

BACKWEB TECHNOLOGIES LTD

Form 10-K/A

April 30, 2007

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**UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

**Amendment No. 1
Form 10-K/A**

**Ⓟ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES
EXCHANGE ACT OF 1934
For the Fiscal Year Ended December 31, 2006**

or

**○ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES
EXCHANGE ACT OF 1934
For the transition period from to
Commission file number 0-26241
BackWeb Technologies Ltd.
(Exact name of registrant as specified in its charter)**

Israel
*(State or Other Jurisdiction of
Incorporation or Organization)*

51-2198508
*(I.R.S. Employer
Identification Number)*

10 Hamal Street, Park Afek, Rosh Ha ayin, Israel
(Address of Principal Executive Offices)

48092
(Zip Code)

(972) 3-6118800

**(Registrant's Telephone Number, Including Area Code)
Securities registered pursuant to Section 12(b) of the Act:**

Title of Each Class

Name of Each Exchange on Which Registered

None

None

**Securities registered pursuant to Section 12(g) of the Act:
Ordinary Shares, NIS 0.03 par value
(Title of Class)**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act: Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934: Yes No

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 No

Indicate by check mark if the 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 the 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.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of accelerated filer and large accelerated filer in Rule 12b-2 of the Exchange Act.

Large accelerated filer Accelerated filer Non-accelerated filer

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

As of June 30, 2006, based on the closing sales price of the registrant's Ordinary Shares as quoted by the Nasdaq Capital Market, 26.4 million Ordinary Shares, having an aggregate market value of approximately \$13.7 million, were held by non-affiliates. For purposes of the above statement only, all directors and executive officers of the registrant and 5% holders of Ordinary Shares are deemed to be affiliates.

As of March 4, 2007, the registrant had 41,313,704 Ordinary Shares outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

None.

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EXPLANATORY NOTE

This Amendment No. 1 on Form 10-K/A (Amendment No. 1) is being filed by BackWeb Technologies Ltd. to amend our Annual Report on Form 10-K for the fiscal year ended December 31, 2006 filed with the Securities and Exchange Commission on April 2, 2007 (the Initial Report) to include the information required by Item 11 of Part III of Form 10-K. The filing of this Amendment No. 1 does not attempt to modify or update any other disclosures set forth in the Initial Report. In addition, the filing of this Amendment No. 1 shall not be deemed an admission that the original filing of the Annual Report, when made, included any untrue statement of a material fact or omitted to state a material fact necessary to make a statement not misleading.

PART III

Item 11. *Executive Compensation*

Compensation discussion and analysis

This section discusses the principles underlying our executive compensation policies and decisions and the most important factors relevant to an analysis of these policies and decisions. It provides qualitative information regarding the manner and context in which compensation is awarded to and earned by our executive officers and places in perspective the data presented in the tables and narrative that follow.

Compensation Philosophy and Overview. Our executive compensation program is designed to attract, as needed, individuals with the skills necessary for us to achieve our business objectives, to reward those individuals fairly over time, to retain those individuals who continue to perform at or above the levels that we expect and to closely align the compensation of those individuals with the performance of our company on both a short-term and long-term basis. To that end, our executive officers' compensation has three primary components: base compensation or salary, cash performance bonuses and stock option awards. In addition, we provide our executive officers a variety of benefits that in most cases are available generally to all salaried employees.

We view the components of compensation as related but distinct. Although our compensation committee reviews total compensation of our executive officers, we do not believe that significant compensation derived from one component of compensation should negate or reduce compensation from other components. We determine the appropriate level for each compensation component based in part, but not exclusively, on competitive benchmarking consistent with our recruiting and retention goals, our view of internal equity and consistency, overall company performance and other considerations that we deem relevant. To this end, we review executive compensation surveys of high technology companies located in the Silicon Valley area against which we compete for talent when making a crucial executive officer hiring decision and annually when we review executive compensation. We seek to establish executive compensation at the market median, while providing the opportunity for executive compensation to exceed this level through cash bonuses when warranted by company and/or individual performance. We believe that, given the industry in which we operate and the corporate culture that we have created, this level of executive compensation is sufficient to retain our existing executive officers and to hire new executive officers when and as required while balancing the interests of our stockholders in conserving cash and equity as much as practicable.

