NATIONAL BEVERAGE CORP
Form 10-Q
March 07, 2013

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

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

For the Quarterly Period Ended January 26, 2013

Commission file number 1-14170

NATIONAL BEVERAGE CORP.
(Exact name of registrant as specified in its charter)

Delaware	59-2605822
(State of incorporation)	(I.R.S. Employer Identification No.)

8100 SW Tenth Street, Suite 4000, Fort Lauderdale, FL 33324
(Address of principal executive offices including zip code)

(954) 581-0922
(Registrant's telephone number including area code)

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 (ü) No ( )

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 (§232.405 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 (ü) No ( )

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. Large accelerated filer ( ) Accelerated filer (ü) Non-accelerated filer ( ) Smaller reporting company ( )

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

The number of shares of registrant's common stock outstanding as of February 28, 2013 was 46,329,015.

NATIONAL BEVERAGE CORP.
QUARTERLY REPORT ON FORM 10-Q
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PART I - FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS
NATIONAL BEVERAGE CORP. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS (UNAUDITED)
(In thousands, except share amounts)

	January 26, 2013	April 28, 2012
Assets		
Current assets:		
Cash and equivalents	$ 18,495	$ 35,626
Trade receivables - net of allowances of $454 ($399 at April 28)	51,178	61,591
Inventories	41,662	40,862
Deferred income taxes - net	3,413	3,550
Prepaid and other assets	4,131	4,425
Total current assets	118,879	146,054
Property, plant and equipment - net	55,770	56,729
Goodwill	13,145	13,145
Intangible assets	1,615	1,615
Other assets	5,818	5,445
Total assets	$ 195,227	$ 222,988
Liabilities and Shareholders' Equity		
Current liabilities:		
Accounts payable	$ 34,926	$ 54,875
Accrued liabilities	16,376	21,279
Income taxes payable	589	82
Total current liabilities	51,891	76,236
Long-term debt	60,000	-
Deferred income taxes - net	13,769	14,214
Other liabilities	10,791	10,902
Shareholders' equity:		
Preferred stock, $1 par value - 1,000,000 shares authorized:		
Series C - 150,000 shares issued	150	150
Series D - 400,000 shares issued at January 26, aggregate liquidation preference of $20,000	400	-
Common stock, $.01 par value - 75,000,000 shares authorized; 50,361,799 shares issued (50,321,559 shares at April 28)	504	503
Additional paid-in capital	50,248	30,425
Retained earnings	25,881	109,200
Accumulated other comprehensive loss	(407)	(642)
Treasury stock - at cost:		
Series C preferred stock - 150,000 shares	(5,100)	(5,100)
Common stock - 4,032,784 shares	(12,900)	(12,900)
Total shareholders' equity	58,776	121,636
Total liabilities and shareholders' equity	$ 195,227	$ 222,988

See accompanying Notes to Consolidated Financial Statements.

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NATIONAL BEVERAGE CORP. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF INCOME (UNAUDITED)
(In thousands, except per share amounts)

	Three Months Ended		Nine Months Ended	
	January 26, 2013	January 28, 2012	January 26, 2013	January 28, 2012
Net sales	$ 144,723	$ 136,401	$ 494,140	$ 463,455
Cost of sales	98,370	91,166	334,903	303,043
Gross profit	46,353	45,235	159,237	160,412
Selling, general and administrative expenses	33,930	33,415	106,310	110,686
Interest expense	116	31	179	85
Other expense - net	23	11	145	81
Income before income taxes	12,284	11,778	52,603	49,560
Provision for income taxes	3,870	3,874	17,780	17,098
Net income	$ 8,414	$ 7,904	$ 34,823	$ 32,462
Earnings per common share				
Basic	$ .18	$ .17	$ .75	$ .70
Diluted	$ .18	$ .17	$ .75	$ .70
Weighted average common shares outstanding:				
Basic	46,321	46,276	46,304	46,263
Diluted	46,482	46,472	46,478	46,441

See accompanying Notes to Consolidated Financial Statements.

NATIONAL BEVERAGE CORP. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (UNAUDITED)
(In thousands)

	Three Months Ended Janua" face="Times New Roman" style="font-size:1.0pt;">	Nine Months Ended
Ajay Ramachandran(9)	180,206	*
Gerald F. Chew(10)	126,825	*
Douglas G. Marshall(11)	120,655	*
Richard W. Smith(12)	73,861	*
Thomas Lim	500	*
All Directors and Executive Officers as a group (7 persons)(13)	16,172,216	59 %

* Represents less than 1%

(1) Except as otherwise indicated below, we believe the persons whose names appear in the table above have sole voting and investment power with respect to all shares of stock shown as beneficially owned by them, subject to applicable community property laws.

