PHOENIX TECHNOLOGIES LTD
Form 10-K/A
June 01, 2009

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UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
Form 10-K/A
Amendment No. 1
ANNUAL REPORT
PURSUANT TO SECTIONS 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934

(Mark One)

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

for the fiscal year ended September 30, 2008

OR

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

for the transition period to .

Commission file number 0-17111
PHOENIX TECHNOLOGIES LTD.
(Exact name of registrant as specified in its charter)

Delaware	**04-2685985**
(State or other jurisdiction of incorporation or organization)	*(I.R.S. Employer Identification No.)*

915 Murphy Ranch Road, Milpitas, CA 95035
(Address of principal executive offices, including zip code)
(408) 570-1000
(Registrant s telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:
Common Stock, par value $.001 Nasdaq Global Market
Preferred Stock Purchase Rights
(Title of each Class)
Securities registered pursuant to Section 12(g) of the Act:
None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. YES o NO þ

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

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.
YES þ NO o

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 229.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). YES o NO o

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant s knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. o

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

Large accelerated filer o	Accelerated filer þ	Non-accelerated filer o (Do not check if a smaller reporting company)	Smaller reporting company o

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

The aggregate market value of the registrant s Common Stock held by non-affiliates of the registrant as of March 31, 2008 was $369,076,618 based upon the last reported sales price of the registrant s Common Stock on the NASDAQ Global Market on such date. For purpose of this disclosure, shares of Common Stock held by directors and officers of the registrant and by stockholders who own more than 10% of the registrant s outstanding Common Stock have been excluded because such persons may be deemed affiliates of the registrant. This determination is not necessarily a conclusive determination for other purposes.

The number of shares of the registrant s Common Stock outstanding as of May 26, 2008 was 29,096,944.

EXPLANATORY NOTE: This Amendment No. 1 on Form 10-K/A (Amendment No. 1) amends the Registrant s Annual Report on Form 10-K, as filed by the Registrant on November 19, 2008 (the Report), and is being filed solely to make the following changes:

- update the aggregate market value of the registrant s Common Stock held by non-affiliates as of March 31, 2008 to more accurately reflect stockholders who are affiliates of the registrant;

- include the discussion of volume purchase agreements and backlog on page 4 of Item 1 Business which was previously only discussed in Item 7 Management Discussion and Analysis;

- include certain information on revenues by geographic area on page 4 of Item 1 Business that was previously only included in the notes to the financial statements and also discuss the portion of North American revenue attributed to United States sales;

- add to Item 12 of Part III on page 8 the section on Equity Compensation Plan Information that was inadvertently left out of the Report;

- add to Item 13 of Part III on page 10 a description of the procedure used by registrant s board and committees of the board for review, approval or ratification of transactions with related persons; and

- update the exhibit index and include references to exhibits for which confidential treatment has been sought or obtained.

Except as otherwise stated herein, no other information contained in the Report has been updated by this Amendment No. 1.

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FORWARD-LOOKING STATEMENTS

This Amendment No. 1 to the report on Form 10-K includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. These statements may include, but are not limited to, statements concerning: future liquidity and financing requirements; expectations of sales volumes to customers and future revenue growth; new business and technology partnerships; our acquisition activities; plans to improve and enhance existing products; plans to develop and market new products; recruiting efforts; our relationships with key industry leaders; trends we anticipate in the industries and economies in which we operate; the outcome of pending disputes and litigation; our tax and other reserves; and other information that is not historical information. Words such as could , expects , may , anticipates , believes , project estimates , intends , plans , and other similar expressions are intended to indicate forward-looking statements. All forward-looking statements included in this report reflect our current expectations and various assumptions, and are based upon information available to us as of the date hereof. Our expectations, beliefs and projections are expressed in good faith, and we believe there is a reasonable basis for them, but we cannot assure you that our expectations, beliefs and projections will be realized.

Some of the factors that could cause actual results to differ materially from the forward-looking statements in this Amendment No. 1 to the report on Form 10-K include the factors described in the section of the Report entitled Item 1A-Risk Factors. These factors include, but are not limited to: demand for our products and services in adverse economic conditions; our dependence on key customers; our ability to successfully enhance existing products and develop and market new products and technologies; our ability to achieve profitability and maintain positive cash flow from operations; our ability to meet our capital requirements in the long-term; our ability to attract and retain key personnel; product and price competition in our industry and the markets in which we operate; our ability to successfully compete in new markets where we do not have significant prior experience; our ability to maintain the average selling price of our Core System Software for Netbooks; end-user demand for products incorporating our products; the ability of our customers to introduce and market new products that incorporate our products; our ability to generate additional capital on terms acceptable to us; risks associated with any acquisition strategy that we might employ; results of litigation; failure to protect our intellectual property rights; changes in our relationship with leading software and semiconductor companies; the rate of adoption of new operating system and microprocessor design technology; the volatility of our stock price; risks associated with our international sales and operating internationally, including currency fluctuations, acts of war or terrorism, and changes in laws and regulations relating to our employees in international locations; whether future restructurings become necessary; our ability to complete the transition from our historical reliance on paid-up licenses to volume purchase license agreements (VPAs) and pay-as-you-go arrangements; fluctuations in our operating results; the effects of any software viruses or other breaches of our network security; our ability to convert free users to paid customers and retain customers for our subscription services; storage of confidential customer information; our ability to effectively manage our rapid growth; defects or errors in our products and services; consolidation in the industry we operate in; internet infrastructure; risk associated with usage of open source software; our dependence on third party service providers; any material weakness in our internal controls over financial reporting; changes in financial accounting standards and our cost of compliance; business disruptions due to acts of war, power shortages and unexpected natural disasters; trends regarding the use of the x86 microprocessor architecture for personal computers and other digital devices; and changes in our effective tax rates. If any of these risks or uncertainties materialize, or if any of our underlying assumptions are incorrect, our actual results may differ significantly from the results that we express in or imply by any of our forward-looking statements. We do not undertake any obligation to revise these forward-looking statements to reflect future events or circumstances.

