

WEBMD CORP /NEW/  
Form S-3  
April 02, 2003

**Table of Contents**

As filed with the Securities and Exchange Commission on April 2, 2003

Registration No. 333-

---

---

**SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

---

**Form S-3**

**REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

---

**WebMD Corporation**

*(Exact name of registrant as specified in its charter)*

**Delaware**

*(State or other jurisdiction of  
incorporation or organization)*

**94-3236644**

*(I.R.S. Employer  
Identification Number)*

**669 River Drive, Center 2  
Elmwood Park  
New Jersey 07407-1361  
(201) 703-3400**

*(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)*

---

**Charles A. Mele, Esq.  
Executive Vice President and General Counsel  
WebMD Corporation  
669 River Drive, Center 2  
Elmwood Park, New Jersey 07407-1361  
(201) 703-3400**

*(Name and address, including zip code, and telephone number, including area code, of agent for service of process)*

---

***Copies to:***

**Stephen T. Giove, Esq.  
Shearman & Sterling  
599 Lexington Avenue  
New York, New York 10022  
(212) 848-4000**

---

**Approximate date of commencement of proposed sale to the public:** From time to time after the effective date of this Registration Statement as determined by market conditions.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering:

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box:

---

## CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered(1)	Proposed maximum offering price per unit or share(2)	Proposed maximum aggregate offering price(2)	Amount of registration fee(3)
3 1/4% Convertible Subordinated Notes Due 2007	\$25,832,000	100%	\$25,832,000	\$2,090
Common Stock, \$.0001 par value	(4)	(4)	(4)	(5)

- (1) \$25,832,000 aggregate principal amount of notes and 2,788,729 shares of common stock issuable upon conversion of the notes are being registered hereby. The prospectus filed with this Registration Statement is a combined prospectus pursuant to Rule 429 under the Securities Act. The combined prospectus filed with this Registration Statement includes (a) the securities being registered hereby and (b) \$245,718,000 aggregate principal amount of notes and 26,526,829 shares of common stock issuable upon conversion of the notes registered by the registrant and that remain unsold under Registration Statements No. 333-89616 and No. 333-100857.
- (2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457.
- (3) This amount has been previously paid. No additional registration fee with respect to the securities being registered hereby is payable at the time of this filing as the registrant has previously paid a registration fee in the amount of \$27,600 with respect to \$300,000,000 aggregate principal amount of notes and 32,386,916 shares of common stock issuable upon conversion of the notes (which includes the \$25,832,000 aggregate principal amount of notes and 2,788,729 shares of common stock being registered hereby) under Registration Statement No. 333-89616 initially filed on May 31, 2002. The aggregate amount of securities previously registered and aggregate amount of securities being registered hereby will not exceed \$300,000,000.
- (4) Includes 2,788,729 shares of common stock issuable upon conversion of the notes at the rate of 107.9564 shares of common stock per \$1,000 principal amount of the notes. Under Rule 416 under the Securities Act, the number of shares of common stock registered includes an indeterminate number of shares of common stock that may be issued in connection with a stock split, stock dividend, recapitalization or similar event.
- (5) Under Rule 457(l), there is no additional filing fee payable with respect to the shares of common stock issuable upon conversion of the notes because no additional consideration will be received in connection with the exercise of the conversion privilege.

Pursuant to Rule 429 under the Securities Act, this Registration Statement contains a combined prospectus that covers the notes and the shares of common stock of the registrant previously registered that remain unsold under Registration Statements No. 333-89616 and No. 333-100857. Accordingly, this Registration Statement constitutes a post-effective amendment to Registration Statement No. 333-100857. This post-effective amendment shall hereafter become effective concurrently with the effectiveness of this Registration Statement.

**The registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until this Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.**

**Table of Contents**

Information contained in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

**SUBJECT TO COMPLETION, DATED APRIL 2, 2003**

**PROSPECTUS**

**\$271,550,000**

**WebMD Corporation**

**3 1/4% Convertible Subordinated Notes due 2007**

**and**

**Common Stock Issuable Upon Conversion of the Notes**

**The Notes and Common Stock**

We issued \$300,000,000 aggregate principal amount of our 3 1/4% convertible subordinated notes due 2007 in a private placement in April 2002.

We will pay interest on the notes semi-annually in arrears on April 1 and October 1 of each year, starting on October 1, 2002.

The notes will mature on April 1, 2007.

The selling securityholders identified in this prospectus may offer from time to time up to \$271,550,000 of the notes and shares of our common stock issuable upon conversion of the notes. If required, we will set forth the names of any other selling securityholders in a post-effective amendment to the registration statement of which this prospectus is a part.

We will not receive any proceeds from the sale of the notes or shares of common stock issuable upon conversion of the notes by any of the selling securityholders. The notes and the shares of common stock may be offered in negotiated transactions or otherwise, at market prices prevailing at the time of sale or at negotiated prices. In addition, shares of our common stock may be offered from time to time through ordinary brokerage transactions on the Nasdaq National Market. See Plan of Distribution.

**Conversion of the Notes**

The notes are convertible into 107.9564 shares of our common stock, par value \$.0001 per share, per \$1,000 principal amount of notes, subject to adjustment in certain circumstances. This rate results in an initial conversion price of approximately \$9.26 per share.

**Redemption and Repurchase of the Notes**

On or after April 5, 2005, we may, at our option, redeem the notes, in whole or in part, at the redemption prices described in this prospectus, plus any accrued and unpaid interest to the redemption date.

Holders may require us to repurchase all or a portion of their notes upon a change in control as defined in the indenture at 100% of their principal amount, plus any accrued and unpaid interest to the repurchase date.

**Ranking of the Notes**

The notes are junior to all of our existing and future senior indebtedness and are structurally subordinated to all existing and future liabilities of our subsidiaries, including trade payables, lease commitments and monies borrowed.

**Listing**

Our common stock is listed on the Nasdaq National Market under the symbol HLTH. On April 1, 2003, the closing sale price of our common stock on the Nasdaq National Market was \$9.10.

The notes originally issued in the private placement are eligible for trading on The Private Offerings, Resales and Trading Through Automated Linkages, or PORTAL, Market of the National Association of Securities Dealers, Inc. However, notes sold pursuant to this prospectus will no longer be eligible for trading on the PORTAL market. We do not intend to list the notes on any national securities exchange.

**Investing in the notes and common stock involves risks. See Risk Factors beginning on page 6.**

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.**

The date of this prospectus is \_\_\_\_\_, 2003.

