BOTTOMLINE TECHNOLOGIES INC /DE/
Form 10-K
September 12, 2007

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# UNITED STATES

# SECURITIES AND EXCHANGE COMMISSION

**Washington, DC 20549**

# FORM 10-K

(Mark One)

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

For the fiscal year ended June 30, 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 0-25259

# BOTTOMLINE TECHNOLOGIES (de), INC.

**(Exact Name of Registrant as Specified in Its Charter)**

| | |
|---|---|
| **Delaware** | **02-0433294** |
| **(State or Other Jurisdiction of Incorporation or Organization)** | **(I.R.S. Employer Identification No.)** |
| **325 Corporate Drive** | |
| **Portsmouth, New Hampshire** | **03801** |

| **(Address of Principal Executive Offices)** | **(Zip Code)** |
|---|---|

**Registrant s telephone number, including area code: (603) 436-0700**

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

| **Title of each class:** | **Name of each exchange on which registered:** |
|---|---|
| Common Stock, $.001 par value per share | The NASDAQ Global Market |

**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 x

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 x

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 x 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 a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of accelerated filer and large accelerated filer in Rule 12b-2 of the Exchange Act (Check one):

| | | |
|---|---|---|
| Large accelerated filer ¨ | Accelerated filer x | Non-accelerated filer ¨ |

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

The aggregate market value of the voting stock held by non-affiliates of the registrant, based on the last sale price of the registrant s common stock at the close of business on December 31, 2006 was $264,628,793 (reference is made to Part II, Item 5 herein for a statement of assumptions upon which this calculation is based). The registrant has no non-voting stock.

There were 24,614,538 shares of common stock, $.001 par value per share, of the registrant outstanding as of August 31, 2007.

**DOCUMENTS INCORPORATED BY REFERENCE**

Items 10, 11, 12, 13 and 14 of Part III (except for information required with respect to our executive officers, which is set forth under Part I Executive Officers and Other Key Employees of the Registrant ) have been omitted from this report, as we expect to file with the Securities and Exchange Commission, not later than 120 days after the close of our fiscal year ended June 30, 2007, a definitive proxy statement for our 2007 annual meeting of stockholders. The information required by Items 10, 11, 12, 13 and 14 of Part III of this report, which will appear in our definitive proxy statement, is incorporated by reference into this report.

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## PART I

*This Annual Report on Form 10-K contains forward-looking statements that involve risks and uncertainties. Any statements (including statements to the effect that we believe, expect, anticipate, plan and similar expressions) that are not statements relating to historical matters should be considered forward-looking statements. Our actual results may differ materially from the results discussed in the forward-looking statements as a result of numerous important factors, including those discussed in Item 1A. Risk Factors .*

### Item 1. *Business*.

### Our Company

We provide electronic payment and invoice solutions to corporations, financial institutions and banks around the world. Our solutions are used to streamline, automate and manage processes and transactions involving global payments, invoice receipt and approval, collections, cash management, risk mitigation, reporting and document archive. We offer software designed to run on-site at the customer s location as well as hosted solutions. Historically, our software has been sold predominantly on a perpetual license basis. Today, however, many of our newer offerings are sold on a subscription and transaction basis.

Our offerings include software solutions that banks use to provide web-based payment and reporting capability to their corporate customers. We also provide a hosted solution, Legal eXchange, that receives, manages and controls legal invoices and the related spend management for insurance companies and other large consumers of outside legal services. Our corporate customers rely on our solutions to automate their payment and accounts payable processes and to streamline and manage the production and retention of electronic documents.

Our solutions complement and leverage our customers existing information systems, accounting applications and banking relationships. As a result, our solutions can be deployed quickly and efficiently. To help our customers receive the maximum value from our products and meet their own particular needs, we also provide professional services for installation, training, consulting and product enhancement. Additionally, we offer our customers a broad range of equipment and supplies that complement our software products.

Bottomline was originally organized as a New Hampshire corporation in 1989 and was reincorporated as a Delaware corporation in August 1997. We maintain our corporate headquarters in Portsmouth, New Hampshire and our international headquarters in Reading, England. We maintain a website with the address www.bottomline.com. Our website includes links to our Code of Business Conduct and Ethics, and our Audit Committee, Compensation Committee, and Nominating and Corporate Governance Committee charters. We are not including the information contained in our website as part of, or incorporating it by reference into, this Annual Report on Form 10-K. We make available free of charge, through our website, our annual reports on Form 10-K, quarterly reports on Form 10-Q, and current reports on Form 8-K, and amendments to these reports, as soon as reasonably practical after such material is electronically filed with, or furnished to, the Securities and Exchange Commission (SEC).

### Our Strategy

Our objective is to be the leading global provider of business payment and invoice management software solutions and services. Key elements of our strategy include the following:

- Providing software and services which enable banks to offer their corporate customers leading global payment capability and functionality;
- Continuing to add customers and functionality to our growing Legal eXchange network;
- Leveraging our leading payment and document management software solutions for enterprise customers;

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Increasing the investment in our AP Automation solutions to capitalize on the new and significant market opportunity for that offering;

Increasing the deployment of our hosted solutions, as well as subscription and transaction based pricing, in order to increase our recurring revenue contribution;

Continuing to expand our presence outside of North America and Europe by leveraging our experience with changing global payment standards;

Broadening our relationships with our customer base by selling existing applications, as well as new product offerings, into that base; and

Pursuing strategic acquisitions that expand our geographical footprint or complement our product functionality.

