

RAINING DATA CORP
Form 10KSB/A
July 24, 2007

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-KSB/A

(Amendment No. 1)

(Mark one)

ANNUAL REPORT PURSUANT TO SECTION 13 or 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended March 31, 2007

or

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 0-16449

RAINING DATA CORPORATION

(Name of Small Business Issuer in Its Charter)

Delaware
(State of Incorporation)
25A Technology Drive, Irvine, California
(Address of Principal Executive Offices)

94-3046892
(I.R.S. Employer ID. No.)
92618
(Zip Code)

(949) 442-4400

(Issuer's Telephone Number, Including Area Code)

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

| Title of Each Class | Name of Each Exchange on Which Registered |
|---------------------|---|
| None | N/A |

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

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Common Stock, \$0.10 par value

Check whether the issuer (1) filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act during the past 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

Check if there is no disclosure of delinquent filers in response to Item 405 of Regulation S-B contained in this form, and no disclosure will 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-KSB or any amendment to this Form 10-KSB.

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

The Registrant's revenues for the fiscal year ended March 31, 2007 were \$18.7 million.

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the Registrant was \$19,267,643 on March 22, 2007 based on the closing sale price of such stock on that date.

As of May 31, 2007, the Registrant had 21,186,747 shares of its common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

None.

Transitional Small Business Disclosure Format (check one): Yes No

EXPLANATORY NOTE

This Amendment No. 1 on Form 10-KSB/A (the Amendment) amends our Annual Report on Form 10-KSB for the fiscal year ended March 31, 2007 (the Original Filing), filed on July 2, 2007. The Amendment provides additional disclosure under the heading Section 16(a) Beneficial Ownership Reporting Compliance in Part III, Item 9. *Directors, Executive Officers, Promoters and Control Persons; Compliance with Section 16(a) of the Exchange Act* relating to a director s failure to file Forms 4 with respect to a substantial number of transactions in the Company s common stock from September 12, 2005 to June 15, 2007. In addition, in connection with the filing of this Amendment and pursuant to the rules of the Securities and Exchange Commission, this Amendment includes certain currently dated certifications.

Except as described above, no other changes have been made to the Original Filing, and this Amendment does not modify or update any other information in the Original Filing. Information not affected by the changes described above is unchanged and reflects the disclosures made at the time of the Original Filing. Accordingly, this Amendment should be read in conjunction with our filings made with the Securities and Exchange Commission subsequent to the date of the Original Filing.

PART III**ITEM 9.** *Directors, Executive Officers, Promoters and Control Persons; Compliance with Section 16(a) of the Exchange Act*

Our Bylaws provide that the Board of Directors is to be composed of no less than five (5) and no more than nine (9) directors divided into Classes I, II and III, each with as nearly equal a number of directors as possible. The exact number of directors is currently set at five (5) by resolution of the Board of Directors. The directors are elected to serve staggered three-year terms, with the term of one class of directors expiring each year at the annual meeting of stockholders.

The following table sets forth as of March 31, 2007, the name, age, and position of the directors, the date they joined the Board of Directors and the year in which their term expires:

| Name of Director | Age | Position | Director Since | Term Expires |
|------------------------------|-----|---|----------------|--------------|
| Richard W. Koe(1)(3)(4) | 50 | Chairman | 2003 | 2009 |
| Carlton H. Baab | 49 | President, Chief Executive Officer and Director | 2001 | 2007 |
| Gerald F. Chew(2) | 47 | Director | 1998 | 2007 |
| Douglas G. Marshall(1)(2)(3) | 50 | Director | 1998 | 2008 |
| Richard W. Smith(2) | 46 | Director | 2005 | 2008 |

- (1) Member of the Compensation Committee
- (2) Member of the Audit Committee
- (3) Member of the Nominating and Corporate Governance Committee
- (4) Member of the Stock Committee, a subcommittee of the Compensation Committee

The following is a description of the background of each director as of March 31, 2007:

Mr. Koe joined the Board of Directors in January 2003. Mr. Koe has served as Managing General Partner for ACP, a significant stockholder of ours, and Montavilla Partners, L.P., both of which are investment partnerships, and as President of ACM since July 1991. Mr. Koe has served as Chairman of the Board since December 2004. Mr. Koe serves as Chairman of the Compensation Committee and the Nominating and Corporate Governance Committee and is the sole member of the Stock Committee, a subcommittee of the Compensation Committee.