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PART I

ITEM 1. *BUSINESS*

Description of Business

Phoenix Technologies Ltd. (Phoenix or the Company) designs, develops and supports core system software for personal computers and other computing devices. Our products, which are commonly referred to as firmware, support and enable the compatibility, connectivity, security and manageability of the various components and technologies used in such devices. We sell these products primarily to computer and component device manufacturers. We also provide training, consulting, maintenance and engineering services to our customers.

The majority of our revenues come from Core System Software (CSS), the modern form of BIOS (Basic Input-Output System) for personal computers (PCs), servers and embedded devices. Our CSS customers are primarily original equipment manufacturers (OEMs) and original design manufacturers (ODMs), who incorporate CSS products during the manufacturing process. The CSS is typically stored in non-volatile memory on a chip that resides on the motherboard built into the device manufactured by our customer. The CSS is executed during the power-up process in order to test, initialize and manage the functionality of the device s hardware. We believe that our products are incorporated into over 125 million computing devices each year, making us the global market share leader in the CSS sector.

We also design, develop and support software products and services that provide the users of personal computers with enhanced device utility, reliability and security. Included among these products and services are offerings which assist users to locate and manage portable devices that have been lost or stolen, offerings which provide backup, sharing, and synchronization of files and data, and offerings which enable certain applications to operate on the device independently of the device s primary operating system. Although the true consumers of these products and services are enterprises, governments, service providers and individuals, we typically license these products to OEMs and ODMs to assist them in making their products attractive to those end-users.

In addition to licensing our products to OEM and ODM customers, we also sell certain of our products directly or indirectly to computer end users, generally delivering such products as subscription based services utilizing web-based delivery capabilities.

We derive additional revenues from providing development tools and support services such as customization, training, maintenance and technical support to our software customers and to various development partners.

We were incorporated in the Commonwealth of Massachusetts in September 1979, and was reincorporated in the State of Delaware in December 1986. Our headquarters are in Milpitas, California. The mailing address of our headquarters is 915 Murphy Ranch Road, Milpitas, CA 95035, the telephone number at that location is +1 (408) 570-1000 and our website is www.phoenix.com.

Products

Described below are certain selected products and services we offer.

Phoenix Core Systems Software

Phoenix s CSS products include:

Phoenix SecureCore

Phoenix SecureCore™ is our primary CSS product, and consists of the firmware that, together with its predecessor TrustedCore, runs many of today s most modern computers. SecureCore supports and enables the compatibility, connectivity, security and manageability of the various components of modern desktop and notebook PCs, PC-based servers and embedded computing systems. The SecureCore product group was released during fiscal year 2007 and includes support for a wide variety of new features developed by semiconductor manufacturers who provide products to the PC industry.

Phoenix TrustedCore

Phoenix TrustedCore™ is the predecessor to SecureCore and was the leading product from our CSS product group until the launch of SecureCore during fiscal year 2007. Customers can continue to purchase TrustedCore object licenses and source code to support older versions of processors in their new and existing products.

Phoenix Award

The Phoenix Award CSS product group supports fast time to market for high-volume PC and digital device electronics design and manufacturing companies. Typically these manufacturers operate on short design and product life cycles. We believe the Phoenix Award product group delivers the standards-based features, simplicity and small code size necessary for this dynamic market segment. Our Phoenix Award CSS product group consists of both our AwardCore ™ CSS product group and our legacy Award BIOS ™

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product group. Our customers can continue to purchase Award BIOS object licenses and source code to support older versions of processors in their new and existing products.

Developments in Core System Software

In recent years, the personal computing industry has been migrating to a new overall design concept for the standardization of Core System Software. This standardization concept was initially pioneered by Intel Corporation (Intel) with its Extensible Firmware Interface (EFI), created for CSS support of the Itanium processor, and the Platform Innovation Framework. Intel s initial implementation of EFI has continued to evolve in recent years and this overall design concept is now supported by a wide industry consortium called the Unified EFI Forum, Inc., which includes Microsoft Corporation, Intel, Advance Micro Devices, Inc. (AMD), Phoenix and others. Under this design concept, firmware has become more modular and standardized than it had been in the past. As a result, computer processor providers are now able to deliver hardware drivers that can be easily integrated into the CSS by both independent BIOS vendors and computer OEMs and ODMs. In addition, due to the standardization of the interfaces, individual developers can also build add-ons or plug-ins to standard interface specifications and deliver products that may be incorporated with firmware platforms from a variety of vendors. Vendor support of these new design concepts and industry standards eases the burden of continually porting features and customizations to new hardware and personal computer designs.

The current Phoenix SecureCore architecture incorporates these philosophies, and hence supports various device drivers and value-added service offerings known as add-ons and plug-ins that we and others may sell in the future.

Phoenix EmbeddedBIOS

Phoenix EmbeddedBIOS™ consists of a specialized version of our CSS product line specifically tailored for the embedded market. The solution includes the firmware and tools necessary for solution providers in key embedded vertical markets to quickly bring up their platforms and bring their products to market. We believe it uniquely addresses their needs which include support for a wide variety of target devices and extreme flexibility within a powerful software development environment.

