

Edgar Filing: DATA SYSTEMS & SOFTWARE INC - Form 8-K/A

DATA SYSTEMS & SOFTWARE INC

Form 8-K/A

September 07, 2005

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

AMENDMENT NO.1  
ON  
FORM 8-K/A  
CURRENT REPORT

PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported) August 12, 2005

DATA SYSTEMS & SOFTWARE INC.  
(Exact name of Registrants as Specified in their Charters)

Delaware	0-19771	22-2786081
-----		
(States or Other Jurisdiction of Incorporation)	(Commission file Numbers)	(IRS Employer Identification Nos.)

200 Route 17, Mahwah, New Jersey	07430
-----	
(Address of Principal Executive Offices)	(Zip Code)

Registrants' telephone number, including area code (201) 529-2026  
-----

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-2 under the Exchange Act (17 CFR 240.14a-2)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Section 2 - Financial Information

Item 2.02 Results of Operations and Financial Condition.

On August 12, 2005, the Registrant announced its financial results for the second quarter and six months ended June 30, 2005. A press release relating

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to such announcement was filed as an exhibit to a Current Report on Form 8-K filed August 18, 2005, which is being amended by this Amendment No.1 on Form 8-K/A. Included herewith is an unaudited pro forma condensed consolidated balance sheet as of June 30, 2005 and unaudited pro forma condensed consolidated statements of operations for the year ended December 31, 2004 and the six-month period ended June 30, 2005, all of which give effect to the sale by the Registrant of the outsourcing consulting business of its dsIT Technologies Ltd. subsidiary to Taldor Computer Systems (1986) Ltd. on August 18, 2005.

### Section 9 - Financial Statements and Exhibits

#### Item 9.01 Financial Statements and Exhibits.

##### (b) Pro Forma Financial Information.

See unaudited pro forma condensed consolidated financial information attached hereto.

##### (c) Exhibits.

- 99.1 Press Release dated August 12, 2005 announcing the financial results. (previously filed)

### SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized on this 6th day of September 2005.

DATA SYSTEMS & SOFTWARE INC.

By: /S/ GEORGE MORGENSTERN

-----  
Name: George Morgenstern

Title: President and Chief Executive Officer

### DATA SYSTEMS & SOFTWARE INC. AND SUBSIDIARIES

#### UNAUDITED PRO FORMA CONDENSED CONSOLIDATED FINANCIAL INFORMATION

(dollars in thousands)

The following unaudited pro forma condensed consolidated financial statements give effect to the sale by Data Systems & Software Inc. (the "Company" or "DSSI") of the outsourcing consulting business of its dsIT Technologies Ltd. subsidiary ("dsIT Technologies") to Taldor Computer Systems (1986) Ltd. ("Taldor") on August 18, 2005 (the "Disposition").

Prior to the consummation of the Disposition, dsIT Technologies completed a spin-off of its project development and solutions activities to certain of its current shareholders. DSSI owns 80% of the entity, which will continue to conduct these activities under the name dsIT Solutions Ltd.

The Unaudited Pro Forma Condensed Consolidated Balance Sheet (the "Pro Forma Balance Sheet") as of June 30, 2005 has been prepared as if the Disposition

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occurred on June 30, 2005. The Pro Forma Balance Sheet is based upon the historical consolidated balance sheet of DSSI as of June 30, 2005, which was included in the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2005, and gives effect to the unaudited pro forma adjustments necessary to account for the Disposition.

The Unaudited Pro Forma Condensed Consolidated Statement of Operations for the year ended December 31, 2004 (the "Annual Pro Forma Statement of Operations") has been prepared as if the Disposition occurred on January 1, 2004. This Annual Pro Forma Statement of Operations is based upon the historical consolidated statement of operations of DSSI for the year ended December 31, 2004, which was included in the Company's Annual Report on Form 10-K for the year ended December 31, 2004, and gives effect to the unaudited pro forma adjustments necessary to account for the Disposition. The Annual Pro Forma Statement of Operations does not include the anticipated gain on the Disposition of approximately \$323, net of taxes.

The Unaudited Pro Forma Condensed Consolidated Statement of Operations for the six-month period ended June 30, 2005 (the "Six-Month Period Pro Forma Statement of Operations") has been prepared as if the Disposition occurred on January 1, 2005. This Six-Month Period Pro Forma Statement of Operations is based upon the historical consolidated statement of operations of DSSI for the six-month period ended June 30, 2005, which was included in the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2005, and gives effect to the unaudited pro forma adjustments necessary to account for the Disposition. The Six-Month Period Pro Forma Statement of Operations does not include the anticipated gain on the Disposition of approximately \$323, net of taxes.