**Our Products and Services**

***Payment and Document Automation***

The payments automation capabilities inherent in our WebSeries® and PayBase® solutions can produce a wide variety of domestic and international payment instructions along with consolidated bank reporting of cash activity including ACH, EDI, Fedwire transfer, BACSTEL-IP and SWIFT messaging and paper checks in most currencies. Through our payments automation capabilities, customers can reduce administrative expenses and strengthen compliance and anti-fraud controls. Users are able to gather and access data via the Internet on payment and bank account information, including account totals and detailed transaction data, providing improved workflow, financial reporting and bank communications.

To help augment financial document composition and delivery we offer Formscape, a suite of software solutions for automating purchase-to-pay, document and financial transaction processes and also Create!form, a document process automation suite. Our Formscape and Create!form products offer advanced design, output formatting and delivery capabilities that enable customers to replace paper-based forms (such as invoices, purchase orders and shipping notices) with more efficient and cost-effective electronic documents. With the capabilities of these product suites, users can centrally manage, distribute and archive important documents and then distribute them via email, print, fax or the Web.

***Spend Management***

Our hosted spend management solution, Legal eXchange, integrates with claims management and time and billing systems to automate legal invoice management processes and to provide insight into all areas of a company s outside legal spend. Legal eXchange s combination of automated invoice routing and a sophisticated rules engine allows corporate legal and insurance claims departments to create more efficient processes for managing invoices generated by outside law firms, while offering access to important legal spend factors including budgeting, expense monitoring and outside counsel performance.

***Electronic Banking***

Our WebSeries Electronic Banking Platform allows banks and financial institutions to deploy Internet-based cash management services for their corporate clients. Based on patented technology and complementary existing systems, our banking platform enables users to leverage a single Web-based interface for the origination and processing of all types of inbound and outbound domestic and international payments. The software architecture of our banking platform allows banks and financial institutions to configure highly specialized solution sets for Enterprise Cash Management, Wholesale Banking and Retail Branch Payments using modules for ACH, International Payments, Check Management, Information Reporting, Unattended Payment and File Transmission, and Distributed Document Printing.

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*AP Automation*

Our AP Automation solutions allow businesses and enterprises to automate the accounts payable invoice receipt and management process and facilitate the ultimate payment. These solutions are offered on a subscription and transaction-based model. We have continued to significantly invest in the on-going development and enhancement of our AP Automation solutions to include a wider range of functionality and to enable high volume usage in a hosted environment.

***Professional Services***

Our teams of service professionals draw on extensive experience to provide consulting, project implementation and training services to our clients. By easing the implementation of our products, these services help our customers accelerate the time to value. By improving the overall customer experience, these services help us retain customers and drive future revenue generating arrangements from existing customers.

***Equipment and Supplies***

We offer consumable products for laser check printing, including magnetic ink character recognition toner and blank-paper check stock. We also provide printers and printer-related equipment, primarily through arrangements with our hardware vendors, to complement our software product offerings.

**Our Customers**

We support more than 9,000 customers, including 3,000 that access our payment and invoice automation capabilities through convenient subscription and transaction-based services. Our customers are in industries such as financial services, insurance, health care, technology, communications, education, media, manufacturing and government. We provide our products and services to approximately 65 of the Fortune 100 companies and approximately 80 of the FTSE (Financial Times) 100 companies. Our customers include leading organizations such as Bank of America, HSBC, Australia and New Zealand Banking Group (ANZ), Franklin Templeton, GMAC, American International Group, Liberty Mutual, Safeco Insurance, British Airways, Vodafone and Hertz Corporation.

**Our Competition**

The markets in which we participate are highly competitive. We believe our ability to compete depends on factors within and beyond our control, including:

- the performance, reliability, features, price and ease of use of our offerings as compared to competitor alternatives;
- our industry knowledge and expertise;
- the execution of our sales organizations;
- our ability to secure and maintain strategic relationships;
- our ability to support our customers; and
- the timing and market acceptance of new products and enhancements to existing products by us and by our current and future competitors.

Our payment and document automation products compete primarily with companies that provide solutions to create, publish, manage and archive electronic documents, such as Adobe, Optio Software, StreamServe and Xerox and companies that offer electronic payment and laser check printing software and services, such as Payformance, MHC Associates, and ACOM Solutions in the US and Microgen, Albany Software Ltd., Direct

Debit, Ltd., and Eiger Systems Limited in Europe. Our products also compete with companies that provide a diverse array of accounts payable automation and workflow capabilities, such as Xign (now part of JP Morgan Chase), BasWare, Digital Vision and 170 Systems. To a lesser extent, we compete with providers of enterprise resource planning solutions and providers of traditional payment products, including check stock and check printing software and services. In addition, some financial institutions compete with us as outsourced check printing and electronic payment services for their customers.

