

DATA SYSTEMS & SOFTWARE INC
Form 10-K/A
May 02, 2005

**SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

AMENDMENT NO. 1 ON FORM 10-K/A TO

FORM 10-K

**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(D) OF THE
SECURITIES EXCHANGE ACT OF 1934**

**For the fiscal year ended December 31,
2004**

Commission file number: 0-19771

**DATA SYSTEMS & SOFTWARE INC.
(Exact name of registrant as specified in charter)**

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

**22-2786081
(I.R.S. Employer Identification
No.)**

**200 Route 17, Mahwah, New Jersey
(Address of principal executive offices)**

**07430
(Zip Code)**

**(201) 529-2026
Registrant's telephone number, including area code**

Securities registered pursuant to Section 12(b) of the Act: None

**Securities registered pursuant to Section 12(g) of the Act:
Common Stock, par value \$.01 per share
Common Stock Purchase Rights
(Title of Class)**

Indicate by check mark whether the registrant (1) has 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), 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.

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Act). Yes No

x

The aggregate market value of the common stock held by non-affiliates of the registrant at June 30, 2004 was approximately \$13.3 million. The aggregate market value was calculated by using the closing price of the stock on that date on The Nasdaq SmallCap Market.

Number of shares outstanding of the registrant's common stock, as of March 31, 2005: 8,116,691

DOCUMENTS INCORPORATED BY REFERENCE:

None.

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TO ANNUAL REPORT ON FORM 10-K**

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PART III

Item 10. Directors and Executive Officers of the Registrant**Directors, Executive Officers and Key Managers**

Set forth below is certain information concerning our directors, executive officers and key managers:

Name	Age	Position
G e o r g e Morgenstern	71	Director, Chairman of the Board, President and Chief Executive Officer; Chairman of the Board of our dsIT Technologies Ltd. subsidiary (“dsIT”); and director of Comverge, Inc. (“Comverge”)
Samuel M. Zentman	59	Director, Member of Audit Committee
Avi Kerbs	57	Director
Elihu Levine	72	Director, Member of Audit Committee
Shane Yurman	57	Director, Chairman of Audit Committee
Shlomie Morgenstern	42	Vice President-Operations, Chief Executive Officer and President of Databit
Jacob Neuwirth	58	Chief Executive Officer and President of dsIT
Yacov Kaufman	47	Vice President and Chief Financial Officer; and Vice President and Chief Financial Officer of dsIT

George Morgenstern has been our Chairman of the Board since June 1993, and has been our President and Chief Executive Officer since our incorporation in 1986. Mr. Morgenstern also serves as Chairman of the Board of dsIT, and as a director of Comverge. Mr. Morgenstern was the Chairman of the Board of Comverge from October 1997 to April 2003.

Samuel M. Zentman has been one of our directors since November 16, 2004. Since 1980 Dr. Zentman has been the president and chief executive officer of a privately-held textile firm, where he also served as vice president of finance and administration from 1978 to 1980. From 1973 to 1978, Dr. Zentman served in various capacities at American Motors Corporation.

Avi Kerbs has been one of our directors since December 2002. Since 1991, Mr. Kerbs has been the Chief Executive Officer and President of Teuza Management and Development 1991 Ltd., a company that manages an Israeli publicly-traded venture capital company. Mr. Kerbs is a director of Nova Measuring Instruments Ltd.

Elihu Levine has been one of our directors and a member of our Audit Committee since April 2003. From 1992 to his retirement in January 1997, Mr. Levine was an officer and employed in various executive capacities by International Data Operations, Inc., one of our subsidiaries. Mr. Levine also served as a director of Tower Semiconductor Ltd. from March 1997 to January 2000.

Shane Yurman has been one of our directors and Chairman of the Audit Committee since April 2003. Mr. Yurman, a certified public accountant, has been engaged in public accounting since 1971. Mr. Yurman is a member of the American Institute of Certified Public Accountants and the New York State Society of Certified Public Accountants where he previously served as a member of the Auditing Standards and Procedures Committee.

Shlomie Morgenstern has been our Vice President-Operations since February 2000 and was one of our directors from November 2001 until December 2002. Mr. Morgenstern also serves as President and Chief Executive Officer of

our Databit subsidiary. Since 1996, Mr. Morgenstern has been employed by us in various administrative capacities. Mr. Morgenstern is the son of George Morgenstern, our Chairman of the Board, President and Chief Executive Officer.

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Jacob Neuwirth has been Chief Executive Officer and President of dsIT since December 2001. From 1994 to 2001, he was the President and the founder of Endan IT Solutions Ltd., an Israeli IT solutions provider specializing in billing and healthcare IT solutions, which was acquired by dsIT in December 2001.

Yacov Kaufman has been our Executive Vice President since December 2001 and our Chief Financial Officer since February 1996. Mr. Kaufman has also served as a Vice President of dsIT since 1992 and as Chief Financial Officer of dsIT since 1990, having served as Controller of dsIT since 1986.

Audit Committee

We have an Audit Committee that was established by our Board of Directors for the purpose of overseeing our accounting and financial reporting processes and audits of our financial statements by our independent auditors. The members of the Audit Committee are Messrs. Yurman (Chairman), Kerbs and Levine. Each of the members of the Audit Committee meets the independence and experience requirements of Marketplace Rule 4350(d)(2) of The Nasdaq Stock Market, Inc.

