

PHOENIX TECHNOLOGIES LTD  
Form 8-A12G/A  
October 21, 2009

As filed with the Securities and Exchange Commission on October 21, 2009

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

**AMENDMENT NO. 2 TO  
FORM 8-A  
FOR REGISTRATION OF CERTAIN CLASSES OF SECURITIES  
PURSUANT TO SECTION 12 (b) OR (g) OF THE  
SECURITIES EXCHANGE ACT OF 1934**

**Phoenix Technologies Ltd.**  
(Exact name of registrant as specified in its charter)

**Delaware**  
(State of incorporation or organization)

**04-2685985**  
(IRS Employer  
Identification No.)

**915 Murphy Ranch Road, Milpitas, CA**  
(Address of principal executive offices)

**95035**  
(Zip Code)

Securities to be registered pursuant to Section 12(b) of the Act:

Title of each class  
to be so registered

Name of each exchange on which  
each class is to be registered

None

None

If this form relates to the registration of a  
class of securities pursuant to Section 12(b)  
of the Exchange Act and is effective  
pursuant to General Instruction A.(c),  
check the following box.

If this form relates to the registration of a  
class of securities pursuant to Section  
12(g) of the Exchange Act and is effective  
pursuant to General Instruction A.(d),  
check the following box.

Securities Act registration statement file number to which this form relates: \_\_\_\_\_ (if applicable)

Securities to be registered pursuant to Section 12(g) of the Act:

Preferred Share Purchase Rights

Item 1. Description of Registrant's Securities to be Registered

This Amendment No. 2 on Form 8-A is being filed by Phoenix Technologies Ltd. (the Company) to amend and restate Item 1 and to file the exhibits listed under Item 2 to reflect the amendment and restatement of the Amended and Restated Preferred Share Rights Agreement dated as of October 5, 2007 (the Amended Rights Agreement) between the Company and Computershare Trust Company, N.A. (the Agent). The Amended Rights Agreement amended and restated the Preferred Share Rights Agreement (the Rights Agreement) dated as of October 22, 1999, by and between the Company and BankBoston, N.A., a national banking association (the predecessor to the Agent).

Pursuant to the Rights Agreement, the Company's Board of Directors declared a dividend of one right (a Right) to purchase one one-thousandth share of the Company's Series B Participating Preferred Stock (Series B Preferred) for each outstanding share of common stock, \$0.001 par value, of the Company. The dividend was paid on November 4, 1999 (the Record Date), to stockholders of record as of the close of business on that date. A Right is also issued in respect of each share of the Company's common stock that is issued after the Record Date but prior to the date the Rights become exercisable or expire, unless the Company's Board of Directors specifies to the contrary. Each Right entitles the registered holder to purchase from the Company one one-thousandth of a share of Series B Preferred at an exercise price of \$75.00 per share (the Purchase Price), subject to adjustment as set forth in the Rights Agreement.

On October 21, 2009, the Company's Board of Directors (the Board) approved an amendment and restatement of the Amended Rights Agreement (the 2009 Amended Rights Agreement) in order to: (i) extend the expiration date of the Rights from October 22, 2009 to October 21, 2014, and (ii) make other ministerial changes. The Board has determined that it is in the best interests to enter into the 2009 Amended Rights Agreement in order to keep the Rights effective for another five years.

The following summary of the principal terms of the 2009 Amended Rights Agreement is a general description only and is subject to the detailed terms and conditions of the 2009 Amended Rights Agreement. A copy of the 2009 Amended Rights Agreement is attached as Exhibit 4.1 to this Registration Statement and is incorporated herein by reference.

Rights Certificate. The Company has paid a dividend of one Right for each share of the Company's common stock outstanding. Prior to the Distribution Date referred to below, the Rights will be evidenced by and trade with the certificates for the Company's common stock. After the Distribution Date, the Company will mail Rights certificates to the Company's stockholders and the Rights will become transferable apart from the Company's common stock.