Services and Solutions

Phoenix s service and solution products include:

Phoenix BeInSync

The Phoenix BeInSync™ service offering is an all-in-one solution that allows users to backup, synchronize, share and access their data online. The solution consists of a software agent that resides on the PC, and an online storage repository. The agent enables users to set backup and synchronization policies that determine which data to backup online, and which data to synchronize with another agent-enabled PC. Once the data is online, users can access it remotely, or share it with others.

Phoenix eSupport

eSupport™ consists of a collection of Web sites and PC diagnostic software products designed to detect and fix the typical problems encountered by users during normal use of their computers. The software products include DriverAgent ™ which detects out of date device drivers, RegistryWizard ™ which detects and corrects problems with the Windows Registry, and BIOS Agent Plus™ which identifies and updates the BIOS software. The solutions consist of a software component and an online database. The software is accessed and downloaded from one of the eSupport Web sites. It scans the information on the computer, and then compares the results of the scan with its database and provides the user with recommendations on how to repair any issues it finds.

Phoenix New Products

Phoenix FailSafe

The Phoenix FailSafe™ service is an advanced theft-loss protection and prevention solution for mobile PCs. The FailSafe solution consists of an embedded tamper-resistant agent that resides in the mobile device and a network connected secure communications center (SCC). The SCC enables users to set policies for their mobile devices and then monitors those devices to detect and prevent violations of those policies. Optional features of this service include the ability for users to encrypt data on the mobile device as well as to retrieve or remove information from the device remotely.

Phoenix HyperSpace

The Phoenix HyperSpace™ family of products provides an environment that enables various Phoenix and third party applications to be installed on a device and to operate independently from the user s primary operating system. A primary component of this family is a lightweight virtualization engine called Phoenix HyperCore ™ , which allows multiple purpose-built applications to operate autonomously alongside the primary operating system. With HyperCore these applications can run at any time, before the primary operating system has been loaded, while it is running or after it has shut down, and users can instantaneously switch between their primary operating system and the HyperSpace environment with a single button or mouse click.

Substantially all of our revenues in fiscal years 2008, 2007 and 2006 were derived from sales of CSS products and related services.

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Sales and Marketing

The Company sells its products and services through a global direct sales force with sales offices in North America, Japan and the Asia Pacific region, as well as through a network of regional distributors and sales representatives. We market to OEMs, ODMs, resellers, system integrators, and system builders as well as to independent software vendors.

Our products and services are sold directly to larger OEMs and ODMs of PCs and of embedded systems, many of which are global technology leaders. These include:

Original Equipment Manufacturers

Dell Inc.	International Business Machines Corporation	Samsung Electronics Co. Ltd.
Foxconn Electronics Inc.	LG Electronics Inc.	Sharp Corporation
Fujitsu Ltd.	Lenovo (Singapore) Pte. Ltd.	Sony Corporation
Fujitsu Siemens Computers GmbH	Matsushita Electric Industrial Co., Ltd.	Toshiba Corporation
Hewlett-Packard Company	NEC Corporation	

Original Design Manufacturers	Motherboard Manufacturers	Non-PC Systems
Arima Computer Corporation	ASUSTeK Computer Inc.	Motorola, Inc.
Compal Electronics Inc.	Elitegroup Computer Systems Co., Inc.	NEC Corporation
Inventec Corporation	Giga-byte Technology Co., Ltd.	Taito Corporation
Quanta Computer, Inc.	Micro-Star International Co., Ltd.	Cisco Systems, Inc.
Wistron Corporation		

During the first quarter of fiscal year 2007, we had made significant changes in our pricing policies and sales practices and our revenues for the fiscal year ended September 30, 2008 reflect the continuing success of these initiatives. During fiscal year 2008, we executed additional significant long term volume purchase agreements (VPAs) with several of our major customers. Combined with the effect of other similar agreements executed since fiscal year 2007, we have achieved both a 27% increase in our deferred revenue balances and a 215% increase in our unbilled backlog of VPA agreements. We consider these unbilled VPA commitments, along with deferred revenues, as order backlog. Our total order backlog increased by 99% from $19.1 million at September 30, 2007 to $38.0 million at September 30, 2008. We expect to invoice and recognize this $38.0 million as revenues over future periods; however, uncertainties such as the timing of customer utilization of our products may impact the timing of recognition of these revenues.

Significant Customers

Quanta Computer, Inc. and Lenovo (Singapore) Pte. Ltd. accounted for 18% and 14%, respectively, of the Company s total revenues in fiscal year 2008. Quanta Computer, Inc. accounted for 18% of the Company s total revenues in fiscal year 2007. Fujitsu Ltd. accounted for 12% of the Company s total revenues in fiscal year 2006. No other customer accounted for more than 10% of total revenues in fiscal years 2008, 2007 or 2006.

International Sales and Activities

Revenues derived from international sales comprise a majority of total revenues. During fiscal years 2008, 2007 and 2006, $60.6 million, or 82%, $39.4 million, or 84%, and $54.1 million, or 89%, of total revenues for each of the respective years were derived from sales outside of the U.S.

Revenues by geographic area *(in thousands)* for the fiscal years ended 2008, 2007 and 2006 were as follows:

	Fiscal Years Ended September 30,		
	2008	**2007**	**2006**
North America	$ 13,136	$ 7,616	$ 6,384
Japan	15,326	7,651	18,302
Taiwan	39,959	26,882	28,556

Other Asian countries	4,132	3,670	5,089
Europe	1,149	1,198	2,164
Total revenues	$ 73,702	$ 47,017	$ 60,495

The portion of North America revenues from external customers attributed to the United States was $13.1 million, $7.6 million, and $6.3 million for the fiscal years ended 2008, 2007 and 2006, respectively.

We have international sales and engineering offices in Japan, Korea, Taiwan, China and India. Almost all of our license fees and royalty contracts are U.S. dollar denominated; however, we do enter into non-recurring engineering (NRE) service contracts in Japan in the local currency.