(2) Represents options to purchase 1,050,000 shares of Common Stock exercisable within 60 days of November 30, 2006, held by Mr. Baab. Also includes the following shares beneficially owned by Astoria: 14,555,569 shares of Common Stock, which includes 4,149,918 shares of Common Stock which may be acquired upon the conversion of a subordinated convertible note payable to Astoria for $20,749,581 convertible at $5.00 per share plus 211,420 shares of Common Stock issued in lieu of cash payments to cover accrued interest on the note on a quarterly basis. Mr. Baab is an employee of ACM, which is a general partner of Astoria. As a general partner of Astoria, ACM has a special profit interest in Astoria s realized and unrealized gains and income in excess of a specified hurdle rate, subject to certain additional conditions. As an employee of ACM, Mr. Baab is entitled to an annual bonus equal to a fixed percentage of any special profit allocation Astoria receives for the year in question. Mr. Baab, who is on formal leave of absence from ACM, disclaims beneficial ownership of the securities held by Astoria as he does not hold voting or investment power over the holdings of Astoria.

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(3) Includes the following shares beneficially owned by Astoria: 14,555,569 shares of Common Stock, which includes 4,149,918 shares of Common Stock which may be acquired upon the conversion of a subordinated convertible note payable to Astoria for $20,749,581 convertible at $5.00 per share plus 211,420 shares of Common Stock issued in lieu of cash payments to cover accrued interest on the note on a quarterly basis. Also includes 64,600 shares beneficially owned by Mr. Koe and ACM through an investment fund managed by ACM. Mr. Koe is the President and sole stockholder of ACM and Mr. Koe and ACM are the General Partners of Astoria.

(4) The principal address of Astoria is 1675 SW Marlow Avenue, Suite 315 Portland, Oregon 97225. Includes 4,149,918 shares of Common Stock which may be acquired upon the conversion of a subordinated convertible note payable to Astoria for $20,749,581 convertible at $5.00 per share plus 211,420 shares of Common Stock issued in lieu of cash payments to cover accrued interest on the note on a quarterly basis. Also includes 500,100 shares of Common Stock issued upon conversion of Series A Convertible Preferred Stock.

(5) The principal address of the Philip and Debra Barrett Charitable Trust is P.O. Box 1033, Vancouver, Washington 98666. The Philip and Debra Barrett Charitable Trust has shared voting and dispositive power over the 1,348,168 shares of Common Stock with Philip Barrett and Debra Barrett.

(6) The principal address for Mr. Barrett is P.O. Box 1033, Vancouver, Washington 98666. Includes 1,348,168 shares of Common Stock owned by the Philip and Debra Barrett Charitable Trust.

(7) The principal address for Ms. Barrett is P.O. Box 1033, Vancouver, Washington 98666. Includes 1,348,168 shares of Common Stock owned by the Philip and Debra Barrett Charitable Trust.

(8) The principal address of Rockport is 1675 SW Marlow Avenue, Suite 315 Portland, Oregon 97225.

(9) Includes options to purchase 180,206 shares of Common Stock exercisable within 60 days of November 30, 2006, held by Mr. Ramachandran.

(10) Includes options to purchase 96,825 shares of Common Stock exercisable within 60 days of November 30, 2006, held by Mr. Chew.

(11) Includes options to purchase 96,825 shares of Common Stock exercisable within 60 days of November 30, 2006, held by Mr. Marshall.

(12) Includes 47,000 shares of Common Stock owned by Mr. Smith directly and 3,250 shares of Common Stock held by his children. Mr. Smith disclaims beneficial ownership of the shares owned by his children. Also includes options to purchase 23,611 shares of Common Stock exercisable within 60 days of November 30, 2006, held by Mr. Smith.

(13) Includes an aggregate of 1,512,067 shares of Common Stock issuable upon exercise of options and warrants exercisable within 60 days of November 30, 2006, 4,149,918 shares of Common Stock which may be acquired upon the conversion of a subordinated convertible note payable to Astoria for $20,749,581 convertible at $5.00 per share plus 211,420 shares of Common Stock issued in lieu of cash payments to cover accrued interest on the note on a quarterly basis.

