

Edgar Filing: IMERGENT INC - Form 10-K/A

IMERGENT INC  
Form 10-K/A  
October 25, 2002

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 10-K  
Amendment No. 1

(Mark one)

Annual report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the fiscal year ended June 30, 2002.

Transition report under section 13 or 15(d) of the Securities Exchange Act of 1934 for the transition period from to \_\_\_\_\_ to \_\_\_\_\_.

Commission file number 000-27941

IMERGENT, INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware  
(State or Other Jurisdiction of  
Incorporation or Organization)

87-0591719  
(I.R.S. Employer  
Identification No.)

754 East Technology Avenue,  
Orem, Utah  
(Address of principal executive office)

84097  
(Zip Code)

(801) 227-0004  
(Issuer's telephone number)

NETGATEWAY, INC.  
(Issuer's former name, if changed since last report)

Securities to be registered under Section 12(b) of the Act:

Title of Each Class	Name of Each Exchange On Which Registered
None	None

Securities to be registered pursuant to Section 12(g) of the Act:

Common Stock, par value \$.001

Indicate by check mark whether the registrant (1) filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), Yes No , and (2) has been subject to such filing requirements for the past 90 days. Yes  No .

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Based on the average of the bid and asked price for the registrant's common stock on the Nasdaq OTC Bulletin Board on October 18, 2002, the aggregate market value on such date of the registrant's common stock held by non-affiliates of the registrant was \$11,765,545. For the purposes of this calculation, shares owned by officers, directors and 10% stockholders known to the registrant have been deemed to be owned by affiliates.

## Edgar Filing: IMERGENT INC - Form 10-K/A

The number of shares outstanding of the registrant's common stock, as of October 18, 2002, was 11,000,774.

The sole purpose of this Form 10-K/A is to add the information required by Part III of Form 10-K to the Registrant's Form 10-K, which was originally filed with the Securities and Exchange Commission on October 15, 2002, pursuant to General Instruction G(3) of Form 10-K.

### PART III

#### Item 10. Directors and Executive Officers of the Registrant

Set forth in the table below are the names, ages and positions of the current directors and executive officers of Netgateway. None of the directors or executive officers has any family relationship to any other director or executive officer of Netgateway.

Name	Age	Position
Donald L. Danks.....	45	Chairman of the Board of Directors
John J. "Jay" Poelman.....	59	Chief Executive Officer and Director
Brandon Lewis.....	32	President and Director
Frank C. Heyman.....	65	Chief Financial Officer
David Rosenvall.....	36	Chief Technology Officer
David Wise.....	42	Vice-President, Operations

Set forth below is a brief description of the business experience for the previous five years of all current directors and executive officers of Imergent.

#### Donald L. Danks

Mr. Danks has served as our Chairman since January 2001. He also served as our Chief Executive Officer from January 5, 2001 to May 7, 2002. He was an original investor in founding Imergent in 1998 and is currently one of our largest stockholders. During the five years previous to joining us as our CEO, Mr. Danks was involved in the creation, funding and business development of early-stage technology companies. In addition to attracting inceptive capital for client companies, Mr. Danks assisted in the development of their business plans, helped in the recruitment of senior management, supported the development of the public market for their securities by introducing them to institutional investors and market makers and oversaw ongoing corporate finance needs. Previously, Mr. Danks was the co-founder and President of Prosoft Training.com, (Nasdaq: POSO), a company involved in Internet technology training, education and certification. Mr. Danks holds a B.S. from UCLA.

#### John J. "Jay" Poelman

Mr. Poelman has served as our Chief Executive Officer since May 7, 2002. He was appointed as our President and chief operating officer on January 5, 2001. Prior to the acquisition by us of Galaxy Enterprises, Inc. ("Galaxy"), Mr. Poelman served as Chairman, Chief Executive Officer and President of Galaxy from 1997-2000. From 1993 until 1997, Mr. Poelman was the CEO of Profit Education Systems, Inc. (PES). In 1997, Galaxy Mall, Inc. acquired the assets of PES, and Mr. Poelman became the CEO of Galaxy. Mr. Poelman has served as one of our directors since November 2000, except for a period from February to May 2002.