In addition, an increasing percentage of our labor force, particularly in engineering, is located in China, Taiwan and India. Approximately 63%, or 320, of our employees are located outside of the U.S. as of September 30, 2008.

Competition

The Company competes for sales primarily with in-house research and development (R&D) departments of PC and component manufacturers such as Dell Inc. (Dell), Hewlett-Packard Company (Hewlett-Packard), Toshiba Corporation (Toshiba), Apple Inc. (Apple) and Intel. These manufacturers may have significantly greater financial and technical resources, as well as closer engineering ties and experience with specific hardware platforms, than we do. We believe that OEM and ODM customers often license our CSS products rather than develop these products internally in order to: (1) differentiate their system offerings with advanced features; (2) easily leverage the additional value of our other software solutions; (3) improve time to market; (4) reduce product development risks; (5) minimize product development and support costs; and/or (6) enhance compatibility with the latest industry standards.

The Company also competes for sales with other independent suppliers, including American Megatrends Inc., a privately held U.S. company, and Insyde Software Corp., a public company based and listed in Taiwan.

Product Development

The Company constantly seeks to develop new products and services, maintain and enhance our current product lines and service offerings, maintain technological competitiveness and meet continually changing customer and market requirements. Our research and development expenditures in fiscal years 2008, 2007 and 2006 were $29.7 million, $19.2 million and $22.9 million, respectively. All of our expenditures for research and development have been expensed as incurred. As of September 30, 2008, the Company s research and development and customer engineering group included 370 full-time employees, or 73% of our total workforce.

Intellectual Property and Other Proprietary Rights

The Company relies primarily on U.S. and foreign patents, trade secrets, trademarks, copyrights and contractual agreements to establish and maintain proprietary rights in our technology. We have an active program to file applications for and obtain patents in the U.S. and in selected foreign countries where there is a potential market for our products. As of September 30, 2008, we have been issued 79 patents in the United States and have 41 patent applications in process in the U.S. Patent and Trademark Office. On a worldwide basis, we have been issued 159 patents with respect to our product offerings and have 136 patent applications pending with respect to certain products we market. We also hold certain licenses and other rights granted to us by the owners of other patents. There can be no assurance that any of these patents would be upheld as valid if challenged. Of the key patents and copyrights that are most closely tied to our product offerings, none are set to expire within the next eight years.

The Company s general policy has been to seek patent protection for those inventions and improvements likely to be incorporated in our products or otherwise expected to be of long-term value. We protect the source code of our products as trade secrets and as unpublished copyrighted works. We may also initiate litigation where appropriate to protect our rights in that intellectual property. We license the source code for our products to our customers for limited uses. Wide dissemination of our software products makes protection of our proprietary rights difficult, particularly outside the United States. Although it is possible for competitors or users to make illegal copies of our products, we believe the rate of technology change and the continual addition of new product features lessen the impact of illegal copying.

In recent years, there has been a marked increase in the number of patents applied for and issued with respect to software products. Although we believe that our products and services do not infringe on any patents, copyright or other proprietary rights of third parties, we have no assurance that third parties will not obtain, or do not have, intellectual property rights covering features of our products or services, in which event we or our customers might be required to obtain licenses to use such features. If an intellectual property rights holder refuses to grant a license on reasonable terms or at all, we may be required to alter certain of our products or services or stop marketing them.

Employees

As of September 30, 2008, we employed 510 full-time employees worldwide, of whom 370 were in research and development and customer engineering, 64 were in sales and marketing, and 76 were in general administration.

Other than in Nanjing, China, where our employees have formed a trade union in accordance with local laws and regulations, our employees are not represented by any labor organizations. We have never experienced a work stoppage and we consider our employee relations to be satisfactory.

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Executive Officers of the Company

The executive officers of the Company serve at the discretion of the Board of Directors of the Company. As of the filing date of this Form 10-K, the executive officers of the Company are as follows:

Name	Age	Position
Woodson Hobbs	61	President and Chief Executive Officer
Richard Arnold	60	Chief Operating Officer and Chief Financial Officer
Dr. Gaurav Banga	36	Senior Vice President, Engineering and Chief Technology Officer
David Gibbs	51	Senior Vice President and General Manager, Worldwide Field Operations
Timothy Chu	35	Vice President, General Counsel and Secretary

BIOGRAPHIES

Mr. Hobbs joined the Company as President and Chief Executive Officer and as a member of the Board of Directors of the Company in September 2006. Prior to joining the Company, Mr. Hobbs served as president, chief executive officer and a member of the board of Intellisync Corporation, a provider of platform-independent wireless messaging and mobile software, from 2002 to 2006. Between 1995 and 2002, Mr. Hobbs was a consulting executive for the venture capital community and a strategic systems consultant to large corporations. During this timeframe, he held the position of interim chief executive officer for various periods at the following companies: FaceTime Communications, a provider of instant messaging network-independent business solutions; Tradenable, Inc., an online escrow service company; BigBook, Inc., a provider in the online yellow pages industry; and I/PRO Corporation, a provider of quantitative measurement of Web site usage. From 1993 to 1994, Mr. Hobbs served as chief executive officer of Tesseract Corporation, a human resources outsourcing and software company. Mr. Hobbs spent the early part of his career with Charles Schwab Corporation, a securities brokerage and financial services company, as chief information officer; with Service Bureau, a division of IBM, as a developer; and with Online Focus, an online credit union system, as the director of operations.

