

EVOLVING SYSTEMS INC
Form 10-K/A
August 24, 2005

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM 10-K/A

(Amendment No. 1)

ý **Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**
For the fiscal year ended December 31, 2004

OR

o **Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**
For the transition period from to

Commission File Number: 0-24081

EVOLVING SYSTEMS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

84-1010843
(IRS Employer
Identification Number)

9777 Pyramid Court, Suite 100 Englewood, Colorado (Address
of principal executive offices)

80112
(Zip Code)

(303) 802-1000

(Registrant's telephone number)

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Securities registered under Section 12(b) of the Exchange Act: **None**

Securities registered under Section 12(g) of the Exchange Act:

Common Stock, par value \$0.001 per share

(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 Exchange Act).
Yes No

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).
 Yes No

The approximate aggregate market value of the Common Stock held by non-affiliates of the registrant, based upon the last sale price of the Common Stock reported on the National Association of Securities Dealers Automated Quotation National Market System was approximately \$29,915,819 as of August 19, 2005.

The number of shares of Common Stock outstanding was 16,056,566 as of August 19, 2005.

EXPLANATORY NOTE

As a result of comments we received from the staff of the Securities and Exchange Commission following a review of our Form 10-K for the year ended December 31, 2004, we are filing this Form 10-K/A to revise Part II, Item 9A, Controls and Procedures, in order to clarify that our Chief Executive Officer and Chief Financial Officer concluded that our internal control over financial reporting was effective as of December 31, 2004, and to disclose the changes we adopted in internal controls over financial reporting as a result of our acquisition of Tertio Telecoms Limited.

All other information in the original filing, including the financial statements, is unchanged. This Form 10-K/A amends only the item specified above and does not otherwise update the disclosures in the original filing or reflect events occurring after the original filing.

FORM 10-K/A INDEX

PART II

Item 9A. Controls and Procedures

PART IV

Item 15. Exhibits and Financial Statement Schedules

PART II

Item 9A. Controls and Procedures

Evaluation of disclosure controls and procedures. We maintain disclosure controls and procedures, as such term is defined in Rule 13a-15(e) under the Securities Exchange Act of 1934 (the Exchange Act), that are designed to provide reasonable assurance that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in Securities and Exchange Commission rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

Our management, with the participation of the Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures as of the end of the period covered by this Annual Report on Form 10-K. Based on that evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures were effective as of the end of such period.

In designing and evaluating our disclosure controls and procedures, management recognized that disclosure controls and procedures, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the disclosure controls and procedures are met. Additionally, in designing disclosure controls and procedures, our management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible disclosure controls and procedures. The design of any disclosure controls and procedures also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions.

Changes in internal control over financial reporting. During 2004, we adapted our internal control over financial reporting to accommodate the consolidation of Tertio. Specifically, we:

Implemented internal control procedures over the translation of financial statements denominated in a foreign currency, as we did not previously have subsidiaries with a functional currency other than the United States dollar;

Implemented internal control procedures to ensure that the Tertio financial statements were properly converted from United Kingdom generally accepted accounting principles to United States generally accepted accounting principles.

Other than as detailed above, there has not been any change in our internal control over financial reporting that occurred during the fourth quarter of the period covered by this Annual Report on Form 10-K that has materially affected, or is reasonably likely to materially affect, our

internal control over financial reporting.

PART IV

ITEM 15. Exhibits and Financial Statement Schedules

Exhibits.

Exhibit Number	Description of Document
3.1 *	Restated Certificate of Incorporation.
3.2 *	Amended and Restated Bylaws.
4.1 *	Reference is made to Exhibits 3.1 and 3.2.
4.2 *	Specimen stock certificate representing shares of Common Stock.
10.1 *	Indemnification Agreement, entered into by the Registrant and each of its directors and executive officers, dated as of January 1, 1998.
10.2 *	Amended and Restated Stock Option Plan.
10.3 *	Employee Stock Purchase Plan.
10.10 *	Software Development Agreement, by and between the Registrant and American Telephone and Telegraph Company, dated as of May 1, 1993. (The division of American Telephone & Telegraph Company responsible for this Agreement has split off from AT&T and is now known as Lucent Technologies, Inc.).
21*	Subsidiaries of the Registrant
23.1*	Consent of KPMG LLP, Independent Registered Public Accounting Firm.
23.2*	Consent of PricewaterhouseCoopers LLP, Independent Registered Public Accounting Firm.
24.1*	Power of Attorney.
31.1	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1*	Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2*	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

* Incorporated by reference to the Registrant's Registration Statement on Form S-1 No. 333-43973.
* Previously Filed

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The exhibits listed on the accompanying index to exhibits, immediately following the financial statement schedule are filed as part of, or incorporated by reference into, this Form 10-K/A.

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned; thereunto duly authorized, on the 23rd day of August, 2005.

EVOLVING SYSTEMS, INC.

By: /S/ STEPHEN K. GARTSIDE, JR.
 Stephen K. Gartside, Jr.
President and Chief Executive Officer
(Principal Executive Officer)

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

Signature	Title	Date
/S/ STEPHEN K. GARTSIDE, JR. Stephen K. Gartside, Jr.	President and Chief Executive Officer (Principal Executive Officer)	August 23, 2005
/S/ BRIAN R. ERVINE Brian R. Ervine	Executive Vice President, Chief Financial Officer (Principal Financial and Accounting Officer)	August 23, 2005
* George A. Hallenbeck	Chairman of the Board of Directors	August 23, 2005
/S/ PHILIP M. NECHES Philip M. Neches	Director	August 23, 2005
* David J. Nicol	Director	August 23, 2005
* Steve B. Warnecke	Director	August 23, 2005

* By: /s/ STEPHEN K. GARTSIDE, JR.
 Stephen K. Gartside, Jr.
 (Attorney-in-Fact)

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