EXECUTIVE COMPENSATION AND OTHER INFORMATION

Executive Officers

The following sets forth certain information regarding our executive officers as of November 30, 2006:

Name	Age	Position(s)
Carlton H. Baab	49	President, Chief Executive Officer and Director
Thomas G. Lim	38	Chief Financial Officer, Vice President Finance and Secretary
Ajay Ramachandran	33	CTO & Vice President, XML-Centric Applications & Platforms

Mr. Baab joined us as the President and Chief Executive Officer in August 2001 and was appointed as a member of the Board in December 2001. From May 2001 to August 2001, Mr. Baab served as a Managing Principal of ACM; a Securities and Exchange Commission (the SEC) registered investment advisor and a General Partner of Astoria, a significant stockholder of ours. In August 2001, Mr. Baab took a formal leave of absence from ACM to join us. From March 2000 to April 2001, Mr. Baab was the Vice President of Finance and Chief Financial Officer of Certive, Inc., a web-based small-business services firm. From January 1999 to March 2000, Mr. Baab was the Chief Operating Officer and Chief Financial Officer of RemarQ Communities, Inc., a web-based provider of discussion group services. Mr. Baab served as Chief Financial Officer of the CKS Group (CKS), a marketing communications company, from February 1994 through December 1998. In addition, Mr. Baab served as an Executive Vice President and the Secretary of CKS from August 1995 through December 1998 and as CKS s Chief Operating Officer from August 1995 through May 1996. Mr. Baab also served on the Board of Directors of Momentum Business Applications, Inc. (Nasdaq: MMTM), which provided research and development expertise on a contract basis, until it was acquired by PeopleSoft (Nasdaq: PSFT) in April 2002. Mr. Baab also serves on the University of Southern California, School of Engineering Board of Councilors. Mr. Baab holds a B.S. in Electrical Engineering, with honors, from the University of Southern California and an M.B.A. from the Harvard Graduate School of Business Administration.

Mr. Lim has served as our Chief Financial Officer and Vice President, Finance since May 2006 and has served as Secretary since August 2006. Prior to joining Raining Data, from March 2004 to May 2006, Mr. Lim served as the Director of Finance and Controller of WageWorks, Inc., an employee benefits administration firm. Mr. Lim served as the Director of Finance of DNA Sciences, Inc., a bio-research company, from October 2002 to January 2004, and as the Corporate Controller of Certive Corporation, a software company, from June 2000 to September 2002. Mr. Lim holds a B.S. in Accounting and Finance from the University of California, Berkeley, Haas School of Business and an M.B.A. from the University of California, Berkeley, Haas School of Business. Mr. Lim is a Certified Public Accountant.

Mr. Ramachandran joined Raining Data as Vice President and General Manager of the Enterprise Applications Group in April 2004. He was promoted to CTO and Vice President of XML-Centric Applications and Platforms in May 2006. From October 2001 to April 2004, Mr. Ramachandran served as a Founding General Partner of Ark Venture Partners LLC, a management advisory and private equity firm. From April 1999 to September 2001, Mr. Ramachandran was a Co-Founder at Electron Economy, a venture capital funded supply chain workflow and XML integration software company, where he was the Vice President of Business Development and Strategic Alliances between April 1999 to July 2000 and the Vice President of Business Development and Product Management from July 2000 to September 2001. From December 1997 to July 1999, Mr. Ramachandran was a Partner and Practice Leader of the E-Commerce Business Unit at USWeb/CKS Corporation, a leading Internet Professional Services Firm. From June 1996 to December 1997, Mr. Ramachandran was a Partner and Director of Technology and Internet Applications at Utopia, Inc. Mr. Ramachandran serves on the boards of several early stage ventures and is the technical chair of the World Wide Consortium of the GRID. Mr. Ramachandran holds a B.S. in Molecular Cellular Biology and B.A. in Communications, from the University of California at Davis.

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Compensation of Executive Officers

The following table sets forth the compensation of our Named Executive Officers, which consist of (i) all persons serving as the chief executive officer during the fiscal year and (ii) the four most highly compensated executive officers serving as such at the end of the fiscal year, in addition to the chief executive officer and (iii) up to two additional individuals for whom disclosure would have been provided pursuant to subsection (ii) above but for the fact that the individual was not serving as an executive officer at the end of the fiscal year ended March 31, 2006:

Summary Compensation Table

	Annual Compensation			Long Term Compensation Awards	
Name and Principal Position	**Year**	**Salary($)**	**Bonus($)**	**Securities Underlying Options(#)**	**All Other Compensation**
Carlton H. Baab(1)	2006	$ 248,000	$ 151,032		$ 15,882
President and Chief Executive Officer	2005	$ 248,000	$ 150,888		$ 14,322
	2004	$ 248,000	$ 150,702		$ 11,510
Ajay Ramachandran(2)	2006	$ 175,000	$ 87,500		$
CTO & Vice President, XML-Centric	2005	$ 167,000	$	250,000	$
Applications & Platforms	2004	$	$		$
Gwyneth Gibbs(3)	2006	$ 206,018	$		$ 31,106
Vice President, European Operations	2005	$ 212,159	$		$ 31,853
	2004	$ 181,631	$		$ 27,670
Soheil Raissi	2006	$ 200,000	$ 35,832		$
Vice President, Product Development &	2005	$ 200,000	$ 70,773	70,000	$
Professional Services	2004	$ 200,000	$ 70,673		$
Brian C. Bezdek	2006	$ 175,000	$ 61,978		$
Chief Financial Officer and Secretary	2005	$ 175,000	$ 61,954	75,000	$
	2004	$ 175,000	$ 61,933		$
Mark Allen(4)	2006	$ 130,000	$ 22,750		$ 12,000
Vice President, Worldwide Customer	2005	$ 130,000	$ 45,500		$ 12,000
Support & Training	2004	$ 130,000	$ 45,500		$ 12,000

(1) All Other Compensation reflects payments to a continuing medical plan Mr. Baab had in place at the time he joined us.

(2) Mr. Ramachandran joined the Company in April 2004.

(3) All Other Compensation reflects pension contributions paid by us on behalf of Mrs. Gibbs.

(4) All Other Compensation reflects housing reimbursements paid by us on behalf of Mr. Allen.

Aggregated Option Exercises in Last Fiscal Year and Year-End Option Values

The Named Executive Officers exercised no options during the last fiscal year.

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The following table shows, as to the Named Executive Officers, the value of unexercised options at March 31, 2006:

	Underlying Unexercised Options at Fiscal Year End(#)		Value of Unexercised In-the-Money Options at Fiscal Year End($)(1)	
Name	**Exercisable**	**Unexercisable**	**Exercisable**	**Unexercisable**
Carlton H. Baab	1,050,000		$ 1,286,500	$
Ajay Ramachandran	128,122	146,878	$	$
Gwyneth Gibbs	121,000		$ 25,000	$
Soheil Raissi	200,624	49,376	$ 129,600	$
Brian C. Bezdek	182,290	67,710	$ 69,572	$ 10,928
Mark Allen	44,791	5,209	$	$

(1) In accordance with SEC rules, values are calculated by subtracting the exercise price from the fair market value of the underlying common stock. For purposes of this table, fair market value is deemed to be closing price of the common stock on March 31, 2006, which was $2.73 per share.

Employment Contracts and Termination of Employment and Change-in-Control Arrangements

Effective April 5, 2002, we entered into an offer letter agreement with Mr. Bezdek. The offer letter provides for full vesting of Mr. Bezdek s options upon an involuntary termination of his employment other than for cause within twelve (12) months following a change of control. In addition, the offer letter provides for severance benefits, including payment of his base salary for six (6) months and acceleration of six (6) months of vesting of his stock options, upon termination of his employment without cause. Mr. Bezdek voluntarily terminated his employment effective May 5, 2006.

Effective June 21, 2002, we entered into an Amendment to Stock Option Agreement with Mr. Raissi, which amended two Stock Option Agreements, dated October 10, 2001 and April 26, 2002, between Mr. Raissi and us, to, in each case, provide for 100% acceleration of vesting of his stock options in the event he is terminated without cause within twelve (12) months following a change of control. Mr. Raissi voluntarily terminated his employment effective April 25, 2006.

Effective April 5, 2003, we entered into a Severance and Change of Control Agreement with Mr. Baab. The agreement provides for twelve (12) months severance at Mr. Baab s salary rate then in effect in the event of his involuntary termination of employment. In the event of Mr. Baab s termination without cause within twelve (12) months following a change of control, the agreement provides for 100% acceleration of vesting of his stock options, as well as severance payments equal to 200% of the aggregate salary and bonus paid to Mr. Baab during the twelve (12) months preceding his termination.

Effective March 17, 2004, we entered into an offer letter agreement with Mr. Ramachandran. The offer letter provides for full vesting of Mr. Ramachandran s options upon an involuntary termination of his employment other than for cause within twelve (12) months following a change of control. In addition, the offer letter provides for severance benefits, including payment of his base salary for six (6) months upon termination of his employment without cause.

Effective April 1, 2004, we entered into a Service Agreement with Mrs. Gibbs. The Service Agreement outlines Mrs. Gibbs annual compensation and may only be terminated by either party by the giving of six months prior written notice. Mrs. Gibbs voluntarily terminated her employment effective July 31, 2006.