Mr. Arnold joined the Company as Executive Vice President, Strategy and Corporate Development in September 2006 and was also appointed Chief Financial Officer in November 2006. In October 2007, Mr. Arnold was named Chief Operating Officer and Chief Financial Officer. Prior to joining the Company, Mr. Arnold served as a member of the board of the Intellisync Corporation from 2004 to 2006. From 2001 to 2006, Mr. Arnold served as a founding partner of Committed Capital Proprietary Limited, a private equity investment company based in Sydney, Australia. From 1999 to 2001, Mr. Arnold served as executive director of Consolidated Press Holdings Limited, also a private investment company based in Sydney. Mr. Arnold has also previously served as managing director of TD Waterhouse Australia, a securities dealer; as chief executive officer of Integrated Decisions and Systems, Inc., an application software company; as managing director of Eagleroo Proprietary Limited, a corporate advisory company; and in various capacities with Charles Schwab Corporation, a securities brokerage and financial services company, including serving as chief financial officer and as executive vice president strategy and corporate development. Mr. Arnold holds a B.S. degree in psychology from Stanford University.

Dr. Banga joined the Company as Chief Technology Officer in October 2006 and was appointed Senior Vice President, Engineering in November 2006. Prior to joining the Company, he was vice president of product management at Intellisync (and at Nokia Corp., after its acquisition of Intellisync), responsible for all client-side products. Before Intellisync, Dr. Banga was co-founder and chief executive officer of PDAapps, the creator of VeriChat, a mobile instant messaging solution. PDAapps was acquired by Intellisync in 2005. From 1998 to 2003, Dr. Banga was a senior engineer at Network Appliance. Dr. Banga holds a B.Tech. in computer science and engineering from the Indian Institute of Technology, Delhi, as well as M.S. and Ph.D. degrees in computer science from Rice University.

Mr. Gibbs joined the Company as Vice President of Business Development in March 2001, was promoted to Senior Vice President and General Manager of the Information Appliance Division in May 2001, became Senior Vice President and General Manager of the Global Sales and Support Division in October 2001, and then became Senior

Vice President and General Manager, Worldwide Field Operations in October 2005. From 1998 to 2001, Mr. Gibbs served as vice president, sales and Asia Pacific strategic accounts manager at FlashPoint Technologies, a company that provides embedded software solutions. From 1997 to 1998, Mr. Gibbs was vice president of sales at DocuMagix, Inc. Mr. Gibbs held a number of executive sales and business development positions with Insignia Solutions from 1993 to 1997. Mr. Gibbs holds a bachelor s degree in economics from the University of California at Los Angeles.

Mr. Chu joined the Company in April 2007 as Vice President, General Counsel and Secretary. Prior to Phoenix, Mr. Chu served as Director of Corporate Legal Affairs at Solectron Corporation, a leading global provider of supply chain and electronics manufacturing solutions, where he was responsible for corporate governance and securities matters and all acquisition, divestiture and other corporate transactions. Prior to Solectron, he was a Senior Attorney at Venture Law Group, where he represented numerous

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Silicon Valley technology companies and was a member of the firm s mergers and acquisitions group. Mr. Chu began his legal career as an associate in the New York and Helsinki offices of White & Case LLP, where he focused on banking, public offering and private placement transactions. He received his B.A. in Economics and Chinese Language and Literature from the University of Michigan and his J.D. from the University of Michigan Law School.

Available Information

The Company s website is located at www.phoenix.com. Through a link on the Investor Relations section of our website, we make available the following and other filings as soon as reasonably practicable after they are electronically filed with or furnished to the SEC: the Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and any amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934. All such filings are available free of charge. Also available on our website are printable versions of our Corporate Governance Guidelines, Audit Committee charter, Compensation Committee charter, Nominating and Corporate Governance Committee charter, Insider Trading Policy and Code of Ethics. Information accessible through our website does not constitute a part of, and is not incorporated into, this annual report or into any of our other filings with the SEC. Copies of the Company s fiscal year 2008 Annual Report on Form 10-K may also be obtained without charge by contacting Investor Relations, Phoenix Technologies Ltd., 915 Murphy Ranch Road, Milpitas, California, 95035 or by calling 408-570-1319.

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PART III

ITEM 12. *SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS MATTERS.*

Equity Compensation Plan Information

The following table gives information about the Company s Common Stock that may be issued upon the exercise of options, warrants and rights under all of our existing equity compensation plans as of September 30, 2008.

Plan Category	(a) Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights	(b) Weighted-Average Exercise Price of Outstanding Options, Warrants and Rights	(c) Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Securities Reflected in Column(a))
Equity compensation plans approved by security holders	5,573,782	$ 9.49	2,807,201
Equity compensation plans not approved by security holders(1)	2,182,500	$ 6.35	327,400
Total	7,756,282	$ 8.57	3,134,601

(1) See the description below of the material features of the equity compensation plans not approved by security holders that correlate with the numbers listed in the table.

1997 Non-Statutory Stock Option Plan

The Company s 1997 Non-Statutory Stock Option Plan (the 1997 Plan) has not been approved by the stockholders. The Board adopted the 1997 Plan to attract and retain the best available personnel for positions of substantial responsibility, to provide additional incentives to employees and consultants of the Company and to promote the success of the Company s business. Officers and directors of the Company are not eligible to receive option grants under the 1997 Plan. The 1997 Plan had a term of ten years which ended on July 17, 2007 (the Expiration Date). As of the Expiration Date, options can no longer be granted under the 1997 Plan.

