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RAINING DATA CORP
Form DEF 14A
October 21, 2005
UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of
the Securities Exchange Act of 1934 (Amendment No.)

Filed by the Registrant ☒ x

Filed by a Party other than the Registrant ☐ o

Check the appropriate box:

- ☐ o Preliminary Proxy Statement
☐ o **Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**
☒ x Definitive Proxy Statement
☐ o Definitive Additional Materials
☐ o Soliciting Material Pursuant to §240.14a-12

Raining Data Corporation

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- ☒ x No fee required.
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RAINING DATA CORPORATION

17500 Cartwright Road

Irvine, California 92614

Notice of Annual Meeting of Stockholders

November 28, 2005

To the Stockholders of Raining Data Corporation:

NOTICE IS HEREBY GIVEN that the Annual Meeting of Stockholders of Raining Data Corporation, a Delaware corporation (the "Company"), will be held at the Cupertino Inn located at 10889 North De Anza Boulevard, Cupertino, California 95104, on Monday, November 28, 2005 at 10:00 a.m. local time for the following purposes, as more fully described in the Proxy Statement accompanying this Notice:

1. To elect two (2) Class I directors of the Company to serve a term of three (3) years or until their successors are duly elected and qualified;
2. To ratify the appointment of KPMG LLP as independent auditors of the Company for the fiscal year ending March 31, 2006;
3. To amend the Company's Restated Certificate of Incorporation to increase the authorized number of shares of Common Stock from 60,000,000 to 100,000,000 shares and to increase the authorized number of shares of Preferred Stock from 300,000 to 5,000,000 shares;
4. To amend the Company's Restated Certificate of Incorporation to remove the provision requiring the affirmative vote of the holders of two-thirds (2/3) of the outstanding voting shares to amend, alter, modify or repeal provisions of the Company's Restated Certificate of Incorporation which (i) set the authorized number of directors, (ii) provide for a classified Board of Directors, and (iii) provide for directors to be removed with or without cause;
5. To approve amendments to Section 3.1 and Article XI of the Company's Amended and Restated Bylaws to remove the requirement of the affirmative vote of two-thirds (2/3) of the then-outstanding shares of stock entitled to vote to amend, change or repeal provisions which (i) set the authorized number of directors and (ii) provide for a classified Board of Directors;
6. To approve amendments to the Company's 1999 Stock Option Plan (the "Plan") to:
 - increase the number of shares authorized for issuance under the plan by 1,500,000 shares to a total of 6,500,000 shares available for issuance under the Plan;
 - provide for automatic annual increases in the number of shares reserved under the Plan by an amount equal to the lesser of (i) 3% of the Company's then outstanding shares, (ii) 2,000,000 shares or (iii) such lesser amount as determined by the Board; and
 - to add restricted stock purchase rights as a new award type and add net exercise as an acceptable form of consideration upon exercise of stock options.

and

7. To transact such other business as may properly come before the meeting or any adjournment thereof.

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Only stockholders of record at the close of business on September 29, 2005 are entitled to notice of and to vote at the Annual Meeting or any adjournment thereof. A list of such stockholders will be available for examination by any stockholder at the Annual Meeting, or at the office of the Secretary of the Company, 17500 Cartwright Road, Irvine, California 92614, for a period of ten (10) days prior to the Annual Meeting.

A copy of the Company's Annual Report for the fiscal year ended March 31, 2005, containing consolidated financial statements, is included with this mailing. Your attention is directed to the accompanying Proxy Statement for the text of the matters to be proposed at the Annual Meeting and further information regarding each proposal to be made.

STOCKHOLDERS UNABLE TO ATTEND THE ANNUAL MEETING IN PERSON ARE ASKED TO COMPLETE, DATE AND SIGN THE ENCLOSED PROXY AND RETURN IT PROMPTLY IN THE ENCLOSED ENVELOPE. IF YOU ATTEND THE ANNUAL MEETING, YOU MAY REVOKE YOUR PROXY AND VOTE IN PERSON IF YOU WISH.