Compensation of Directors

We reimburse directors for travel and other out-of-pocket expenses incurred in attending Board meetings. We do not pay cash compensation to our directors. We granted 50,000 options to Richard W. Smith during the year ended March 31, 2006.

Section 16(a) Beneficial Ownership Reporting Compliance

Section 16(a) of the Exchange Act requires our officers, directors and persons who own more than ten percent (10%) of a registered class of our equity securities to file certain reports of ownership with the SEC and with the National Association of Securities Dealers, Inc. To our knowledge, based solely on a review of the copies of such reports furnished to the Company and any written representations that no other reports were required, all reports required to be filed during the fiscal year ended March 31, 2006 pursuant to Section 16(a) of the Exchange Act by directors, executive officers and ten percent (10%) beneficial owners were filed on timely basis.

Certain Relationships and Related Party Transactions

In January 2003, we entered into a Note Exchange Agreement (the Exchange Agreement) with Astoria to replace the existing Secured Promissory Note, as amended, with a Convertible Subordinated Note. Under the terms of the Exchange Agreement, the Secured Promissory Note was exchanged and replaced with a Convertible Subordinated Note having a principal amount of $22.1 million, which principal amount was equal to the outstanding principal and accrued interest payable on the Secured Promissory Note as of the date of the Exchange Agreement. In October 2005, Astoria assigned a portion of its Common Stock holdings totaling 870,536 shares and a portion of the Convertible Subordinated Note, totaling $1,751,832, to two of its limited partners. As such, the Company issued an Amended and Restated Note to Astoria for $20,749,581 and corresponding notes directly to the limited partners for $862,979 and $888,853, respectively. The Convertible Subordinated Notes are convertible into Common Stock at any time, at the option of the holder, at a price of $5.00 per share. The Convertible Subordinated Note matures on May 30, 2008, extending the May 30, 2003 maturity date of the Secured Promissory Note. Under terms of the Note, the Company was unable to redeem the Convertible Subordinated Note prior to January 30, 2005. The interest rate of the Convertible Subordinated Note is 5% per annum as compared to an interest rate of 10% per annum under the Secured Promissory Note. The interest is payable quarterly at our option in cash or through increases to the outstanding principal of the Convertible Subordinated Note. Mr. Koe, a director of the Company, is the President and sole stockholder of ACM, and Mr. Koe and ACM are the General Partners of Astoria. Mr. Baab, our President, Chief Executive Officer and a director of the Company, is an employee of ACM. As an employee of ACM, Mr. Baab is entitled to an annual bonus equal to a fixed percentage of any special profit allocation Astoria receives for the year in question. Mr. Baab is currently on a formal leave of absence from ACM.

On December 14, 2004, we entered into an Agreement Regarding Amended and Restated Common Stock Purchase Warrant and 5% Convertible Subordinated Note Due 2008 with Astoria whereby we could redeem, in part, the Convertible Subordinated Note in advance of January 30, 2005. On December 14, 2004, Astoria exercised its warrant in the amount of $2,670,904. In lieu of a cash payment, we used the proceeds of the exercise to pay down a portion of the indebtedness to Astoria. The paydown consisted of $247,129 for accrued and unpaid interest, and $2,423,775 as a reduction of principal of the Convertible Subordinated Note. As of September 30, 2006 we increased the principal of the Convertible Subordinated Notes by $1,057,100 in lieu of cash payments for the interest. For the foreseeable future, we expect to increase the principal of the Convertible Subordinated Notes in lieu of cash payments for the interest. If the Convertible Subordinated Notes are converted into Common Stock, our stockholders may experience substantial dilution. Unlike the Secured Promissory Note, the Convertible Subordinated Notes are not secured by our assets.

The Philip and Debra Barrett Charitable Remainder Trust, a significant stockholder of ours, loaned us $250,000 in September 2000. The loan, as amended, had a maturity date of April 2, 2003 with interest accruing at 10% per annum, payable quarterly. The note was paid in full on April 2, 2003.

A description of the terms of the Severance and Change of Control Agreement between us and Mr. Baab and the offer letter agreement between us and Mr. Ramachandran, may be found under the caption Employment Contracts and Termination of Employment and Change-in-Control Arrangements above.

We have entered into our standard form of indemnification agreement with each of our directors and officers.

Any transactions between us and our officers, directors, five percent (5%) stockholders and their affiliates must be pre-approved by the Company s Audit Committee.