Our compensation committee has not adopted any formal policies or guidelines for allocating compensation between long-term and currently paid out compensation, between cash and non-cash compensation or among different forms of non-cash compensation. However, our philosophy is to make a greater percentage of an employee's compensation performance-based and to keep cash compensation to a competitive level while providing the opportunity to be significantly rewarded through equity if our company and our stock price perform well over time. We also believe that for technology companies stock-based compensation is the primary motivator in attracting employees, rather than base salary or cash bonuses.

Our current intent is to perform at least annually a strategic review of our executive officers' overall compensation packages to determine whether they provide adequate incentives and motivation and whether they adequately compensate our executive officers relative to comparable officers in other companies with which we compete for executives. Our compensation committee most recently reviewed compensation matters for our executive officers in January and March 2007. Compensation committee meetings have generally included, for all or a portion of the meeting, our Chief Executive Officer and our Chief Financial Officer. For compensation decisions, including decisions regarding the grant of equity compensation, relating to executive officers other than to our Chief Executive

Officer, the compensation committee considers recommendations from the Chief Executive Officer.

We account for equity compensation paid to our employees under SFAS 123(R), which requires us to estimate and record an expense over the service period of the award. Our cash compensation is recorded as an expense at the time the obligation is accrued.

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We are eligible to receive a tax deduction for the compensation expense. We structure cash bonus compensation so that it is taxable to our executives at the time it becomes available to them. We currently intend that all cash compensation paid will be tax deductible for us. In addition, with respect to equity compensation awards, we typically grant our executive officers nonqualified options, and any gain recognized by employees from such nonqualified options granted at fair market value should be tax deductible for us. However, to the extent that we determine in the future to grant our executive officers incentive stock options, any gain recognized by the optionee will not be deductible if there is no disqualifying disposition by the optionee.

Base compensation. We set executive officer base compensation at a level that we believe enables us to hire and retain individuals in a competitive environment and rewards satisfactory individual performance and a satisfactory level of contribution to our overall business goals. We take into account the base salaries that are paid by companies with which we believe we generally compete for executives. Although we generally target executive base pay at the median of the market, individuals can be paid above or below the median based on their experience and performance.

For 2006, our compensation committee increased the salary of Mr. Heye from \$180,000 to \$200,000 and the salary of Mr. Holmes from \$155,000 to \$165,000. The committee approved these increases as part of our normal annual compensation review process and reflected the committee's review of the compensation levels of similar positions at comparable companies. As discussed below under Cash bonuses, for 2006, the cash bonus component of Mr. Holmes compensation consisted of a Company Performance Bonus, or CPB, which related to the achievement by BackWeb of certain company-specific milestones, and Management By Objective, or MBO, which related to the achievement by Mr. Holmes of certain personal objectives. In January 2007, the compensation committee discontinued a portion of Mr. Holmes' MBO related compensation and moved \$20,000 of his annual MBO target into base salary, thereby increasing his base salary to \$185,000. The remaining \$10,000 of his MBO related cash bonus remained as an annual variable bonus. Additionally in January 2007, the compensation committee approved a further increase in Mr. Holmes base salary to \$190,000 in connection with his promotion from Vice President, Finance to Chief Financial Officer.

Cash bonuses. We utilize cash bonuses to reward performance achievements with a time horizon of one year or less. We have two forms of cash bonus programs, the MBO and the CPB. Goals within the MBO program are specific to the employee's core function and are established in advance for each quarter with the employee's direct supervisor. The goals within the CPB are based on more broad corporate objectives not controlled directly by the employee. For 2006, Mr. Holmes participated in both bonus programs, and his quarterly MBO goals were set by Mr. Heye and consisted of goals such as obtaining a significant lease reduction for our headquarters office space, completion of certain third party development royalty-based agreements to enhance our product offerings and various other finance, accounting, information technology and human resources related goals. Mr. Heye was only eligible to participate in the CPB program and did not have quarterly MBO milestones. Mr. Heye was also eligible for a non-recoverable draw of \$30,000 against his CPB performance. This draw is paid quarterly.