For Electronic Banking, we primarily compete with companies such as S1 Corporation and ACI Worldwide that offer a wide range of financial services including electronic banking applications. We also encounter competition to a lesser degree from Metavante, SunGard, and Fundtech, as well as companies that provide traditional treasury workstation solutions.

For our Legal eXchange solution, we compete with a number of companies, including DataCert, CT TyMetrix, LexisNexis CounselLink and Allegient Systems.

Although we believe that we compete favorably in each of the markets in which we participate, the markets for our products and services are intensely competitive and characterized by rapid technological change and a number of factors could adversely affect our ability to compete in the future, including those discussed in Item 1A. Risk Factors .

**Our Operating Segments**

We organize our business by segments in order to maximize market opportunities. Our operating segments are organized principally by the type of product or services offered and by geography. As of July 1, 2006 we revised the structure of our internal operating segments and changed the nature of the financial information that is provided to and used by our chief operating decision maker. The change in segment structure as of July 1, 2006 resulted in three reportable segments, and that change is reflected for all periods presented. Our reportable segments are as follows:

*Payments and Transactional Documents.* Our Payments and Transactional Documents segment supplies software products that provide a range of financial business process management solutions, including making and collecting payments, sending and receiving invoices, accounts payable automation and generating and storing business documents. This segment also provides an array of standard professional services and equipment and supplies that complement and enhance our core software products. Revenue associated with this segment has historically been recorded upon delivery. This segment also incorporates the Company s check printing and accounts payable automation solutions, revenue for which is typically recorded on a per transaction basis or ratably over the expected life of the customer relationship.

*Banking Solutions.* The Banking Solutions segment provides solutions that are specifically designed for banking and financial institution customers. These solutions typically involve lengthy implementation periods and a significant level of customization. Due to the tailored nature of these products, revenue is generally recognized on a percentage of completion basis.

*Outsourced Solutions.* The Outsourced Solutions segment provides customers with outsourced and hosted solution offerings that facilitate invoice receipt and presentment and spend management. The majority of the activity in this segment is associated with our Legal eXchange solution, which provides customers the opportunity to create more efficient processes for managing invoices generated by outside law firms while offering access to important legal spend factors such as budgeting, expense monitoring and outside counsel performance. Revenue for this segment is generally recognized on a per transaction basis or ratably over a specified subscription period or the estimated life of the customer relationship.

Each operating segment has a dedicated sales force and, periodically, a sales person in one operating segment will sell products and services that are typically sold within a different operating segment. In such cases,

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the transaction is generally recorded by the operating segment to which the sales person is assigned. Accordingly, segment results can include the results of transactions that have been allocated to a specific segment based on the contributing sales resource, rather than the nature of the product or service. Conversely, a transaction can be recorded by the operating segment primarily responsible for delivery to the customer, even if the sales person is assigned to a different operating segment.

The Company s chief operating decision maker assesses segment performance based on a variety of factors that can include segment revenue and a segment measure of profit or loss. Each segment s measure of profit or loss is on a pre-tax basis and excludes stock compensation expense and acquisition-related expenses such as amortization of intangible assets and charges related to acquired in-process research and development. There are no inter-segment sales; accordingly the measure of segment revenue and profit or loss reflects only revenues from external customers. The costs of certain corporate level expenses, primarily general and administrative expenses, are allocated to the Company s operating segments at predetermined rates that approximate cost.

The Company does not track or assign its assets by operating segment.

The following represents a summary of our reportable segments for the years ended June 30, 2005, 2006 and 2007.

| | Fiscal Year Ended June 30, | | |
|---|---|---|---|
| | 2005 | 2006 | 2007 |
| | | (in thousands) | |
| Revenues: | | | |
| Payments and Transactional Documents | $ 79,946 | $ 77,600 | $ 84,506 |
| Banking Solutions | 9,164 | 12,706 | 20,017 |
| Outsourced Solutions | 7,395 | 11,359 | 13,812 |
| Total revenues | $ 96,505 | $ 101,665 | $ 118,335 |
| Segment measure of profit (loss): | | | |
| Payments and Transactional Documents | $ 9,048 | $ 5,784 | $ 2,041 |
| Banking Solutions | (745) | (1,155) | 576 |
| Outsourced Solutions | 729 | 2,609 | 3,561 |
| Total measure of segment profit | $ 9,032 | $ 7,238 | $ 6,178 |

A reconciliation of the measure of segment profit to our GAAP income (loss) for 2005, 2006 and 2007, before the provision for income taxes, is as follows:

| | Fiscal Year Ended June 30, | | |
|---|---|---|---|
| | 2005 | 2006 | 2007 |
| | | (in thousands) | |
| Segment measure of profit | $ 9,032 | $ 7,238 | $ 6,178 |
| Less: | | | |
| Amortization of intangible assets | (3,217) | (4,491) | (9,324) |
| Stock compensation expense | (14) | (6,984) | (7,945) |
| Acquisition related technology write-offs | | (189) | |
| Other income, net | 444 | 3,252 | 3,177 |
| Income (loss) before provision for income taxes | $ 6,245 | $ (1,174) | $ (7,914) |

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**Financial Information About Geographic Areas**