By Order of the Board of Directors,

Richard W. Koe
Chairman of the Board

Irvine, California
October 21, 2005

RAINING DATA CORPORATION

17500 Cartwright Road

Irvine, California 92614

PROXY STATEMENT

INFORMATION CONCERNING SOLICITATION AND VOTING

This Proxy Statement is furnished by the Board of Directors of Raining Data Corporation, a Delaware corporation (the Board and the Company, respectively), in connection with the solicitation of proxies to be voted at the Annual Meeting of Stockholders (the Annual Meeting) of the Company to be held on Monday, November 28, 2005, at 10:00 a.m. local time, at the Cupertino Inn located at 10889 North De Anza Boulevard, Cupertino, California 95104, and at any adjournments or postponements thereof. Our principal executive office is located at 17500 Cartwright Road, Irvine, California 92614 and our telephone number is (949) 442-4400. The purposes of the Annual Meeting are set forth in the accompanying Notice of Annual Meeting of Stockholders.

This Proxy Statement and the Notice of Annual Meeting and proxy are being mailed on or about October 24, 2005, to all stockholders entitled to vote at the Annual Meeting. **ANY PROXY IN WHICH NO DIRECTION IS SPECIFIED WILL BE VOTED IN FAVOR OF EACH OF THE MATTERS FOR WHICH NO DIRECTION IS SPECIFIED.**

GENERAL INFORMATION ABOUT THE MEETING

The close of business on September 29, 2005 has been fixed as the record date for the determination of stockholders entitled to receive notice of and to vote at the Annual Meeting. On that date, the Company's outstanding voting securities consisted of 20,355,086 shares of Common Stock and 300,000 shares of Series A Convertible Preferred Stock, which were held by approximately 140 stockholders of record.

Holders of a majority of the Company's outstanding securities entitled to vote must be present, in person or by proxy, at the Annual Meeting in order to have the required quorum for the transaction of business. If the shares present, in person or by proxy, at the Annual Meeting do not constitute the required quorum, the Annual Meeting may be adjourned to a subsequent date for the purpose of obtaining a quorum. If a broker, bank or other nominee holds your shares, you will receive instructions from them that you must follow in order to have your shares voted.

Shares that are voted FOR, AGAINST, WITHHOLD AUTHORITY or ABSTAIN will be treated as being present at the Annual Meeting for purposes of establishing a quorum. Accordingly, if you have returned a valid proxy or attend the Annual Meeting in person, your shares will be counted for the purpose of determining whether there is a quorum, even if you wish to abstain from voting on some or all matters at the Annual Meeting. Broker non-votes (i.e., votes from shares held of record by brokers as to which the beneficial owners have given no voting instructions) will also be counted as present for purposes of determining the presence of a quorum.

Abstentions are included in determining the number of shares voted on the proposals submitted to stockholders (other than the election of directors) and will have the same effect as a vote against such proposals. Because directors are elected by a plurality of the votes of the shares represented at the Annual Meeting, abstentions will have no effect on the outcome of the election of directors. Although broker

non-votes will be counted for the purpose of determining the presence of a quorum, broker non-votes will not be counted for the purpose of determining the number of shares voted on the proposals submitted to stockholders. Accordingly, broker non-votes will have no effect on the outcome of a vote on any of the proposals.

Whether or not you are able to attend the Annual Meeting, the Company urges you to submit your proxy, which is solicited by the Board. You are urged to give instructions as to how to vote your shares. All properly executed proxies delivered pursuant to this solicitation and not revoked will be voted at the Annual Meeting in accordance with the directions given. Any proxy for which no instructions are given will be voted in accordance with the following recommendations of our Board of Directors:

- FOR the election of Douglass G. Marshall and Richard W. Smith as a Class I directors to serve a term of three (3) years expiring at the Annual Meeting of Stockholders in 2008 or until their successors are duly elected and qualified;
- FOR ratification of KPMG LLP as our independent auditors for the fiscal year ending March 31, 2006;
- FOR amendment of the Company's Restated Certificate of Incorporation to increase the authorized number of shares of Common Stock from 60,000,000 to 100,000,000 shares and to increase the authorized number of shares of Preferred Stock from 300,000 to 5,000,000 shares;
- FOR amendment of the Company's Restated Certificate of Incorporation to remove the provision requiring the affirmative vote of the holders of two-thirds (2/3) of the outstanding voting shares to amend, alter, modify or repeal provisions of the Company's Restated Certificate of Incorporation which (i) set the authorized number of directors, (ii) provide for a classified Board of Directors, and (iii) provide for directors to be removed with or without cause;
- FOR amendment of the Company's Amended and Restated Bylaws to amend Section 3.1 and Article XI of the Bylaws to remove the requirement of the affirmative vote of two-thirds of the then-outstanding shares of stock entitled to vote to amend, change or repeal provisions which (i) set the authorized number of directors and (ii) provide for a classified Board of Directors; and
- FOR amendment of the Company's 1999 Stock Option Plan as described in Proposal Six.

We are not aware of any matters to be presented other than those described in this Proxy Statement. If any matters not described in the Proxy Statement are properly presented at the Annual Meeting, the persons designated in the enclosed proxy (the Proxy Agents) will use their own judgment to determine how to vote your shares. If the Annual Meeting is adjourned, the Proxy Agents can vote your shares on the new meeting date as well, unless you have revoked your proxy.

You may revoke your proxy at any time prior to its use by (i) delivering a written notice of revocation to the chief financial officer of the Company, (ii) filing a duly executed proxy bearing a later date with the Company or (iii) attending the Annual Meeting and voting in person.

The costs of this solicitation, including the preparation, assembly, printing and mailing of this Proxy Statement and the proxy, will be borne by the Company. The Company will request brokerage houses and other nominees, custodians and fiduciaries to forward soliciting material to beneficial owners of the Company's voting securities. The Company may reimburse brokerage firms and other persons representing beneficial owners for their expenses in forwarding solicitation materials to beneficial owners. Proxies may also be solicited by certain of the Company's directors, officers and regular employees, without additional compensation, either personally or by telephone or facsimile. Except as described above, the Company does not intend to solicit proxies other than by mail.

PROPOSAL ONE

ELECTION OF DIRECTORS

General

The Amended and Restated Bylaws of the Company provide that the Board 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. 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.

At the Annual Meeting, two (2) individuals will be elected as Class I directors, to serve for three (3) year terms or until their successors are duly elected and qualified. The Board has nominated Douglas G. Marshall and Richard W. Smith for election as Class I directors at the Annual Meeting. Mr. Marshall is standing for re-election and Mr. Smith was recommended by a non-management director and nominated for election by our Nominating and Corporate Governance Committee.

The Board knows of no reason why the nominees would be unable or unwilling to serve, but if either nominee should, for any reason, be unable or unwilling to serve, the proxies will be voted for the election of such other person to the office of director as the Board may recommend in the place of such nominee.

THE BOARD OF DIRECTORS RECOMMENDS A VOTE FOR APPROVAL OF THE NOMINEES FOR ELECTION AS MEMBERS OF THE BOARD OF DIRECTORS.

Voting Information

Proxies solicited by the Board will, unless otherwise directed, be voted to elect the nominees proposed by the Board. A stockholder submitting a proxy may vote for the nominees for election to the Board or may withhold his or her vote from such nominees. The Series A Convertible Preferred Stock will be treated as though it had been converted into 500,100 shares of the Company's Common Stock for purposes of voting on this proposal and will be voted together with the Common Stock as a single class. Each stockholder will be entitled to one (1) vote for each share of Common Stock held by the stockholder on the record date. Directors are elected by a plurality of votes, and, therefore, if a quorum is present and voting, the two nominees receiving the highest number of affirmative votes will be elected to the Board. Abstentions and broker non-votes, while included for the purpose of determining the presence of a quorum at the Annual Meeting, will have no effect on the vote. The Proxy Agents will vote your shares **FOR** the nominee unless instructions to the contrary are indicated in the enclosed proxy.

