

DATA SYSTEMS & SOFTWARE INC  
Form 8-K  
August 04, 2006

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

**FORM 8-K  
CURRENT REPORT**

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

**Date of Report (Date of earliest event reported) July 31, 2006**

**DATA SYSTEMS & SOFTWARE INC.  
(Exact name of Registrant as Specified in its Charter)**

Delaware  
(State or Other Jurisdiction  
of Incorporation)

0-19771  
(Commission file Number)

22-2786081  
(IRS Employer  
Identification No.)

200 Route 17, Mahwah, New  
Jersey  
(Address of Principal Executive  
Offices)

07430  
(Zip Code)

Registrant's 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))



**Item 1.01 Entry Into a Material Definitive Agreement**

**Item 3.02 Unregistered Sales of Equity Securities**

On July 31, 2006 Data Systems & Software Inc. (the “Company”) conducted the second and final closing of the previously reported private placement of its Common Stock, par value \$.01 per share, resulting in the issuance of 345,685 shares of Common Stock. In connection with the closing, the Company entered into subscription agreements with certain accredited investors for the purchase of the shares at a purchase price of \$2.65 per share, resulting in gross proceeds to the Company of \$916,061. This brings the aggregate gross proceeds raised in the offering to \$3.18 million and the aggregate number of shares issued to 1.2 million.

By the terms of the subscription agreements, each subscriber, in addition to the Common Stock purchased, received a warrant exercisable for the purchase of 25% of the number of shares purchased, resulting in the issuance of warrants to purchase 86,424 shares. The warrants are exercisable for shares of the Company’s Common Stock for a period of five years at an exercise price of \$2.78 per share and are redeemable by the Company in certain circumstances. Warrants to issue an aggregate of 300,005 shares of Common Stock were issued to subscribers in the offering.

The subscription agreements require the Company to file a registration statement covering the shares of Common Stock purchased and the shares of Common Stock underlying the warrants by August 30, 2006. If the registration statement is not filed by such date, or is not declared effective within 120 days of such date, the Company will be required to pay liquidated damages to the subscribers equal to 1.25% of the total amount invested on a prorated monthly basis up to an aggregate 11.25%.

In connection with the offering, the Company entered into a placement agent agreement with First Montauk Securities Corp. (“First Montauk”) appointing it exclusive placement agent. According to the terms of the agreement, the placement agent is entitled to receive a 7% selling commission, 3% management fee, and 1% advisory fee of the gross proceeds of the offering. In addition, the placement agent is entitled to warrants with the same terms as those issued to the subscribers exercisable for the purchase of 10% of the number of shares purchased in the offering.

Out of the gross proceeds received at the final closing, the Company paid the placement agent fees and commissions of approximately \$100,000. In addition, the Company issued to the placement agent warrants to purchase 34,569 shares of Common Stock on the same terms as those issued to the subscribers. The total of placement agent fees and commissions paid in connection with the offering was approximately \$350,000 and the total number of warrants issued to the placement agent was 120,001.

The issuance and sale of the Common Stock and warrants was made to accredited investors in reliance upon the exemption provided in Section 4(2) of the Securities Act of 1933, as amended (the “Securities Act”). As such, the securities sold in the offering have not been registered under the Securities Act and may not be offered or sold in the United States absent registration or an applicable exemption from the registration requirements. No form of general solicitation or general advertising was conducted in connection with offering. Each of the warrants and the certificates representing the shares of Common Stock issued pursuant to the subscription agreements will contain restrictive legends preventing the sale, transfer or other disposition of such shares and warrants, unless registered under the Securities Act.

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 4th day of August, 2006.

DATA SYSTEMS & SOFTWARE INC.

By: /s/ Sheldon Krause

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Name: Sheldon Krause

Title: Secretary and General Counsel