## Edgar Filing: IMERGENT INC - Form 10-K/A

Brandon Lewis

Mr. Lewis has served as our President since May 2002, and prior thereto, since January 2001, he served as our Executive Vice-President for sales and marketing. He was Vice-President of sales and marketing and COO of Galaxy from 1997 until he joined our company. Prior to Galaxy, Mr. Lewis was Vice-President of sales and marketing for Profit Education Systems, Inc. a worldwide marketing and sales organization. Mr. Lewis earned his B.A. degree from Brigham Young University.

Frank C. Heyman

Mr. Heyman has served as our Chief Financial Officer since September 2000. Prior to that, he served from 1997-2000 as vice president, secretary, treasurer and chief financial officer of Galaxy. From June 1992 to May 1996 he also served as financial vice president and chief financial officer and a director of NYB Corporation, a manufacturer of women's sport clothing, and from June 1996 to April 1997 he was employed as controller of Provider Solutions, Inc., a business consulting firm. Prior to that, from 1986 to 1992, Mr. Heyman served as vice president and chief financial officer of GC Industries, Inc., a manufacturer of calibration systems for toxic gas monitors. Mr. Heyman is a graduate of the University of Utah with a B.S. degree in accounting.

David Rosenvall

Mr. Rosenvall was appointed as our Chief Technology Officer in February 2001. Prior thereto, he served as our Chief Architect from September 1999. He initially joined us in November 1998 as part of Imergent's acquisition of StoresOnline.com. From September 1997-December 1998, Mr. Rosenvall was president of Spartan Multimedia in Calgary, Alberta, Canada, and from January 1995 to August 1997, he was Vice-President for Research and Development at Xentel, another Calgary company. Mr. Rosenvall holds a B.S. in Mechanical Engineering from the University of Calgary and an M.B.A. from Brigham Young University.

David Wise

Mr. Wise was Chief Operating Officer of Galaxy Mall prior to becoming our Vice President-Operations in July 2000. Prior to joining Galaxy Mall, Mr. Wise was, from 1998-1999, president of Wise Business Solutions. From 1992 to 1999, he was chief financial officer and chief operating officer of Capsoft Development Corp.

Election of Officers

Officers are elected annually by the board of directors and hold office at the discretion of the board of directors. There are no family relationships among our directors or executive officers.

Section 16(a) Beneficial Ownership Reporting Compliance

Based on a review of reports and representations submitted to us, all reports regarding beneficial ownership of our securities required to be filed under Section 16(a) of the Exchange Act for the 2002 fiscal year were timely filed with the exception of the following Forms 4 which should have been filed by June 10, 2002 but were filed by the following individuals on the dates indicated: Donald Danks, June 18, 2002; Jay Poelman, June 24, 2002; Brandon Lewis, June 17, 2002; Frank Heyman, June 17, 2002; David Rosenvall, June 21, 2002; and David Wise, June 28, 2002.

Item 11. Executive Compensation

## Edgar Filing: IMERGENT INC - Form 10-K/A

On June 28, 2002, our stockholders approved amendments to our Certificate of Incorporation to change our corporate name to "Imergent, Inc." and to effect a one-for-ten reverse split of the issued and outstanding shares of our common stock and reduce the authorized number of shares of common stock from 250,000,000 to 100,000,000. These changes were effected July 2, 2002. As a result of the reverse stock split, every ten shares of our existing common stock was converted into one share of our new common stock under our new name, Imergent, Inc. Fractional shares resulting from the reverse stock split were settled by cash payment. References herein to numbers of shares and prices of shares have been adjusted to reflect the reverse stock split.

### Executive Compensation

The following table contains information concerning each of the two persons who served as our chief executive officer during fiscal year 2002 and our four most highly-compensated executive officers during fiscal year 2002 who were serving as executive officers at the end of fiscal year 2002 (as a group, the "named executive officers").

