

DATA I/O CORP
Form 10-K/A
September 19, 2008
UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K/A

(Amendment No. 2)

(Mark One)

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

For the fiscal year ended **December 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. **0-10394**

DATA I/O CORPORATION
(Exact name of registrant as specified in its charter)

Washington
(State or other jurisdiction of incorporation)

91-0864123
(I.R.S. Employer Identification No.)

6464 185th Ave NE, Suite 101, Redmond, Washington, 98052

(425) 881-6444

(Address, including zip code, of registrant's principal executive offices and telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

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Title of each class
Common Stock (No Par Value)

Name of each exchange on which registered
(I.R.S. Employer Identification No.)

Securities registered pursuant to Section 12(g) of the Act:

None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

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 (§229.405 of this chapter) 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. Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer or a smaller reporting company. See definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company

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

Aggregate market value of voting and non-voting common equity held by non-affiliates of the registrant as of June 30, 2007:
\$28,660,807

Shares of Common Stock, no par value, outstanding as of March 20, 2008:
8,786,211

Portions of the registrant's Proxy Statement relating to its May 19, 2008 Annual Meeting of Shareholders are incorporated into Part III of this Annual Report on Form 10-K.

FORM 10-K/A

For the Fiscal Year Ended December 31, 2007

INDEX

Part II

Item 9A. Controls and Procedures	2
----------------------------------	---

Part IV

Item 15. Exhibits, Financial Statement Schedules	4
--	---

Signatures	10
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EXPLANATORY NOTE

Data I/O Corporation (the Company) is filing this Amendment No. 2 on Form 10K/A (this Amendment) to its Annual Report on Form 10-K for the year ended December 31, 2007, which was originally filed March 31, 2008 (the Original Filing), and was amended by Amendment No. 1 to Form 10-K filed on August 15, 2008. The purpose of the Amendment is to amend and restate Item 9A in its entirety. As disclosed below, Item 9A revises management's conclusions regarding the effectiveness of the Company's disclosure controls and procedures as of December 31, 2007 solely as a result of its failure to file management's annual report on internal control over financial reporting in the Original Filing.

This Form 10-K/A (Amendment No. 2) is limited in scope to the items identified above and should be read in conjunction with the Form 10-K and our other filings with the SEC.

This Form 10-K/A (Amendment No. 2) does not reflect events occurring after the filing of the Form 10-K or modify or update those disclosures affected by subsequent events. Consequently, all other information is unchanged and reflects the disclosures made at the time of the filing of the Form 10-K. With this Form 10-K/A (Amendment No. 2), the Principal Executive Officer and Principal Financial Officer of the Company have reissued their certifications required by Section 302 of the Sarbanes-Oxley Act of 2002, included in Part IV, Item 15. Exhibits, Financial Statement Schedules, furnished herewith.

Item 9A. Controls and Procedures

- (a) Evaluation of disclosure controls and procedures.

Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, Data I/O evaluated the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rule 13a-15(e) and Rule 15d-15(e) under the Exchange Act) as of the end of the period covered by this report (the Evaluation Date). Disclosure Controls are controls and procedures designed to reasonably assure that information required to be disclosed in our reports filed under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms. Disclosure Controls are also designed to reasonably assure that such information is accumulated and communicated to our management, including the CEO and CFO, as appropriate to allow timely decisions regarding required disclosure.

Based on this evaluation, the Company's Chief Executive Officer and Chief Financial Officer concluded that, as of December 31, 2007, the Company's disclosure controls and procedures were not effective and solely because of the inadvertent omission of the required management's report on internal control over financial reporting in its Form 10-K when it was originally filed on March 31, 2008.

- (b) Management's Report on Internal Control Over Financial Reporting.

Our management is responsible for establishing and maintaining adequate internal control over financial reporting. Our internal control systems was designed to provide reasonable assurance to the Company's management and board of directors regarding the preparation and fair presentation of published financial statements. Internal control over financial reporting is defined in Rule 13a-15(f) promulgated under the Securities Exchange Act of 1934 and includes those policies and procedures that:

- (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company;
- (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and
- (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the company's assets that could have a material effect on the financial statements.

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All internal controls, no matter how well designed, have inherent limitations. Therefore, even those systems determined to be effective can provide only reasonable assurance with respect to financial statements preparation and presentation.

Our management assessed the effectiveness of the Company's internal control over financial reporting as of December 31, 2007. In making this assessment, we used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in Internal Control - Integrated Framework. Based on this assessment we concluded that, as of December 31, 2007, our internal control over financial reporting was effective.