---

**TABLE OF CONTENTS**

IMPORTANT NOTICE TO READERS

PROSPECTUS SUMMARY

RISK FACTORS

USE OF PROCEEDS

FORWARD-LOOKING STATEMENTS

CERTAIN CONSIDERATIONS RELATING TO THE HEALTHCARE INDUSTRY

DESCRIPTION OF NOTES

DESCRIPTION OF CAPITAL STOCK

CERTAIN U.S. FEDERAL INCOME TAX CONSIDERATIONS

SELLING SECURITYHOLDERS

PLAN OF DISTRIBUTION

LEGAL MATTERS

EXPERTS

WHERE YOU CAN FIND MORE INFORMATION

INCORPORATION BY REFERENCE

SIGNATURES

EX-5.1 OPINION OF SHEARMAN STERLING

EX-23.1 CONSENT OF ERNST & YOUNG LLP

EX-25 STATEMENT OF ELIGIBILITY OF TRUSTEE

---

**Table of Contents****IMPORTANT NOTICE TO READERS**

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission, or SEC, using a shelf registration process. Under this shelf registration process, the selling securityholders may, from time to time, offer notes or shares of our common stock owned by them. Each time the selling securityholders offer notes or common stock under this prospectus, they will provide a copy of this prospectus and, if applicable, a copy of a prospectus supplement. You should read both this prospectus and, if applicable, any prospectus supplement together with the information incorporated by reference in this prospectus. See [Where You Can Find More Information](#) and [Incorporation by Reference](#) for more information.

You should rely only on the information contained or incorporated by reference in this prospectus. We have not authorized anyone else to provide you with different information. If anyone provides you with different information, you should not rely on it. We are not making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should assume that the information appearing in this prospectus or any documents incorporated by reference in this prospectus is accurate only as of the date on the front cover of the applicable document or as specifically indicated in the document. Our business, financial condition, results of operations and prospects may have changed since that date.

Unless otherwise indicated, in this prospectus, [WebMD](#), [we](#), [us](#) and [our](#) refer to WebMD Corporation and its subsidiaries.

**TABLE OF CONTENTS**

	<b>Page</b>
Important Notice to Readers	i
Prospectus Summary	1
Risk Factors	6
Use of Proceeds	21
Forward-Looking Statements	21
Certain Considerations Relating to the Healthcare Industry	22
Description of Notes	30
Description of Capital Stock	42
Certain U.S. Federal Income Tax Considerations	46
Selling Securityholders	52
Plan of Distribution	60
Legal Matters	62
Experts	62
Where You Can Find More Information	62
Incorporation by Reference	63

WebMD®, Web-MD®, WebMD Health®, The Medical Manager®, ULTIA™, Intergy™, Envoy®, ExpressBill®, Medscape®, WellMed®, Personal Health Manager™, Personal Health Insight™, POREX®, KippMed®, MEDPOR®, Quality Scientific Products® and QSP® are trademarks of WebMD Corporation or its subsidiaries.

**Table of Contents**

**PROSPECTUS SUMMARY**

*This summary highlights information contained elsewhere in this prospectus. It is not complete and is qualified in its entirety by, and should be read in conjunction with, the more detailed information (including Risk Factors and financial information) appearing elsewhere in this prospectus, as well as in the documents incorporated by reference in this prospectus.*

**Our Company**

Our business is comprised of four segments. Three of our business segments, Portal Services or WebMD Health, Transaction Services or WebMD Envoy and Physician Services or WebMD Medical Manager, provide various types of healthcare information services and technology solutions. Our fourth business segment, Plastic Technologies, is known as Porex. The following overview describes our key products, services and markets:

***Healthcare Information Services and Technology Solutions.*** We provide a range of information services and technology solutions for participants across the entire continuum of healthcare, including physicians and other healthcare providers, payers, suppliers and consumers. Our products and services promote administrative efficiency and assist in reducing the cost of healthcare and creating better patient outcomes.

***WebMD Health.*** Our Portal Services segment, WebMD Health, offers a variety of online resources and services for consumers and healthcare professionals. Our online offerings for consumers help them become better informed about healthcare choices and assist them in playing an active role in managing their own health. Our offerings for healthcare professionals help them improve their clinical knowledge, as well as their communication with patients regarding treatment options for specific health conditions.

We reach a large audience of health-involved consumers and clinically active healthcare professionals. We work closely with pharmaceutical, medical device and other healthcare companies to develop innovative online channels of communication to our audience, or targeted portions of our audience, that complement their offline education, marketing and customer service programs.

In addition, through WellMed from WebMD, we provide employers and health plans with access to a suite of online tools and related services, for use by their employees and plan members. These tools and services provide a framework for better decision-making by healthcare consumers and can assist employers and plans in managing demand while improving quality of care.

We generate revenue by selling advertising on our portals and the online and offline properties of our strategic partners, by selling sponsorships of specific pages, sections or events on our portal and related e-mailed newsletters, and by licensing our content and our online tools and related software and services. The majority of our WebMD Health revenues come from a small number of customers. Our WebMD Health customers include pharmaceutical, biotech and medical device companies, employers and health plans and media distribution companies.

***WebMD Envoy.*** Our Transaction Services segment, WebMD Envoy, transmits electronic transactions between healthcare payers and physicians, pharmacies, dentists, hospitals, laboratory companies and other healthcare providers. The use of electronic transactions significantly reduces processing time and costs, as compared to mail, fax or telephone, and increases productivity for both payers and providers. The transactions that we facilitate include:

administrative transactions, such as claims submission and status inquiry, eligibility and patient coverage verification, referrals and authorizations, and electronic remittance advice, and



**Table of Contents**

clinical transactions, such as lab test ordering and reporting of results.

We also provide automated patient billing services to providers, including statement printing and mailing services. We are focused on continuing to increase the percentage of healthcare transactions that are handled electronically and on providing value-added services to providers and payers in connection with our transmission of their transactions.

We generate revenue by selling our transaction services to healthcare payers and providers, generally on either a per transaction basis or, in the case of some providers, on a monthly fixed fee basis. We also generate revenue by selling our patient statement services, typically on a per statement basis. A significant portion of WebMD Envoy revenues come from the country's leading national and regional healthcare payers.

*WebMD Medical Manager.* Our Physician Services segment, WebMD Medical Manager, develops and markets information technology systems for healthcare providers, primarily under The Medical Manager, Intergy, ULTIA and Medical Manager Network Services brands. Our systems include:

administrative and financial applications that enable healthcare providers and their administrative personnel to manage their practices more efficiently, and

electronic medical record and other clinical applications that assist them in delivering quality patient care.