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REPORT OF AUDIT COMMITTEE

To the Board of Directors:

We have reviewed and discussed with management the Company s audited financial statements as of and for the fiscal year ended March 31, 2006.

We have discussed with KPMG LLP the matters required to be discussed by Statement on Auditing Standards No. 61, Communication with Audit Committees, as amended.

We have received and reviewed the written disclosures and the letter from KPMG LLP required by Independence Standard No. 1, Independence Discussions with Audit Committees, as amended, by the Independence Standards Board, and have discussed with the auditors their independence.

Based on the reviews and discussions referred to above, we recommended to the Board of Directors that the financial statements referred to above be included in the Company s Annual Report on Form 10-KSB for the fiscal year ended March 31, 2006.

We have also considered whether the provision of services by KPMG LLP, other than services related to the audit of the financial statements referred to above and the review of the interim financial statements included in the Company s quarterly reports on Form 10-QSB for the most recent fiscal year, is compatible with maintaining the independence of KPMG LLP.

Respectfully submitted by:

Gerald F. Chew

Douglass G. Marshall

Richard W. Smith

* * *

The foregoing Audit Committee Report shall not be deemed to be soliciting material or filed or incorporated by reference in any previous or future documents filed by the Company with the Securities and Exchange Commission under the Securities Act of 1933 or the Securities Exchange Act of 1934, except to the extent that the Company specifically incorporates the Report by reference in any such document.

STOCKHOLDER PROPOSALS FOR NEXT ANNUAL MEETING

Stockholders may submit proposals on matters appropriate for stockholder action at subsequent annual meetings of the Company consistent with Rule 14a-8 promulgated under the Exchange Act and the Bylaws of the Company, which may be amended from time to time. Proposals of stockholders intended to be presented at the Company s next annual meeting of stockholders must be received by the Company (Attention: Secretary, at the principal offices of the Company) no later than July 10, 2007, for inclusion in the Company s proxy statement and form of proxy for that meeting. If you intend to present a proposal at our 2007 annual meeting, but you do not intend to have it included in our 2007 proxy statement, you must provide written notice of the stockholder proposal to the Company (Attention: Secretary, at the principal offices of the Company) no later than July 24, 2007.

OTHER MATTERS

The Board does not intend to bring any matters before the Annual Meeting other than as stated in this Proxy Statement and is not aware that any other matters will be presented for action at the Annual Meeting. Should any other matters be properly presented, the Proxy Agents will vote the proxy with respect thereto in accordance with their best judgment, pursuant to the discretionary authority granted by the proxy.

Copies of the Company s recent reports on Form 10-KSB and Form 10-QSB as filed with the Securities and Exchange Commission will be provided to stockholders without charge upon written or oral request to Thomas G. Lim, Chief Financial Officer, Vice President of Finance and Corporate Secretary, Raining Data Corporation, 25A Technology Drive, Irvine, California 92618, telephone number (949) 442-4400. Copies may also be obtained from the Company s website at www.rainingdata.com.

The SEC has adopted rules that permit companies and intermediaries (e.g., brokers) to satisfy the delivery requirements for annual reports and proxy statements with respect to two or more security holders sharing the same address by delivering a single annual report and proxy statement addressed to those security holders. This process, which is commonly referred to as householding, potentially means extra convenience for security holders and cost savings for companies.

This year, brokers with account holders who are Raining Data Corporation stockholders may be householding our proxy materials. A single annual report and proxy statement will be delivered to multiple stockholders sharing an address unless contrary instructions have been received from the affected stockholders. Once you have received notice from your broker or us that they will be householding communications to your address, householding will continue until you are notified otherwise or until you revoke your consent. If, at any time, you no longer wish to participate in householding and would prefer to receive a separate annual report and proxy statement, please notify your broker and direct your request to Thomas G. Lim, Chief Financial Officer, Vice President of Finance and Corporate Secretary, Raining Data Corporation, 25A Technology Drive, Irvine, California 92618, telephone number (949) 442-4400.

By Order of the Board of Directors,

Richard W. Koe
Chairman of the Board

January 18, 2007
Irvine, California

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Annex A

**CHARTER FOR THE AUDIT COMMITTEE
OF THE BOARD OF DIRECTORS
OF
RAINING DATA CORPORATION**

PURPOSE:

The Board of Directors of Raining Data Corporation (the **Board** and the **Company**, respectively) has established an Audit Committee, whose purpose shall be to:

- Oversee the accounting and financial reporting processes of the Company and audits of the financial statements of the Company;

- Assist the Board in oversight and monitoring of (i) the integrity of the Company s financial statements, (ii) the Company s compliance with legal and regulatory requirements, (iii) the independent auditor s qualifications, independence and performance, and (iv) the Company s internal accounting and financial controls;

- Prepare the report that the rules of the Securities and Exchange Commission (the **SEC**) require be included in the Company s annual proxy statement;

- Provide the Company s Board with the results of its monitoring and recommendations derived therefrom; and

- Provide to the Board such additional information and materials as it may deem necessary to make the Board aware of significant financial matters that require the attention of the Board.