The unaudited pro forma adjustments are based on an estimated sale price and assumptions that DSSI believes are reasonable. Therefore, the amounts in the Pro Forma Statements of Operations and Pro Forma Balance Sheet and accompanying notes (collectively, the "Pro Forma Financial Information") are subject to change. The Pro Forma Financial Information is provided for illustrative purposes only and does not purport to represent what DSSI's results of operations or financial position would actually have been, had the Disposition in fact occurred on such dates, nor does it purport to project the results of operations or financial position of DSSI for any future period or date.

The Pro Forma Financial Information should be read in conjunction with, and is qualified by reference to, the audited and unaudited financial statements and accompanying notes of DSSI, which were included in the Company's Annual Report on Form 10-K for the year ended December 31, 2004 and Quarterly Report on Form 10-Q for the quarter ended June 30, 2005.

### DATA SYSTEMS & SOFTWARE INC. AND SUBSIDIARIES

#### UNAUDITED PRO FORMA CONDENSED CONSOLIDATED BALANCE SHEET

(in thousands, except share and per share data)

As of June 30, 2005

ASSETS	DSSI as reported -----	Business disposition (Notes 1 and 2) -----	Pro forma adjustments -----	No -----
--------	------------------------------	--	-----------------------------------	-------------

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Current assets:

Cash and cash equivalents	\$265	3,318	(1,441)
Investment in short-term restricted deposits	--		300
Restricted cash	352	(109)	
Accounts receivable, net	6,021	(1,540)	
Unbilled work-in-process	588	(127)	
Inventory	63		
Other current assets	610	(103)	(38)
	-----		
Total current assets	7,899		
Property and equipment, net	598		
Other assets	730	(91)	(262)
Long-term restricted deposits	--		1,141
Funds in respect of employee termination benefits	2,748	(972)	
Goodwill	4,151	(4,022)	
Other intangible assets, net	61		
	-----		
Total assets	\$16,187		
	=====		

LIABILITIES AND SHAREHOLDERS' EQUITY

Current liabilities:

Short-term bank credit	\$858	(398)	
Current maturities of long-term debt	401	(3)	
Related Party - Note payable	100		
Trade accounts payable	2,147	(243)	
Accrued payroll, payroll taxes and social benefits	1,715	(985)	
Other current liabilities	2,326	(220)	
	-----		
Total current liabilities	7,547		
	-----		

Long-term liabilities:

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Investment in Comverge, net	1,824		
Long-term debt	166		
Liability for employee termination benefits	4,270	(1,428)	
Other liabilities	21		
	-----		
Total long-term liabilities	6,281		
	-----		
Minority interests	1,437	(1,437)	
	-----		
Shareholders' equity:			
Common stock - \$0.01 par value per share:			
Authorized - 20,000,000 shares; Issued - 8,937,395 shares at December 31, 2004 and June 30, 2005			
	88		
Additional paid-in capital	39,733	335	
Warrants	461		
Deferred compensation	(47)		
Accumulated deficit	(35,303)	544	(300)
Treasury stock, at cost -820,704 shares at December 31, 2004 and June 30, 2005	(3,791)		
Accumulated other comprehensive loss	(219)	189	
	-----		
Total shareholders' equity	922		
	-----		
Total liabilities and shareholders' equity	\$16,187		
	=====		

DATA SYSTEMS & SOFTWARE INC. AND SUBSIDIARIES

UNAUDITED PRO-FORMA CONDENSED CONSOLIDATED STATEMENT OF OPERATIONS

For the Year Ended December 31, 2004

(in thousands, except net loss per share data)

Business  
disposition

Pro-forma

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	DSSI -----	(Notes 1 and 3) -----	adjustment -----
Sales	\$30,113	\$ (8,273)	
Cost of sales	23,587	(6,344)	
	-----	-----	
Gross profit	6,526	(1,929)	
Research and development expenses	30	--	
Selling, marketing, general and administrative expenses	7,369	(260)	
	-----	-----	
Total operating expenses	7,399	(260)	
	-----	-----	
Operating loss	(873)	(1,669)	
Interest income	84		
Interest expense	(175)		
Other income (expense), net	197		
	-----	-----	-----
Loss before taxes on income	(767)	(1,669)	
Taxes on income	126		
	-----	-----	-----
Loss from operations of the Company and its consolidated subsidiaries	(893)	(1,669)	
Share in losses of Comverge	(1,242)		
Gain on sale of shares in Comverge	705		
Minority interests	(90)		
	-----	-----	-----
Net loss	(1,520)	(1,669)	
	=====	=====	=====
Basic and diluted net loss per share:			
Loss per share	\$ (0.19)		
	=====		
Weighted average number of shares outstanding - basic and diluted	7,976		
	=====		

