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PAYMENT DATA SYSTEMS INC
Form S-8 POS
January 14, 2004

Registration No.

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

POST EFFECTIVE AMENDMENT NO. 1
TO
FORM S-8
REGISTRATION STATEMENT UNDER THE
SECURITIES ACT OF 1933

Payment Data Systems, Inc.
(Exact name of Registrant as specified in its charter)

Nevada
(State or other jurisdiction of
incorporation or organization)

98-0190072
(I.R.S. Employer
Identification No.)

12500 San Pedro, Suite 120
San Antonio, TX 78216
(Address of principal executive offices)

AMENDED AND RESTATED 1999 EMPLOYEE COMPREHENSIVE STOCK PLAN
(Full title of the Plan)

Timothy N. Tuggey
Loeffler Jonas & Tuggey LLP
755 E. Mulberry, Suite 200
San Antonio, Texas 78212
(210) 354-4300
(Name, address, telephone
number, including area code, of agent for service)

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price Per Share (2)	Maximum Aggregate Offering Price (2)	A
Common Stock, Par Value \$.001	N/A (1)	N/A	N/A	

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- (1) This registration statement also relates to such indeterminate number of additional shares as may be issuable pursuant to the anti-dilution provisions of the Registrant's Amended and Restated 1999 Employee

Comprehensive Stock Plan.

- (2) Computed in accordance with Rules 457(c) and (h) under the Securities Act of 1933, as amended, solely for purposes of calculating the registration fee.
- (3) Fee amount paid upon initial filing of Registration Statements on February 23, 2000 (Commission File No. 333-30962) and February 11, 2002 (Commission File No. 333-82530).
- (4) No additional fee is payable because no additional shares are being registered pursuant to this post effective amendment No. 1.

EXPLANATORY NOTE

Registration Statements 333-30962 and 333-82530, filed with the Securities and Exchange Commission on February 23, 2000 and February 11, 2002, respectively, covered, in aggregate, 5,000,000 shares under the Registrant's 1999 Employee Comprehensive Stock Plan (the "Plan"). On December 29, 2003, the Plan was amended and restated by the Registrant's Board of Directors to add provisions 1) allowing for stock awards to be made to consultants as provided in Rule 405 promulgated under the Securities Act of 1933, as amended from time to time, or other applicable law, 2) increasing the amount of shares of Common Stock of the Company exercisable per fiscal year from stock options, whether Incentive Stock Options or nonqualified stock options, from 350,000 to 500,000, and 3) removing minimum holding periods on "Restricted Stock" (as such term is defined in the Plan). We are filing this Post-Effective Amendment to the Registration Statement to amended and restated 1999 Employee Comprehensive Stock.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference

The following documents and reports filed by the Registrant with the Securities and Exchange Commission (the "Commission") are incorporated herein by reference:

- (a) Annual Report of the Registrant on Form 10-K for the year ended December 31, 2002, Commission File No. 000-30152.
- (b) Quarterly Reports of the Registrant on Form 10-Q for the quarters ended March 31, 2003, June 30, 2003, and September 30, 2003, Commission File No. 000-30152.
- (c) The description of the Registrant's Common Stock contained in the Registration Statement (Commission File No. 001-15093) filed under Section 12 of the Securities Exchange Act of 1934, including any amendment or report filed for the purpose of updating such description.

Item 4. Description of Securities

The Registrant's common stock is registered pursuant to Section 12 of the Exchange Act, as amended, and, therefore, the description of the securities is omitted.

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Item 5. Interests of Named Experts and Counsel

None.

Item 6. Indemnification of Directors and Officers

Nevada law generally sets forth the powers of the Registrant to indemnify officers, directors, employees, and agents. The Articles of Incorporation for the Registrant provide as follows:

No director or officer shall have any personal liability to the corporation or its stockholders for the damages for breach of fiduciary duty as a director or officer, except that this Article shall not eliminate or limit the liability of a director or officer for (i) acts or omissions that involve intentional misconduct, fraud or a knowing violation of the law, or (ii) the payment of dividends in violation of the Nevada Revised Statutes.

Except to the extent herein above set forth, there is no charter provision, bylaw, contract, arrangement, or statute pursuant to which any director or officer of the Registrant is indemnified in any manner against any liability that he may incur in his capacity as such.

Item 7. Exemption from Registration Claimed

Not applicable.

Item 8. Exhibits

Except as noted below, the following Exhibits are filed herewith and made a part hereof:

Exhibit	Description of Document
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4	Amended and Restated 1999 Employee Comprehensive Stock Plan
5	Opinion of Loeffler Jonas & Tuggey LLP
23.1	Consent of Loeffler Jonas & Tuggey LLP (included in Exhibit 5)
23.2	Consent of Independent Accountants
24	Power of Attorney

Item 9. 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) of the Securities Act of 1933;

(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.

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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 a prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent 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, Form S-8, or Form F-3, and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, as amended, 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 the offering.

(b) For the purpose of determining any liability under the Securities Act of 1933, as amended, each filing of the Registrant's annual report pursuant to section 13(a) or section 15(d) of the Securities Exchange Act of 1934, as amended, (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Securities Exchange Act of 1934, as amended) 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.

(h) Insofar as indemnification for liabilities arising under the Securities Act of 1933, as amended, 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 Securities and Exchange Commission such indemnification is against public policy as expressed in the 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 Act and will be governed by the final adjudication of such issue.

SIGNATURES

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Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Antonio, State of Texas, on this 8th day of January, 2004.

Payment Data Systems, Inc.

By: /s/ Michael R. Long

 Chairman of the Board, Chief Executive Officer, and Chief Financial Officer

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed below by the following persons in the capacities indicated as of the dates indicated:

Signatures	Titles	Date
/s/ Michael R. Long ----- Michael R. Long *	Chairman of the Board, Chief Executive Officer, Chief Financial Officer, and Director	January 8, 2004
/s/ Louis A. Hoch ----- Louis A. Hoch *	President, Chief Operating Officer, and Director	January 8, 2004
/s/ Peter G. Kirby ----- Peter G. Kirby, Ph.D.*	Director	January 8, 2004

Michael R. Long, the undersigned attorney-in-fact, by signing his name below, does hereby sign this Registration Statement on behalf of the directors and officers of Payment Data Systems, Inc. indicated above by asterisk (constituting a majority of the directors) pursuant to a power of attorney executed by such persons and filed with the Securities and Exchange Commission contemporaneously herewith.

By: /s/ Michael R. Long

 Michael R. Long, as attorney-in-fact

EXHIBIT INDEX

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