In addition, through Medical Manager Network Services, we provide integrated access to our WebMD Envoy transaction services.

Our systems are scalable to meet the needs of a wide variety of healthcare provider settings, from small physician groups to large clinics, and across various medical specialties. Customers can purchase a base system and then add additional modules and services over time to expand their use of state-of-the-art technology as needed.

We generate revenue from one-time fees for licenses to our software modules and for system hardware and from recurring fees for the maintenance and support of our software and system hardware. Pricing depends on the number and type of software modules to be licensed, the number of users, the complexity of the installation and other factors. Our Medical Manager Network Services and some of our other WebMD Medical Manager products and services are priced on a monthly fee per user basis or a per transaction basis.

We believe that the combination, in one company, of WebMD Health, WebMD Envoy and WebMD Medical Manager makes us well positioned to create significant improvements in the way that information is used by the healthcare industry, enabling increased efficiency, better decision-making and, ultimately, higher quality patient care at a lower cost.

*Plastic Technologies.* Our Plastic Technologies segment, Porex, develops, manufactures and distributes proprietary porous and solid plastic products and components used in healthcare, industrial and consumer applications. Our Porex customers include both end-users of our finished products, as well as manufacturers that include our components in their products for the medical device, life science, research and clinical laboratory, surgical and other markets. Porex is an international business with manufacturing operations in North America, Europe and Asia and customers in more than 65 countries.

WebMD Corporation is a Delaware corporation that was incorporated in December 1995 and commenced operations in January 1996 as Healtheon Corporation. Our principal executive offices are located at 669 River Drive, Center 2, Elmwood Park, New Jersey 07407-1361 and our telephone number is (201) 703-3400. Our common stock has traded on the Nasdaq National Market under the symbol HLTH since February 11, 1999.

**Table of Contents**

**The Offering**

Issuer	WebMD Corporation.
Notes	We issued \$300,000,000 aggregate principal amount of 3 1/4% convertible subordinated notes due 2007 in a private placement in April 2002. The selling securityholders identified in this prospectus may offer from time to time up to \$271,550,000 of the notes and shares of our common stock issuable upon conversion of the notes.
Interest payment dates	We will pay interest on the notes semi-annually in arrears on April 1 and October 1 of each year, starting on October 1, 2002.
Maturity	The notes will mature on April 1, 2007.
Conversion	The notes are convertible into 107.9564 shares of our common stock, par value \$.0001 per share, per \$1,000 principal amount of notes, subject to adjustment in certain circumstances. This rate results in an initial conversion price of approximately \$9.26 per share. See Description of Notes Conversion Rights.
Ranking	<p>The notes are:</p> <ul style="list-style-type: none"><li>unsecured;</li><li>junior to all of our existing and future senior indebtedness; and</li><li>structurally subordinated to all existing and future liabilities of our subsidiaries, including trade payables, lease commitments and monies borrowed.</li></ul> <p>As of December 31, 2002, we and our subsidiaries had approximately \$430 million of consolidated obligations effectively ranking senior to the notes. The indenture under which the notes were issued does not restrict our or our subsidiaries' ability to incur additional senior or other indebtedness. See Description of Notes Subordination of Notes.</p>
Sinking fund	None.
Original issue discount	The notes were sold with original issue discount and you will therefore be required to include amounts in gross income in each taxable year in advance of receipt of a corresponding cash payment on the notes. See Certain U.S. Federal Income Tax Considerations Payment of Interest Original Issue Discount.
Optional redemption	On or after April 5, 2005, we may, at our option, redeem the notes, in whole or in part, at the redemption prices described in this prospectus, plus any accrued and unpaid interest to the redemption date. See Description of Notes Redemption of Notes at Our Option.
Change in control	If we experience a change in control as defined in the indenture, each holder may require us to purchase all or a portion of that holder's notes at 100% of their principal amount, plus any accrued and unpaid interest to the repurchase date. See Description of Notes Holders May Require Us To Purchase Their Notes Upon a Change in Control.

**Table of Contents**

Use of proceeds	We will not receive any proceeds from the sale by any selling securityholder of the notes or the shares of common stock issuable upon conversion of the notes.
Listing and trading	The notes originally issued in the private placement are eligible for trading on the PORTAL market. However, notes sold pursuant to this prospectus will no longer be eligible for trading on the PORTAL market. We do not intend to list the notes on any national securities exchange. Our common stock is listed on the Nasdaq National Market under the symbol HLTH.
Risk factors	In analyzing an investment in the notes and common stock offered by this prospectus, prospective investors should carefully consider, along with other matters referred to in this prospectus, the information set forth under Risk Factors.

For a more complete description of the terms of the notes, see Description of Notes. For a more complete description of the common stock, see Description of Capital Stock.

**Table of Contents****RATIO OF EARNINGS TO FIXED CHARGES**

The following table sets forth our consolidated ratio of earnings to fixed charges for each of the periods indicated (in thousands):

	Fiscal years ended December 31,				
	1998	1999	2000	2001	2002
Coverage Deficiency(1)	\$(54,048)	\$(287,992)	\$(3,080,794)	\$(6,669,561)	\$(59,704)

(1) Earnings were inadequate to cover fixed charges. We needed additional earnings, as indicated by the coverage deficiency for each of the periods presented above, to achieve a ratio of earnings to fixed charges of 1.0x.

**Table of Contents**

**RISK FACTORS**

*This section describes circumstances or events that could have a negative effect on our financial results or operations or that could change, for the worse, existing trends in some or all of our businesses. The occurrence of one or more of the circumstances or events described below could have a material adverse effect on our financial condition, results of operations and cash flows or on the trading prices of the common stock and convertible notes that we have issued. The risks and uncertainties described below are not the only ones facing WebMD. Additional risks and uncertainties that are not currently known to us or that we currently believe are immaterial may also adversely affect our business and operations. You should carefully consider all of the information contained or incorporated by reference in this prospectus before deciding whether to invest in the notes and, in particular, the risks and uncertainties described below.*

**Risks Related to Our Relationships with Customers and Strategic Partners**

***WebMD Envoy's transaction volume and financial results could be adversely affected if we do not maintain relationships with practice management system vendors and large submitters of healthcare electronic data interchange, or EDI, transactions***

We have developed relationships with practice management system vendors and large submitters of healthcare claims to increase the usage of our WebMD Envoy transaction services. WebMD Medical Manager is a competitor of these practice management system vendors. These vendors, as a result of our ownership of WebMD Medical Manager or for other reasons, may choose in the future to diminish or terminate their relationships with WebMD Envoy. Some other large submitters of claims compete with, or may have significant relationships with entities that compete with, WebMD Envoy or WebMD Health. To the extent that we are not able to maintain mutually satisfactory relationships with the larger practice management system vendors and large submitters of healthcare EDI transactions, WebMD Envoy's transaction volume and financial results could be adversely affected.