Each nominee has agreed to serve the Company as a director if elected. However, should a nominee become unwilling or unable to serve if elected, the Proxy Agents will exercise their voting power in favor of such other person as the Board may recommend. The Company's Restated Certificate of Incorporation does not provide for cumulative voting in the election of directors.

Nominees and Current Directors

The following table sets forth the names, ages, as of August 31, 2005, and committee memberships of the current directors of the Company, the dates they joined the Board of Directors and the years in which their terms expire:

Name of Director	Age	Director Since	Term Expires
Richard W. Koe(1,3,4)	48	2003	2006
Carlton H. Baab	47	2001	2007
Gerald F. Chew(2)	45	1998	2007
Richard W. Smith(2)	44	2005	2005
Douglas G. Marshall(1,2,3)	49	1998	2005

- (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 brief summary of the background of each director:

Mr. Koe joined the Board in January 2003. Since 1991, Mr. Koe has served as Managing General Partner for Astoria Capital Partners, L.P. (Astoria), a significant stockholder of ours, and Montavilla Partners, L.P., both of which are investment partnerships, and as President of Astoria Capital Management (ACM). Mr. Koe has served as Chairman of the Board since December 2004. Mr. Koe holds a B.A. in History from the University of Oregon. 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 the President and, Chief Executive Officer in August 2001 and was appointed as a member of the Board in December 2001. From May 2001 to August 2001, Mr. Baab served as a Managing Principal of ACM; a Securities and Exchange Commission (the SEC) registered investment advisor and a General Partner of Astoria, 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 Group (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's 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 in July 1998. Mr. Chew most recently served as the President and Chief Operating Officer of MDSI Mobile Data Solutions Inc. (MDSI) from April 2001 to March 2002 and served as a director of MDSI from 1995 until April 2001. Mr. Chew served as Executive Vice President of Ancora Capital & Management Group, LLC, an investment firm, from June 1998 to January 2001. Since February 1997, Mr. Chew has served as Managing Director of The Cairn Group. Mr. Chew holds a B.S. in

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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 serves as Chairman of the Audit Committee.

Mr. Marshall joined the Board 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 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 in various Officer roles with the United States Army. Mr. Smith received his Bachelor of Science Degree in Civil Engineering from the United States Military Academy at West Point and his Masters of Business Administration from the Darden Graduate School of Business Administration at the University of Virginia. Mr. Smith serves on the Audit Committee.

To the Company's 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.

Meetings and Committees of the Board of Directors

The Board currently has three (3) committees and one (1) subcommittee: an Audit Committee, a Compensation Committee, a Stock Committee, which is a subcommittee of the Compensation Committee, and a Nominating and Corporate Governance Committee. The following describes each committee, its current membership, the number of meetings held during fiscal 2004, and its function. All members of these committees are non-employee directors.

The Board held twelve (12) meetings during the fiscal year ended March 31, 2005. Each director attended all of the meetings of the Board, and each director attended all meetings of the committees and subcommittees on which he served during his term, except that Carlton H. Baab did not participate in one Board meeting approving his annual bonus and Richard W. Koe did not participate in two Board meetings as the subject matter related to Astoria. The Board has determined that all of its directors, other than Mr. Baab and Mr. Koe, are independent for purposes of the applicable rules and regulations of the Securities and Exchange Commission and the applicable rules of the National Association of Securities Dealers listing standards. The Company relies on the Controlled Company exemption set forth in Rule 4350(c)(5) of the National Association of Securities Dealers listing standards because Mr. Koe serves on both the Compensation Committee and the Nominating and Corporate Governance Committee. The Company is a Controlled Company as defined in such Rule because more than 50% of the voting power of the Company is held by Astoria.

