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DATA SYSTEMS & SOFTWARE INC
Form S-3
July 10, 2002

AS FILED WITH SECURITIES AND EXCHANGE COMMISSION ON JULY __, 2002
REGISTRATION NO. ____-_____

=====

SECURITIES AND EXCHANGE COMMISSION

FORM S-3
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

DATA SYSTEMS & SOFTWARE INC.
(Exact name of registrant as specified in its charter)

DELAWARE
(State of
incorporation)

22-2786081
(I.R.S. Employer
Identification No.)

200 ROUTE 17
MAHWAH, NJ 07430
(201) 529-2026
(Address, including zip code, and telephone number, including area code,
of registrant's principal executive offices)

GEORGE MORGENSTERN
DATA SYSTEMS & SOFTWARE INC.
200 ROUTE 17
MAHWAH, NEW JERSEY 07430
(Name, address, including zip code, and telephone number, including area code,
of agent for service)

COPIES TO:

SHELDON KRAUSE
EHRENREICH EILENBERG & KRAUSE LLP
11 EAST 44TH STREET
NEW YORK, NEW YORK 10017 (212) 986-9700

Approximate date of commencement of proposed sale to the public: From time
to time after the effective date of this registration statement.

If the only securities being registered on this Form are to be offered
pursuant to dividend or interest reinvestment plans, please check the following
box.

If any of the securities being registered on this Form are to be offered on
a delayed or continuous basis pursuant to Rule 415 under the Securities Act of
1933, as amended (the "Securities Act"), other than securities offered only in
connection with dividend or interest reinvestment plans, check the following
box.

If this Form is filed to register additional securities for an offering
pursuant to Rule 462(b) under the Securities Act, please check the following box

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and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. |_|

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. |_|

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. |_|

CALCULATION OF REGISTRATION FEE

| Title of each class of securities to be registered | Amount to be registered | Proposed maximum offering price per share | Proposed maximum aggregate offering price | Amount of registration fee |
|--|-------------------------|---|---|----------------------------|
| Common Stock | 848,417 (1) | \$2.415 | \$2,048,927 (2) | \$188.50 |
| Common Stock | 125,000 (3) | \$4.20 | \$525,000 (4) | \$ 48.30 |
| Total | 973,417 | | | \$236.80 |

- (1) Represents our good faith estimate of the number of shares that are issuable to the selling security holder following the conversion of interest and/or principal of a convertible note held by the selling security holder or our payment of the interest and/or principal of the convertible note held by the selling security holder with shares of our common stock.
- (2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(c) under the Securities Act of 1933. The calculation of the registration fee is based on the average of the high and low prices for our common stock on July 5, 2002 as quoted through the NASDAQ National Market.
- (3) Represents the number of shares that may be sold by the selling security holder following the exercise of a warrant.
- (4) Pursuant to Rule 457(g), calculated based upon the exercise price of the warrant.

We hereby amend the registration statement on such date or dates as may be necessary to delay its effective date until we shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission, acting pursuant to Section 8(a), may determine.

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The information in this prospectus is not complete and may be changed. The selling security holder may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

PROSPECTUS
(SUBJECT TO COMPLETION, DATED JULY 10, 2002)

DATA SYSTEMS & SOFTWARE INC.
COMMON STOCK

Shares That May be Offered -----

This prospectus covers the resale of a total of up to an estimated 973,417 shares of our common stock that may be issued pursuant to a convertible note and a warrant that were issued to the selling security holder in exchange for a \$2 million investment. See "Recent Transactions" on page 4 for additional details of this transaction. We are not offering any shares.

Method of Sale -----

The shares may be sold:

- through the Nasdaq Stock Market, in the over-the-counter market, in privately negotiated transactions or otherwise;
- directly to purchasers or through agents, brokers, dealers or underwriters; and
- at market prices prevailing at the time of sale, at prices related to the prevailing market prices, or at negotiated prices.

Our common stock is listed on the Nasdaq National Market under the symbol "DSSI." On July 8, 2002, the closing price of our common stock was \$2.33.