Revenues, based on the point of sales, not the location of the customer, are as follows:

| | Fiscal Year Ended June 30, | | | | | |
|---|---|---|---|---|---|---|
| | 2005 | | 2006 | | 2007 | |
| | (in thousands) | | | | | |
| United States | $ 46,527 | 48.2% | $ 54,331 | 53.5% | $ 65,064 | 55.0% |
| Europe | 48,300 | 50.1% | 45,471 | 44.7% | 51,507 | 43.5% |
| Australia | 1,678 | 1.7% | 1,863 | 1.8% | 1,764 | 1.5% |
| Total | $ 96,505 | 100.0% | $ 101,665 | 100.0% | $ 118,335 | 100.0% |

Long-lived assets, which are based on geographical designation, were as follows:

| | Fiscal Year Ended June 30, | |
|---|---|---|
| | 2006 | 2007 |
| | (in thousands) | |
| Long-lived assets: | | |
| United States | $ 4,169 | $ 4,664 |
| Europe | 3,970 | 5,195 |
| Australia | 214 | 195 |
| Total long-lived assets | $ 8,353 | $ 10,054 |

A significant percentage of our revenues have been generated by our international operations and our future growth rates and success are in part dependent on continued growth and success in international markets. As is the case with most international operations, the success and profitability of these operations is subject to numerous risks and uncertainties including exchange rate fluctuations that are not hedged currently. A number of other factors could also have a negative effect on our business and results from operations outside the US, including different regulatory and industry standards and certification requirements, reduced protection for intellectual property rights in some countries, import or export licensing requirements, the complexities of foreign tax jurisdictions and difficulties and costs of staffing and managing our foreign operations.

**Sales and Marketing**

As of June 30, 2007, we employed 137 sales and marketing employees worldwide, of whom 66 were focused on the Americas markets, 67 were focused on European markets and 4 were focused on Asia Pacific markets. We market and sell our products directly through our sales forces and indirectly through a variety of channel partners and reseller relationships. We market and sell our products domestically and internationally, with an international focus on Europe and Australia. We also maintain an inside sales group which provides a lower-cost channel into maintaining existing customers and expanding our customer base.

**Product Development and Engineering**

Our product development and engineering organization included 99 employees as of June 30, 2007. We also use off-shore development resources to supplement our internal development teams. We have three primary development groups: software engineering, quality assurance and technical writing. We spent $9.4 million, $12.3 million, and $16.1 million on product development and engineering costs in fiscal years 2005, 2006 and 2007. The 2006 and 2007 expenditures include the impact of stock compensation expense, based on accounting rules that we adopted on July 1, 2005.

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Our software engineers have substantial experience in advanced software development techniques as well as extensive knowledge of the complex processes involved in business payment and invoicing systems. Our engineers participate in the Microsoft Developer Network, IBM Partner World for Developers, and the Oracle Partner Developer Program. They maintain extensive knowledge of software development trends and best practices. Our technology focuses on providing business solutions utilizing industry standards, providing a path for extendibility and scalability of our products. Security, control and fraud prevention, as well as data management and information reporting, are priorities in the technology we develop and deploy.

Our quality assurance engineers have extensive knowledge of our products and expertise in software quality assurance techniques. Members of the quality assurance group make use of automated software testing tools to facilitate comprehensive and timely testing of products. The quality assurance group members participate in beta releases, including tests of new products or enhancements, and provide initial training materials for customer support and service.

Our technical support group provides all product documentation as well as technical support for released products. The technical writers are versed in current document technology and work closely with the software engineers to create and maintain documentation that is clear, current and complete. The technical support engineers are responsible for the analysis of reported software problems and work closely with customers and customer support staff. The group s broad knowledge of our products, our technology, and our customers infrastructure allows it to rapidly respond to customer support needs.

**Backlog**

At the end of fiscal year 2007, our backlog was $59.7 million, including deferred revenues of $27.7 million. At the end of fiscal year 2006, our backlog was $43.5 million, including deferred revenues of $21.1 million. We do not believe that backlog is a meaningful indicator of sales that can be expected for any period, and there can be no assurance that backlog at any point in time will translate into revenue in any specific subsequent period.

**Proprietary Rights**

We rely upon a combination of patents, copyrights, trademarks and trade-secret laws to establish and maintain proprietary rights in our technology and products. We had 37 active patent applications relating to our products as of June 30, 2007. We have been awarded 9 patents, 3 of which were awarded in fiscal year 2007, and expect to receive others. The earliest year of expiration for our awarded patents is 2015.

We intend to continue to file patent applications as we develop new technologies. There can be no assurance, however, that our existing patent applications, or any others that may be filed in the future, will issue or will be of sufficient scope and strength to provide meaningful protection of our technology or any commercial advantage to us, or that the issued patents will not be challenged, invalidated or circumvented. In addition, we rely upon a combination of copyright and trademark laws and non-disclosure and other intellectual property contractual arrangements to protect our proprietary rights. Given the rapidly changing nature of the industry s technology, the creative abilities of our development, marketing and service personnel may be as or more important to our competitive position as the legal protections and rights afforded by patents. We also enter into agreements with our employees and clients that seek to limit and protect our intellectual property and the distribution of proprietary information. However, there can be no assurance that the steps we have taken to protect our intellectual property will be adequate to deter misappropriation of proprietary information, and we may not be able to detect unauthorized use and take appropriate steps to enforce our proprietary rights.