Mr. Baab joined us as President and Chief Executive Officer in August 2001 and was appointed as a member of the Board of Directors in December 2001. From May 2001 to August 2001, Mr. Baab served as a Managing Principal of ACM and a General Partner of ACP, a significant stockholder of ours. In August 2001, Mr. Baab took a formal leave of absence from ACM to join us. From March 2000 to April 2001, Mr. Baab was the Vice President of Finance and Chief Financial Officer of Certive, Inc., a web-based small-business services firm. From January 1999 to March 2000, Mr. Baab was the Chief Operating Officer and Chief Financial Officer of RemarQ Communities, Inc., a web-based provider of discussion group services. Mr. Baab served as Chief Financial Officer of the CKS, a marketing communications company, from February 1994 through December 1998. In addition, Mr. Baab served as an Executive Vice President and the Secretary of CKS from August 1995 through December 1998 and as CKS Chief Operating Officer from August 1995 through May 1996. Mr. Baab also served on the Board of Directors of Momentum Business Applications, Inc. (Nasdaq: MMTM), which provided research and development expertise on a contract basis, until it was acquired by PeopleSoft (Nasdaq: PSFT) in April 2002. Mr. Baab also serves on the University of Southern California, School of Engineering Board of

Councilors. Mr. Baab holds a B.S. in Electrical Engineering, with honors, from the University of Southern California and an M.B.A. from the Harvard Graduate School of Business Administration.

Mr. Chew joined the Board of Directors in 1998. Since 2003, Mr. Chew has served as Managing Director of Bridgetown Associates, LLC, an investment advisory firm. Mr. Chew served as the President and Chief Operating Officer of MDSI Mobile Data Solutions Inc. (Nasdaq: MDSI) from 2001 to 2002 and served as a director of MDSI from 1995 until 2001. Mr. Chew served as Executive Vice President of Ancora Capital & Management Group, LLC, an investment firm, from 1998 to 2001. In addition, since 1997, Mr. Chew has served as Managing Director of The Cairn Group. Mr. Chew holds a B.S. in Electrical Engineering from the University of California, Davis and an M.B.A. from the Amos Tuck School of Business Administration at Dartmouth College. Mr. Chew is also an advisor to several private companies. Mr. Chew serves as Chairman of the Audit Committee.

Mr. Marshall joined the Board of Directors in July 1998. Mr. Marshall is Senior Vice President of Deposit Strategy and Product Management at Washington Mutual (NYSE: WM), a financial services company. Mr. Marshall joined Washington Mutual in November 2001. From August 1994 to November 2001, Mr. Marshall held a number of marketing positions at Bank of America (NYSE: BAC), most recently as Vice President of Advertising and Marketing Communications. Mr. Marshall holds a B.A. in English from Seattle Pacific University and an M.B.A. from the University of Washington. Mr. Marshall serves on the Audit Committee, Compensation Committee and the Nominating and Corporate Governance Committee.

Mr. Smith joined the Board of Directors in August 2005. Mr. Smith currently serves as a sales and business development consultant for global technology and semiconductor organizations. From 1997 through 2004, Mr. Smith held various management positions with Intel Corporation, most recently as Business Development Manager for Intel Capital. Prior to Intel, Mr. Smith held positions with Cummins Engine Company and General Electric and served as an officer with the United States Army. Mr. Smith received his B.S. in Civil Engineering from the United States Military Academy at West Point and his M.B.A. from the Darden Graduate School of Business Administration at the University of Virginia. Mr. Smith serves on the Audit Committee.

Information regarding our current executive officers, which may be found under the caption "Executive Officers" in Part I hereof, is incorporated by reference into this Item 9.

Family Relationships

To our knowledge, with the exception of Mr. Chew and Mr. Koe who are cousins, there are no family relationships between any of our directors and executive officers.

Audit Committee Financial Expert

The Audit Committee of the Board of Directors is comprised solely of independent directors as defined in the Marketplace Rules of the Nasdaq Stock Market, and is governed by a written charter adopted by the Board of Directors. The Board of Directors has determined that Gerald F. Chew qualifies as an "audit committee financial expert" as that term is defined in Item 401(e) of Regulation S-B under the Exchange Act and is "independent" as defined in Rule 4200(a)(15) of the National Association of Securities Dealers' listing standards.