INVESTING IN OUR SECURITIES INVOLVES CERTAIN RISKS. YOU SHOULD CONSIDER THE "RISK FACTORS" BEGINNING ON PAGE 1 IN DECIDING WHETHER TO BUY ANY COMMON STOCK.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved these securities, or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The date of this Prospectus is _____, 2002.

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RISK FACTORS

Investing in us entails substantial risk. You should consider the following risks and other information contained in this prospectus, information incorporated by reference, and information that we file with the Securities and Exchange Commission from time to time. The information in this prospectus is complete and accurate as of this date, but the information may change after the date of this prospectus.

GENERAL FACTORS

We Have a History of Operating Losses and Expect to Have an Operating Loss for 2002; Our Comverge subsidiary must raise capital or become cash flow neutral in order to avoid cuts in its operating budget.

We are experiencing and have in the past experienced operating losses. In the first quarter of 2002, we had an operating loss of approximately \$1.8 million, and in 2001, 2000 and 1999 we had operating losses of approximately \$10.3 million, \$3.9 million and \$5.6 million, respectively. We expect to have an operating loss for the year ending December 31, 2002. We believe that the expected net cash flow from all business segments along with the \$2 million raised in the sale of the convertible note and warrant to the selling security holder will be adequate to fund our US operating and corporate activities for at least the next 12 months; although we do not expect to be able to utilize cash generated from dsIT operations to finance US operating or corporate activities in the foreseeable future because of Israeli tax and company law constraints as well as the significant minority interest in dsIT. We expect that our dsIT Technologies and Databit subsidiaries will each have sufficient liquidity to finance its activities from cash flow from its own operations. However, we do not expect our subsidiary Comverge Technologies, Inc., which has been the primary consumer of our cash resources, to be able to finance its own operations until the fourth quarter of 2002. Comverge used \$7.0 million of net cash in its operating activities in 2001 and \$621,000 in the first quarter of 2002. Comverge will have net negative cash flow from operations for the second and third quarters of 2002, which we expect will not exceed an aggregate of \$2 million. We anticipate that Comverge will be cash flow neutral in the fourth quarter of 2002 as a result of both anticipated reductions in manufacturing costs and expected increase in sales from new contracts signed this year. There are no assurances that in 2003 Comverge will be able to remain cash flow neutral or become cash

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flow positive. While Comverge has made significant strides in its effort to secure sufficient financing to fund its operations and expand its business, there are no assurances that Comverge will be able to raise capital or raise an amount sufficient to meet the needs of its business plan. Should Comverge not be successful in raising capital in 2002 or secure additional new business that will sustain or increase sales during 2003, Comverge will need to implement a plan in 2003 to reduce operating costs to a level that will result in breakeven cash flow. Such an operating plan may include curtailing research and development expenses, consolidating geographically distant operations, reducing marketing efforts on new products as well as reducing general administrative and marketing expenses. The reduction in costs, however, may not result in operations with breakeven cash flow and may make it difficult to increase revenues.

The Markets for Our Energy Intelligence Solutions and Software Consulting and Development Services are Subject to Rapid Technological Change; If We Fail to Keep Pace, We Will Have Difficulty Developing and Maintaining a Market for Our Products and Services.

The markets for our energy intelligence solutions and software consulting and development segments are characterized by rapid technological change. In the energy intelligence solutions market, communications and networking technologies are continuously changing and we will need to invest in continued product development, both hardware and software, in order to keep pace with these changing technologies. We may not have adequate resources to invest in development if our Comverge subsidiary does not raise additional capital, and/or secure additional new business, and our development efforts may not be successful. In the software consulting and development market, the continuing evolution of the Internet and introduction of new software systems will require us to invest in additional personnel training and/or hire new personnel. We may not have adequate resources to invest in sufficient training or hire personnel with the necessary skills.

1

Exchange Rate Fluctuations Could Increase the Cost of our Israeli Operations.