**Government Regulation**

Although our operations have not been subject to any material industry-specific governmental regulation, some of our existing and potential customers are subject to extensive federal and state governmental regulations.

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In addition, governmental regulation in the financial services industry is evolving, particularly with respect to payment technology, and our customers may become subject to increased regulation in the future. Accordingly, our products and services must be designed to work within the regulatory constraints under which our customers operate.

**Employees**

As of June 30, 2007, we had 555 full-time employees, 137 of whom were in sales and marketing, 228 of whom were in professional services and customer support, 99 of whom were in development and 91 of whom were in administration and finance. None of our employees are represented by a labor union. We have not experienced any work stoppages and we believe that employee relationships are good. Our future success will depend in part on our ability to attract, retain and motivate highly qualified technical and managerial personnel in a highly competitive market.

## Item 1A. Risk Factors

*Investing in our common stock involves a high degree of risk. You should carefully consider the risks and uncertainties described below before making an investment decision involving our common stock. The risks and uncertainties described below are not the only ones facing our company. Additional risks and uncertainties may also impair our business operations.*

*If any of the following risks actually occur, our business, financial condition or results of operations would likely suffer. In that case, the trading price of our common stock could fall, and you may lose all or part of the money you paid to buy our common stock.*

**Our common stock has experienced and may continue to undergo extreme market price and volume fluctuations**

Stock markets in general, and The NASDAQ Global Market in particular, have experienced extreme price and volume fluctuations, particularly in recent years. Broad market fluctuations of this type may adversely affect the market price of our common stock. The stock prices for many companies in the technology sector have experienced wide fluctuations that often have been unrelated to their operating performance. The market price of our common stock has experienced and may continue to undergo extreme fluctuations due to a variety of factors, including:

- changes in or our failure to meet analysts or investors estimates or expectations;
- general and industry-specific business, economic and market conditions;
- actual or anticipated fluctuations in operating results, including those arising as a result of any impairment of goodwill or other intangible assets related to past or future acquisitions;
- public announcements concerning us, including announcements of litigation, our competitors or our industry;
- introductions of new products or services or announcements of significant contracts by us or our competitors;
- acquisitions, strategic partnerships, joint ventures, or capital commitments by us or our competitors;
- adverse developments in patent or other proprietary rights; and
- announcements of technological innovations by our competitors.

**A growing number of our customer arrangements involve selling our products and services on a hosted basis, which may have the effect of delaying revenue recognition and increasing development or start-up expenses**

An increasing number of our customer arrangements involve offering certain of our products and services on a hosted basis. These arrangements typically include a contractually defined service period as well as performance criteria that our products or services are required to meet over the duration of the service period. Arrangements entered into on a hosted basis generally delay the timing of revenue recognition and often require the incurrence of up-front costs, which can be significant. We are currently making significant investments in certain of our hosted offerings, such as our accounts payable automation products, and there can be no assurance that these products will ultimately gain broad market acceptance. Additionally, there is a risk that we might be unable to consistently maintain the performance requirements, or service levels, called for under any such hosted arrangements. Such events, to the extent occurring, could have a material and adverse effect on our operating results.

**Our future financial results will be impacted by our success in selling new products in a subscription and transaction based revenue model**

A substantial portion of our revenues and profitability were historically generated from software license revenues. We are currently offering certain of our newer product sets under a subscription and transaction based revenue model, which we believe has certain advantages over a perpetual license model, including better predictability of revenue.

A subscription and transaction based revenue model typically results in no up-front revenue. Additionally, there can be no assurance that our customers, or the markets in which we compete, will respond favorably to the approach we have taken with our newer offerings. To the extent that our new subscription and transaction based offerings do not receive general marketplace acceptance, our financial results could be materially and adversely affected.

**We make significant investments in existing products and new product offerings that can adversely affect our operating results and may not be successful**

We operate in a highly competitive and rapidly evolving technology environment and believe that it is important to enhance existing product offerings and develop new product offerings to meet strategic opportunities as they evolve. Investments in existing product enhancements and new product offerings can have a negative impact on our operating results, and any existing product enhancements or new product offerings may not be accepted in the marketplace or generate material revenues. For example, during our fiscal year ended June 30, 2007, our operating results were affected by a significant increase in product development expenses as we continued to make investments in our banking and accounts payable automation products.

**Integration of acquisitions could interrupt our business and our financial condition could be harmed**

We have made several recent business acquisitions, including Formscape in October 2006. We may in the future continue to acquire, or make investments in, other businesses, products or technologies. Any acquisition or strategic investment we have made in the past or may make in the future may entail numerous risks, including the following:

- difficulties integrating acquired operations, personnel, technologies or products;
- inadequacy of existing operating, financial and management information systems to support the combined organization or new operations;
- write-offs related to impairment of goodwill and other intangible assets;
- entrance into markets in which we have no or limited prior experience or knowledge;

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- diversion of management s focus from our core business concerns;
- dilution to existing stockholders and earnings per share;
- incurrence of substantial debt; and
- exposure to litigation from third parties, including claims related to intellectual property or other assets acquired or liabilities assumed.

