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ICANN fails to obtain necessary approval for VeriSign deal

ICANN's new proposed agreement with VeriSign, Inc. (Symbol VRSN; \$57) does not comply with Department of Commerce's ("DOC") regulations governing ICANN's authority to exercise control over the domain name system ("DNS"). ICANN failed to comply with the Clinton Administration's June 1998 White Paper's consensus and policy requirements. This makes any possible DOC reversal of VeriSign's divestiture requirement subject to rule making laws. It may also adversely affect the on-going Senate and General Accounting Office investigations concerning the Clinton administration's failure to comply with Administrative Procedures Act ("APA") in conditionally contracting with ICANN to regulate the DNS. We believe the new agreement merits rejection because it is anti-competitive and unnecessary. However, these failures make VeriSign's "rubber stamp" approval expectations baseless.

ICANN is a private non-profit California corporation with no statutory authority to make regulations or to create public policy. ICANN's by-laws and actions must strictly and uniformly conform to the White Paper's Statement of Policy and principles in order to attempt to control the DNS outside of the APA. ICANN's Board failed to comply with its required by-laws. The new VeriSign violates the White Paper's principles.

According to its by-laws, ICANN's Board is required to develop any policy decisions concerning the DNS through its Domain Name Supporting Organization ("DNSO"), including the development and approval of the new proposed VeriSign agreement. ICANN's by-laws also require that the DNSO seek and produce a consensus on any DNS policy matters and abide by the DNSO consensus. On March 28, 2001 the DNSO notified ICANN's Board that it failed to provide proper notice and that it opposed the Board's proposal. It instructed ICANN's Board not to hold a vote without due process. ICANN's Board ignored the instructions, and on April 2, 2001 approved the new VeriSign agreement.

The DNSO is composed of seven constituency groups, headed by the Names Council ("NC") and a General Assembly. NC consists of 21 members, three members from each constituency group. NC has sole authority for determining DNSO consensus on DNS matters. Both the NC and the General Assembly rejected VeriSign's proposed deal. Among the DNSO's many ignored concerns is its opposition to ICANN's "surprise" plan to "abolish VeriSign's obligation to sell either its registrar or registry businesses" and the proposed new agreement's "windfall to VeriSign". ICANN's failure to gain a consensus and its Board's decision to ignore the DNSO's rejection renders its approval useless to the DOC.

The November 10, 1999 agreement attempts to comply with the White Paper's "Competition" and "Bottom-Up" basic principles. ICANN's new proposed agreement directly violates rather than complies with the "Competition" principle, and ICANN's Board approval despite DNSO's rejection directly violates rather than complies with the "Bottom-Up" principle.