A significant portion of the sales of our Israeli operations is in New Israeli Shekels ("NIS") linked to the dollar. Such transactions are negotiated in dollars; however, for the convenience of the customer, they are settled in NIS. The dollar value of the revenues of our operations in Israel will decrease if the dollar is devalued in relation to the NIS during the period from the invoicing of a transaction to its settlement. In addition, a significant portion of our expenses in those operations is in NIS, so that if the dollar is devalued in relation to the NIS, the dollar value of these expenses will increase.

Loss of the Services of a Few Key Employees Could Harm Our Operations.

We depend on our key management and technical employees. The loss of certain managers could diminish our ability to develop and maintain relationships with customers and potential customers. The loss of technical personnel could harm our ability to meet development and implementation schedules. Most of our significant employees are bound by confidentiality and non-competition agreements. We do not maintain a "key man" life insurance policy on any of our executives or employees. Our future success also depends on our continuing ability to identify, hire, train and retain other highly qualified technical and managerial personnel. Competition for such personnel can be intense. If we fail to attract or retain highly qualified technical and managerial personnel in the future, our business could be disrupted.

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Our share price may decline due to the large number of shares of our common shares eligible for future sale in the public market including the shares of the selling security holder.

A substantial number of shares of our common stock will become eligible for sale in the public market as described below. Sales of substantial amounts of our shares of common stock in the public market, or the possibility of these sales, may adversely affect our stock price.

- 182,605 shares of our common stock became eligible on June 13, 2002, for sale on the public market under a registration statement filed by us with respect to shares of our common stock that were issued in the acquisition by our dsIT Technologies subsidiary of Israeli information technology solutions provider Endan IT Solutions Ltd. On September 13, 2002, an additional 182,605 shares will become eligible for sale on the public market under the same registration statement.
- The selling security holder under this registration statement may sell up to 973,417 shares of our common stock, including 125,000 shares of our common stock issuable upon the exercise of a warrant and an estimated 848,417 shares of our common stock that may be issued by us upon conversion by the selling security holder of a convertible note or payment by us of interest and/or principal of the convertible note. The shares issuable upon conversion or payment of the convertible note would be issued, if at all, from the date of this prospectus until June 30, 2003. We may have to register additional shares if our stock price significantly declines and we then elect to pay the convertible note with shares of our common stock. See "Recent Transactions" for the discussion of the transaction in which the selling security holder acquired the warrant and convertible note.

RISKS RELATED TO THE CONSULTING AND DEVELOPMENT SERVICES SEGMENT

Failure to Accurately Forecast Costs of Fixed-Priced Contracts Could Reduce Our Margins

When working on a fixed-price basis, we undertake to deliver software or integrated hardware/software solutions to a customer's specifications or requirements for a particular project. The profits from these projects are primarily determined by our success in correctly estimating and thereafter controlling project costs. Costs may in fact vary substantially as a result of various factors, including underestimating costs, difficulties with new technologies and economic and other changes that may occur during the term of the contract. If, for any reason, our costs are substantially higher than expected, we may incur losses on fixed-price contracts.

2

RISKS RELATED TO THE ENERGY INTELLIGENCE SOLUTIONS SEGMENT

We have made a significant investment in our energy intelligence solutions segment, which develops and markets load control products and systems offering two-way automated meter reading and related data management capability to utilities. Revenues have fluctuated significantly from quarter to quarter and to date this segment has operated at a loss. The activities of this segment are subject to many risks, including the following.

The Pace of Utility Deregulation Has Been Slow; The Ultimate Regulatory Structure of the Utility Industry May Not Provide Mandates or Incentives to Purchase Our Products.

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The electric utility industry is undergoing significant deregulation. The pace of deregulation appears to have slowed due to the uncertainty about deregulation in the wake of the energy crisis in California in 2000 and the recent Enron reorganization. Market observers expect deregulation to include energy choice and time-of-use pricing requirements, which will mandate, or favor implementation by utilities of, load control programs and the use of automated meter reading and data distribution. However, the pace of deregulation has not been as rapid as expected and to date only a limited number of utilities have made purchase commitments for automated meter reading and data distribution systems. Many utilities have also deferred the purchase of load control systems, pending resolution of broader industry and regulatory developments. The results of deregulation are uncertain and may not result in the mandates or incentives for the types of services, which require AMR systems. If the state and federal regulation does not provide these requirements or incentives, the market for our products may not develop as we expect.