In addition, the Audit Committee will undertake those specific duties and responsibilities listed below and such other duties as the Board may from time to time prescribe.

MEMBERSHIP:

The Audit Committee members will be appointed by, and will serve at the discretion of, the Board. The Audit Committee will consist of at least three (3) members of the Board. Members of the Audit Committee must meet the following criteria (as well as any criteria required by the SEC):

- Each member will be an independent director, as defined in (i) NASDAQ Rule 4200 and (ii) the rules of the SEC;

- Each member will be able to read and understand fundamental financial statements, in accordance with the NASDAQ National Market Audit Committee requirements, at the time of their appointment; and

- At least one (1) member will have past employment experience in finance or accounting, requisite professional certification in accounting, or other comparable experience or background, including a current or past position as a principal financial officer or other senior officer with financial oversight responsibilities.

RESPONSIBILITIES:

The responsibilities of the Audit Committee shall include:

- Reviewing on a continuing basis the adequacy of the Company s system of internal controls, including meeting periodically with the Company s management and the independent auditors to review the adequacy of such controls and to review before release the disclosure regarding such

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system of internal controls required under SEC rules to be contained in the Company s periodic filings and the attestations or reports by the independent auditors relating to such disclosure;

- Appointing, compensating and overseeing the work of the independent auditors (including resolving disagreements between management and the independent auditors regarding financial reporting) for the purpose of preparing or issuing an audit report or related work;

- Pre-approving audit and non-audit services provided to the Company by the independent auditors or subsequently approving non-audit services in those circumstances where a subsequent approval is necessary and permissible (in this regard, the Audit Committee shall have the sole authority to approve the hiring and firing of the independent auditors, all audit engagement fees and terms and all non-audit engagements, as may be permissible, with the independent auditors);

- Reviewing and providing guidance with respect to the external audit and the Company s relationship with its independent auditors by (i) reviewing the independent auditors proposed audit scope, approach and independence; (ii) obtaining on a periodic basis a statement from the independent auditors regarding relationships and services with the Company which may impact independence and presenting this statement to the Board, and to the extent there are relationships, monitoring and investigating them; (iii) reviewing the independent auditors peer review conducted every three (3) years; (iv) discussing with the Company s independent auditors the financial statements and audit findings, including any significant adjustments, management judgments and accounting estimates, significant new accounting policies and disagreements with management and any other matters described in SAS No. 61, as may be modified or supplemented; and (v) reviewing reports submitted to the audit committee by the independent auditors in accordance with the applicable SEC requirements;

- Reviewing and discussing with management and the independent auditors the annual audited financial statements and quarterly unaudited financial statements, including the Company s disclosures under Management s Discussion and Analysis of Financial Condition and Results of Operations, prior to filing the Company s Annual Report on Form 10-KSB and Quarterly Reports on Form 10-QSB, respectively, with the SEC;

- Directing the Company s independent auditors to review before filing with the SEC the Company s interim financial statements included in Quarterly Reports on Form 10-QSB, using professional standards and procedures for conducting such reviews;

- Conducting a post-audit review of the financial statements and audit findings, including any significant suggestions for improvements provided to management by the independent auditors;

- Reviewing before release the unaudited quarterly operating results in the Company s quarterly earnings release;

- Overseeing compliance with the requirements of the SEC for disclosure of auditor s services and audit committee members, member qualifications and activities;

- Reviewing, approving and monitoring the Company s code of ethics for its senior financial officers;

- Reviewing management s monitoring of compliance with the Company s standards of business conduct and with the Foreign Corrupt Practices Act;

- Reviewing, in conjunction with counsel, any legal matters that could have a significant impact on the Company s financial statements;

- Providing oversight and review at least annually of the Company s risk management policies, including its investment policies;

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- Reviewing the Company s compliance with employee benefit plans;

- Overseeing and reviewing the Company s policies regarding information technology and management information systems;

- If necessary, instituting special investigations with full access to all books, records, facilities and personnel of the Company;

- As appropriate, obtaining advice and assistance from outside legal, accounting or other advisors;

- Reviewing and approving in advance any proposed related party transactions;

- Reviewing its own charter, structure, processes and membership requirements;

- Providing a report in the Company s proxy statement in accordance with the rules and regulations of the SEC; and

- Establishing procedures for receiving, retaining and treating complaints received by the Company regarding accounting, internal accounting controls or auditing matters and procedures for the confidential, anonymous submission by employees of concerns regarding questionable accounting or auditing matters.