***WebMD Envoy's transaction volume and financial results could be adversely affected if payers and providers conduct EDI transactions without using a clearinghouse***

There can be no assurance that healthcare payers and providers will continue to use WebMD Envoy and other independent companies to transmit healthcare transactions. Some payers currently offer electronic data transmission services to healthcare providers that establish a direct link between the provider and payer, bypassing third party EDI service providers such as WebMD Envoy. Any significant increase in the utilization of direct links between healthcare providers and payers could have a material adverse effect on WebMD Envoy's transaction volume and financial results. We cannot provide assurance that we will be able to maintain our existing links to payers or develop new connections on satisfactory terms, if at all.

***Loss of a small number of advertisers and sponsors could have a material adverse effect on WebMD Health's revenues***

A substantial portion of WebMD Health's revenues come from a relatively small number of advertisers and sponsors. We expect this to continue in the future. Thus, the loss of one or a small number of relationships with advertisers and sponsors or reduction of their purchases could have a material adverse effect on our Portal Services revenues. We may lose such relationships or experience a reduction in purchases if customers decide not to renew their commitments or renew at lower levels, which may occur if we fail to meet our customers' expectations or needs or to keep up with our competition or for reasons outside our control, including changes in economic and regulatory conditions affecting the healthcare industry or changes specific to the businesses of particular customers. See "Developments in the healthcare industry could adversely affect our business" and "Certain Considerations Relating to the Healthcare Industry" below.

**Table of Contents**

***Third parties may bring claims as a result of the activities of our strategic partners***

We could be subject to claims by third parties, and to liability, as a result of the activities, products or services of our strategic partners. We state on our Web sites that we do not control or endorse the products or services of our strategic partners. However, there can be no assurance that the statements made in our Web sites will be found to be sufficient to ensure that we are not held responsible for such activities, products or services. Furthermore, even if these claims do not result in liability to us, investigating and defending these claims could be expensive, time-consuming and result in adverse publicity that could harm our business.

---

**Risks Related to the Performance of Our Healthcare Information Services and Technology Solutions**

***Our ability to generate revenue could suffer if we do not continue to update and improve our existing products and services and develop new ones***

We must introduce new healthcare information services and technology solutions and improve the functionality of our existing products and services in a timely manner in order to retain existing customers and attract new ones. However, we may not be successful in responding to technological developments and changing customer needs. The pace of change in the markets we serve is rapid, and there are frequent new product and service introductions by our competitors and by vendors whose products and services we use in providing our own products and services. If we do not respond successfully to technological changes and evolving industry standards, our products and services may become obsolete. Technological changes may also result in the offering of competitive products and services at lower prices than we are charging for our products and services, which could result in our losing sales unless we lower the prices we charge.

We rely on a combination of internal development, strategic relationships, licensing and acquisitions to develop our products and services. The cost of developing new healthcare information services and technology solutions is inherently difficult to estimate. Our development of proposed products and services may take longer than originally expected, require more testing than originally anticipated and require the acquisition of additional personnel and other resources. In addition, there can be no assurance that the products we develop or license will be able to compete with the alternatives available to our customers. For more information, see *Business Healthcare Information Services and Technology Solutions Competition for Our Healthcare Information Services and Technology Solutions* in our annual report on Form 10-K for the year ended December 31, 2002.

***New or newly integrated products and services will not become profitable unless they achieve sufficient levels of market acceptance***

There can be no assurance that healthcare providers and payers will accept from us new products and services or products and services that result from integrating existing and/or acquired products and services, including the products and services we are developing to integrate our transaction services and portal services into the physician office workflow, such as our handheld solution.

Even providers and payers who are already our customers may not purchase new or newly integrated products or services, especially when they are initially offered. Providers using our existing products and services may refuse to adopt new or newly integrated products and services when they have made extensive investments in hardware, software and training relating to those existing products and services. Similarly, other healthcare participants may not accept new or newly integrated products and services that we develop for their use. In addition, there can be no assurance that any pricing strategy that we implement for any such products and services will be economically viable or acceptable to the target markets. Failure to achieve broad penetration in target markets with respect to new or newly integrated products and services could have a material adverse effect on our business prospects.

**Table of Contents**

***Achieving market acceptance of new or newly integrated products and services is likely to require significant efforts and expenditures***

Achieving market acceptance for new or newly integrated products and services is likely to require substantial marketing efforts and expenditure of significant funds to create awareness and demand by participants in the healthcare industry. In addition, deployment of new or newly integrated products and services may require the use of additional resources for training our existing sales force and customer service personnel and for hiring and training additional salespersons and customer service personnel. There can be no assurance that the revenue opportunities from new or newly integrated products and services will justify amounts spent for their development, marketing and roll-out.

***We could be subject to breach of warranty claims if our software products, information technology systems or transmission systems contain errors, experience failures or do not meet customer expectations***

We could face breach of warranty or other claims or additional development costs if the software and systems we sell or license to customers or use to provide services contain undetected errors, experience failures, do not perform in accordance with their documentation, or do not meet the expectations that our customers have for them. These software and systems are inherently complex and, despite testing and quality control, we cannot be certain that errors will not be found in prior versions, current versions or future versions or enhancements. In particular, during times when we are making significant changes or improvements to our products and services, such as those required by the Healthcare Insurance Portability and Accountability Act of 1996, or HIPAA, there is increased risk of error.

Undetected errors in the software and systems we provide or those we use to provide services could cause serious problems for which our customers may seek compensation from us. For example, errors in our transaction processing systems can result in healthcare payers paying the wrong amount or making payments to the wrong payee. We attempt to limit, by contract, our liability for damages arising from negligence, errors or mistakes. However, contractual limitations on liability may not be enforceable in certain circumstances or may otherwise not provide sufficient protection to us from liability for damages. Even if these claims do not result in liability to us, investigating and defending against them could be expensive and time consuming and could divert management's attention away from our operations. In addition, negative publicity caused by these events may delay market acceptance of our products and services, including unrelated products and services.