We Must Compete With Other Utility Solution Providers for Market Acceptance and Customers.

While we believe that the systems offered by our energy intelligence solutions segment offer advantages over competing load control and data communications solutions, there are alternative solutions, and we cannot predict what share of the market we will obtain. In addition, some of our competitors have more sales and marketing resources, better brand recognition and/or technologies that offer alternative advantages. If our potential customers do not adopt our solutions or do so less rapidly than we expect, our future financial results and our ability to achieve positive cash flow or profitability, will be harmed.

We May Encounter Difficulties in Implementing our Technology, Products and Services.

Problems may occur in the implementation of our technology, products or services, and we may not successfully complete the commercial implementation of our technology on a wide scale. Future advances may render our technology obsolete or less cost effective than competitive systems. Consequently, we may be unable to offer competitive services or offer appropriate new technologies on a timely basis or on satisfactory terms.

Delays, Quality Control and Price Problems Could Arise Due to Our Reliance on Third-Party Manufacturers of Certain Components.

We use a limited number of outside parties to manufacture components of some of our products. Our reliance on third party manufacturers exposes us to risks relating to timeliness, quality control and pricing. We have experienced certain delays and quality control problems from third-party manufacturers in the past and we may experience such problems with our new manufacturers. In addition, to diversify our product offerings, we recently contracted with a third-party manufacturer to develop and manufacture new products and new features to existing products. Implementing these new product offerings could cause some transitional delays and the diversification could have a negative impact on price and quality control. Such delays, price increases and/or quality control problems at our third-party manufacturers could harm our relationships with our customers, our operating results and cash flow.

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RISKS RELATED TO THE COMPUTER HARDWARE SEGMENT

We Face Low Margin, Mass Marketing Competition.

The market for PCs and related peripheral hardware sales in which we

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operate is characterized by severe competition in price-performance and financing capabilities. Manufacturers and on-line Internet vendors have been increasing their direct sales efforts on the Internet and otherwise, reducing prices to end-users, which reduce profit margins for distributors and value-added resellers such as our Databit subsidiary. Should this trend continue, it could make our method of sales uneconomical and bring into question the long-term viability of the business model used by Databit.

A Large Portion of Our Sales are Concentrated in the Greater New York City Area.

Computer hardware sales to the greater New York City metropolitan area represented 84%, 78% and 83% of the total segment sales for the years ended December 31, 2001, 2000 and 1999, respectively. Furthermore, all of the sales force for the segment is based in Manhattan and northern New Jersey. Sales in the New York City metropolitan area are significantly lower in 2002 than sales in 2001. The downturn in sales was significantly exacerbated by the September 11th events. If the region does not recover from the continuing economic downturn, or recover in a manner commensurate with our expectations or our ability to control fixed costs, our operating results could deteriorate.

CAUTIONARY NOTICE REGARDING FORWARD-LOOKING STATEMENTS

Certain statements contained in, or incorporated by reference in, this prospectus are forward-looking in nature. These statements can be identified by the use of forward-looking terminology such as "believes," "expects," "may," "will," "should," or "anticipates," or the negatives thereof or comparable terminology, or by discussions of strategy. You are cautioned that our business and operations are subject to a variety of risks and uncertainties and, consequently, our actual results may materially differ from those projected by any forward-looking statements. Certain of these risks and uncertainties are discussed above under the heading "Risk Factors." We make no commitment to revise or update any forward-looking statements in order to reflect events or circumstances after the date any such statement is made.

RECENT TRANSACTIONS

On June 11, 2002, we completed a transaction with Laurus Master Fund, Ltd., pursuant to which Laurus made a \$2 million investment in us in exchange for a 10% convertible note and a three-year warrant to purchase 125,000 shares of our common stock at an exercise price of \$4.20. We intend to use the proceeds of the investment for general corporate purposes.