Any such difficulties encountered as a result of any merger, acquisition or strategic investment could have a material adverse effect on our business, operating results and financial condition.

**As a result of our acquisitions, we could be subject to significant future write-offs with respect to intangible assets, which may adversely affect our future operating results**

We review our intangible assets, including goodwill, periodically for impairment. At June 30, 2007, the carrying value of our goodwill and our other intangible assets was approximately $53 million and $31 million, respectively. While we reviewed our goodwill and intangible assets during the fourth quarter of fiscal year 2007 and concluded that there was no impairment, we could be subject to future impairment charges with respect to these intangible assets, or intangible assets arising as a result of acquisitions in future periods. Such charges, to the extent occurring, would likely have a material adverse effect on our operating results.

**Our fixed costs may lead to operating results below analyst or investor expectations if our revenues are below anticipated levels, which could adversely affect the market price of our common stock**

A significant percentage of our expenses, particularly personnel and facilities costs, are relatively fixed and based in part on anticipated revenue levels. In recent years, we have experienced slowing growth rates with certain of our licensed software products and in 2006 we experienced a decrease in the growth of our software license revenues as a result of the BACSTEL-IP initiative ending in the UK. A decline in revenues without a corresponding and timely slowdown in expense growth could negatively affect our business. Significant revenue shortfalls in any quarter may cause significant declines in operating results since we may be unable to reduce spending in a timely manner.

Quarterly or annual operating results that are below the expectations of public market analysts could adversely affect the market price of our common stock. Factors that could cause fluctuations in our operating results include the following:

- economic conditions, which may affect our customers and potential customers budgets for information technology expenditures;
- the timing of orders and longer sales cycles;
- the timing of product implementations, which are highly dependent on customers resources and discretion;
- the incurrence of costs relating to the integration of software products and operations in connection with acquisitions of technologies or businesses; and
- the timing and market acceptance of new products or product enhancements by either us or our competitors.

Because of these factors, we believe that period-t;

Marcia Allen

6,750

(6)

Less than 1

%

1112 Montana Avenue, #284

Santa Monica, CA 90403

Loeb Partners Corporation

176,790

(7)

5.06

%

61 Broadway

New York, New York 10006

Paul Gordon

37,250

(4)

1.06

%

85 Fifth Avenue

New York, New York 10003

Robert Stewart

39,050

(4)

1.11

%

85 Fifth Avenue

New York, New York 10003

Arthur Stainman

65,200

(6)(8)

1.86

%

320 East 72nd Street

New York, New York 10021

FMR LLC

348,804

(9)

9.99

%

82 Devonshire Street

Boston, MA 02109

Stephen Novick

6,750

(6)

Less than 1

%

110 East 59th Street

New York, New York 10022

Irving Hershkowitz

246,642

(10)

7.06

%

c/o Big Geyser, Inc.

57-65 48th Street

Maspeth, NY 11378

Royce & Associates, LLC

181,132

(11)

5.19

%

1414 Avenue of the Americas

New York, NY 10019

| | | |
|---|---|---|
| All directors and officers as a group (ten persons) | 1,694,909 (12) | 45.49 % |

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(1) Except to the extent otherwise indicated, to the best of the Company s knowledge, each of the indicated persons exercises sole voting and investment power with respect to all shares beneficially owned by him.

(2) Includes 13,771 shares owned by The Weinstein Foundation, a private foundation of which Mr. Weinstein acts as trustee and as to which shares Mr. Weinstein has shared investment and shared voting power, an aggregate of 2,400 shares owned by Mr. Weinstein s minor children and 51,000 shares issuable pursuant to stock options exercisable within 60 days after the date of this Proxy Statement.

(3) Includes 1,500 shares owned by Mr. Lewin in his Individual Retirement Account ( IRA ).

(4) Includes 37,250 shares issuable pursuant to stock options exercisable within 60 days after the date of this Proxy Statement.

(5) Includes 900 shares owned by Mr. Tower s spouse in his IRA.

(6) Includes 6,750 shares issuable pursuant to stock options exercisable within 60 days after the date of this Proxy Statement.