Audit Committee Financial Expert

Our Board has determined that Mr. Shane Yurman, the Chairman of our Audit Committee, is an “audit committee financial expert” as defined in Item 401(h)(2) of Regulation S-K. Mr. Yurman is independent in accordance with SEC and Nasdaq listing standards applicable to our company.

Compliance with Section 16(a) of the Securities Exchange Act of 1934

Section 16(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) requires our executive officers and directors, and persons who own more than 10% of a registered class of our equity securities to file reports of ownership and changes in ownership with the SEC. These persons are also required by SEC regulation to furnish us with copies of all Section 16(a) forms they file. Based solely on its review of such forms received by us or written representations from certain reporting persons, except as described below we believe that during 2004 all applicable filing requirements were complied with by its executive officers and directors.

Dr. Zentman’s Form 4 disclosing his receipt of options to purchase 7,500 shares of common stock automatically granted to him on his election as a director on November 16, 2004 was filed one day late due to delays in obtaining an EDGAR identification number for Dr. Zentman.

Code of Ethics

We have adopted a code of ethics that applies to our principal executive officer, principal financial officer, and principal accounting officer or controller, and/or persons performing similar functions. Our code of ethics is incorporated by reference as an exhibit to this Annual Report.

Item 11. Executive and Director Compensation**Executive Compensation**

The following table sets forth for the periods indicated information concerning the compensation of our Chief Executive Officer and the four other officers who received in excess of \$100,000 in salary and bonus during 2004 (the “named executive officers”):

SUMMARY COMPENSATION TABLE

Name and Principal Position	Year	Annual Compensation		Long Term Compensation Awards		All Other Compensation (\$)
		Salary (\$)	Bonus (\$)	Restricted Stock Awards (\$)	Securities Underlying Options (#)	
George Morgenstern Chief Executive Officer	2004	241,396	13,712	--	180,000 ⁽¹⁾	101,550 ⁽²⁾
	2003	464,250	--	--	--	177,825
	2002	465,700	--	--	--	182,860
Yacov Kaufman Chief Financial Officer	2004	183,839	13,711	--	75,000 ⁽³⁾	51,239 ⁽⁴⁾
	2003	182,942	--	--	--	49,901
	2002	170,297	--	--	--	37,899
Shlomie Morgenstern Vice President	2004	258,432	181,035 ⁽⁵⁾	67,450 ⁽⁶⁾	305,000 ⁽⁷⁾	21,990 ⁽⁸⁾
	2003	210,800	50,000	--	--	14,045
	2002	204,345	15,000	--	--	7,440
Jacob Neuwirth Chief Executive Officer and President of dsIT	2004	220,369	1,162	--	--	35,572 ⁽⁴⁾
	2003	154,963	83,694	--	--	44,290
	2002	174,512	--	--	--	39,788

(1) Represents shares of common stock underlying options granted to George Morgenstern, and described in the table captioned “Option SAR Grants in 2004,” below.

(2) Consists of (i) \$59,888 in contributions to a non-qualified retirement fund, (ii) \$30,675 in life insurance premiums, (iii) \$6,000 in director’s fees and (iv) \$4,987 imputed value of automobile fringe benefits.

(3) Represents shares of common stock underlying options granted to Yacov Kaufman as described below.

(4) Represents primarily contributions to severance and pension funds and automobile fringe benefits. Contributions to severance and pension funds are made on substantially the same basis as those made on behalf of Israeli executives.

(5) Consists of (i) \$110,035 cash bonus earned with respect to 2004 under the terms of Shlomie Morgenstern’s employment agreement and (ii) \$71,000 value (at \$0.71 per share) of 100,000 shares of common stock, which were part of the August 2004 stock grant that vested immediately upon grant.

(6) Represents the value (at \$0.71 per share) of 95,000 shares of common stock granted to Mr. Shlomie Morgenstern in August 2004 that did not vest immediately. One-third of these shares will vest on each anniversary of the grant,

(7)

Represents shares of common stock underlying options granted to Shlomie Morgenstern in August 2004 which vest over time as described in the table captioned "Option/SAR Grants in 2004," below.

(8) Consists of (i) \$19,231 for accrued vacation and (ii) \$2,759 imputed value of automobile fringe benefits.

The following tables summarize (i) the options granted in 2004 to the executive officers named in the Summary Compensation Table above, (ii) the potential value of these options at the end of the option term assuming certain levels of appreciation of our common stock, (iii) the number of shares acquired by such named executive officers upon the exercise of options in 2004 and the value realized thereon, and (iv) the number and value of all options held by such executive officers at the end of 2004

OPTION/SAR GRANTS IN 2004

Name	Individual Grants ⁽¹⁾		Base Price (\$/Share)	Exercise or Expiration Date	Potential Realizable Value at Assumed Annual Rates of Stock Price Appreciation for Option Terms ⁽²⁾	
	Number of Securities Underlying Options Granted (#)	% of Total Options Granted to Employees in Fiscal Year (%)			5% (\$)	10% (\$)
George Morgenstern	180,000	23%	\$ 0.91	12/31/09		