Annual bonus compensation targets for both the MBO and CPB are established by our compensation committee and are intended to provide a competitive level of compensation if the relevant performance objectives are achieved. Our compensation committee also determines the performance measures and other terms and conditions of the CPB program. For 2006, the CPB criteria consisted of achieving certain specified milestones related to 2006 annual revenue and our cash balance at the end of fiscal year 2006, as well as the attainment of certain strategic objectives. The compensation committee chose revenue and cash balance level because it believed that, as a growth company, we should reward revenue growth, but only if that revenue growth is achieved cost effectively. Thus, we considered the chosen metrics to be the best indicators of financial success and stockholder value creation.

For 2006, Mr. Heye and Mr. Holmes earned bonuses equal to \$30,000 and \$19,797, respectively; they were eligible to receive bonuses of \$120,000 and \$75,000, respectively. With respect to the CPB, BackWeb did not achieve any of the goals established by the compensation committee and, accordingly, the committee did not award any cash bonuses under this program for 2006. However, because Mr. Heye's draw of \$30,000 against his CPB performance is non-recoverable, he was entitled to retain this amount as part of his compensation. Mr. Holmes was eligible to receive \$30,000 under his MBO, and was awarded a majority of this amount for achieving a significant portion of his MBO milestones.

The compensation committee is in the process of finalizing the CPB for 2007. We anticipate that the bonus criteria under this plan will consist of achieving specified milestones related to (1) profitability and cash flow, (2) company strategic goals and (3) our BackWeb Offline Service for Salesforce.com and other on-demand business partners. An addition to the CPB for the 2007 fiscal year is a range of performance achievement rather than a binary completion assessment. We expect that Mr. Heye's bonus potential for 2007 will be within a range of \$30,000 to \$235,000.

Stock options awards. We utilize stock options to ensure that our executive officers have a continuing stake in our long-term success and to align their interests with the interests of our stockholders. Because our executive officers are awarded stock options

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with an exercise price equal to the fair market value of our common stock on the date of grant, the determination of which is discussed below, these options will have value to our executive officers only if the market price of our common stock increases after the date of grant. Typically, our stock options vest at a rate of 25% of the shares subject to the option or restricted stock grant on the first anniversary of the grant date, and with respect to 2.0833% of the shares each month thereafter such that the stock option or restricted stock grant is fully vested after four years.

In determining the size of stock option grants to executive officers, our compensation committee considers our performance against the strategic plan, individual performance against the individual's objectives, comparative share ownership data from compensation surveys of high technology companies in our area, the extent to which shares subject to previously granted options are vested and the recommendation of our Chief Executive Officer with respect to other members of management.

We did not grant stock options to Mr. Heye or Mr. Holmes during 2006, as the compensation committee believed that their existing level of stock option holdings was consistent with the equity positions of officers in comparable companies.

All grants of options to our executive officers and other employees, as well as to our directors, have been granted with exercise prices equal to or exceeding the fair value of the underlying shares of common stock on the grant date, which has been equal to the closing price of our Ordinary Shares on the trading market on which our Ordinary Shares were listed at the time of grant. All equity-based awards have been reflected in our consolidated financial statements, based upon the applicable accounting guidance. Previously, we accounted for equity compensation paid to our employees and directors using the intrinsic value method under APB Opinion No. 25 and FASB Financial Interpretation No. 44, *Accounting for Certain Transactions Involving Stock Compensation – an Interpretation of APB Opinion No. 25*. Under the intrinsic value method, no stock-based compensation was recognized in our consolidated statements of operations for options granted to our directors, employees, consultants and others because the exercise price of such stock options equaled or exceeded the fair value of the underlying stock on the dates of grant. Effective January 1, 2006, we adopted SFAS 123R using the modified prospective transition method. Under this method, stock-based compensation expense is recognized using the fair-value based method for all awards granted on or after the date of adoption of SFAS 123R. SFAS 123R requires us to estimate and record an expense over the service period of the stock-based award.

We do not have any program, plan or practice that requires us to grant equity-based awards to our executive officers on specified dates and we have not made grants of such awards that were timed to precede or follow the release or withholding of material non-public information. We do not have any equity security ownership guidelines or requirements for our executive officers.

Severance and change of control payments. We are in the process of finalizing a change-in-control agreement with Mr. Heye and we will file a Current Report on Form 8-K disclosing the material terms of such change-in-control agreement when such agreement has been completed.