Laurus may convert the convertible note at any time into shares of our common stock at a fixed conversion price of \$3.49, subject to certain restrictions in the purchase agreement. We may pay the principal and interest on the convertible note, which has a one-year term, in cash, shares of our common stock or a combination of cash and stock, except prior to the date of this prospectus we must make such payments solely in cash unless Laurus consents to payment in stock. If we choose to use our common stock to pay the note, the conversion price will be the lesser of (i) \$3.49 and (ii) 83% of the average of the 10 lowest closing prices during the 30 trading days prior to the date we give notice of payment. We make interest only payments until October 1, 2002, at which time we will pay interest and one-tenth of the principal on the first business day of each calendar month and on the maturity date of June 30, 2003. Our subsidiary Databit Inc. secured the convertible note by granting to Laurus a security interest in Databit's accounts receivable.

We expect to record a debt discount as a result of the issuance of the warrant to Laurus of approximately \$181,000, which amount will be charged to interest expense over the term of the convertible note using the effective yield method. Furthermore, upon the date of this prospectus, we expect to record an additional debt discount as a result of the beneficial conversion feature of

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approximately \$511,000, which amount will be charged to interest expense over the remaining term of the convertible note using the effective yield method.

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Laurus contractually agreed to restrict its ability to convert the convertible note and/or exercise its warrants and receive shares of our common stock such that the number of shares of common stock held by it and its affiliates after such conversion and/or exercise does not exceed 4.9% of the then issued and outstanding shares of our common stock. However, in the event we redeem the convertible note, the 4.9% limitation is increased to 9.9%.

We also agreed to file with the Securities and Exchange Commission, and have declared effective by September 10, 2002, a registration statement registering the resale of the shares of our common stock issuable to Laurus upon conversion or payment of the note and exercise of the warrant.

SELLING SECURITY HOLDER

One of our security holders may sell, from time to time, an estimated 973,417 shares of our common stock pursuant to this prospectus, including 125,000 shares of our common stock issuable upon the exercise of a warrant and an estimated 848,417 shares of our common stock which may be issued to the selling security holder upon either the conversion of a convertible note or issuance by us as payment of interest and/or principal of a convertible note. The table below identifies the selling security holder and indicates the number of shares that the selling security holder may sell pursuant to this prospectus.

| Name Of Selling Security Holder | Number Of Shares Beneficially Owned Prior To Sale | Number Of Shares Beneficially Owned After Sale |
|---------------------------------------|---|--|
| ----- Laurus Master Fund, Ltd. (1) | ----- 973,417(2) | ----- 0 |

(1) In accordance with Rule 13d-3 under the Securities Exchange Act of 1934, Laurus Capital Management, L.L.C., a Delaware limited liability company, may be deemed a control person of the shares owned by Laurus Master Fund, Ltd. David Grin and Eugene Grin are the principals of Laurus Capital Management, L.L.C.

(2) The number and percentage of shares beneficially owned is determined in accordance with Rule 13d-3 of the Securities Exchange Act of 1934, and the information is not necessarily indicative of beneficial ownership for any other purpose. Under such rule, beneficial ownership includes any shares as to which the selling security holder has sole or shared voting power or investment power and also any shares, which the selling stockholder has the right to acquire within 60 days. The actual number of shares of common stock issuable upon the conversion or payment of the convertible note is subject to the future market price of our common stock, and could be materially less or more than the number estimated in the table. However the selling stockholder has contractually agreed to restrict its ability to convert the convertible note or exercise its warrants and receive shares of our common stock such that the number of shares of common stock held by it and its affiliates after such conversion or exercise does not exceed 4.9% of the then issued and outstanding shares of common stock.

USE OF PROCEEDS

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The shares covered by this prospectus are being offered by selling security holders and not by us. Therefore, we will not receive proceeds from the sale of shares.