(7) Based upon information set forth in Schedule 13D/A filed by Loeb Partners Corporation ( LPC ) with the SEC on or about November 11, 2008. Loeb Arbitrage Management LLC ( LAM ) is the general partner of Loeb Arbitrage Fund ( LAF ). LAM is the investment manager of Loeb Arbitrage B Fund LP ( LAFB ). The President and Chief Operating Officer of the general partner is Robert E. Enslein, Jr. The other officers of LAM are Thomas L. Kempner, Chairman of the Board, Gideon J. King, Chief Executive Officer, Michael S. Emanuel, Senior Vice President and Secretary and David S. Hampson, Chief Financial Officer. Thomas L. Kempner is the President, Chief Executive Officer and a director of LPC. Loeb Holding Corporation ( LHC ) is the sole stockholder of LAM and LPC. Thomas L. Kempner is its President and a director as well as its Chief Executive Officer and majority stockholder and Bruce L. Lev, Norman N. Mintz and Peter A. Tcherepnine are also directors of LHC. Loeb Offshore Management, LLC ( LOM ), a wholly-owned subsidiary of LHC, is the investment adviser of Loeb Offshore Fund, Ltd., ( LOF ) and Loeb Offshore B Fund Ltd. ( LOFB ). Gideon J. King and Thomas L. Kempner are Directors of LOF and LOFB and Managers of LOM. LAM is general partner of Loeb Marathon Fund ( LMF ) and investment adviser of Loeb Marathon Offshore Fund Ltd. ( LMOF ). As of November 11, 2008, LAF beneficially owned 59,378 shares, LPC beneficially owned 36,870 shares (including shares purchased for the accounts of customers of LPC as to which LPC has investment discretion), LOF beneficially owned 14,534 shares, LMF beneficially owned 21,573 shares, LMOF beneficially owned 14,486 shares, LAFB beneficially owned 21,727 shares, and LOFB beneficially owned 8,222 shares. The above-referenced shareholders may, therefore, be deemed the beneficial owner of 176,790 shares, or 5.06% of the Company s outstanding Common Stock.

(8) Includes 31,150 shares owned by Mr. Stainman s spouse and 9,200 shares held by investment advisory clients of First Manhattan Co. ( FMC ), as to which FMC and Mr. Stainman, in his capacity as Managing Member of First Manhattan LLC, the sole general partner of FMC, share dispositive and voting power.

(9) Based upon information set forth on Schedule 13G filed by FMR LLC ( FMR ) with the SEC on or about February 16, 2010. Fidelity Management & Research Company ( Fidelity ), a wholly-owned subsidiary of FMR and an investment adviser registered under Section 203 of the Investment Advisers Act of 1940, is the beneficial owner of 348,804 shares of our common stock as a result of acting as investment adviser to various investment companies registered under Section 8 of the Investment Company Act of 1940. The ownership of one investment company, Fidelity Low Priced Stock Fund, amounted to 348,804 shares of our common stock. Edward C. Johnson 3d and FMR, through its control of Fidelity, and the funds each has sole power to dispose of the 348,804 shares owned by the funds. Members of the family of Edward C. Johnson 3d, Chairman of FMR, are the predominant owners, directly or through trusts, of Series B voting common shares of FMR representing 49% of the voting power of FMR. The Johnson family group and all other Series B shareholders have entered into a shareholders voting agreement under which all Series B voting common shares will be voted in accordance with the majority vote of Series B voting common shares. Accordingly, through their ownership of voting common shares and the execution of the shareholders voting agreement, members of the Johnson family may be deemed, under the Investment Company Act of 1940, to form a controlling group with

respect to FMR. Neither FMR nor Edward C. Johnson 3d has the sole power to vote or direct the voting of the shares owned directly by the Fidelity funds, which power resides with the funds Boards of Trustees. Fidelity carries out the voting of the shares under written guidelines established by the funds Boards of Trustees.

(10) Based upon information set forth in Schedule 13G/A filed by Irving Hershkowitz with the SEC on or about January 27, 2009.

(11) Based upon information set forth in Schedule 13G/A filed by Royce & Associates, LLC with the SEC on or about January 22, 2010.

(12) Includes 233,750 shares issuable pursuant to stock options exercisable within 60 days after the date of this Proxy Statement.

**SECTION 16(a) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE**

Section 16(a) of the Exchange Act requires the Company s officers and directors, and persons who own more than ten percent of a registered class of the Company s equity securities to file reports of ownership and changes in ownership on Forms 3, 4 and 5 with the SEC and the NASDAQ Global Market. Officers, directors and greater than ten percent shareholders are required by the Commission s regulations to furnish the Company with copies of all Forms 3, 4 and 5 they file.

Based solely on the Company s review of the copies of such forms it has received, the Company believes that all of its officers, directors and greater than ten percent beneficial owners complied with all filing requirements applicable to them with respect to transactions during fiscal 2010.

**CERTAIN RELATIONSHIPS AND RELATED PERSON TRANSACTIONS**

The following section sets forth certain required information regarding transactions or proposed transactions between the Company and certain related persons for the last two completed fiscal years.

The Company made loans to Robert Towers, President, Chief Operating Officer, and Treasurer of the Company. During fiscal 2010, the largest amount of indebtedness outstanding at any one time with respect to these loans to Mr. Towers was $113,000. At January 25, 2011, Mr. Towers was indebted to the Company in the amount of $29,000 with respect to the loans made to him in connection with the exercise of stock options and $37,000 with respect to certain other executive loans. The loans made to him in connection with the exercise of stock options are repayable on demand and bear interest at prime plus one-half percent. The other executive loans are payable on demand and bear interest at the minimum statutory rate.

Other than as noted above, none of the directors, executive officers or any member of the immediate family of any director or executive officer are indebted to us.

For information on the compensation received by our directors and executive officers of the Company during the 2010 fiscal year, and the beneficial ownership of equity securities of the Company of such individuals, see the Security Ownership of Certain Beneficial Owners and Executive Compensation sections.