The members of the Audit Committee are Gerald F. Chew, Douglas G. Marshall and Richard W. Smith. The Audit Committee held thirteen (13) meetings during the fiscal year ended March 31, 2005. The functions of the Audit Committee include reviewing and supervising the financial controls of the Company, appointing, compensating and overseeing the work of the independent auditors, reviewing the books and accounts of the Company, meeting with the officers of the Company regarding the Company's financial controls, acting upon recommendations of the independent auditors and taking such further actions as the Audit Committee deems necessary to complete an audit of the books and accounts of the Company. The Board has adopted a written charter for the Audit Committee which is posted on our Internet website at www.rainingdata.com. The Board has determined that the members of the Audit Committee are

independent for purposes of the applicable rules and regulations of the Securities and Exchange Commission and the applicable rules of the National Association of Securities Dealers listing standards.

The members of the Compensation Committee are Richard W. Koe and Douglas G. Marshall. The Compensation Committee held four (4) meetings during the fiscal year ended March 31, 2005. The Compensation Committee's functions include reviewing with management cash and other compensation policies for employees, making recommendations to the Board regarding compensation matters and determining compensation for the Chief Executive Officer. In addition, the Compensation Committee administers the Company's stock plans and, within the terms of each stock plan, determines the terms and conditions of issuances of awards thereunder. The Board has adopted a written charter for the Compensation Committee, which is posted on our Internet website at www.rainingdata.com

The members of the Nominating and Corporate Governance Committee are Richard W. Koe and Douglas G. Marshall. The Nominating and Corporate Governance Committee held two (2) meetings during the fiscal year ended March 31, 2005. The Nominating and Corporate Governance Committee makes recommendations to the Board regarding the size and composition of the Board, establishes procedures for the nomination process, recommends candidates for election to the Board and nominates officers for election by the Board. In addition, the Nominating and Corporate Governance Committee reviews and reports to the Board on a periodic basis with regard to matters of corporate governance. The Board has adopted a written charter for the Nominating and Corporate Governance Committee, which is posted on our Internet website at www.rainingdata.com. The Board has determined that the members of the Corporate Governance and Nominating Committee, other than Mr. Koe, are independent for purposes of the applicable rules and regulations of the Securities and Exchange Commission and the applicable rules of the National Association of Securities Dealers listing standards.

The Nominating and Corporate Governance Committee will consider recommendations for candidates to the Board from stockholders holding no less than 2% of the outstanding shares of the Company's voting securities continuously for at least 12 months prior to the date of the submission of the recommendation for nomination. If the Nominating and Corporate Governance Committee wishes to identify new independent director candidates for Board membership, it is authorized to retain, and to approve the fees of, third party executive search firms to help identify prospective director nominees. A stockholder that desires to recommend a candidate for election to the Board shall direct the recommendation in writing to Raining Data Corporation, attention Corporate Secretary, 17500 Cartwright Road, Irvine, California 92614, and must include the candidate's name, home and business contact information, detailed biographical data and qualifications, information regarding any relationships between the candidate and the Company within the last three years and evidence of the nominating person's ownership of Company stock, a statement from the recommending stockholder in support of the candidate, references, particularly within the context of the criteria for Board membership, including issues of character, diversity, skills, judgment, age, independence, industry experience, expertise, corporate experience, length of service, other commitments and the like, and a written indication by the candidate of her/his willingness to serve, if elected. The Nominating and Corporate Governance Committee has not formally adopted any specific, minimum qualifications that must be met by each candidate for the Board, nor are there specific qualities or skills that are necessary for one or more of the members of the Board to possess. The Nominating and Corporate Governance Committee believes that candidates and nominees must reflect a Board that is comprised of directors who (i) are predominantly independent, (ii) are of high integrity, (iii) have or have had experience in positions with a high degree of responsibility, (iv) are or were leaders in the companies or institutions with which they are or were affiliated, (v) have qualifications that will increase overall Board effectiveness and (vi) meet other requirements as may be required by applicable rules, such as financial literacy or financial expertise with respect to audit committee members. In order to identify and evaluate nominees for director, the Nominating and Corporate Governance Committee regularly reviews the current composition and size of the Board, reviews qualifications of