PLAN OF DISTRIBUTION

Subject to the restrictions on transfer in the registration rights agreement with us, the selling security holders may sell shares:

- through the Nasdaq Stock Market, otherwise in the over-the-counter market, in privately negotiated transactions or otherwise;

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- directly to purchasers or through agents, brokers, dealers or underwriters; and

- at market prices prevailing at the time of sale, at prices related to the prevailing market prices, or at negotiated prices.

If a selling security holder sells shares through agents, brokers, dealers or underwriters, such agents, brokers, dealers or underwriters may receive compensation in the form of discounts, commissions or concessions. This compensation may be greater than customary compensation.

To the extent required, we will use our best efforts to file one or more supplements to this prospectus to describe any material information with respect to the plan of distribution not previously disclosed in this prospectus or any material change in such information.

LEGAL MATTERS

Certain legal matters relating to the shares of common stock that may be offered pursuant to this prospectus have been passed upon for us by Ehrenreich Eilenberg & Krause LLP, counsel to our company. Sheldon Krause, a partner of Ehrenreich Eilenberg & Krause LLP, is a member of our Board of Directors, our Secretary and the son-in-law of George Morgenstern, the Chairman of our Board of Directors, President and Chief Executive Officer. During 2001, we paid approximately \$575,000 for legal services rendered and reimbursement of out-of-pocket expenses to Ehrenreich Eilenberg & Krause LLP. These fees related to services rendered by Mr. Krause and other members and employees of his firm, as well as certain special and local counsel retained and supervised by his firm who performed services on our behalf.

EXPERTS

The consolidated financial statements of Data Systems & Software Inc. and subsidiaries as of December 31, 2000 and 2001, and for each of the years in the two year period ended December 31, 2001 have been incorporated by reference herein and in the registration statement in reliance upon the report of KPMG LLP, independent accountants, incorporated by reference herein and in the registration statement, and upon the authority of KPMG LLP as experts in accounting and auditing. The audit report covering the December 31, 2001 consolidated financial statements refers to a change in accounting for purchase method business combinations completed after June 30, 2001.

The consolidated statements of operations and comprehensive income (loss), changes in shareholders' equity and cash flows for the year ended December 31, 1999 incorporated in this prospectus by reference from Data Systems & Software Inc.'s annual report on Form 10-K have been audited by Deloitte & Touche LLP, independent auditors, as stated in their report, which is incorporated herein by

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reference, and has been so incorporated in reliance upon the report of such firm, given upon their authority as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION

We are subject to the informational requirements of the Securities Exchange Act of 1934. Accordingly, we file annual, quarterly and special reports, proxy statements and other information with the SEC. You may read and copy any document that we file at the SEC's public reference room in Washington, D.C. Please call the SEC at 1-800-SEC-0330 for further information on the public reference room. You can obtain copies of our SEC filings at prescribed rates from the SEC Public Reference Section at 450 Fifth Street, N.W., Washington, D.C. 20549. Our SEC filings are also available to you free of charge at the SEC's web site at <http://www.sec.gov>.

Shares of our common stock are traded on the Nasdaq National Market. Documents we file can be inspected at the offices of the National Association of Securities Dealers, Inc., Reports Section, 1735 K Street, N.W., Washington, D.C. 20006.

You can read and print press releases, financial statements and additional information about us, free of charge, at our web site at <http://www.dssiinc.com>.

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This prospectus is a part of a registration statement on Form S-3 filed by us with the SEC under the Securities Act of 1933. This prospectus does not contain all of the information set forth in the registration statement, certain parts of which are omitted in accordance with the rules and regulations of the SEC. For further information with respect to us and the shares of our common stock offered hereby, please refer to the registration statement. The registration statement may be inspected at the public reference facilities maintained by the SEC at the addresses set forth above. Statements in this prospectus about any document filed as an exhibit are not necessarily complete and, in each instance, you should refer to the copy of such document filed with the SEC. Each such statement is qualified in its entirety by such reference.