Distribution Date. Rights will separate from the Company's common stock and become exercisable upon the earlier of: (i) 10 days following a public announcement that a person or group of affiliated or associated persons (an Acquiring Person), has acquired, or obtained the right to acquire, beneficial ownership of 20% or more of the Company's outstanding common stock, or (ii) 10 business days (or such later date as may be determined by a majority of the Board) following the commencement of, or announcement of a tender offer or exchange offer the

consummation of which would result in the beneficial ownership by a person or group of 20% or more of the Company's outstanding common stock. The earlier of such dates is referred to as the Distribution Date.

Preferred Stock Purchasable Upon Exercise of Rights. Following the Distribution Date, and until one of the further events described below, holders of the Rights will be entitled to receive, upon exercise and the payment of the Purchase Price, one one-thousandth share of the Series B Preferred. In the event that the Company does not have sufficient Series B Preferred available for all Rights to be exercised, or the Board decides that such action is necessary and not contrary to the interests of Rights holders, the Company may instead substitute cash, assets or other securities for the Series B Preferred for which the Rights would have been exercisable under this provision or as described below.

Right to Buy Company Common Shares. Unless the Rights are earlier redeemed, in the event that an Acquiring Person becomes the beneficial owner of 20% or more of the Company's common stock then outstanding, then each holder of a Right which has not theretofore been exercised (other than Rights beneficially owned by the Acquiring Person, which will thereafter be void) will thereafter have the right to receive, upon exercise, the Company's common stock having a value equal to two times the Purchase Price. Rights are not exercisable following the occurrence of an event as described above until such time as the Rights are no longer redeemable by the Company as set forth below.

Right to Buy Acquiring Company Stock. Similarly, unless the Rights are earlier redeemed, in the event that, after an Acquiring Person becomes the beneficial owner of 20% or more of the Company's common stock then outstanding, (i) the Company is acquired in a merger or other business combination transaction, or (ii) 50% or more of the Company's consolidated assets or earning power are sold (other than in transactions in the ordinary course of business), proper provision must be made so that each holder of a Right which has not theretofore been exercised (other than Rights beneficially owned by the Acquiring Person, which will thereafter be void) will thereafter have the right to receive, upon exercise, shares of common stock of the acquiring company having a value equal to two times the Purchase Price.

Exchange Provision. At any time after the date an Acquiring Person obtains 20% or more of the Company's common stock and prior to the acquisition by the Acquiring Person of 50% of the Company's outstanding common stock. The Company may, with the approval of a majority of the Board, exchange the Rights (other than Rights owned by the Acquiring Person or its affiliates), in whole or in part, for shares of the Company's common stock at an exchange ratio of one share of the Company's common stock per Right (subject to adjustment).

Redemption of the Rights. Rights will be redeemable at the Company's option for \$0.001 per Right at any time on or prior to the tenth day (or such later date as may be determined by a majority of the Board) following public announcement that a Person has acquired beneficial ownership of 20% or more of the Company's common stock (the Shares Acquisition Date).

Expiration of the Rights. The Rights expire on the earliest of (a) the close of business on October 21, 2014 or (b) the exchange or redemption of the Rights as described above.

Amendment of Terms of Rights. The terms of the Rights and the 2009 Amended Rights Agreement may be amended in any respect without the consent of the Rights holders on or prior to the Distribution Date; thereafter, the terms of the Rights and the 2009 Amended Rights Agreement may be amended without the consent of the Rights holders in order to cure any ambiguities or to make changes that do not adversely affect the interests of Rights holders (other than the Acquiring Person).

No Stockholders Rights Prior to Exercise. Until a Right is exercised, the holder of the Right, as such, will have no rights as a stockholder of the Company (other than any rights resulting from such holder's ownership of common stock), including, without limitation, the right to vote or to receive dividends.

Anti-Dilution Provisions. The Purchase Price payable, the number of Rights, and the number of Series B Preferred or common stock or other securities or property issuable upon exercise of the Rights are subject to adjustment from time to time in connection with the dilutive issuances by the Company as set forth in the Rights Agreement. With certain exceptions, no adjustment in the Purchase Price will be required until cumulative adjustments require an adjustment of at least 1% in such Purchase Price.