This annual report does not include an attestation report of the company's registered public accounting firm regarding internal control over financial reporting. Management's report was not subject to attestation by the company's registered public accounting firm pursuant to temporary rules of the Securities and Exchange Commission that permit the company to provide only management's report in this annual report.

(c) Changes in internal controls.

There were no changes made in our internal controls during the period covered by this report that has materially affected or is reasonably likely to materially affect our internal control over financial reporting.

Our restructuring actions decreased the number of personnel and reallocated tasks. We did not change our internal controls, however, these restructure actions may have an impact on our internal controls operation which we will continue to monitor and evaluate.

Item 15. Exhibits, Financial Statement Schedules

Executive Compensation Plans and Arrangements

The following list is a subset of the list of exhibits described below and contains all compensatory plans, contracts or arrangements in which any director or executive officer of Data I/O is a participant, unless the method of allocation of benefits thereunder is the same for management and non-management participants:

- (1) Amended and Restated 1982 Employee Stock Purchase Plan. See Exhibit 10.17.
- (2) Amended and Restated Retirement Plan and Trust Agreement. See Exhibit 10.2, 10.3, 10.4, 10.8, 10.11, 10.12, and 10.13.
- (3) Summary of Amended and Restated Management Incentive Compensation Plan. See Exhibit 10.9.
- (4) Amended and Restated 1983 Stock Appreciation Rights Plan. See Exhibit 10.1.
- (5) Amended and Restated 1986 Stock Option Plan. See Exhibit 10.15.
- (6) Form of Change in Control Agreements. See Exhibit 10.21 and 10.22.
- (7) 1996 Director Fee Plan. See Exhibit 10.14.
- (8) Letter Agreement with Frederick R. Hume. See Exhibit 10.16.
- (9) Amended and Restated 2000 Stock Compensation Incentive Plan. See Exhibit 10.18.
- (10) Form of Option Agreement. See Exhibit 10.20.
- (11) Data I/O Corporation Tax Deferral Retirement Plan. See Exhibit 10.19 and 10.24.
- (12) Harald Weigelt Employment Agreement. See Exhibit 10.23.

(a) **List of Documents Filed as a Part of This Report:**

Page

(1) Index to Financial Statements:

Report of Independent Registered Public Accounting Firm

Consolidated Balance Sheets as of December 31, 2007 and 2006

Consolidated Statements of Operations for each of the two years ended December 31, 2007

Consolidated Statements of Cash Flows for each of the two years ended December 31, 2007

Consolidated Statement of Stockholders' Equity for each of the two years ended December 31, 2007

Notes to Consolidated Financial Statements

(2) Index to Financial Statement Schedules:

Schedule II Consolidated Valuation and Qualifying Accounts

All other schedules not listed above have been omitted because the required information is included in the consolidated financial statements or the notes thereto, or is not applicable or required.

(3) Index to Exhibits:

3 Articles of Incorporation:

- 3.1 Data I/O s restated Articles of Incorporation filed November 2, 1987 (Incorporated by reference to Exhibit 3.1 of Data I/O s 1987 Annual Report on Form 10-K (File No. 0-10394)).
- 3.2 Data I/O s Bylaws as amended and restated as of February 2006 (Incorporated by reference to Exhibit 3.2 of Data I/O s 2005 Annual Report on Form 10-K (File No. 0-10394)).
- 3.3 Certification of Designation, Preferences and Rights of Series A Junior Participating Preferred Stock (Incorporated by reference to Exhibit 1 of Data I/O s Registration Statement on Form 8-A filed March 13, 1998 (File No. 0-10394)).

4 Instruments Defining the Rights of Security Holders, Including Indentures:

- 4.1 Rights Agreement, dated as of April 4, 1998, between Data I/O Corporation and ChaseMellon Shareholder Services, L.L.C. as Rights Agent, which includes: as Exhibit A thereto, the Form of Right Certificate; and, as Exhibit B thereto, the Summary of Rights to Purchase Series A Junior Participating Preferred Stock (Incorporated by reference to Data I/O s Current Report on Form 8-K filed on March 13, 1998 (File No. 0-10394)).
- 4.2 Rights Agreement, dated as of March 31, 1988, between Data I/O Corporation and First Jersey National Bank, as Rights Agent, as amended by Amendment No. 1 thereto, dated as of May 28, 1992 and Amendment No. 2 thereto, dated as of July 16, 1997 (Incorporated by reference to Data I/O s Report on Form 8-K filed on March 13, 1998 (File No. 0-10394)).
- 4.3 Amendment No. 1, dated as of February 10, 1999, to Rights Agreement, dated as of April 4, 1998, between Data I/O Corporation and ChaseMellon Shareholder Services, L.L.C. as Rights Agent (Incorporated by reference to Exhibit 4.1 of Data I/O s Form 8-A/A dated February 10, 1999 (File No. 0-10394)).