The Board has reserved 1,317,576 shares of Common Stock for issuance under the 1997 Plan. As of September 30, 2008, 634,372 shares of Common Stock had been issued upon exercise of options granted under the 1997 Plan and options to purchase 359,900 shares were outstanding. As a result of the 1997 Plan s expiration, no shares remain available for future grant. Options granted under the 1997 Plan are non-statutory stock options that are not intended to qualify as incentive stock options as defined in Section 422 of the Internal Revenue Code of 1986, as amended. The 1997 Plan is administered by the Board or a committee appointed by the Board (as applicable, the Administrator). The Administrator determines the exercise price of options at the time the options are granted, when options become exercisable, and the acceptable form of consideration for exercising an option. Options granted under the 1997 Plan are generally not transferable other than by will or the laws of descent and distribution, and may be exercised during the optionee s lifetime only by the optionee.

2008 Acquisition Equity Incentive Plan

In April 2008, the Board of Directors of the Company adopted the 2008 Acquisition Equity Incentive Plan (the 2008 Acquisition Plan). Under the 2008 Acquisition Plan, at September 30, 2008, 650,000 shares had been authorized by the Board of Directors with 322,600 shares of common stock outstanding from prior awards and 327,400 available for future awards.

The 2008 Acquisition Plan is administered by the Board or a committee appointed by the Board and authorizes the issuance of stock-based awards, including non-statutory stock options and stock awards, to employees of companies that Phoenix acquires and to other persons the Company may issue securities to without stockholder approval in accordance with applicable NASDAQ rules. Stock options are granted at an exercise price of not less than the fair value of the Company s common stock on the date of grant; the Committee determines the prices of all other forms of stock awards in accordance with the terms of the 2008 Acquisition Plan. Initial stock option grants generally vest over a 48-month period, with 25% of the total shares vesting on the first anniversary of the date of grant and 6.25% of the remaining shares vesting quarterly over a 36-month period. All stock option grants generally expire ten years after the date of grant, unless the option holder terminates employment or his or her relationship with the Company prior to the expiration date. Vested options granted under the 2008 Acquisition Plan generally may be exercised for three months after termination of the optionee s service to the Company, except for options granted to directors or certain executives, in which case the option may be exercised up to 6 months following the date of termination, or in the case of death or disability, in which case the options generally may be exercised up to 12 months following the date of death or disability. The number of shares subject to any award, the exercise price and the number of shares issuable under this plan are subject to adjustment in the event of a change relating to the Company s capital structure.

Non-Plan Stock Option Agreements

Pursuant to a stock option agreement between Woodson Hobbs and the Company, dated September 6, 2006, Mr. Hobbs was granted a non-qualified stock option on September 6, 2006, to purchase 900,000 shares of Common Stock with an exercise price of $5.05 per share, the closing price of the Common Stock on September 6, 2006. Subject to certain vesting acceleration provisions, 1/4 of the shares underlying the option vested on September 6, 2007 and 1/48 is vesting each month after that date, conditioned upon Mr. Hobbs continued employment with the Company. The term of the option is ten years from the date of grant unless sooner terminated. Mr. Hobbs may elect to exercise this option with respect to unvested shares and enter into a Restricted Stock Purchase Agreement providing the Company with a repurchase right for the unvested shares. This repurchase right would lapse at the same rate as the options would have otherwise vested.

Pursuant to a stock option agreement between Richard Arnold and the Company, Mr. Arnold was granted a non-qualified stock option on September 27, 2006, to purchase 600,000 shares of Common Stock with an exercise price of $4.45 per share, the closing price of the Common Stock on that date. Subject to certain vesting acceleration provisions, 1/4 of the shares underlying the option vested on September 27, 2007 and 1/48 is vesting each month after that date, conditioned upon Mr. Arnold s continued employment with the Company. The term of the option is ten years from the date of grant unless sooner terminated. Mr. Arnold may elect to exercise this option with respect to unvested shares and enter into a Restricted Stock Purchase Agreement providing the Company with a repurchase right for the unvested shares. This repurchase right would lapse at the same rate as the options would have otherwise vested.

Non-Plan Restricted Stock Purchase Agreement

Pursuant to a restricted stock purchase agreement between Woodson Hobbs and the Company dated September 27, 2006, Mr. Hobbs received a grant of 100,000 shares of restricted stock in connection with the commencement of his employment with the Company. Subject to certain vesting acceleration provisions contained in Mr. Hobbs severance and change of control agreement, the restricted stock vests, the shares become nonforfeitable and the Company s right to repurchase the stock lapses with respect to 50% of the shares on September 6, 2008, and as to 12.5% of the shares every six months after that date, conditioned on Mr. Hobbs continued employment with the Company.

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ITEM 13. *CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE*

COMPENSATION COMMITTEE INTERLOCKS AND INSIDER PARTICIPATION

The members of the Compensation Committee during the Last Fiscal Year who are still on the Board of Directors were Messrs. Clair, Barnett and Tuchman. No executive officer of the Company served during the Last Fiscal Year on the board of directors or compensation committee of another entity that had one or more executive officers who served as a member of the Board or Compensation Committee of the Company.

MANAGEMENT INDEBTEDNESS, CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

Since the beginning of the Company s Last Fiscal Year, the Company has not engaged and does not propose to engage in any transaction or series of similar transactions in which the amount involved exceeded or exceeds $60,000 and in which any of our directors or executive officers, any Nominee, any holder of more than 5% of any class of our voting securities or any member of the immediate family of any of the foregoing persons had or will have a direct or indirect material interest, nor was any director or executive officer, any Nominee or any of their family members indebted to us or any of our subsidiaries, in any amount in excess of $60,000 at any time.

REVIEW, APPROVAL OR RATIFICATION OF TRANSACTIONS WITH RELATED PERSONS

Our Corporate Governance Guidelines provide that our Board of Directors is responsible for establishing and maintaining governance and compliance processes and procedures to ensure that the Company is managed with the highest standards of responsibility, ethics and integrity. One of the main purposes of our Nominating and Corporate Governance Committee is to develop and monitor the corporate governance practices of the Company. Transactions between Phoenix and any director or executive officer are reviewed by the Nominating and Corporate Governance Committee. In reviewing a potential related party transaction, the Nominating and Corporate Governance Committee considers all relevant facts and circumstances to determine whether such transaction is, or is not inconsistent with, the best interests of the Company and our stockholders.