Section 16(a) Beneficial Ownership Reporting Compliance

Section 16(a) of the Exchange Act requires our officers and directors, and persons who own more than ten percent of a registered class of our equity securities, to file certain reports of ownership with the SEC and with the National Association of Securities Dealers, Inc. To our knowledge, based solely on a

review of the copies of such reports furnished to us and written representations that no other reports were required during the fiscal year ended March 31, 2007, all reports required to be filed during fiscal year ended March 31, 2007 pursuant to Section 16(a) of the Exchange Act by directors, executive officers and 10% beneficial owners were timely filed, with the exception of the following late filings: one Form 3 and one Form 4 by Mr. Lim on June 5, 2006, one Form 3 by Mr. Bramley on April 4, 2007 and one Form 3 by Mr. Albo on June 21, 2007. In addition, it has recently come to the Company's attention that Mr. Smith, a director, failed to timely file twenty-three Forms 4 with respect to fifty-nine transactions in the Company's common stock from September 12, 2005 to June 15, 2007. Two Forms 4 were filed on behalf of Mr. Smith on July 20, 2007 disclosing all such transactions, and Mr. Smith has paid to the Company eight thousand six hundred seventy six dollars and nine cents [\$8,676.09], which is the aggregate amount of the short-swing profits for his transactions in the Company's common stock from September 12, 2005 to June 15, 2007.

Code of Ethics

We have adopted a Code of Ethics for Principal Executive and Senior Financial Officers, which is posted on our Internet website at www.rainingdata.com. We will post any amendments or waivers, if and when approved or granted, of our Code of Ethics on our website at www.rainingdata.com.

ITEM 13. *Exhibits*

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| Exhibit | Description |
|----------------|--|
| 3.1 | Amended and Restated Certificate of Incorporation of the Registrant dated November 29, 2005 (included as Exhibit 3.1 to the Registrant's Form 8-K filed with the Commission on November 30, 2005 and incorporated herein by reference). |
| 3.2 | Amended and Restated Bylaws of the Registrant, dated November 28, 2005 (included as Exhibit 3.2 to the Registrant's Form 8-K filed with the Commission on November 30, 2005 and incorporated herein by reference). |
| 3.3 | Certificate of Designations dated March 31, 1999, as corrected (included as Exhibit 3.1 to the Registrant's Form 8-K filed with the Commission on April 5, 1999 and incorporated herein by reference). |
| 4.1 | Registration Rights Agreement by and among the Registrant, Astoria Capital Partners, L.P., Harrison H. Augur, Keogh MP and Robert D. van Roijen dated as of December 4, 2000, as amended on April 3, 2003 (included as Exhibit 4.3 to the Registrant's Form 10-QSB filed with the Commission on August 13, 2002 and incorporated herein by reference). |
| 4.2 | Sixth Amendment to the Registration Rights Agreement by and among the Registrant, Astoria Capital Partners, L.P., Harrison H. Augur, Keogh MP and Robert D. van Roijen dated as of April 1, 2003 (included as Exhibit 4.3 to the Registrant's Form 10-KSB filed with the Commission on June 6, 2003 and incorporated herein by reference). |
| 4.3 | Registration Rights Agreement by and between the Registrant and Astoria Capital Partners, L.P., dated as of September 27, 2001, as amended on April 3, 2002 (included as Exhibit 4.2 to the Registrant's Form 10-QSB filed with the Commission on August 13, 2002 and incorporated herein by reference). |
| 4.4 | Third Amendment to Registration Rights Agreement by and between the Registrant and Astoria Capital Partners, L.P., dated as of September 27, 2001, as amended on January 30, 2003 (included as Exhibit 4.3 to the Registrant's Form 8-K filed with the Commission on January 30, 2003 and incorporated herein by reference). |
| 4.5 | Note Exchange Agreement between the Registrant and Astoria Capital Partners, L.P. dated January 30, 2003 (included as Exhibit 4.1 to the Registrant's Form 8-K filed with the Commission on January 30, 2003 and incorporated herein by reference). |