**ADDITIONAL INFORMATION**

***Householding of Proxy Materials***

The SEC has adopted rules that permit companies and intermediaries such as brokers to satisfy delivery requirements for proxy statements and annual reports with respect to two or more shareholders sharing the same address by delivering a single proxy statement and annual report addressed to those shareholders. This process, which is commonly referred to as householding, potentially provides extra convenience for shareholders and cost savings for companies. The Company and some brokers household proxy materials, delivering a single proxy statement and annual report to multiple shareholders sharing an address unless contrary instructions have been received from the affected shareholders.

Once you have received notice from your broker or us that each of us will be householding materials to your address, householding will continue until you are notified otherwise or until you revoke your consent. If, at any time, you no longer wish to participate in householding and would prefer to receive a separate proxy statement and annual report, or if you are receiving multiple copies of the proxy statement and annual report and wish to receive only one, please notify your broker if your shares are held in a brokerage account or the Company if you hold registered shares. You can notify us by sending a written request to Ark Restaurants Corp., Attention Treasurer, 85 Fifth Avenue, New York, NY 10003.

***Other Matters***

The Board is not aware of any business to be presented at the Meeting, other than the matters set forth in the notice of Meeting and described in this Proxy Statement. If any other business does lawfully come before the Meeting, it is the intention of the persons named as proxies or agents in the enclosed proxy card to vote on such other business in accordance with their judgment.

***Annual Report***

This proxy solicitation material has been mailed with the annual report to shareholders for the fiscal year ended October 2, 2010; however, it is not intended that the annual report for fiscal year 2010 be a part of the proxy statement or this solicitation of proxies.

Shareholders are respectfully urged to complete, sign, date and return the accompanying form of proxy in the enclosed envelope.

ARK RESTAURANTS CORP.

By Order of the Board of Directors,

Michael P. Buck
*Secretary and General Counsel*

New York, New York
February 17, 2011

# Important Notice Regarding the Availability of Proxy Materials for the Annual Meeting of Shareholders to be held March 22, 2011.

# The Proxy Statement and our 2010 Annual Report to Shareholders are available at: http://www.cstproxy.com/arkrestaurants/2011

**FOLD AND DETACH HERE AND READ THE REVERSE SIDE**

**ARK RESTAURANTS CORP.**

**PROXY SOLICITED BY THE BOARD OF DIRECTORS FOR THE ANNUAL MEETING OF SHAREHOLDERS**

**March 22, 2011**

THE UNDERSIGNED, revoking all previous proxies, hereby appoints MICHAEL WEINSTEIN, ROBERT TOWERS and VINCENT PASCAL, or any of them as attorneys, agents and proxies with power of substitution, and with all powers the undersigned would possess if personally present, to vote all shares of Common Stock of ARK RESTAURANTS CORP. (the Company ) which the undersigned is entitled to vote at the Annual Meeting of Shareholders of the Company to be held on March 22, 2011 at 10:00 A.M. local time at Robert, located at 2 Columbus Circle, 9th Floor, New York, New York, and at all adjournments thereof.

**(CONTINUED AND TO BE SIGNED ON THE REVERSE SIDE)**

**FOLD AND DETACH HERE AND READ THE REVERSE SIDE**

Please mark your vote like this **X**

| 1. ELECTION OF A BOARD OF NINE DIRECTORS **(To withhold authority to vote for any individual nominee, strike a line through that nominee s name in the list below)** | FOR | WITHHOLD AUTHORITY |
|---|---|---|
| | o | o |

01 - Michael Weinstein
02 - Steven Shulman
03 - Robert Towers
04 - Marcia Allen
05 - Paul Gordon
06 - Bruce R. Lewin
07 - Vincent Pascal
08 - Arthur Stainman
09 - Stephen Novick

| | FOR | AGAINST | ABSTAIN |
|---|---|---|---|
| 2. Ratification of the appointment of J.H. Cohn LLP as independent auditors for the 2011 fiscal year. | o | o | o |
| 3. In their discretion, the proxies are authorized to vote upon such other business as may properly come before the meeting. | o | o | o |

**The shares represented by this proxy will be voted in accordance with the instructions given. If no such instructions are given, the shares represented by this proxy will be voted in favor of the: (I) election of all of the nominees for directors designated by the board of directors; (II) ratification of the appointment of J.H. Cohen LLP as independent auditors for the 2011 fiscal year; and (III) such other business as may properly come before the meeting.**

PLEASE COMPLETE, DATE, SIGN AND MAIL THIS PROXY IN THE ENVELOPE ENCLOSED FOR THIS PURPOSE. No postage is required for mailing in the United States.

**COMPANY ID:**

**PROXY NUMBER:**

**ACCOUNT NUMBER:**

**Dated: ______________________________________, 2011** **Signature ______________________________________ Signature ______________________________________**

Please sign exactly as your name or names appear hereon. Joint owners should each sign personally. When signing as executor, administrator, corporation, officer, attorney, agent, trustee or guardian, etc. please add your full title to your signature. If signer is a corporation, please sign n full corporate name by president and authorized officer. If a partnership or limited liability company, please sign in partnership or limited liability company name by authorized person.