Our directors and executive officers are also subject to our Code of Ethics. Our Code of Ethics requires that our directors and executive officers not have any personal interests that adversely influence the performance of their job responsibilities and avoid situations where the director or officer takes actions or has interests that may make it more difficult to perform his or her work for the Company objectively. The Code of Ethics advises our directors and executive officers to consult with our general counsel with respect to any actual or potential conflicts of interest.

On an annual basis and upon any new appointment of a director and executive officer, each is required to complete a Director and Officer Questionnaire, which requires disclosure of any related party transactions pertaining to the director or executive officer. Our Board of Directors will consider such information in its determinations of independence with respect to our directors under NASD Rule 4200 and the applicable rules promulgated by the SEC.

In addition, as part of our quarterly Sarbanes-Oxley compliance process, our general counsel reviews any transactions between the Company and its subsidiaries and related persons (as defined by SEC rules) that have occurred during the previous quarter and confirms that the appropriate procedures have been followed with respect to approval or ratification and disclosure of such transaction.

Each of the Code of Ethics, Nominating and Corporate Governance Committee Charter and Corporate Governance Guidelines is available on our website at *www.phoenix.com*.

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PART IV

ITEM 15. *EXHIBITS AND FINANCIAL STATEMENT SCHEDULES*

(b) Exhibits

See Exhibit Index attached hereto.

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SIGNATURES

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

PHOENIX TECHNOLOGIES LTD.

By: /s/ WOODSON M. HOBBS
Woodson M. Hobbs
President and Chief Executive Officer

Date: June 1, 2009

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

/s/ WOODSON M. HOBBS	/s/ RICHARD W. ARNOLD
Woodson M. Hobbs President and Chief Executive Officer *(Principal Executive Officer)*	Richard W. Arnold Chief Operating Officer and Chief Financial Officer *(Principal Financial and Accounting Officer)*
Date: June 1, 2009	Date: June 1, 2009
*	*
Michael M. Clair Chairman of the Board	Douglas E. Barnett Director
Date: June 1, 2009	Date: June 1, 2009
*	*
Mitchell Tuchman Director	Richard M. Noling Director
Date: June 1, 2009	Date: June 1, 2009

* By: /s/ Woodson M. Hobbs, Attorney-in-fact

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EXHIBIT INDEX

Exhibit Number	Description
2.1	Agreement and Plan of Merger dated April 9, 2008 by and among Phoenix, Andover Merger Sub, Inc. and TouchStone Software Corporation (incorporated herein by reference to Exhibit 2.1 to Phoenix s Current Report on Form 8-K dated April 10, 2008).
2.2	Form of Voting Agreement (incorporated herein by reference to Exhibit 2.2 to Phoenix s Current Report on Form 8-K dated April 10, 2008).
2.3**	Share Purchase Agreement dated as of March 26, 2008 by and among Phoenix, BeInSync Ltd., the Shareholders of BeInSync Ltd. and the Representative of the Shareholders (incorporated herein by reference to Exhibit 2.3 to Phoenix s Quarterly Report on Form 10-Q for the quarter ended March 31, 2008).
2.4**	Stock Purchase Agreement dated as of July 23, 2008 by and among Phoenix, General Software, Inc., the Shareholder of General Software, Inc., and the Representative of the Shareholder (previously filed with Phoenix s Annual Report on Form 10-K for the fiscal year ended September 30, 2008).
3.1	Amended and Restated Certificate of Incorporation of Phoenix dated January 2, 2008 (incorporated herein by reference to Exhibit 3.1 to Phoenix s Quarterly Report on Form 10-Q for the quarter ended December 31, 2007).
3.2	By-laws of Phoenix as amended through September 17, 2008 (incorporated herein by reference to Exhibit 3.1 to Phoenix s Current Report on Form 8-K filed with the SEC on September 22, 2008).
4.1	Amended and Restated Preferred Share Purchase Rights Plan dated as of October 5, 2007 (incorporated herein by reference to Exhibit 4.1 to Amendment No. 1 to Form 8-A filed with the SEC on October 9, 2007).
10.1*	1994 Equity Incentive Plan, as amended through February 28, 1996 (incorporated herein by reference to Exhibit 10.17 to Phoenix s Report on Form 10-K for fiscal year ended September 30, 1995).
10.2*	1996 Equity Incentive Plan, as amended through December 12, 1996 (incorporated herein by reference to Exhibit 4.2 to Phoenix s Registration Statement on Form S-8 filed on January 27, 1997, Registration Statement No. 333-20447).
10.3*	1997 Nonstatutory Stock Option Plan (incorporated herein by reference to Exhibit 4.1 to Phoenix s Registration Statement on Form S-8 filed on October 2, 1997, Registration Statement No. 333-37063).
10.4*	1998 Stock Plan (incorporated herein by reference to Exhibit 99.1 to Phoenix s Registration Statement on Form S-8 filed on June 5, 1998, Registration Statement No. 333-56103).
10.5*	1999 Director Option Plan (incorporated herein by reference to Exhibit 4.2 to Phoenix s Registration Statement on Form S-8 filed on December 5, 2001, Registration Statement No. 333-74532).
10.5.1*	Form of Stock Option Agreement for 1999 Director Option Plan (incorporated herein by reference to Exhibit 10.6.1 to Phoenix s Report on Form 10-K for the year ended September 30, 2005).
10.6*	1999 Stock Plan (incorporated herein by reference to Exhibit 10.1 to Phoenix s Report on Form 10-Q for the quarter ended March 31, 2002).
10.6.1*	Form of Stock Option Agreement for 1999 Stock Plan (incorporated herein by reference to Exhibit 10.7.1 to Phoenix s Report on Form 10-K for the year ended September 30, 2005).
10.6.2*	Form of Option Agreement for performance-based stock options for Woodson Hobbs, Richard Arnold, Gaurav Banga and David Gibbs (incorporated herein by reference to Exhibit 10.3 to Phoenix s Quarterly Report on Form 10-Q for the quarter ended December 31, 2007).
10.6.3*	Form of Restricted Stock Purchase Agreement for 1999 Stock Plan (incorporated herein by reference to Exhibit 10.6.2 to Phoenix s Report on Form 10-K for the year ended September 30, 2006).