DATA SYSTEMS & SOFTWARE INC. AND SUBSIDIARIES

UNAUDITED PRO-FORMA CONDENSED CONSOLIDATED STATEMENT OF OPERATIONS

For the Six Months Ended June 30, 2005

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(in thousands, except loss per share data)

	DSSI ----	Business disposition (Notes 1 and 4) -----	Pro-forma adjustments -----
Sales	\$15,657	(4,303)	
Cost of sales	12,420	(3,388)	
	-----	-----	
Gross profit	3,237	(915)	
Research and development expenses	26		
Selling, marketing, general and administrative expenses	3,614	(84)	
	-----	-----	
Total operating expenses	3,640	(84)	
	-----	-----	
Operating loss	(403)	(831)	
Interest income	4		
Interest expense	(98)		
Other income (expense), net	60		
	-----	-----	-----
Loss before taxes on income	(437)	(831)	(
Taxes on income	137		
	-----	-----	-----
Loss from operations of the Company and its consolidated subsidiaries	(574)	(831)	(3
Share in losses of Comverge	(380)		
Minority interests	(59)		
	-----	-----	-----
Net loss	(1,013)	(831)	(2
	=====	=====	=====
Basic and diluted net loss per share:			
	-----		
Loss per share	\$ (0.12)		
	=====		
Weighted average number of shares outstanding - basic and diluted	8,117		
	=====		

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## DATA SYSTEMS & SOFTWARE INC. AND SUBSIDIARIES

### NOTES TO UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL INFORMATION

(in thousands, except share and per share data)

#### NOTE 1

To record the Disposition resulting in estimated proceeds to DSSI of \$3,318, net of estimated expenses of \$200 (\$150 of transaction expenses and \$50 of tax). As a result of the transaction, goodwill, minority interest and accumulated other comprehensive loss balances associated with dsIT Technologies are accordingly adjusted.

#### NOTE 2

To record the reduction of assets and liabilities in the spin-off of dsIT Technologies' project development and solutions activities as follows:

##### Assets

Restricted cash	\$ (109)
Accounts receivable, net	(1,540)
Unbilled work-in-process	(127)
Other current assets	(103)
Other assets	(91)
Funds in respect of employee termination benefits	(972)
	-----
Reduction in total assets	(2,942)
	=====

##### Liabilities

Short-term bank credit	(398)
Current maturities of long-term debt	(3)
Trade accounts payable	(243)
Accrued payroll, payroll taxes and social benefits	(985)
Other current liabilities	(220)
Liability for employee termination benefits	(1,428)
	-----
Reduction in total liabilities	(3,277)
	=====
Excess of liabilities over assets - to additional paid-in-capital	335
	=====

#### NOTE 3

To record the exclusion of dsIT Technologies' outsourcing consulting business activities for the period from January 1, 2004 to December 31, 2004 as follows:

Sales	\$8,273
Cost of sales	6,344
	-----
Gross profit	1,929
Selling, marketing, general and administrative	260
	-----
Operating income	\$1,669

#### NOTE 4



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To record the exclusion of dsIT Technologies' outsourcing consulting business activities for the period from January 1, 2005 to June 30, 2005 as follows:

Sales	\$4,303
Cost of sales	3,388
	-----
Gross profit	915
Selling, marketing, general and administrative	84
	-----
Operating income	\$ 831

### NOTE 5

To adjust for the recording of minority interests' share of income/losses in dsIT Solutions. As a result of the transaction, there is no longer a minority interest participation in dsIT Solutions' income/losses. DSSI records the full amount of dsIT Solutions' losses with no adjustment for minority interests.

### NOTE 6

To expense all deferred tax assets in dsIT Solutions.

### NOTE 7

To record the funding of the present value of the remaining balance of the consulting agreement of the Company's Chief Executive Officer in accordance with the Company's agreement with him dated as of January 1, 1997, as amended to date.

### NOTE 8

To record interest income resulting from the investment in short-term and long-term deposits of the remaining balance of cash remaining from the Disposition after the funding of the Company's Chief Executive Officer's consulting agreement.

### NOTE 9

As part of the Disposition, DSSI granted to Taldor warrants to purchase 10% of dsIT Solutions Ltd. for \$200. The warrants have a seven-year life and expire on August 18, 2012. The value of such warrants is immaterial.