Summary Compensation Table

Name and Principal Position -----	Year ----	Annual Compensation		Long-Term Compensation Award	
		Salary (\$) ---	Bonus (\$) ---	Restricted Stock Awards (\$) ---	Stock Option (#) (3) ---
Donald L. Danks (1) .....	2002	--	--	--	--
Chief Executive Officer	2001	--	--	--	--
	2000	--	--	--	--
John J. "Jay" Poelman (2) .....	2002	119,274	148,591	--	--
Chief Executive Officer	2001	134,200	86,339	--	--
	2000	126,152	43,212	--	--
Brandon Lewis (4) .....	2002	104,787	124,565	--	--
President	2001	106,542	69,154	--	--
	2000	100,169	34,650	--	--
David Rosenvall .....	2002	111,539	20,760	--	--
Chief Technology Officer	2001	117,343	--	--	--
	2000	118,841	--	--	--
David Wise .....	2002	102,139	53,852	--	--
Vice President - Operations	2001	103,841	61,792	--	--
	2000	49,154	--	--	--
Frank C. Heyman .....	2002	86,513	78,089	--	--
Chief Financial Officer	2001	71,165	58,799	--	--
	2000	60,753	30,030	--	--

(1) Mr. Danks was appointed as chief executive officer on January 5, 2001 and

## Edgar Filing: IMERGENT INC - Form 10-K/A

served in this capacity until May 7, 2002.

- (2) Mr. Poelman was appointed as chief executive officer on May 7, 2002. Prior to this appointment, he served as our president and chief operating officer from January 5, 2001.
- (3) On June 28, 2002, our stockholders approved a one-for-ten reverse split of the outstanding shares of our common stock, which became effective July 3, 2002. All data for shares of common stock, options and warrants have been adjusted to reflect the one-for-ten reverse split for all periods presented.
- (4) Mr. Lewis was appointed as president on May 7, 2002. Prior to this appointment, he served as our Executive Vice-President, Sales and Marketing.

### Employment Agreements

The following table summarizes the key provisions of employment agreements between us and our current executive officers that were in effect during our fiscal year ended June 30, 2002. All of the agreements expired at various times during the fiscal year.

Name/Position -----	Contract Commencement Date ----	Contract Termination Date ----	Per Annum Salary ----- (1)
John J. "Jay" Poelman..... Chief Executive Officer	June 26 2000	June 26, 2002	\$143,000
Brandon Lewis..... President	June 26, 2000	June 26, 2002	\$114,125
David Rosenvall ..... Chief Technology Officer	November 1, 1998	November 1, 2001	\$145,000
David Wise..... Vice President - Operations	June 26, 2000	June 26, 2002	\$110,650
Frank C. Heyman..... Chief Financial Officer	June 26, 2000	June 26, 2002	\$90,700

(1) Each of Messrs. Poelman, Lewis, Rosenvall, Wise and Heyman agreed to a pay cut for an indefinite period effective March 3, 2001, which cuts remain in effect at the present time. Mr. Poelman's salary was adjusted to \$114,400; Mr. Lewis' salary was adjusted to \$91,300; Mr. Rosenvall's salary was adjusted to \$116,000; Mr. Wise's salary was adjusted to \$88,250; and Mr. Heyman's salary was adjusted to \$72,560. From January 28, 2002 through March 31, 2002, Mr. Poelman served without remuneration.

### Stock Option Grants in Last Fiscal Year

We did not grant any stock options or stock appreciation rights in fiscal year 2002 to any of the named executive officers.

### Aggregated Stock Option Exercises in Last Fiscal Year and Fiscal Year End Option Values

## Edgar Filing: IMERGENT INC - Form 10-K/A

The following table sets forth information concerning the year-end number and value of unexercised options with respect to each of the named executive officers. None of these individuals exercised any options during this period.

Name	Number of Securities Underlying Unexercised Options at Fiscal Year End (#)		Value of
	Exercisable	Unexercisable	In-The- at Fiscal
Donald Danks.....	-	-	-
Jay Poelman.....	27,402	12,866	-
Brandon Lewis.....	29,317	18,931	-
David Rosenval.....	19,965	6,285	-
David Wise.....	11,643	10,433	-
Frank Heyman.....	20,228	12,328	-

(1) Based on the closing sale price of our common stock on the OTC bulletin board at fiscal year end of \$1.50 per share less the exercise price payable for the shares. The fair market value of our common stock at June 30, 2002 was determined on the basis of the closing sale price of our common stock on June 28, 2002, the last trading day prior to fiscal year-end.