***We could be subject to product liability claims if our products malfunction or provide inaccurate information***

We provide products and services that assist in healthcare decision-making, including some that relate to patient medical histories and treatment plans. If these products malfunction or fail to provide accurate and timely information, we could be subject to product liability claims. Even if these claims do not result in liability to us, investigating and defending against them could be expensive and time consuming and could divert management's attention away from our operations. In addition, negative publicity caused by these events may delay market acceptance of our products and services, including unrelated products and services.

We attempt to limit, by contract, our liability for damages arising from negligence, errors or mistakes. However, contractual limitations on liability may not be enforceable in certain circumstances or may otherwise not provide sufficient protection to us from liability for damages. We maintain general liability insurance coverage, including coverage for errors and omissions. However, it is possible that claims could exceed the amount of our applicable insurance coverage or that this coverage may not continue to be available on acceptable terms or in sufficient amounts.

***We could lose customers and revenues if we fail to meet the performance standards in our contracts***

Many of our customer contracts contain performance standards. If we fail to meet these standards, our customers may seek to terminate their agreements with us, withhold payments due to us, seek refunds

## **Table of Contents**

from us of part or all of the fees charged under those agreements or initiate litigation or other dispute resolution procedures. Despite testing and quality control, we cannot be certain that we will meet these performance standards. To the extent we fail to achieve these standards, our revenues and customer relationships could be adversely affected.

### ***If our systems or the Internet experience security breaches or are otherwise perceived to be insecure, our business could suffer***

A security breach could damage our reputation or result in liability. We retain and transmit confidential information, including patient health information, in our processing centers and other facilities. It is critical that these facilities and infrastructure remain secure and be perceived by the marketplace as secure. We may be required to expend significant capital and other resources to protect against security breaches and hackers or to alleviate problems caused by breaches. Despite the implementation of security measures, this infrastructure or other systems that we interface with, including the Internet and related systems, may be vulnerable to physical break-ins, hackers, improper employee or contractor access, computer viruses, programming errors, attacks by third parties or similar disruptive problems. Any compromise of our security, whether as a result of our own systems or systems that they interface with, could reduce demand for our services.

### ***Performance problems with WebMD Envoy's systems could adversely affect our business***

Our payer and provider customer satisfaction and our business could be harmed if WebMD Envoy experiences delays, failures or loss of data in its systems. We currently process our payer and provider transactions and data at our facilities and at a data center in Tampa, Florida that is operated by an independent third party. We have contingency plans for emergencies with our systems; however, we have limited backup facilities to process information if these facilities are not functioning. The occurrence of a major catastrophic event or other system failure at any of our facilities or at the third party facility could interrupt data processing or result in the loss of stored data, which could have a material adverse impact on our business.

### ***WebMD Envoy's ability to provide transaction services depends on services provided by telecommunications companies***

WebMD Envoy relies on a limited number of suppliers to provide some of the telecommunications services necessary for its transaction services. The telecommunications industry has been subject to significant changes as a result of changes in technology, regulation and the underlying economy. Recently, many telecommunications companies have experienced financial problems and some have sought bankruptcy protection. Some of these companies have discontinued telecommunications services for which they had contractual obligations to WebMD Envoy. WebMD Envoy's inability to source telecommunications services at reasonable prices due to a loss of competitive suppliers could affect its ability to maintain its margins until it is able to raise its prices to its customers and, if it is not able to raise its prices, could have a material adverse effect on its financial results.

---

## **Risks Related to Providing Products and Services to the Healthcare Industry**

### ***Developments in the healthcare industry could adversely affect our business***

Almost all of the revenues of WebMD Health, WebMD Envoy and WebMD Medical Manager come from customers in various parts of the healthcare industry. In addition, a significant portion of Porex's revenues come from products used in healthcare or related applications. Developments that result in a reduction of expenditures by customers or potential customers in the healthcare industry could have a



## **Table of Contents**

material adverse effect on our business. General reductions in expenditures by healthcare industry participants could result from, among other things:

government regulation or private initiatives that affect the manner in which healthcare providers interact with patients, payers or other healthcare industry participants, including changes in pricing or means of delivery of healthcare products and services (for additional discussion of the potential effects of regulatory matters on our business and on participants in the healthcare industry, see *Certain Considerations Relating to the Healthcare Industry* below);

consolidation of healthcare industry participants;

reductions in governmental funding for healthcare; and

adverse changes in business or economic conditions affecting healthcare payers or providers, pharmaceutical companies, medical device manufacturers or other healthcare industry participants.

Even if general expenditures by industry participants remain the same or increase, developments in the healthcare industry may result in reduced spending on information technology and services or in some or all of the specific segments of that market we serve or are planning to serve. For example, use of our products and services could be affected by:

changes in the billing patterns of healthcare providers;

changes in the design of health insurance plans;

changes in the contracting methods payers use in their relationships with providers; and

decreases in marketing expenditures by pharmaceutical companies or medical device manufacturers, including as a result of governmental regulation or private initiatives that discourage or prohibit promotional activities by pharmaceutical or medical device companies.

In addition, expectations of our customers regarding pending or potential industry developments may also affect their budgeting processes and spending plans with respect to products and services of the types we provide.

The healthcare industry has changed significantly in recent years and we expect that significant changes will continue to occur. However, the timing and impact of developments in the healthcare industry are difficult to predict. We cannot provide assurance that the markets for our products and services will continue to exist at current levels or that we will have adequate technical, financial and marketing resources to react to changes in those markets.

### ***Government regulation of healthcare and healthcare information technology, including HIPAA, creates risks and challenges with respect to our compliance efforts and our business strategies***

*General.* The healthcare industry is highly regulated and is subject to changing political, regulatory and other influences. These factors affect the purchasing practices and operations of healthcare organizations. Federal and state legislatures and agencies periodically consider programs to reform or revise the United States healthcare system. These programs may contain proposals to increase governmental involvement in healthcare, lower reimbursement rates or otherwise change the environment in which healthcare industry participants operate. Healthcare industry participants may respond by reducing their investments or postponing investment decisions, including investments in our applications and services. We are unable to predict future proposals with any certainty or to predict the effect they would have on our business. Existing laws and regulations also could create liability, cause us to incur additional cost or restrict our operations.