MEETINGS:

The Audit Committee will meet at least four (4) times each year. The Audit Committee may establish its own schedule, which it will provide to the Board in advance.

The Audit Committee will meet separately with the Chief Executive Officer and separately with the principal financial officer of the Company at such times as are appropriate to review the financial affairs of the Company. The Audit Committee will meet separately with the independent auditors of the Company, at such times as it deems appropriate, but not less than quarterly, to fulfill the responsibilities of the Audit Committee under this charter.

MINUTES:

The Audit Committee will maintain written minutes of its meetings, which minutes will be filed with the minutes of the meetings of the Board.

REPORTS:

In addition to preparing the report in the Company s proxy statement in accordance with the rules and regulations of the SEC, the Audit Committee will summarize its examinations and recommendations to the Board as may be appropriate, consistent with the Committee s charter.

COMPENSATION:

Members of the Audit Committee shall receive such fees, if any, for their service as Audit Committee members as may be determined by the Board in its sole discretion. Such fees may include retainers or per meeting fees. Fees may be paid in such form of consideration as is determined by the Board.

Members of the Audit Committee may not receive any compensation from the Company except the fees that they receive for service as a member of the Board or any committee thereof.

DELEGATION OF AUTHORITY:

The Audit Committee may delegate to one or more designated members of the Audit Committee the authority to pre-approve audit and permissible non-audit services, provided such pre-approval decision is presented to the full Audit Committee at its scheduled meetings.

X	**PLEASE MARK VOTES AS IN THIS EXAMPLE**	**REVOCABLE PROXY** **RAINING DATA CORPORATION**		For	With-hold
ANNUAL MEETING OF STOCKHOLDERS FEBRUARY 16, 2007 **THIS PROXY IS BEING SOLICITED ON BEHALF OF THE BOARD OF DIRECTORS.**			1.To elect one (1) Class II director of the Company to serve a term of three (3) years or until their successors are duly elected and qualified;	O	O
			Richard W. Koe		

	For	Against	Abstain
2.To ratify the appointment of KPMG LLP as independent auditors of the Company for the fiscal year ending March 31, 2007;	O	O	O

The undersigned hereby appoints Richard W. Koe and Thomas G. Lim, and each of them, with full power of substitution as proxies and agents (the Proxy Agents), in the name of the undersigned, to attend the Annual Meeting of Stockholders of Raining Data Corporation, a Delaware corporation, to be held at The Cupertino Inn, 10889 North De Anza Boulevard, Cupertino, California 95014 on Friday, February 16, 2007 at 10:00 a.m. local time, or any adjournment thereof, and to vote the number of shares of Common Stock of the Company that the undersigned would be entitled to vote, and with all the power the undersigned would possess, if personally present, as follows:

3.In their discretion, the Proxy Agents are authorized to vote on such other business as may properly come before the meeting or any adjournment thereof.

THIS PROXY WHEN PROPERLY EXECUTED AND RETURNED TO THE COMPANY WILL BE VOTED IN THE MANNER DIRECTED HEREIN BY THE UNDERSIGNED STOCKHOLDER(S). IF NO DIRECTION IS MADE, THIS PROXY WILL BE VOTED FOR THE NOMINEE FOR THE BOARD AND FOR BOARD PROPOSAL 2.

PLEASE DATE AND SIGN the enclosed proxy exactly as the name(s) appears herein and return promptly in the accompanying envelope. If the shares are held by joint tenants or as community property, both stockholders should sign.

Please be sure to sign and date this Proxy in the box below.	Date

Stockholder sign above	Co-holder (if any) sign above

+ +

RAINING DATA CORPORATION

Receipt of Notice of Annual Meeting of Stockholders, Annual Report for the year ended March 31, 2006 and Proxy Statement dated January 18, 2007, is hereby acknowledged by the undersigned.

PLEASE ACT PROMPTLY

MARK, SIGN, DATE AND MAIL YOUR PROXY CARD TODAY.

IF YOUR ADDRESS HAS CHANGED, PLEASE CORRECT THE ADDRESS IN THE SPACE PROVIDED BELOW AND RETURN THIS PORTION WITH THE PROXY IN THE ENVELOPE PROVIDED.