### Stock Option Plans

#### 1998 Stock Option Plan for Senior Executives

In December 1998, the board of directors adopted, and our stockholders approved, the 1998 Stock Option Plan for Senior Executives. This plan provides for the grant of options to purchase up to 500,000 shares of common stock to our senior executives. Options may be either incentive stock options or non-qualified stock options under Federal tax laws.

The board of directors administers this plan. The board has appointed a plan administrator to address the day-to-day administration of this plan. The board determines, among other things, the individuals who will receive options, the time period during which the options may be partially or fully vested and exercisable, the number of shares of common stock issuable upon the exercise of each option and the option exercise price.

The exercise price per share of common stock subject to an incentive option may not be less than the fair market value per share of common stock on the date the option is granted. The per share exercise price of the common stock subject to a non-qualified option may be established by the compensation committee, but shall not be less than 50% of the fair market value per share of common stock on the date the option is granted. The aggregate fair market value of common stock for which any person may be granted incentive stock options which first become exercisable in any calendar year may not exceed \$100,000 on the date of grant.

No stock option may be transferred by an optionee other than by will or the laws of descent and distribution or, if permitted, pursuant to a qualified domestic relations order and, during the lifetime of the optionee, the option will be exercisable only by the optionee. In the event of termination of

## Edgar Filing: IMERGENT INC - Form 10-K/A

employment by reason of death, disability or by us for cause, as defined in each optionee's employment agreement, the optionee will have no more than 365 days after such termination during which the optionee shall be entitled to exercise the vested options, unless otherwise determined by the board of directors. Upon termination of employment by us without cause or by the optionee for good reason, as defined in the optionee's employment agreement, the optionee's options remain exercisable to the extent the options were exercisable on the date of such termination until the expiration date of the options pursuant to the option agreement.

We may grant options under this plan within ten years from the effective date of the plan. The effective date of this plan is December 31, 1998. Holders of incentive stock options granted under this plan cannot exercise these options more than ten years from the date of grant. Payment of the exercise price may be made by (1) delivery of cash or a check, bank draft or money order, in United States dollars, payable to our order, (2) through delivery to us of shares of common stock already owned by the optionee with an aggregate fair market value on the date of exercise equal to the total exercise price, (3) by having shares with an aggregate fair market value on the date of exercise equal to the total exercise price (A) withheld by us or (B) sold by a broker-dealer under the circumstances meeting the requirements of 12 C.F.R. ss. 220 or any successor thereof, (4) by any combination of the above methods of payment or (5) by any other means determined by the board of directors. Therefore, if it is provided in an optionee's option agreement, the optionee may be able to tender shares of common stock to purchase additional shares of common stock and may theoretically exercise all of his stock options with no additional investment other than the purchase of his original shares.

Any unexercised options that expire or terminate upon an optionee's ceasing to be employed by us become available again for reissuance under this plan.

As of June 30, 2002, options exercisable for an aggregate of 91,563 shares of common stock were outstanding pursuant to this plan at a weighted average exercise price of \$28.40 per share.

### 1998 Stock Compensation Program

In July 1998, the board of directors adopted the 1998 Stock Compensation Program. Our stockholders approved the program in December 1998. This program provides for the grant of options to purchase up to 100,000 shares of common stock to officers, employees, directors and independent contractors and agents. Options may be either incentive stock options or non-qualified stock options under Federal tax laws.

The board of directors administers this program. The board has appointed a plan administrator to address the day-to-day administration of this plan. The board determines, among other things, the individuals who will receive options, the time period during which the options may be partially or fully vested and exercisable, the number of shares of common stock issuable upon the exercise of each option and the option exercise price.

The exercise price per share of common stock subject to an incentive option may not be less than the fair market value per share of common stock on the date the option is granted. The aggregate fair market value of common stock for which any person may be granted incentive stock options which first become exercisable in any calendar year may not exceed \$100,000 on the date of grant.