Terms of the Series B Preferred. Shares of Series B Preferred purchasable upon exercise of the Rights will not be redeemable. Each share of Series B Preferred will be entitled to an aggregate dividend of 1,000 times the dividend declared per a share of common stock. In the event of liquidation, the holders of the Series B Preferred would be entitled to receive an aggregate payment equal to 1,000 times the payment made per share of common stock. Each share of Series B Preferred will have 1,000 votes, voting together with the common stock. Finally, in the event of any merger, consolidation or other transaction in which the shares of common stock are exchanged, each share of Series B Preferred will be entitled to receive 1,000 times the amount of consideration received per share of common stock. These rights are protected by customary anti-dilution provisions. Because of the nature of the dividend and liquidation rights of the Series B Preferred, the value of one one-thousandth of a share of Series B Preferred should approximate the value of one share of common stock. The Series B Preferred would rank junior to any other series of the Company's preferred stock.

Certain Anti-Takeover Effects. The Rights approved by the Board are designed to protect and maximize the value of the outstanding equity interests in the Company in the event of an unsolicited attempt by an acquirer to take over the Company in a manner or on terms not approved by the Board. Takeover attempts frequently include coercive tactics to deprive the Board and stockholders of any real opportunity to determine the destiny of the Company. The Rights have been declared by the Board in order to deter such tactics, including a gradual accumulation of shares in the open market of a 20% or greater position to be followed by a merger or a partial or two-tier tender offer that does not treat all shareholders equally. These tactics may unfairly pressure stockholders, squeeze them out of their investment without giving them any real choice, or deprive them of the full value of their shares.

The Rights are not intended to prevent a takeover of the Company and will not do so. Subject to the restrictions described above, the Rights may be redeemed by the Company at \$0.001 per Right at any time prior to the Distribution Date. Accordingly, the Rights should not interfere with any merger or business combination approved by the Company's Board. Nonetheless, the Rights may have the effect of rendering more difficult or discouraging an acquisition of the Company deemed undesirable by the Board. The Rights may cause substantial dilution to a person or group that attempts to acquire the Company on terms or in a manner not approved by the Board, except pursuant to an offer conditioned upon the negotiation, purchase or redemption of the Rights.

The Amended Rights Agreement is attached hereto as an exhibit and is incorporated herein by reference. The foregoing description of the Rights is qualified in its entirety by reference to such exhibit.

Item 2. Exhibits

The following exhibits are filed as a part of this Registration Statement:

- 3.1 Amended and Restated Certificate of Incorporation of Phoenix Technologies Ltd. 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 Certificate of Designation of Rights, Preferences and Privileges of Series B Participating Preferred Stock (incorporated herein by reference to Exhibit 4.2 to the Post-Effective Amendment No. 1 to the Registration Statement on Form S-3 filed with the SEC on June 25, 2009, Registration Statement No. 333-159879).
  - 3.3 Certificate of Correction of Amended and Restated Certificate of Incorporation dated June 25, 2009 (incorporated herein by reference to Exhibit 4.3 to the Post-Effective Amendment No. 1 to the Registration Statement on Form S-3 filed with the SEC on June 25, 2009, Registration Statement No. 333-159879).
  - 3.4 Amended and Restated By-laws of Phoenix Technologies Ltd. (incorporated herein by reference to Exhibit 3.1 to the Current Report on Form 8-K filed with the SEC on September 22, 2008).
  - 4.1 Phoenix Technologies Ltd. Amended and Restated Preferred Share Purchase Rights Agreement dated October 21, 2009.
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SIGNATURE

Pursuant to the requirements of Section 12 of the Securities Exchange Act of 1934, the Registrant has duly caused this Amendment to Registration Statement to be signed on its behalf by the undersigned, thereto duly authorized.

Date: October 21, 2009

Phoenix Technologies Ltd.

By: /s/ Timothy C. Chu  
Timothy C. Chu  
Vice President, General Counsel  
and Secretary

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INDEX TO EXHIBITS

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