10 Material Contracts:

- 10.1 Amended and Restated 1983 Stock Appreciation Rights Plan dated February 3, 1993 (Incorporated by reference to Exhibit 10.23 of Data I/O s 1992 Annual Report on Form 10-K (File No. 0-10394)).
- 10.2 Amended and Restated Retirement Plan and Trust Agreement. (Incorporated by reference to Exhibit 10.26 of Data I/O s 1993 Annual Report on Form 10-K (File No. 0-10394)).

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- 10.3 First Amendment to the Data I/O Tax Deferred Retirement Plan (Incorporated by reference to Exhibit 10.21 of Data I/O s 1994 Annual Report on Form 10-K (File No. 0-10394)).
- 10.4 Second Amendment to the Data I/O Tax Deferred Retirement Plan (Incorporated by reference to Exhibit 10.26 of Data I/O s 1995 Annual Report on Form 10-K (File No. 0-10394)).
- 10.5 Purchase and Sale Agreement dated as of July 9, 1996 (Relating to the sale of Data I/O Corporation s headquarters property in Redmond, Washington consisting of approximately 79 acres of land and an approximately 96,000 square foot building. (Portions of this exhibit have been omitted pursuant to an application for an order granting confidential treatment. The omitted portions have been separately filed with the Commission) (Incorporated by reference to Exhibit 10.32 of Data I/O s 1996 Annual Report on Form 10-K (File No. 0-10394)).
- 10.6 Letter dated as of December 20, 1996, First Amendment and extension of the Closing Date under that certain Purchase and Sale Agreement dated as of July 9, 1996. (Portions of this exhibit have been omitted pursuant to an application for an order granting confidential treatment. The omitted portions have been separately filed with the Commission) (Incorporated by reference to Exhibit 10.33 of Data I/O s 1996 Annual Report on Form 10-K (File No. 0-10394)).
- 10.7 Letter dated as of February 17, 1997, Second Amendment and extension of the Closing Date under that certain Purchase and Sale Agreement dated as of July 9, 1996. (Portions of this exhibit have been omitted pursuant to an application for an order granting confidential treatment. The omitted portions have been separately filed with the Commission) (Incorporated by reference to Exhibit 10.34 of Data I/O s 1996 Annual Report on Form 10-K (File No. 0-10394)).
- 10.8 Third Amendment to the Data I/O Tax Deferred Retirement Plan (Incorporated by reference to Exhibit 10.35 of Data I/O s 1996 Annual Report on Form 10-K (File No. 0-10394)).
- 10.9 Amended and Restated Management Incentive Compensation Plan dated January 1, 1997 (Incorporated by reference to Exhibit 10.25 of Data I/O s 1997 Annual Report on Form 10-K (File No. 0-10394)).
- 10.10 Amended and Restated Performance Bonus Plan dated January 1, 1997 (Incorporated by reference to Exhibit 10.26 of Data I/O s 1997 Annual Report on Form 10-K (File No. 0-10394)).
- 10.11 Fourth Amendment to the Data I/O Tax Deferred Retirement Plan (Incorporated by reference to Exhibit 10.27 of Data I/O s 1997 Annual Report on Form 10-K (File No. 0-10394)).