No stock option may be transferred by an optionee other than by will or the laws of descent and distribution or, if permitted, pursuant to a qualified domestic relations order and, during the lifetime of the optionee, the option will be exercisable only by the optionee. In the event of termination of

## Edgar Filing: IMERGENT INC - Form 10-K/A

employment for reasons other than the death or disability of the optionee, the option shall terminate immediately; provided, however, that the board of directors may, in its sole discretion, allow the option to be exercised, to the extent exercisable on the date of termination of employment or service, at anytime within 60 days from the date of termination of employment or service. In the event of termination of employment by reason of the death or disability of the optionee, the option may be exercised, to the extent exercisable on the date of death or disability, within one year from such date.

We may grant options under this program within ten years from the effective date of the plan. The effective date of this program is July 31, 1998. Holders of incentive stock options granted under this program cannot exercise these options more than ten years from the date of grant. Payment of the exercise price may be made by (1) delivery of cash or a check, bank draft or money order, in United States dollars, payable to our order, (2) through delivery to us of shares of common stock already owned by the optionee with an aggregate fair market value on the date of exercise equal to the total exercise price, (3) by having shares with an aggregate fair market value on the date of exercise equal to the total exercise price (A) withheld by us or (B) sold by a broker-dealer under the circumstances meeting the requirements of 12 C.F.R. ss. 220 or any successor thereof, (4) by any combination of the above methods of payment or (5) by any other means determined by the board of directors. Therefore, if it is provided in an optionee's option agreement, the optionee may be able to tender shares of common stock to purchase additional shares of common stock and may theoretically exercise all of his stock options with no additional investment other than the purchase of his original shares.

Any unexercised options that expire or that terminate upon an optionee's ceasing to be employed by us become available again for reissuance under this program.

This program permits us to grant, in addition to incentive stock options and non-qualified stock options: (i) rights to purchase shares of our common stock to employees; (ii) restricted shares of our common stock; (iii) stock appreciation rights; and (iv) performance shares of common stock.

However, we have not issued any other type of compensation under this program other than non-qualified stock options and have agreed not to do so in the future.

As of June 30, 2002, options exercisable for an aggregate of 8,432 shares of common stock were outstanding pursuant to this program at a weighted average exercise price of \$33.20 per share.

### 1999 Stock Option Plan For Non-Executives

In July 1999, the board of directors adopted the 1999 Stock Option Plan for Non-Executives. This plan was approved by our stockholders in May 2000. This plan is administered by the compensation committee of the board of directors. The compensation committee has appointed a plan administrator to address the day-to-day administration of this plan. The compensation committee determines, among other things, the individuals who will receive options, the time period during which the options may be partially or fully vested and exercisable, the number of shares of common stock issuable upon the exercise of each option and the option exercise price.

The exercise price per share of common stock subject to an option is determined on the date of grant, and is generally fixed at 100% of the fair market value per share at the time of grant. The exercise price of any option granted to an optionee who owns stock possessing more than 10% of the voting power of our outstanding capital stock must equal at least 110% of the fair market value of the common stock on the date of grant. Payment of the exercise

## Edgar Filing: IMERGENT INC - Form 10-K/A

price may be made by (1) delivery of cash or a check, bank draft or money order in United States dollars, payable to our order, (2) through delivery to us of shares of common stock already owned by the optionee with an aggregate fair market value on the date of exercise equal to the total exercise price (3) by having shares with an aggregate fair market value on the date of exercise equal to the total exercise price (A) withheld by us or (B) sold by a broker-dealer under circumstances meeting the requirements of 12 C.F.R. ss. 220 or any successor thereof, (4) by any combination of the above methods of payment or (5) by any other means determined by the board of directors.

Options granted to employees under the 1999 Stock Option Plan for Non-Executives generally become exercisable in increments, based on the optionee's continued employment with us, over a period of up to three years. The form of option agreement generally provides that options granted under the 1999 Stock Option Plan for Non-Executives is not transferable by the optionee, other than by will or the laws of descent and distribution, and are exercisable during the optionee's lifetime only by the optionee. In the event of termination of employment for reasons other than the death or disability of the optionee, the option shall terminate immediately; provided, however, that the board of directors may, in its sole discretion, allow the option to be exercised, to the extent exercisable on the date of termination of employment or service, at anytime within 60 days from the date of termination of employment or service. In the event of termination of employment by reason of the death or disability of the optionee, the option may be exercised, to the extent exercisable on the date of death or disability, within one year from such date. Generally, in the event of our merger with or into another corporation or a sale of all or substantially all of our assets, all outstanding options under the 1999 Stock Option Plan for Non-Executives shall accelerate and become fully exercisable upon consummation of such merger or sale of assets.