Other benefits. Executive officers are eligible to participate in all of our employee benefit plans, such as medical, dental, vision, group life, disability, and accidental death and dismemberment insurance and our 401(k) plan, in each case on the same basis as other employees, subject to applicable law. We also provide vacation and other paid holidays to all employees, including our executive officers, which are comparable to those provided at peer companies. There were no special benefits or perquisites provided to any executive officer in 2006.

Recruitment of new Chief Financial Officer. On April 16, 2007, Mr. Holmes resigned as our Chief Financial Officer. We intend to retain an interim finance professional while undertaking a search for a long-term replacement for Mr. Holmes. We expect that the compensation for the replacement of Mr. Holmes will be generally at market for companies in a same or similar market segment and of our approximate size.

Summary Compensation Table

The following table sets forth the compensation earned for services rendered to us in all capacities for the fiscal years ended December 31, 2006, December 31, 2005 and December 31, 2004 by our Chief Executive Officer and our Chief Financial Officer, who were our only two executive officers serving in such capacity during the year ended December 31, 2006 (collectively, our Named Executive Officers):

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| Name and Principal Position | Year | Salary | Bonus | Option Awards(3) | All Other Compensation(4) | Total(5) |
|--|-------------|---------------|--------------|-----------------------------|--------------------------------------|-----------------|
| William Heye(1) Chief Executive Officer | 2006 | \$198,333 | \$30,000 | \$ | \$ 4,750 | \$233,083 |
| | 2005 | 180,000 | 90,000 | | 14,461 | 284,461 |
| | 2004 | 180,000 | 44,126 | 78,790 | 11,763 | 302,916 |
| Ken Holmes(2) Chief Financial Officer | 2006 | 164,167 | 19,797 | | | 183,964 |
| | 2005 | 155,000 | 56,364 | | | 211,364 |
| | 2004 | 155,000 | 25,480 | 17,815 | | 198,295 |

(1) Mr. Heye became our Chief Executive Officer in October 2004. Prior to this time, he served as our Vice President, Business Development and Products.

(2) Mr. Holmes became our Chief Financial Officer in January 2007. Prior to this time, Mr. Holmes served as our Vice President, Finance from October 2004 to January 2007 and our Senior Director, Finance from May 2003 until October 2004.

(3) The amounts in this column represent the amounts recognized as compensation expense for

financial statement reporting purposes in accordance with SFAS No. 123R in connection with the options granted to the named executive officer. We adopted SFAS No. 123R on January 1, 2006. Please see Note 2 of the Notes to the Consolidated Financial Statements for a discussion of all assumptions made in determining the grant date fair values of these options.

(4) The Other Annual Compensation consists of commission payments and vacation payout amounts.

(5) The dollar value in this column for each named executive officer represents the sum of all compensation reflected in the preceding columns.

Grants of Plan-Based Awards in 2006

There were no stock options or other equity-based or non-equity awards granted to either of the Named Executive Officers in 2006. Our compensation committee is in the process of finalizing the Company Performance Bonus, or CPB, for 2007. We anticipate that the bonus criteria under this plan will consist of achieving specified milestones related to (1) profitability and cash flow, (2) company strategic goals and (3) our BackWeb Offline Service for Salesforce.com and other on-demand business partners. An addition to the CPB for the 2007 fiscal year is a range of performance achievement rather than a binary completion assessment. We expect that Mr. Heye's bonus potential for 2007 will be within a range of \$30,000 to \$235,000.

Outstanding Equity Awards at Fiscal Year End

None of the Named Executive Officers in the Summary Compensation Table, set forth above, exercised any of his options during the fiscal year ended December 31, 2006. The following table sets forth the number of securities underlying unexercised option grants held by each of the Named Executive Officers as of December 31, 2006, and the option exercise price and expiration date of each such grant.