nominees, evaluates the performance of the Board as a whole, evaluates the performance and qualifications of individual members of the Board eligible for re-election at the annual meeting of stockholders, considers such factors as character; diversity; skills; judgment; age; independence; industry experience; expertise; corporate experience; length of service; other commitments and the like; and the general needs of the Board, including applicable independence requirements. The Nominating and Corporate Governance Committee considers each individual candidate in the context of the current perceived needs of the Board as a whole. The Nominating and Corporate Governance Committee uses the same process for evaluating all nominees, regardless of the original source of the nomination.

The Company encourages all incumbent directors and nominees for election as director to attend the annual meeting of stockholders. All of the Company's directors attended the annual meeting of stockholders on December 15, 2004, except for Mr. Smith who did not join the Board until August 2005.

Stockholder Communications with the Board

A stockholder that desires to communicate directly with the Board or one or more of its members concerning the affairs of the Company shall direct the communication in written correspondence by letter to Raining Data Corporation, attention Corporate Secretary, 17500 Cartwright Road, Irvine, California 92614. If such communication is intended for some but not all of the members of the Board, the intended recipients shall be clearly indicated in bold type at the beginning of the letter. Alternatively, a stockholder may communicate anonymously with the non-employee members of the Board via the Internet website www.mysafeworkplace.com.

**PROPOSAL TWO
RATIFICATION
OF THE APPOINTMENT OF INDEPENDENT AUDITORS**

The Audit Committee has selected the accounting firm of KPMG LLP to serve as the Company's independent auditors for the fiscal year ending March 31, 2006. KPMG LLP were the independent auditors for the year ended March 31, 2005. A proposal to ratify the appointment of KPMG LLP for the current year will be presented at the Annual Meeting. Representatives of KPMG LLP are expected to be present at the Annual Meeting. They will have an opportunity to make a statement if they desire to do so and will be available to respond to appropriate questions from stockholders.

The decision of the Audit Committee to appoint KPMG LLP was based on a careful consideration of the firm's qualifications as independent auditors. This included a review of the qualifications of the engagement team, the quality control procedures the firm has established, the issues, if any, raised by the most recent quality control review, and the reputation for integrity and competence of the firm in the fields of accounting and auditing. The Audit Committee's review also included matters required to be considered under the SEC's Rules on Auditor Independence, including the nature and extent of non-audit services, to ensure that such services will not impair the independence of the auditors.

THE BOARD OF DIRECTORS RECOMMENDS A VOTE FOR THE RATIFICATION OF THE APPOINTMENT OF INDEPENDENT AUDITORS.

Voting Information

Although ratification by stockholders is not required by law, the Board has determined that it is desirable to request ratification of this selection by the stockholders. For purposes of this Proposal Two, the Series A Convertible Preferred Stock will be treated as though it has been converted into 500,100 shares of the Company's Common Stock and will be voted together with the Common Stock as a single class. Ratification of the selection requires the affirmative vote by a majority of the shares entitled to vote present in person or represented by proxy at the Annual Meeting. Abstentions, while included for the purpose of determining the presence of a quorum at the Annual Meeting, will have the effect of a vote against the ratification of KPMG LLP as our independent auditors. Broker non-votes, while included for the purpose of determining the presence of a quorum at the Annual Meeting, will have no effect on the vote. The Proxy Agents will vote your shares **FOR** approval of the ratification of the appointment of KPMG LLP as our independent auditors for the fiscal year ending March 31, 2006 unless instructions to the contrary are indicated in the enclosed proxy. Notwithstanding its selection, the Audit Committee, in its discretion, may appoint new independent auditors at any time during the year if the Audit Committee believes that such a change would be in the best interests of the Company and its stockholders. If the stockholders do not ratify the appointment of KPMG LLP, the Audit Committee may reconsider its selection.