*HIPAA.* As described under *Certain Considerations Relating to the Healthcare Industry* *Health Insurance Portability and Accountability Act of 1996* below and *Business WebMD Envoy HIPAA* in our annual report on Form 10-K for the year ended December 31, 2002, the effect of HIPAA on our business is difficult to predict and there can be no assurances that we will adequately address the

## **Table of Contents**

business risks created by HIPAA and its implementation or that we will be able to take advantage of any resulting business opportunities. We may incur significant expenses relating to compliance with HIPAA. Our ability to perform our transaction services in compliance with HIPAA and the cost to us of doing so will depend on, among other things, the status of the compliance efforts of our payer and provider customers and the extent of the need to adjust our systems and procedures in response to changes in their systems and procedures. We cannot control when or how payers, providers, practice management system vendors or other healthcare participants will comply with HIPAA's transaction standards or predict how their compliance efforts will affect their relationships with us, including the volume of transactions for which they use our services. In addition, our technological and strategic responses to HIPAA may result in conflicts with, or other adverse changes in our relationships with, some healthcare industry participants, including some who are existing or potential customers for our products and services or existing or potential strategic partners. Furthermore, we are unable to predict what changes to HIPAA, or the regulations issued pursuant to HIPAA, might be made in the future or how those changes could affect our business or the costs of compliance with HIPAA.

*Healthcare Relationships.* A federal law commonly known as the Medicare/ Medicaid anti-kickback law and several similar state laws prohibit payments that are intended to induce healthcare providers either to refer patients or to acquire or arrange for or recommend the acquisition of healthcare products or services. These laws are broad and may apply to some of our activities or our relationships with our customers, advertisers or strategic partners. Other federal and state laws generally prohibit individuals or entities from knowingly presenting, or causing to be presented, claims for payment from Medicare, Medicaid, or other third-party payers that are false or fraudulent, or are for items or services that were not provided as claimed. Since we provide transaction services to healthcare providers, we cannot provide assurance that the government will regard errors in transactions processed by us as inadvertent and not in violation of these laws. Anti-kickback and false claims laws prescribe civil and criminal penalties for noncompliance that can be substantial. Even an unsuccessful challenge by regulatory authorities or our practices could cause us adverse publicity and be costly for us to respond to.

*Regulation of Medical Devices.* Certain of Porex's products are medical devices regulated by the Food and Drug Administration, or the FDA, such as plastic and reconstructive surgical implants, intravenous administration sets, blood filters, and tissue expanders. These products are subject to comprehensive government regulation under the Food, Drug and Cosmetic Act and implementing regulations. In addition, the FDA regulates WebMD Medical Manager's DIM<sub>x</sub> System as a medical image management device. If the FDA finds that we have not complied with required procedures, it can bring a wide variety of enforcement actions that could result in severe civil and criminal sanctions. Porex is also subject to similar regulation in international markets, with similar risks. Future medical devices that Porex or WebMD Medical Manager wish to bring to market may be required to obtain 510(k) clearance or premarket approval from the FDA, as well as similar clearances and approvals from governmental authorities outside of the United States, which can be expensive, time-consuming and burdensome to obtain.

For more information regarding healthcare regulation to which we are or may be subject, see [Certain Considerations Relating to the Healthcare Industry](#) below.

---

### **Risks Related to Our Web Sites and Our Use of the Internet**

#### ***Government regulation of the Internet could adversely affect our business***

The Internet and its associated technologies are subject to government regulation. Our failure, or the failure of our business partners, to accurately anticipate the application of applicable laws and regulations, or any other failure to comply, could create liability for us, result in adverse publicity, or negatively affect our business. In addition, new laws and regulations, or new interpretations of existing laws and regulations, may be adopted with respect to the Internet or other online services covering user privacy, patient confidentiality, consumer protection and other issues, including pricing, content, copyrights and patents,

**Table of Contents**

distribution, and characteristics and quality of products and services. We cannot predict whether these laws or regulations will change or how such changes will affect our business. Government regulation of the Internet could limit the effectiveness of the Internet for the methods of healthcare e-commerce that we are providing or developing or even prohibit the sale of particular products and services.

For more information regarding government regulation of the Internet to which we are or may be subject, see Certain Considerations Relating to the Healthcare Industry below.

***We face potential liability related to the privacy and security of personal information we collect on our Web sites***

Internet user privacy has become a controversial issue both in the United States and abroad. We have privacy policies posted on our consumer portal and our professional portal that we believe comply with applicable laws requiring notice to users about our information collection, use and disclosure practices. However, whether and how existing privacy and consumer protection laws in various jurisdictions apply to the Internet is still uncertain and may take years to resolve. Any legislation or regulation in the area of privacy of personal information could affect the way we operate our Web sites and could harm our business. Further, we can give no assurance that the statements on our portals, or our practices, will be found sufficient to protect us from liability or adverse publicity in this area.

For more information regarding regulation of the collection, use and disclosure of personal information to which we may be subject, see Certain Considerations Relating to the Healthcare Industry below.

***We must demonstrate the value of the WebMD Medscape Health Network to advertisers and sponsors in order to generate revenue from it***

We generate WebMD Health revenues from advertising and sponsorships on the WebMD Medscape Health Network, with a majority of these revenues coming from a small number of customers. The Internet advertising and sponsorship market is new and continues to evolve, and no standards have been widely accepted to measure its effectiveness as compared to traditional media advertising. We cannot provide assurance that we will be able to continue to generate sufficient advertising or sponsorship revenue from the WebMD Medscape Health Network to operate it profitably.

We sometimes enter into relationships with advertisers and sponsors in which we agree to be compensated based on specific negotiated criteria designed to demonstrate the value of our portal services. The amount of compensation that we receive from such arrangements may be less than we believed it would be at the time of entering into such arrangements and at the time of performing the services.

***Implementation of changes in hardware and software platforms used to deliver our Web sites may result in performance problems***

From time to time, we implement changes to the hardware and software platforms we use for creating and delivering our Web sites. During and after the implementation of those changes, a platform may not perform as expected, which could result in interruptions in the operation of our Web sites, an increase in response time of those sites or an inability to track performance metrics. Any significant interruption in our ability to operate our Web sites could have an adverse effect on our relationship with users and sponsors and, as a result, on our financial results.

***Our Internet-based services rely on third party service providers***

Our Web sites are designed to operate 24 hours a day, seven days a week, without interruption. To do so, we rely on communications and hosting services provided by third parties. We do not maintain

**Table of Contents**

redundant systems or facilities for some of these services. To operate without interruption, both we and our service providers must guard against:

damage from fire, power loss and other natural disasters;

communications failures;

software and hardware errors, failures or crashes;

security breaches, computer viruses and similar disruptive problems; and

other potential interruptions.