The board may amend the 1999 Stock Option Plan for Non-Executives at any time or from time to time or may terminate the 1999 Stock Option Plan for Non-Executives without the approval of the stockholders, provided that stockholder approval is required for any amendment to the 1999 Stock Option Plan for Non-Executives requiring stockholder approval under applicable law as in effect at the time. However, no action by the board of directors or stockholders may alter or impair any option previously granted under the 1999 Stock Option Plan for Non-Executives. The board may accelerate the exercisability of any option or waive any condition or restriction pertaining to such option at any time.

Any unexercised options that expire or that terminate upon an optionee's ceasing to be employed by us become available for reissuance under this plan.

In May 2000, our stockholders approved an amendment to this plan to increase the number of shares available for grant under the plan from 200,000 to 500,000.

As of June 30, 2002, options exercisable for an aggregate of 74,660 shares of common stock were outstanding pursuant to this plan at a weighted average exercise price of \$33.50.

### Galaxy Enterprises Stock Option Plan

Pursuant to the terms of the merger with Galaxy Enterprises, each outstanding option to purchase shares of Galaxy Enterprises common stock under Galaxy Enterprises' 1997 Employee Stock Option Plan was assumed by us, whether or not vested and exercisable. We assumed options exercisable for an aggregate of 166,582 shares of common stock of Galaxy Enterprises.

Each Galaxy Enterprises stock option and warrant we assumed is subject

## Edgar Filing: IMERGENT INC - Form 10-K/A

to the same terms and conditions that were applicable to the stock option or warrant immediately prior to the merger, except that:

- o each Galaxy Enterprises stock option will be exercisable for shares of our common stock and the number of shares of our common stock issuable upon exercise of any given option or warrant will be determined by multiplying 0.63843 by the number of shares of Galaxy Enterprises common stock underlying such option or warrant; and
- o the per share exercise price of any such option or warrant will be determined by dividing the exercise price of the option immediately prior to the effective time of the merger by 0.63843.

As at June 30, 2002, outstanding options assumed in the Galaxy merger were exercisable for 44,373 shares of our common stock.

### Compensation Committee Interlocks and Insider Participation

During fiscal 2002, membership of the compensation committee was comprised of the full board of directors. No interlocking relationships exist between our compensation committee and the board of directors or compensation committee of any other company, nor has any such interlocking relationship existed in the past. There are no interlocking relationships between us and other entities that might affect the determination of the compensation of our directors and executive officers.

### Limitation of Liability and Indemnification Matters

Our certificate of incorporation and/or bylaws include provisions to (1) indemnify the directors and officers to the fullest extent permitted by the Delaware General Corporation Law including circumstances under which indemnification is otherwise discretionary and (2) eliminate the personal liability of directors and officers for monetary damages resulting from breaches of their fiduciary duty, except for liability for breaches of the duty of loyalty, acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, violations under Section 174 of the Delaware General Corporation Law or for any transaction from which the director derived an improper personal benefit. We believe that these provisions are necessary to attract and retain qualified directors and officers.

We have directors and officers liability insurance in an amount of not less than \$2.0 million. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons pursuant to the foregoing provisions or otherwise, we have been informed that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

### Director Compensation

None of our current directors are awarded stock options or are compensated for their services as directors, but Mr. Poelman and Mr. Lewis are compensated as officers of our company and have been granted stock options in this capacity. All directors are reimbursed for reasonable expenses incurred in connection with attending meetings of the board of directors.

### Item 12. Security Ownership of Certain Beneficial Owners and Management

The following table sets forth, as of October 8, 2002, the number of shares of common stock beneficially owned by each of the following persons and groups and the percentage of the outstanding shares owned by each person and group: (i) each person who is known by us to be the owner of record or beneficial owner of more than 5% of the outstanding common stock; (ii) each of our directors and

Edgar Filing: IMERGENT INC - Form 10-K/A

named executive officers; and (iii) all of our current directors and executive officers as a group.