INFORMATION INCORPORATED BY REFERENCE

The SEC allows us to "incorporate by reference" the information we file with them, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be part of this prospectus, and information that we file later with the SEC will automatically update and supersede previously filed information, including information contained in this prospectus.

We incorporate by reference into this prospectus the documents listed below and any future filings we will make with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act until this offering has been completed:

- (1) Our Annual Report on Form 10-K for the fiscal year ended December 31, 2001 filed on March 27, 2002, as amended by Amendment No.1 on Form 10-K/A filed on April 30, 2002.
- (2) Our Quarterly Report on Form 10-Q for the three months ended March 31, 2002, filed on May 15, 2002;
- (3) Our Current Report on Form 8-K dated June 11, 2002, filed on June 12, 2002;
- (4) The description of our common stock contained in our Registration Statement on Form 8-A, declared effective by the SEC on February 11, 1992, which was

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filed pursuant to Section 12 of the Exchange Act, and any amendment or report filed for the purpose of updating such description; and

- (5) The description of our Common Stock Purchase Rights contained in our Registration Statement on Form 8-A, dated March 22, 1996, which was filed pursuant to Section 12 of the Exchange Act, and any amendment or report filed for the purpose of updating such description.

You may request a free copy of these documents by writing to Investor Relations, Data Systems & Software Inc., 200 Route 17, Mahwah, New Jersey 07430, or by calling Investor Relations at (201) 529-2026.

You should rely only on the information incorporated by reference or provided in this prospectus or a prospectus supplement or amendment. We have not authorized anyone to provide you with different information. This prospectus does not offer these securities in any state where the offer is not permitted. Also, this prospectus does not offer to sell any securities other than the securities covered by this prospectus. You should not assume that the information in this prospectus or a prospectus supplement or amendment is accurate as of any date other than the date on the front of the document.

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PART II

INFORMATION NOT REQUIRED IN THE PROSPECTUS

ITEM 14. OTHER EXPENSES OF ISSUANCE AND DISTRIBUTION.

The Registrant will pay all expenses incident to the offering and sale to the public of the shares being registered other than any commissions and discounts of underwriters, dealers or agents and any transfer taxes. Such expenses are set forth in the following table. All of the amounts shown are estimates except the SEC registration fee.

| | |
|--|-----------|
| SEC registration fee | \$ 237 |
| Legal fees and expenses | 7,500 |
| Accounting fees and expenses | 10,000 |
| Miscellaneous expenses | 1,000 |
| | ----- |
| Total | \$ 18,737 |

ITEM 15. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

The Certificate of Incorporation, as amended, and the Amended Bylaws of the Registrant provide that the Registrant shall indemnify its officers, directors and certain others to the fullest extent permitted by the General Corporation Law of Delaware ("DGCL"). Section 145 of the DGCL provides that the Registrant, as a Delaware corporation, is empowered, subject to certain procedures and limitations, to indemnify any person against expenses (including attorney's fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with any threatened, pending or completed action, suit or proceeding (including a derivative action) in which such person is made a party by reason of his being or having been a director, officer, employee or agent of the Registrant (each, an "Indemnitee"); provided that the right of an Indemnitee to receive indemnification is subject to the following limitations: (i) an Indemnitee is not entitled to indemnification unless he acted in good faith and in a manner that he reasonable believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such conduct was unlawful and (ii) in the case of a derivative action, and Indemnitee is not entitled to

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indemnification in the event that he is judged to be liable to the Company (unless and only to the extent that the court determines that the Indemnitee is fairly and reasonably entitled to indemnification for such expenses as the court deems proper). The statute provides that indemnification pursuant to its provisions is not exclusive of other rights of indemnification to which a person may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors, or otherwise.

Pursuant to Section 145 of the DGCL, the Registrant has purchased insurance on behalf of its present and former directors and officers against any liability asserted against or incurred by them in such capacity or arising out of their status as such.

In accordance with Section 102(b)(7) of the DGCL, the Certificate of Incorporation of the Registrant eliminates personal liability of the Registrant's directors to the Registrant or its stockholders for monetary damages for breach of their fiduciary duties as a director, with certain limited exceptions set forth in Section 102(b)(7) of the DGCL.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers or persons controlling the Registrant pursuant to the foregoing provisions, the Registrant has been informed that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

ITEM 16. EXHIBITS.