| Name | Number of Securities Underlying Unexercised Options | | Option Exercise Price | Option Expiration Date(1) |
|--------------|---|---------------|-----------------------|---------------------------|
| | Exercisable | Unexercisable | | |
| William Heye | 30,000 | | \$1.20 | 3/3/08 |
| | 50,000 | | 2.10 | 12/31/08 |
| | 80,000 | | 7.32 | 11/1/07 |
| | 32,089 | | 0.76 | 10/22/09 |
| | 15,911 | | 0.76 | 10/22/09 |
| | 10,000 | | 0.76 | 7/1/07 |
| | 75,000 | 75,000 | 0.60 | 10/1/11 |
| | 37,500 | | 0.77 | 4/15/09 |
| | 47,500 | 12,500 | 1.15 | 10/25/10 |
| Ken Holmes | 485,041 | 214,959 | 0.39 | 11/4/11 |
| | 193,000 | | \$0.39 | 11/4/11 |
| | 52,500 | 7,500 | 0.61 | 7/21/10 |
| | 4,500 | 1,500 | 1.15 | 10/25/10 |

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- (1) These option vest as to 25% of the Ordinary Shares subject to the option on the first anniversary of the grant date and as to 1/48th of the Ordinary Shares subject to the option each month thereafter until the option is fully vested four years from the grant date.

Employment Agreements and Change of Control Arrangements

Mr. Heye's current base salary is \$200,000 and his bonus for 2007 will be determined according to the terms of BackWeb's 2007 variable compensation plan, which is in the process of being finalized. Mr. Heye's employment is at will and may be terminated at any time, with or without formal cause.

Mr. Holmes' current base salary is \$190,000 and his bonus for 2007 will be determined according to the terms of BackWeb's 2007 variable compensation plan which is in the process of being finalized. Mr. Holmes' employment is at will and may be terminated at any time, with or without formal cause.

Compensation of Directors

Directors who are not employees of BackWeb are compensated for their services as follows:

A retainer fee of \$1,000, per fiscal quarter;

A fee of \$1,000 for each meeting of the Board of Directors attended; and

A fee of \$1,000 for each committee meeting attended, with the Chair of the Audit Committee being paid an additional \$500 for each committee meeting.

In addition, non-employee directors receive a non-discretionary option grant under either our 1998 U.S. Stock Option Plan or 1996 Israel Stock Option Plan to acquire 50,000 Ordinary Shares upon their initial election or appointment to the Board of Directors and annual option grants of 15,000 Ordinary Shares at each Annual General Meeting of Shareholders thereafter during their term of service. Accordingly, immediately following our 2006 Annual General Meeting of Shareholders held in December 2006, each of Messrs. Barkat, Bellary and Makleff and Ms. Andersen received options to purchase 15,000 Ordinary Shares at an exercise price of \$0.22 per share, which was the closing sale price of our Ordinary Shares on The Nasdaq Capital Market the day before the grant date. Grants are not to be made in cases where the initial term is shorter than six months. These grants vest over a period of four years, with one-quarter of the shares underlying the option becoming vested and exercisable after one year and monthly thereafter over the remaining period of thirty-six months, subject to continued service as one of our directors.

Reasonable expenses incurred by each director in connection with his or her duties as a director are also reimbursed. A Board member who is also an employee of BackWeb does not receive compensation for service as a director.

Compensation Committee Interlocks and Insider Participation

Ms. Andersen and Messrs. Bellary and Makleff are the members of the Compensation Committee of our Board of Directors. None of these directors has ever been one of our officers or employees nor during the past fiscal year had any other interlocking relationships as defined by the SEC. None of our executive officers currently serves or in the past has served as a member of the board of directors or compensation committee of any entity that has one or more executive officers serving on our board or compensation committee.

PART IV

Item 15. Exhibits and Financial Statement Schedules

Part IV of our Initial Report is hereby amended solely to add the following exhibits required to be filed in connection with this Amendment No. 1. See Exhibit Index below for exhibits filed as part of this Amendment No. 1.

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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 amended report to be signed on its behalf by the undersigned, thereunto duly authorized.

BACKWEB TECHNOLOGIES LTD.

By: /s/ WILLIAM HEYE

William Heye,
Chief Executive Officer

Dated: April 30, 2007

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EXHIBIT INDEX

| Exhibit No | Description |
|-------------------|--|
| 31.1 | Certification of Chief Executive Officer, pursuant to Rule 13a-14(a) Under the Securities Exchange Act of 1934 |
| 31.2 | Certification of Chief Financial Officer, pursuant to Rule 13a-14(a) Under the Securities Exchange Act of 1934 |
| 32.1 | Certifications of Chief Executive Officer and Chief Financial Officer, pursuant to 18 U.S.C Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 |