With respect to certain of the individuals listed below, we have relied upon information set forth in statements filed with the Securities and Exchange Commission pursuant to Section 13(d) or 13(g) of the Securities Exchange Act of 1934. Except as otherwise noted below, the address of each of the persons in the table is c/o Imergent, Inc., 754 East Technology Ave., Orem, Utah 84097.

Name of Beneficial Owner	Shares Owned	Number of Warrants and Option Grants Under Imergent Stock Options Plans (1)	Total Beneficial Ownership (2)
Donald L. Danks.....	475,751	-	475,751
John J. "Jay" Poelman.....	352,425	34,277	386,702
Brandon Lewis.....	240,968	38,427	279,395
David Rosenvall.....	109,470	23,715	133,185
David Wise.....	126,271	16,683	142,954
Frank Heyman .....	134,260	25,574	159,834
All current directors and executive officers as a group (6 persons).....	1,439,145	138,676	1,577,821

(1) Reflects warrants or options that will be exercisable or vested, as the case may be, as of October 18, 2002 or within 60 days thereafter.

(2) Beneficial ownership is determined in accordance with the rules of the SEC. In computing the number of shares beneficially owned by a person and the percentage ownership of that person, shares of common stock subject to options held by that person that are currently exercisable or become exercisable within 60 days following October 18, 2002 are deemed outstanding. These shares, however, are not deemed outstanding for the purpose of computing the percentage ownership of any other person. Unless otherwise indicated in the footnotes to this table, the persons and entities named in the table have sole voting and sole investment power with respect to the shares set forth opposite such stockholder's name.

Item 13. Certain Relationships and Related Transactions

During the fiscal year ended June 30, 2002 we derived approximately \$5,100,000, or 14%, of our total revenues, from the sale to our customers of a product which allows the customer to accept credit card payments for goods and services sold by them through their website. In the past, we have experienced difficulty in maintaining the arrangements that allow us to offer this product to our customers and have experienced difficulty in establishing such a product

## Edgar Filing: IMERGENT INC - Form 10-K/A

for resale at our workshops held outside the United States. In addition, from time to time, credit card issuing organizations make changes that affect this product which could negatively impact, or preclude, our offering this product for sale in the United States in its present form. We presently obtain this product for resale from Electronic Commerce International, Inc. ("ECI"), the sole shareholder of which was John J. Poelman, our chief executive officer and one of our directors and stockholders, who, effective October 1, 2002, sold his interest in ECI to an unrelated third party. Were we to lose our access to this product or if its cost increases our business would be severely and negatively impacted and were we not to be able to obtain a comparable product for resale outside the United States our ability to successfully execute our international expansion would be compromised.

Total revenue generated by us from the sale of ECI merchant account solutions was \$5,106,494, \$6,403,478 and \$2,412,800 for the years ended June 30, 2002, 2001 and 2000, respectively. The cost to us for these products and services totaled \$994,043, \$975,257 and \$1,110,404 for the years ended June 30, 2002, 2001 and 2000, respectively. During the years ended June 30, 2002, 2001 and 2000, we processed leasing transactions for customers through ECI in the amounts of \$1,090,520, \$3,386,231, and \$2,450,292, respectively. As of June 30, 2002 and 2001, we had a receivable from ECI for leases in process of \$0 and \$90,109, respectively. In addition, we have \$26,702 and \$516,858 recorded in accounts payable as of June 30, 2002 and 2001, respectively, relating to the amounts owed to ECI for the purchase of its merchant account product.

On August 1, 2001, we entered into an agreement with ECI, pursuant to which, among other matters, we agreed to issue ECI a total of 83,192 shares of our common stock at a price of \$3.00 per share in exchange for the release by ECI of trade claims against us totaling \$249,575.

We offer our customers at our Internet training workshops, and through backend telemarketing sales, certain products intended to assist the customer in being successful with their business. These products include live chat and web traffic building services. We utilize Electronic Marketing Services, LLC. ("EMS") to fulfill these services to our customers. In addition, EMS provides telemarketing services, selling some of our products and services to those who do not purchase at our workshops and to other leads. Ryan Poelman, who owns EMS, is the son of John J. Poelman, Chief Executive Officer, a director and a stockholder of the Company. Our revenues realized from the above products and services were \$4,806,497, \$1,263,793 and \$0 for the years ended June 30, 2002, 2001 and 2000, respectively. We paid EMS \$479,984, \$78,435, and \$0 to fulfill these services during the years ended June 30, 2002, 2001 and 2000, respectively.