Fees Paid to Principal Accountants

The following table presents the aggregate fees billed for the indicated services performed by KPMG LLP during the 2005 and 2004 fiscal years.

Description of Services	2005	2004
Audit Fees	\$ 416,551	\$ 395,136
Audit-Related Fees	\$	\$
Tax Fees	\$ 67,616	\$ 65,062
All Other Fees	\$	\$
Total	\$ 484,167	\$ 460,198

Audit Fees. Audit Fees relate to professional services rendered in connection with the audit of our annual financial statements, quarterly review of financial statements included in our 10-QSB, and audit services provided in connection with other statutory and regulatory filings.

Tax Fees. Tax Fees include professional services related to tax compliance, tax advice and tax planning and transfer pricing consultation, including but not limited to the preparation of federal and state tax returns.

The Audit Committee approved all of the services provided by KPMG LLP in fiscal years 2005 and 2004. Pursuant to the Audit Committee Charter, the Audit Committee must pre-approve audit and non-audit services to be provided to the Company by the independent auditor, or subsequently approve non-audit services in those circumstances where a subsequent approval is necessary and permissible.

PROPOSAL THREE

APPROVE AMENDMENT TO THE AMENDED AND RESTATED CERTIFICATE OF INCORPORATION TO INCREASE THE NUMBER OF AUTHORIZED SHARES OF COMMON STOCK AND PREFERRED STOCK

Our Board of Directors has adopted, subject to stockholder approval, amendments to our Restated Certificate of Incorporation which would (i) increase our authorized number of shares of Common Stock from 60,000,000 shares to 100,000,000 shares and (ii) increase our authorized number of shares of Preferred Stock from 300,000 shares to 5,000,000 shares. Please see Appendix A for a copy Amended and Restated Certificate of Incorporation as it is proposed to be amended by this Proposal Three and by Proposal Four.

Reasons to Increase the Authorized Shares of Common Stock

As of September 29, 2005, of the 60,000,000 shares of Common Stock presently authorized, 20,355,086 shares were issued and outstanding. After taking into account shares reserved for issuance pursuant to our 1999 Stock Option Plan, outstanding warrants, debt conversion, preferred stock conversion and PIK notes, approximately 29,713,861 shares remained available for issuance on such date.

The Board recommends an increase in the number of authorized shares of Common Stock to provide flexibility for our business and financial purposes in the future. We may issue the additional shares of Common Stock for various purposes including, without limitation, expanding our business through the acquisition of other businesses, raising capital, issuing stock options to officers, directors or employees, establishing strategic relationships with other companies, and issuing stock dividends. Unless required to do so by applicable law, a regulatory authority or a third party, further stockholder approval for the issuance of the authorized Common Stock is not required. The Company has no present commitments, agreements, or intent to issue additional shares of Common Stock, other than with respect to currently reserved shares, in connection with transactions in the ordinary course of the Company's business, or shares that may be issued under the Company's stock option, stock purchase, and other existing employee benefit plans.

The Board believes the proposed increases in the authorized Common Stock and Preferred Stock will make a sufficient number of shares available for the foreseeable future should we decide to use our shares of Common Stock for one or more of the purposes identified above or otherwise.

Principal Effects of the Increase of the Authorized Shares of Common Stock

If this Proposal Three is approved, the additional shares of Common Stock would have rights identical to our currently outstanding Common Stock. Increasing the number of authorized shares of Common Stock and the issuance of the Common Stock would not affect the rights of the holders of our currently outstanding Common Stock, except for effects incidental to increasing the number of shares of our Common Stock outstanding, such as dilution of the earnings per share and voting rights of current holders of Common Stock.

