

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

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

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**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**

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**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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**DATA SYSTEMS & SOFTWARE INC.  
AMENDMENT NO. 1 ON FORM 10-K/A  
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
George 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 <sup>(1)</sup>	101,550 <sup>(2)</sup>
	2003	464,250	--	--	--	177,825
	2002	465,700	--	--	--	182,860
Yacov Kaufman Chief Financial Officer	2004	183,839	13,711	--	75,000 <sup>(3)</sup>	51,239 <sup>(4)</sup>
	2003	182,942	--	--	--	49,901
	2002	170,297	--	--	--	37,899
Shlomie Morgenstern Vice President	2004	258,432	181,035 <sup>(5)</sup>	67,450 <sup>(6)</sup>	305,000 <sup>(7)</sup>	21,990 <sup>(8)</sup>
	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 <sup>(4)</sup>
	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 <sup>(1)</sup>			Base Price (\$/Share)	Exercise or Expiration Date	Potential Realizable Value at Assumed Annual Rates of Stock Price Appreciation for Option Terms <sup>(2)</sup>	
	Number of Securities Underlying Options Granted (#)	% of Total Options Granted to Employees in Fiscal Year (%)				5% (\$)	10% (\$)
George Morgenstern	(3) 180,000	23%		\$ 0.91	12/31/09	(b) o	x
3	SEC USE ONLY						
4	SOURCE OF FUNDS						
5	OO CHECK " BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e)						
6	CITIZENSHIP OR PLACE OF ORGANIZATION						
7	Delaware SOLE VOTING POWER						
NUMBER OF SHARES BENEFICIALLY							

	OWNED BY EACH REPORTING PERSON WITH	0	8 SHARED VOTING POWER
		0	9 SOLE DISPOSITIVE POWER
		0	10 SHARED DISPOSITIVE POWER
11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON	1,819,849*	
12	CHECK o BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES	1,819,849*	
13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)		
14	TYPE OF REPORTING PERSON	14.3%*	
	IA		

\* See Item 5



CUSIP NO. 749360400

1 NAME OF REPORTING PERSON

Bradley S. Vizi

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a)  (b)

3 SEC USE ONLY

4 SOURCE OF FUNDS

PF, OO

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

United States

NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	7	SOLE VOTING POWER
		1,000
	8	SHARED VOTING POWER
		0
	9	SOLE DISPOSITIVE POWER
		1,000
	10	SHARED DISPOSITIVE POWER
		1,819,849*

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

1,819,849\*

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

14.3%\*

14 TYPE OF REPORTING PERSON

IN

\* See Item 5

CUSIP NO. 749360400

1 NAME OF REPORTING PERSON

Christopher S. Kiper

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP (a)  (b)

3 SEC USE ONLY

4 SOURCE OF FUNDS

PF, OO

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

United States

NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	7	SOLE VOTING POWER
		22,000
	8	SHARED VOTING POWER
		0
	9	SOLE DISPOSITIVE POWER
		22,000
	10	SHARED DISPOSITIVE POWER
		1,819,849*

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

1,841,849\*

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

14.5%\*

14 TYPE OF REPORTING PERSON

IN

\* See Item 5

CUSIP NO. 749360400

The following constitutes Amendment No. 12 (“Amendment No. 12”) to the Schedule 13D filed by the undersigned (the “Schedule 13D”). This Amendment No. 12 amends the Schedule 13D as specifically set forth herein.

Item 3. Purpose of Transaction.

Item 3 is hereby amended and restated to read as follows:

The aggregate purchase price of the 1,553,775 Common Shares owned directly by the IRS 19 is approximately \$8,403,155, including brokerage commissions. Such Common Shares were acquired with the working capital of IRS 19.

The aggregate purchase price of the 266,074 Common Shares owned directly by the Foundation is approximately \$1,344,063, including brokerage commissions. Such Common Shares were acquired with the working capital of the Foundation.

The aggregate purchase price of the 22,000 Common Shares owned directly by Mr. Kiper is approximately \$126,694, including brokerage commissions. Such Common Shares were acquired with Mr. Kiper’s personal funds.

The aggregate purchase price of the 1,000 Common Shares owned directly by Mr. Vizi is approximately \$4,478.64, including brokerage commissions. Such Common Shares were acquired with Mr. Vizi’s personal funds.

Messrs. Kiper and Vizi effect purchases of securities through margin accounts maintained with prime brokers, which may extend margin credit to them as and when required to open or carry positions in the margin accounts, subject to applicable federal margin regulations, stock exchange rules and the prime brokers’ credit policies. In such instances, the positions held in the margin accounts are pledged as collateral security for the repayment of debit balances in the accounts.

To the best of the Reporting Persons’ knowledge, except as otherwise set forth herein, none of the persons listed on Schedule A beneficially owns any securities of the Issuer or is a party to any contract, agreement or understanding required to be disclosed herein.

Item 5. Interest in Securities of the Issuer.

Items 5(a)-(c) are hereby amended and restated to read as follows:

(a) The aggregate percentage of Common Shares reported owned by each person named herein is based upon 12,711,660 Common Shares outstanding as of May 14, 2015, which is the total number of Common Shares outstanding as reported in the Issuer’s Quarterly Report on Form 10-Q filed with the SEC on May 14, 2015.