During our fiscal year ended June 30, 2002 we sold unregistered common stock to qualified investors in a private placement that closed during May 2002. The stock was sold at a price of \$.40 per share. Our officers and directors purchased stock in that sale as follows: Mr. Danks 225,000 shares; Mr. Poelman 200,000 shares; Mr. Lewis 200,000 shares; Mr. Heyman 100,000 shares; Mr. Wise 100,000 shares; and Mr. Rosenvall 100,000 shares. We loaned Messrs. Wise and Rosenvall \$20,000 each to assist in their participation in the private placement. Their full-recourse promissory notes carried interest at 5% and a repayment schedule of 24 months. Mr. Wise has repaid his loan, and Mr. Rosenvall is current in making the required monthly payments.

We engaged vFinance Investments, Inc. ("vFinance") as a financial advisor and placement agent for our private placement of unregistered securities that closed during May 2002. Shelly Singhal a former member of the Company's Board of Directors was a principal of vFinance at the time of the private placement. During the year ended June 30, 2002 the company paid vFinance \$61,500 in fees and commissions for their services. The offering was successful with adjusted gross proceeds to the Company of \$2,185,995.

## Edgar Filing: IMERGENT INC - Form 10-K/A

We engaged SBI-E2 Capital USA Ltd. ("SBI") as a financial consultant to provide us with various financial services. Shelly Singhal a former member of the Company's Board of Directors is a managing director of SBI. During the year ended June 30, 2002 SBI provided us with a Fairness Opinion relating to our proposed merger with Category 5 Technologies, for which we paid \$67,437, and additional \$85,000 is still payable to SBI for that opinion as of June 30, 2002.

We also paid SBI \$58,679 for expenses and commissions relating to our private placement of unregistered securities that closed during November 2001. The offering was successful with adjusted gross proceeds to us of \$2,803,466.

Pursuant to an agreement dated February 15, 2002, SBI also rendered certain financial advisory services to us in connection with our private placement that closed in May 2002, including delivery of a fairness opinion with respect to such private placement. Pursuant to this agreement, we paid SBI a total of \$40,000 and issued to SBI and various of its designees an aggregate of 112,500 shares of our common stock.

During the 12 months ended June 30, 2001, we issued 12,500 warrants to Shelly Singhal for non-director services rendered. The warrants were valued at \$40,657.

Item 15. Exhibits, Financial Statement Schedules and Report on Form 8-K

(a) 3. Exhibits

99.1 Certification pursuant to 18 U.S.C. Section 1350

99.2 Certification pursuant to 18 U.S.C. Section 1350

### SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Imergent, Inc.

October 24, 2002

By: /s/ John J. Poelman  
John J. Poelman  
Chief Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

October 24, 2002

/s/ Donald L. Danks  
Donald L. Danks  
Chairman of the Board of Directors

October 24, 2002

/s/ John J. Poelman  
John J. Poelman

Edgar Filing: IMERGENT INC - Form 10-K/A

Chief Executive Officer and Director

October 24, 2002

/s/ Frank C. Heyman  
Frank C. Heyman  
Chief Financial Officer

October 24, 2002

/s/ Brandon Lewis  
Brandon Lewis  
President and Director

CERTIFICATION

I, John J. Poelman, certify that:

1. I have reviewed this annual report on Form 10-K/A of Imergent, Inc.;
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report; and
3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report.

October 24, 2002

/s/ JOHN J. POELMAN  
John J. Poelman,  
Chief Executive Officer

CERTIFICATION

I, Frank C. Heyman, certify that:

1. I have reviewed this annual report on Form 10-K/A of Imergent, Inc.;
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report; and
3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the

Edgar Filing: IMERGENT INC - Form 10-K/A

registrant as of, and for, the periods presented in this annual report.

October 24, 2002

/s/ FRANK C. HEYMAN  
Frank C. Heyman  
Chief Financial Officer