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Exhibit Number	Description
10.7*	2007 Equity Incentive Plan (incorporated herein by reference to Exhibit 10.1 to Phoenix s Quarterly Report on Form 10-Q for the quarter ended December 31, 2007).
10.7.1*	Form of Stock Option Agreement for 2007 Equity Incentive Plan (incorporated herein by reference to Exhibit 10.2 to Phoenix s Quarterly Report on Form 10-Q for the quarter ended December 31, 2007).
10.8*	2008 Acquisition Equity Incentive Plan (incorporated herein by reference to Exhibit 10.1 to Phoenix s Quarterly Report on Form 10-Q for the quarter ended March 31, 2008).
10.9*	2001 Employee Stock Purchase Plan, as amended and restated as of September 19, 2007 and generally effective as of December 1, 2007 (incorporated herein by reference to Exhibit 10.4 to Phoenix s Quarterly Report on Form 10-Q for the quarter ended December 31, 2007).
10.10*	Director Compensation Plan effective as of April 1, 2008 (incorporated herein by reference to Exhibit 10.1 to Phoenix s Quarterly Report on Form 10-Q for the quarter ended June 30, 2008).
10.11*	Severance and Change of Control Agreement originally dated January 11, 2006, as amended and restated effective July 25, 2006, between Phoenix and David L. Gibbs (incorporated herein by reference to Exhibit 10.9 to Phoenix s Report on Form 10-K for the year ended September 30, 2006).
10.12*	Offer Letter dated September 6, 2006 between Phoenix and Woodson Hobbs (incorporated herein by reference to Exhibit 10.1 to Phoenix s Current Report on Form 8-K dated September 6, 2006).
10.13*	Stock Option Agreement between Phoenix and Woodson Hobbs dated September 6, 2006 (incorporated herein by reference to Exhibit 10.2 to Phoenix s Current Report on Form 8-K dated September 6, 2006).
10.14*	Restricted Stock Purchase Agreement between Phoenix and Woodson Hobbs dated September 6, 2006 (incorporated herein by reference to Exhibit 10.3 to Phoenix s Current Report on Form 8-K dated September 6, 2006).
10.15*	Severance and Change of Control Agreement between Phoenix and Woodson Hobbs dated September 6, 2006 (incorporated herein by reference to Exhibit 10.4 to Phoenix s Current Report on Form 8-K dated September 6, 2006).
10.16*	Severance and Change of Control Agreement between Phoenix and Richard Arnold (incorporated herein by reference to Exhibit 10.2 to Phoenix s Current Report on Form 8-K dated November 1, 2006).
10.17*	Form of Severance and Change of Control Agreement between Phoenix and each of Gaurav Banga and Timothy Chu (incorporated herein by reference to Exhibit 10. 21 to Phoenix s Annual Report on Form 10-K for the year ended September 30, 2006).
10.18*	Stock Option Agreement between Phoenix and Richard Arnold dated September 26, 2006 (incorporated herein by reference to Exhibit 10.1 to Phoenix s Current Report on Form 8-K dated November 1, 2006).
10.19*	Form of Indemnification Agreement (incorporated herein by reference to Exhibit 10.5 to Phoenix s Report on Form 8-K dated September 6, 2006).
10.20**	Amendment to Technology and License Services Agreement dated as of November 15, 2007 by and between Phoenix and Quanta Computer Inc. (incorporated herein by reference to Exhibit 10.5 to Phoenix s Quarterly Report on Form 10-Q for the quarter ended December 31, 2007).
10.21**	Technology Licensing and Services Agreement dated as of April 26, 2007 by and between Phoenix and Lenovo (Singapore) Pte. Ltd.
10.22**	Asset Purchase Agreement dated as of August 2, 2007 by and between Phoenix and XTool Mobile Security, Inc. (incorporated herein by reference to Exhibit 10.18 to Phoenix s Annual Report on Form 10-K for the fiscal year ended September 30, 2007).
21.1	Subsidiaries of the Registrant (incorporated herein by reference to Exhibit 21.1 to Phoenix s Annual Report on Form 10-K for the fiscal year ended September 30, 2008).
23.1	Consent of Independent Registered Public Accounting Firm (previously filed with Phoenix s Annual Report on Form 10-K for the fiscal year ended September 30, 2008).
24	Power of Attorney (see signature page).

31.1 Certification of Principal Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.

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Exhibit Number	Description
31.2	Certification of Principal Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Certification of Principal Executive Officer Pursuant to 18 U.S.C. Section 1350.
32.2	Certification of Principal Financial Officer Pursuant to 18 U.S.C. Section 1350.

* *Management contract or compensatory plan or arrangement.*

** *Confidential Treatment has been obtained with respect to certain portions of this exhibit and the omitted portions have been filed separately with the Securities and Exchange Commission.*