As of the close of business on May 29, 2015, IRS 19 beneficially owned 1,553,775 Common Shares, constituting approximately 12.2% of the Common Shares outstanding. By virtue of their relationships discussed in further detail in Item 2, IRS 19, M2O, the Trust and Mr. O’Connell may be deemed to have shared voting and dispositive power over the Common Shares owned by IRS 19 and Legion Partners, Mr. Kiper and Mr. Vizi may be deemed to have shared dispositive power with respect to the Common Shares held by IRS 19.

As of the close of business on May 29, 2015, the Foundation beneficially owned 266,074 Common Shares, constituting approximately 2.1% of the Common Shares outstanding. By virtue of their relationships discussed in further detail in Item 2, Mr. O’Connell may be deemed to have shared voting and dispositive power over the Common

Shares owned by the Foundation and Legion Partners, Mr. Kiper and Mr. Vizi may be deemed to have shared dispositive power with respect to the Common Shares held by the Foundation.

CUSIP NO. 749360400

As discussed in Item 6 below, IRS 19 and the Foundation have entered into an investment advisory agreement with Legion Partners, pursuant to which Mr. Kiper and Mr. Vizi on behalf of Legion Partners, exclusively manage IRS 19's and the Foundation's investment in Common Shares and have certain discretion to purchase or sell Common Shares but do not have any right to vote the Common Shares. As a result, Legion Partners, Mr. Kiper and Mr. Vizi may be deemed to have shared dispositive power with respect to the Common Shares held by IRS 19 and the Foundation.

As of the close of business on May 29, 2015, Mr. Kiper directly owned 22,000 Common Shares, constituting less than 1.0% of the Common Shares outstanding and Mr. Vizi directly owned 1,000 Common Shares, constituting less than 1.0% of the Common Shares outstanding.

No person listed on Schedule A hereto owns any Common Shares.

As a result of certain of the matters described in Item 4 in the Schedule 13D, the Reporting Persons may be deemed to constitute a "group," within the meaning of Section 13(d) of the Exchange Act and the rules and regulations promulgated thereunder by the SEC. The aggregate number of Common Shares that would be deemed beneficially owned collectively by the Reporting Persons as a group is 1,842,849, which represents approximately 14.5% of the Common Shares outstanding. The filing of this Amendment No. 12 shall not be deemed an admission that the Reporting Persons are, for purposes of Section 13(d) of the Securities Exchange Act of 1934, as amended, the beneficial owners of any Common Shares he or it does not directly own. Each of the Reporting Persons specifically disclaims beneficial ownership of the Common Shares reported herein that he or it does not directly own, except to the extent of his or its pecuniary interest therein.

(b) Each of IRS 19, M2O, the Trust and Mr. O'Connell may be deemed to have shared voting and dispositive power over the Common Shares owned by IRS 19. The Foundation and Mr. O'Connell may be deemed to have shared voting and dispositive power over the Common Shares owned by the Foundation. Legion Partners, Mr. Kiper and Mr. Vizi may be deemed to have shared dispositive power with respect to the Common Shares held by IRS 19 and the Foundation. Each of Messrs. Kiper and Vizi has sole voting and dispositive power over the Common Shares he owns directly.

(c) The transactions in the Common Shares by the Reporting Persons during the past 60 days are set forth on Schedule B and are incorporated herein by reference.



CUSIP NO. 749360400

SIGNATURES

After reasonable inquiry and to the best of his knowledge and belief, each of the undersigned certifies that the information set forth in this statement is true, complete and correct.

Dated: May 29, 2015

IRS PARTNERS NO. 19, L.P.

By: M2O, Inc., its General Partner

By: /s/ Bradley S. Vizi

Name: Bradley S. Vizi  
Title: As Attorney-in-Fact for Michael O'Connell, Chief Executive Officer

THE LEONETTI/O'CONNELL FAMILY FOUNDATION

By: /s/ Bradley S. Vizi

Name: Bradley S. Vizi  
Title: As Attorney-in-Fact for Michael O'Connell, Secretary, Chief Financial Officer and Director

M2O, INC.

By: /s/ Bradley S. Vizi

Name: Bradley S. Vizi  
Title: As Attorney-in-Fact for Michael O'Connell, Chief Executive Officer

THE MICHAEL F. O'CONNELL AND MARGO L. O'CONNELL REVOCABLE TRUST

By: /s/ Bradley S. Vizi

Name: Bradley S. Vizi  
Title: As Attorney-in-Fact for Michael O'Connell, Trustee

CUSIP NO. 749360400

LEGION PARTNERS ASSET MANAGEMENT, LLC

By: /s/ Bradley S. Vizi  
Name: Bradley S. Vizi  
Title: Managing Director

/s/ Christopher S. Kiper  
Christopher S. Kiper

/s/ Bradley S. Vizi  
Bradley S. Vizi, Individually and as  
attorney-in-fact for Michael O'Connell

CUSIP NO. 749360400

SCHEDULE B

Transactions in the Common Shares during the past 60 days

Securities Purchased/(Sold)	Price Per Share (\$)	Date of Purchase/Sale
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IRS PARTNERS NO. 19, L.P.

112,500(1)	5.5500	05/28/2015
87,500(1)	5.5500	05/28/2015

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1 The Common Shares were acquired in a privately negotiated transaction.