Please see Index of Exhibits on Page II-5 below.

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ITEM 17. UNDERTAKINGS.

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) Securities Act of 1933 (the "Securities Act");

(ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective Registration Statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement; PROVIDED, HOWEVER, that paragraphs A(1)(i) and A(1)(ii) do not apply if the Registration Statement is on Form S-3 or Form S-8, and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") that are

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incorporated by reference in the Registration Statement;

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof;

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of this offering.

B. UNDERTAKING REGARDING FILINGS INCORPORATING SUBSEQUENT EXCHANGE ACT DOCUMENTS BY REFERENCE.

The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

C. UNDERTAKING IN RESPECT OF INDEMNIFICATION.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

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SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the Township of Mahwah, New Jersey, on this 10th day of July, 2002.

DATA SYSTEMS & SOFTWARE INC.

By: /s/George Morgenstern

George Morgenstern
President and Chief Executive Officer

POWER OF ATTORNEY

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Each person whose signature appears below constitutes and appoints George Morgenstern and Sheldon Krause, jointly and severally, as attorneys-in-fact, each with the power of substitution, in any and all capacities, to sign any amendment to this Registration Statement and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting to said attorneys-in-fact, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes they might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact or any of them, or their, his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed below by the following persons on the dates indicated in the capacities indicated.

| SIGNATURE ----- | TITLE ----- | |
|--|---|---------------|
| <u>/s/George Morgenstern</u> George Morgenstern | Chairman, President, CEO and Director | July 10, 2002 |
| <u>/s/Yacov Kaufman</u> Yacov Kaufman | Vice President, Chief Financial Officer (Principal Financial Officer, Principal Accounting Officer) | July 10, 2002 |
| <u>/s/Robert Kuhn</u> Robert Kuhn | Director | July 10, 2002 |
| <u>/s/Allen I. Schiff</u> Allen I. Schiff | Director | July 10, 2002 |
| <u>/s/Sheldon Krause</u> Sheldon Krause | Director, Secretary | July 10, 2002 |
| <u>/s/Susan L. Malley</u> Susan L. Malley | Director | July 10, 2002 |
| <u>/s/Howard A. Gutzmer</u> Howard A. Gutzmer | Director | July 10, 2002 |
| <u>/s/Shlomie Morgenstern</u> Shlomie Morgenstern | Director | July 10, 2002 |

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INDEX OF EXHIBITS

| Exhibit Number | Description |
|-------------------|---|
| 2.3 | Certificate of Incorporation of the Registrant, with amendments thereto (incorporated herein by reference to Exhibit 3.1 to the Registrant's Registration Statement on Form S-1 (File No. 33-70482)). |
| 2.4. | By-laws of the Registrant (incorporated herein by reference to Exhibit 3.2 to the Registrant's Registration Statement on Form S-1 (File No. 33-44027)). |
| 2.5 | Amendments to the By-laws of the Registrant adopted December 27, 1994 (incorporated herein by reference to Exhibit 3.3 of the Registrant's Current Report on Form 8-K dated January 10, 1995). |
| 5.1 | Opinion of Ehrenreich Eilenberg & Krause LLP. |
| 10.1 | Securities Purchase Agreement, dated as of June 10, 2002, by and among Data Systems & Software Inc., Databit Inc. and Laurus Master Fund, Ltd. relating to the purchase and sale of the convertible note and the warrant, including the forms of convertible note and the warrant (incorporated herein by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K, dated June 11, 2002, filed on June 12, 2002). |
| 23.1 | Consent of KPMG LLP. |
| 23.2 | Consent of Deloitte & Touche LLP. |
| 23.3 | Consent of Ehrenreich Eilenberg & Krause LLP (included in Exhibit 5.1). |
| 24.1 | Power of Attorney (included in signature page of this Registration Statement). |