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- 10.12 Fifth Amendment to the Data I/O Tax Deferred Retirement Plan (Incorporated by reference to Exhibit 10.28 of Data I/O s 1997 Annual Report on Form 10-K (File No. 0-10394)).
- 10.13 Sixth Amendment to the Data I/O Tax Deferred Retirement Plan (Incorporated by reference to Exhibit 10.29 of Data I/O s 1997 Annual Report on Form 10-K (File No. 0-10394)).
- 10.14 Amended and Restated Data I/O Corporation 1996 Director Fee Plan (Incorporated by reference to Exhibit 10.32 of Data I/O s 1997 Annual Report on Form 10-K (File No. 0-10394)).
- 10.15 Amended and Restated 1986 Stock Option Plan dated May 12, 1998 (Incorporated by reference to Exhibit 10.37 of Data I/O s 1998 Annual Report on Form 10-K (File No. 0-10394)).
- 10.16 Letter Agreement with Fred R. Hume dated January 29, 1999. (Incorporated by reference to Exhibit 10.35 of Data I/O s 1999 Annual Report on Form 10-K (File No. 0-10394)).
- 10.17 Amended and Restated 1982 Employee Stock Purchase Plan dated May 16, 2003 (Incorporated by reference to Data I/O s 2003 Proxy Statement dated March 31, 2003(File No. 0-10394)).
- 10.18 Amended and Restated 2000 Stock Compensation Incentive Plan dated May 20, 2004 (Incorporated by reference to Data I/O s 2004 Proxy Statement dated April 12, 2004(File No. 0-10394)).
- 10.19 Data I/O Corporation Tax Deferral Retirement Plan, as amended (Incorporated by reference to Data I/O s 2004 Annual Report on Form 10-K (File No. 0-10394)).
- 10.20 Form of Option Agreement (Incorporated by reference to Data I/O s 2004 Annual Report on Form 10-K (File No. 0-10394)).
- 10.21 Change in Control Agreement with Fred R. Hume dated March 22, 2007 (Incorporated by reference to Data I/O s Current Report on Form 8-K filed on March 28, 2007(File No. 0-10394)).
- 10.22 Change in Control Agreement with Joel S. Hatlen dated March 22, 2007 (Incorporated by reference to Data I/O s Current Report on Form 8-K filed on March 28, 2007(File No. 0-10394)).
- 10.23 Harald Weigelt Employment Agreement (Incorporated by reference to Data I/O s 2005 Annual Report on Form 10-K (File No. 0-10394)).
- 10.24 Data I/O Corporation Tax Deferral Retirement Plan, as amended (Incorporated by reference to Data I/O s 2005 Annual Report on Form 10K (File No. 0-10394)).
- 10.25 Lease Termination Agreement dated February 28, 2006 (Redmond Headquarters) (Incorporated by reference to Data I/O s 2005 Annual Report on Form 10K (File No. 0-10394)).

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- 10.26 Lease, Redmond East Business Campus between Data I/O Corporation and Carr Redmond PLCC dated February 28, 2006 (Incorporated by reference to Data I/O s 2005 Annual Report on Form 10K (File No. 0-10394)).
- 10.27 Amended and Restated 2000 Stock Compensation Incentive Plan dated May 24, 2006 (Incorporated by reference to Data I/O s 2006 Proxy Statement dated April 6, 2006).
- 10.28 Form of Performance Award Agreement (incorporated by reference to Exhibit 10.28 of Data I/O s June 30, 2006 Quarterly Report on Form 10-Q (File No. 0-10394)).
- 10.29 Form of Performance Award Agreement (incorporated by reference to Exhibit 10.28 of Data I/O s June 30, 2006 Quarterly Report on Form 10-Q (File No. 0-10394)).
- 10.30 Patent Purchase Agreement (Incorporated by reference to Data I/O s Current Report on Form 8-K filed on March 25, 2008 (File No. 0-10394)).
- 10.31 First Amendment to the Patent Purchase Agreement (Incorporated by reference to Data I/O s Current Report on Form 8-K filed on March 25, 2008(File No. 0-10394)).
- 10.32 Orchard Trust Company Defined Contribution Prototype Plan and Trust (Incorporated by reference to Exhibit 10.32 of Data I/O s 2007 Annual Report on Form 10K (File No. 0-10394)).
- 10.33 Orchard Trust Company Non-standardized 401(k) Plan (Incorporated by reference to Exhibit 10.33 of Data I/O s 2007 Annual Report on Form 10K (File No. 0-10394)).
- 21.1 Subsidiaries of the Registrant*
- 23.1 Consent of Independent Registered Public Accounting Firm*

31 Certification Section 302:

- 31.1 Chief Executive Officer Certification
- 31.2 Chief Financial Officer Certification

32 Certification Section 906:

- 32.1 Chief Executive Officer Certification*
- 32.2 Chief Financial Officer Certification*

* Previously filed with the annual report on Form 10-K filed on March 31, 2008.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

DATA I/O CORPORATION
(REGISTRANT)

DATED: September 19, 2008

By: //S//Frederick R. Hume
Frederick R. Hume
President and Chief Executive Officer