We have experienced periodic system interruptions in the past, and we cannot guarantee that they will not occur again. In addition, our Web sites may, at times, be required to accommodate higher than usual volumes of traffic. At those times, our Web sites may experience slower response times or system failures. Any sustained or repeated interruptions or disruptions in these systems or increase in their response times could result in reduced usage of our Web sites and could damage our relationships with strategic partners, advertisers and sponsors. Although we maintain insurance for our business, we cannot guarantee that our insurance will be adequate to compensate us for all losses that may occur or to provide for costs associated with business interruptions.

***Our Internet-based services are dependent on the development and maintenance of the Internet infrastructure***

Our ability to deliver our Internet-based services is dependent on the development and maintenance of the infrastructure of the Internet by third parties. This includes maintenance of a reliable network backbone with the necessary speed, data capacity and security, as well as timely development of complementary products such as high-speed modems, for providing reliable Internet access and services. The Internet has experienced, and is likely to continue to experience, significant growth in the number of users and the amount of traffic. If the Internet continues to experience increased usage, the Internet infrastructure may be unable to support the demands placed on it. In addition, the performance of the Internet may be harmed by increased usage.

The Internet has experienced a variety of outages and other delays as a result of damages to portions of its infrastructure, and it could face outages and delays in the future. These outages and delays could reduce the level of Internet usage as well as the availability of the Internet to us for delivery of our Internet-based services. In addition, our customers who utilize our Web-based services depend on Internet service providers, online service providers and other Web site operators for access to our Web site. All of these providers have experienced significant outages in the past and could experience outages, delays and other difficulties in the future due to system failures unrelated to our systems. Any significant interruptions in our services or increases in response time could result in a loss of potential or existing users of and advertisers and sponsors on our Web site and, if sustained or repeated, could reduce the attractiveness of our services.

***Third parties may challenge the enforceability of our online agreements***

The law governing the validity and enforceability of online agreements and other electronic transactions is evolving. We could be subject to claims by third parties that our online agreements with consumers and physicians that provide the terms and conditions for use of our portal services and physician services are unenforceable. A finding by a court that these agreements are invalid could harm our business and require costly changes to our portals.

***Third parties may bring claims against us as a result of content provided on our Web site, which may be expensive and time consuming to defend***

We could be subject to third party claims based on the nature and content of information supplied on our Web site by us or third parties, including content providers, medical advisors or users. We could also

## **Table of Contents**

be subject to liability for content that may be accessible through our Web site or third party Web sites linked from our Web site or through content and information that may be posted by users in chat rooms, bulletin boards or on Web sites created by professionals using our Web site application. Even if these claims do not result in liability to us, investigating and defending against these claims could be expensive and time consuming and could divert management's attention away from our operations.

### ***Some of our services will not be widely adopted until broadband connectivity is more generally available***

Some of our services and planned services require a continuous broadband connection between the physician's office and our data center and/or the Internet. The availability of broadband connectivity varies widely from location to location and even within a single geographic area, due to factors such as the distance of a site from the central switching office. The future availability of broadband connections is unpredictable and is not within our control. While we expect that many physician office locations will remain without ready access to broadband connectivity for some period of time, we cannot predict how long that will be. Accordingly, the lack of these broadband connections will continue to place limitations on the number of sites that are able to utilize our Internet-based services and the revenue we can expect to generate from those services.

---

## **Risks Related to Porex's Business and Industry**

### ***Porex's success depends upon demand for its products, which in some cases ultimately depends upon end-user demand for the products of its customers***

Demand for our Porex products may change materially as a result of economic or market conditions and other trends that affect the industries in which it participates. In addition, because a significant portion of our Porex products are components that are eventually integrated into or used with products manufactured by customers for resale to end-users, the demand for these product components is dependent on product development cycles and marketing efforts of these other manufacturers, as well as variations in their inventory levels, which are factors that we are unable to control. Accordingly, the amount of Porex's sales to manufacturer customers can be difficult to predict and subject to wide quarter-to-quarter variances.

### ***Porex's success may depend upon satisfying rapidly changing customer requirements***

A significant portion of our Porex products are integrated into end products used in various industries, some of which are characterized by rapidly changing technology, evolving industry standards and practices and frequent new product introductions. Accordingly, Porex's success will depend to a substantial degree on our ability to develop and introduce in a timely manner products that meet changing customer requirements and to differentiate our offerings from those of our competitors. If we do not introduce new Porex products in a timely manner and make enhancements to existing products to meet the changing needs of our Porex customers, some of our products could become obsolete over time, in which case our customer relationships, revenue and operating results would be negatively impacted.

### ***Potential new or enhanced Porex products may not achieve sufficient sales to be profitable or justify the cost of their development***

We cannot be certain, when we engage in Porex research and development activities, whether potential new products or product enhancements will be accepted by the customers for which they are intended. Achieving market acceptance for new or enhanced products may require substantial marketing efforts and expenditure of significant funds to create awareness and demand by potential customers. In addition, sales and marketing efforts with respect to these products may require the use of additional resources for training our existing Porex sales forces and customer service personnel and for hiring and training additional salespersons and customer service personnel. There can be no assurance that the revenue opportunities from new or enhanced products will justify amounts spent for their development and

## **Table of Contents**

marketing. In addition, there can be no assurance that any pricing strategy that we implement for any new or enhanced Porex products will be economically viable or acceptable to the target markets.

### ***Porex may not be able to source the raw materials it needs or may have to pay more for those raw materials***

Some of Porex's products require high-grade plastic resins with specific properties as raw materials. While Porex has not experienced any material difficulty in obtaining adequate supplies of high-grade plastic resins that meet its requirements, it relies on a limited number of sources for some of these plastic resins. If Porex experiences a reduction or interruption in supply from these sources, it may not be able to access alternative sources of supply within a reasonable period of time or at commercially reasonable rates, which could have a material adverse effect on its business and financial results.

Porex also uses a variety of plastic resins that are generally available from a number of suppliers. However, the raw materials for these plastic resins are petroleum based and may be subject to significant and rapid price increases based on factors affecting the pricing of petroleum products in general, which could have a material adverse effect on the margins of some of our plastic products.

### ***Disruptions in Porex's manufacturing operations could have a material adverse effect on its business and financial results***

Any significant disruption in Porex's manufacturing operations, including as a result of fire, power interruptions, equipment malfunctions, labor disputes, material shortages, earthquakes, floods, computer viruses, sabotage, terrorist acts or other force majeure, could have a material adverse effect on Porex's ability to deliver products to customers and, accordingly, its financial results.