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- 4.6 5% Convertible Subordinated Note Due 2008 between the Registrant and Astoria Capital Partners, L.P. dated January 30, 2003 (included as Exhibit 4.2 to the Registrant's Form 8-K filed with the Commission on January 30, 2003 and incorporated herein by reference).
- 4.7 Form of payment in kind note, as referenced in the 5% Convertible Subordinated Note, between the Registrant and Astoria Capital Partners, L.P. (included as Exhibit 4.8 to the Registrant's Form 10-KSB filed with the Commission on June 6, 2003 and incorporated herein by reference).
- 4.8 Form of Common Stock Purchase Warrant issued by the Registrant to Astoria Capital Partners, L.P. dated April 1, 2004. Originally issued on November 30, 2000 and adjusted on April 1, 2003 (included as Exhibit 4.9 to the Registrant's Form 10-KSB filed with the Commission on June 29, 2004 and incorporated herein by reference).
- 4.9 Agreement Regarding Amended and Restated Common Stock Purchase Warrant and 5% Convertible Subordinated Note Due 2008, dated December 14, 2004 (included as exhibit 4.12 to the Registrant's Form 8-K filed with the Commission on December 17, 2004 and incorporated herein by reference).
- 10.1* 1999 Stock Option Plan, as amended on November 28, 2005, Form of Notice of Stock Option Agreement and Form of Stock Option Agreement (included as Exhibit 10.1 to the Registrant's Form 8-K filed with the Commission on November 30, 2005 and incorporated herein by reference).
- 10.2* 2001 Employee Stock Purchase Plan as amended on December 28, 2001 (included as Exhibit 10.1 to the Registrant's Form 10-QSB filed with the Commission on March 21, 2002 and incorporated herein by reference).
- 10.3* Option Agreement dated September 24, 2001, between the Registrant and Carlton H. Baab (included as Exhibit 10.22 of Registrant's Form 10-QSB filed with the Commission on November 14, 2001 and incorporated herein by reference).
- 10.5* Form of Indemnification Agreement entered into with officers and directors of Registrant (included as Exhibit 10.2 to the Registrant's Form 10-QSB filed with the Commission on March 21, 2002 and incorporated herein by reference).
- 10.9* Severance and Change of Control Agreement, dated April 5, 2003, between the Registrant and Carlton H. Baab (included as Exhibit 10.12 to the Registrant's Form 10-KSB filed with the Commission on June 6, 2003 and incorporated herein by reference).
- 10.10 Loan and Security Agreement dated February 11, 2004, between the Registrant, Raining Data U.S., Inc. and Silicon Valley Bank (included as Exhibit 10.13 to the Registrant's Form 10-KSB filed with the Commission on June 29, 2004 and incorporated herein by reference).
- 10.11 Lease Agreement dated November 9, 2004 between Registrant and The Irvine Company (included as Exhibit 10.1 to the Registrant's Form 10-QSB filed with the Commission on November 9, 2004 and incorporated herein by reference).
- 10.12* Offer Letter Agreement, effective March 17, 2004, between the Registrant and Ajay Ramachandran (included as Exhibit 10.12 to the Registrant's Form 10-KSB filed with the Commission on July 24, 2006 and incorporated herein by reference).
- 10.13* Offer Letter, dated April 22, 2006, between the Registrant and Thomas G. Lim (included as Exhibit 10.1 to the Registrant's Form 8-K filed with the Commission on April 27, 2006 and incorporated herein by reference).
- 10.14* Offer Letter Agreement, effective July 15, 2005 between the Registrant and Robert W. Albo.

- 21.1 Subsidiaries of the Registrant (included as Exhibit 21.1 to the Registrant's Form 10-KSB filed with the Commission on June 28, 2002 and incorporated herein by reference).
 - 23.1 Consent of Independent Registered Public Accounting Firm.
 - 24.1 Power of Attorney.
 - 31.1 Certification of Chief Executive Officer.
 - 31.2 Certification of Chief Financial Officer.
 - 32.1 Certification of Chief Executive Officer and Chief Financial Officer Pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
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* Indicates management contracts or compensatory plans and arrangements filed pursuant to Item 601 of Regulation S-B under the Exchange Act.

Filed with the Original Filing.

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SIGNATURES

In accordance with Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, the Registrant caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

RAINING DATA CORPORATION
 By: /s/ THOMAS LIM
 Thomas Lim
 Chief Financial Officer
 Date: July 23, 2007

In accordance with the Securities Exchange Act of 1934, as amended, this report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

| Signatures | Title | Date |
|---------------------|---|---------------|
| /s/ CARLTON H. BAAB | President, Chief Executive Officer and Director | July 23, 2007 |
| Carlton H. Baab | (Principal Executive Officer) | |
| /s/ THOMAS LIM | Chief Financial Officer | July 23, 2007 |
| Thomas Lim | (Principal Financial and Accounting Officer) | |
| * | Director | July 23, 2007 |
| Richard W. Koe | Director | July 23, 2007 |
| * | Director | July 23, 2007 |
| Gerald F. Chew | Director | July 23, 2007 |
| * | Director | July 23, 2007 |
| Douglas G. Marshall | Director | July 23, 2007 |
| * | Director | July 23, 2007 |
| Richard W. Smith | | |

* Thomas Lim, by signing his name hereto does sign this document on behalf of the above noted individuals, pursuant to powers of attorney duly executed by such individuals, which have been filed as Exhibit 24.1 to the Original Filing.

By: /s/ THOMAS LIM
 Thomas Lim
 Attorney-in-fact

EXHIBIT INDEX

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