The additional shares of Common Stock that would become available for issuance if this proposal is adopted could also be used by us to oppose a hostile takeover attempt or delay or prevent changes in control or our management. Although the proposal to increase the authorized Common Stock has been prompted by business and financial considerations and not by the threat of any hostile takeover attempt (nor are we currently aware of any such attempts directed at us), stockholders should be aware that approval of this proposal could facilitate future efforts by us to deter or prevent changes in control, including transactions in which the stockholders might otherwise receive a premium for their shares over then current market prices.

Reasons to Increase the Authorized Shares of Preferred Stock

The Company currently has 300,000 authorized shares of blank check Preferred Stock pursuant to the current Restated Certificate of Incorporation. The term blank check refers to Preferred Stock, the creation and issuance of which is authorized in advance by the stockholders of the Company and the terms, rights and features of which are determined by the Board of Directors of the Company upon issuance. As of September 29, 2005, of the 300,000 shares of Preferred Stock presently authorized, all such shares had been designated Series A Convertible Preferred Stock and all of such shares of Series A Preferred Stock were issued and outstanding.

The Board recommends an increase in the number of authorized shares of Preferred Stock to provide flexibility for our business and financial purposes in the future. We may issue the additional shares of Preferred Stock for various purposes including, without limitation, expanding our business through the acquisition of other businesses, raising capital, establishing strategic relationships with other companies, and issuing stock dividends. Unless required to do so by applicable law, a regulatory authority or a third party, further stockholder approval for the issuance of the authorized Preferred Stock is not required. The Company has no present commitments, agreements, or intent to issue additional shares of Preferred Stock.

Principal Effects of the Increase of the Authorized Shares of Preferred Stock

If this Proposal Three is adopted, the authorized number of shares of blank check Preferred Stock would be increased from 300,000 to 5,000,000 shares. Subject to the provisions of the Company's Amended and Restated Certificate of Incorporation and the limitations prescribed by law, the Board would be expressly authorized, in its discretion, to adopt resolutions to issue shares from time to time, to fix the number of shares and to change the number of shares constituting any series, and to provide for or change the voting powers, designations, preferences and relative, participating, optional or other special rights, qualifications, limitations or restrictions thereof, including dividend rights (including whether the dividends are cumulative), dividend rates, terms of redemption (including sinking fund provisions), redemption prices, conversion rights and liquidation preferences of the shares constituting any series of the Preferred Stock, in each case without any further action or vote by the stockholders. The Board would be required to make any determination to issue shares of Preferred Stock based on its judgment as to the best interests of the Company and its stockholders.

In addition to the effects incidental to increasing the number of shares of our Preferred Stock outstanding, such as dilution of the earnings per share and voting rights of current holders of Preferred Stock, the additional shares of Preferred Stock that would become available for issuance if this proposal is adopted could also be used by us to oppose a hostile takeover attempt or delay or prevent changes in control or our management. Although the proposal to increase the authorized Preferred Stock has been prompted by business and financial considerations and not by the threat of any hostile takeover attempt (nor are we currently aware of any such attempts directed at us), stockholders should be aware that approval of this proposal could facilitate future efforts by us to deter or prevent changes in control, including transactions in which the stockholders might otherwise receive a premium for their shares over then current market prices.

THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS A VOTE **FOR** THE APPROVAL OF THE AMENDMENT TO OUR RESTATED CERTIFICATE OF INCORPORATION TO INCREASE THE NUMBER OF AUTHORIZED SHARES OF COMMON STOCK FROM 60,000,000 TO 100,000,000 AND TO INCREASE THE NUMBER OF AUTHORIZED SHARES OF PREFERRED STOCK FROM 300,000 TO 5,000,000.

Voting Information

The approval of Proposal Three requires the affirmative vote of (i) a majority of the issued and outstanding shares of Common Stock and Preferred Stock voting together as a single class on an as-converted to Common Stock basis, (ii) a majority of the issued and outstanding shares of Preferred Stock, voting as a separate class, and (iii) a majority of the issued and outstanding shares of Common Stock, voting as a separate class. If the Amended and Restated Certificate of Incorporation is approved, it will become effective upon