### ***The nature of Porex's products exposes it to product liability claims that may not be adequately covered by indemnity agreements or insurance***

The products sold by Porex, whether sold directly to end-users or sold to other manufacturers for inclusion in the products that they sell, expose it to potential risk of product liability claims, particularly with respect to Porex's life sciences, clinical, surgical and medical products. Some of Porex's products are designed to be permanently implanted in the human body. Design defects and manufacturing defects with respect to such products sold by Porex or failures that occur with the products of Porex's manufacturer customers that contain components made by Porex could result in product liability claims and/or a recall of one or more of Porex's products. Porex also manufactures products that are used in the processing of blood for medical procedures and the delivery of medication to patients. Porex believes that it carries adequate insurance coverage against product liability claims and other risks. We cannot assure you, however, that claims in excess of Porex's insurance coverage will not arise. In addition, Porex's insurance policies must be renewed annually. Although Porex has been able to obtain adequate insurance coverage at an acceptable cost in the past, we cannot assure you that Porex will continue to be able to obtain adequate insurance coverage at an acceptable cost.

In most instances, Porex enters into indemnity agreements with its manufacturing customers. These indemnity agreements generally provide that these customers would indemnify Porex from liabilities that may arise from the sale of their products that incorporate Porex components to, or the use of such products by, end-users. While Porex generally seeks contractual indemnification from its customers, any such indemnification is limited, as a practical matter, to the creditworthiness of the indemnifying party. If Porex does not have adequate contractual indemnification available, product liability claims, to the extent not covered by insurance, could have a material adverse effect on its business, operating results and financial condition.

Since March 1991, Porex has been named as one of many co-defendants in a number of actions brought by recipients of mammary implants distributed by Porex in the United States. For a description of these actions, see the information under "Legal Proceedings - Porex Mammary Implant Litigation" in our annual report on Form 10-K for the year ended December 31, 2002.

**Table of Contents**

***Economic, political and other risks associated with Porex's international sales and geographically diverse operations could adversely affect Porex's operations and results***

Since Porex sells its products worldwide, its business is subject to risks associated with doing business internationally. In addition, Porex has manufacturing assets in the United Kingdom, Germany and Malaysia. Accordingly, Porex's operations and financial results could be harmed by a variety of factors, including:

changes in foreign currency exchange rates;

changes in a specific country's or region's political or economic conditions, particularly in emerging markets;

trade protection measures and import or export licensing requirements;

potentially negative consequences from changes in tax laws;

difficulties in managing international and geographically diverse operations;

differing protection of intellectual property; and

unexpected changes in regulatory requirements.

***Environmental regulation could adversely affect Porex's business***

Porex is subject to foreign and domestic environmental laws and regulations and is subject to scheduled and random checks by environmental authorities. Porex's business involves the handling, storage and disposal of materials that are classified as hazardous. Although Porex's safety procedures for handling, storage and disposal of these materials are designed to comply with the standards prescribed by applicable laws and regulations, Porex may be held liable for any environmental damages that result from Porex's operations. Porex may be required to pay fines, remediation costs and damages, which could have a material adverse effect on its results of operations.

---

**Risks Applicable to Our Entire Company**

***We face significant competition for our products and services***

The markets in which we operate are intensely competitive, continually evolving and, in some cases, subject to rapid technological change. Many of our competitors have greater financial, technical, product development, marketing and other resources than we do. These organizations may be better known than we are and have more customers than we do. We cannot provide assurance that we will be able to compete successfully against these organizations or any alliances they have formed or may form. For more information about the competition we face, see Business Healthcare Information Services and Technology Solutions Competition for Our Healthcare Information Services and Technology Solutions and Business Porex Competition in our annual report on Form 10-K for the year ended December 31, 2002.

***The performance of our businesses depends on attracting and retaining qualified executives and employees***

Our performance depends on attracting and retaining key personnel, including executives, product managers, software developers and other technical personnel and sales and marketing personnel. Failure to do so could have a material adverse effect on the performance of our business and the results of our operations.

**Table of Contents**

***We may not be successful in protecting our intellectual property and proprietary rights***

Our intellectual property is important to all of our businesses. We rely on a combination of trade secret, patent and other intellectual property laws and confidentiality procedures and non-disclosure contractual provisions to protect our intellectual property. We believe that our non-patented proprietary technologies and business and manufacturing processes are protected under trade secret, contractual and other intellectual property rights. However, those rights do not afford the statutory exclusivity provided by patented processes. In addition, the steps that we take to protect our intellectual property, proprietary information and trade secrets may prove to be inadequate and, whether or not adequate, may be expensive.

There can be no assurance that we will be able to detect potential or actual misappropriation or infringement of our intellectual property, proprietary information or trade secrets. Even if we detect misappropriation or infringement by a third party, there can be no assurance that we will be able to enforce our rights at a reasonable cost, or at all. In addition, our rights to intellectual property, proprietary information and trade secrets may not prevent independent third-party development and commercialization of competing products or services.

***Third parties may claim that we are infringing their intellectual property, and we could suffer significant litigation or licensing expenses or be prevented from selling products***

We could be subject to claims that we are misappropriating or infringing intellectual property or other proprietary rights of others. These claims, even if not meritorious, could be expensive to defend and divert management's attention from our operations. If we become liable to third parties for infringing these rights, we could be required to pay a substantial damage award and to develop non-infringing technology, obtain a license or cease selling the products or services that use or contain the infringing intellectual property. We may be unable to develop non-infringing products or services or obtain a license on commercially reasonable terms, or at all. We may also be required to indemnify our customers if they become subject to third party claims relating to intellectual property that we license or otherwise provide to them.

***We have incurred and may continue to incur losses***

We began operations in January 1996 and have incurred net losses from operations in each year since our inception and, as of December 31, 2002, we had an accumulated deficit of \$10.2 billion. Although we generated net income, determined in accordance with generally accepted accounting principles, in the quarter ended September 30, 2002, we incurred a net loss for the year ended December 31, 2002. We currently intend to continue to invest in infrastructure development, applications development, sales and marketing, and acquisitions in order to execute on our business plan and whether we continue to incur losses in a particular period will depend on, among other things, the amount of such investments and whether those investments lead to increased revenues.

***We may be subject to litigation***

Our business and operations may subject us to claims, litigation and other proceedings brought by private parties and governmental authorities. For information regarding certain proceedings to which we are currently a party, see "Legal Proceedings" in our annual report on Form 10-K for the year ended December 31, 2002.