

COMPUTER PROGRAMS & SYSTEMS INC
Form S-8
January 20, 2006

As filed with the Securities and Exchange Commission on January 20, 2006

Registration No. 333-_____

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM S-8

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

COMPUTER PROGRAMS AND SYSTEMS, INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

7389
(Primary Standard Industrial
Classification Code Number)

74-3032373
(I.R.S. Employer
Identification Number)

6600 Wall Street
Mobile, Alabama 36695
(251) 639-8100

(Address, including zip code, and telephone number, including area code,
of Registrant's principal executive offices)

COMPUTER PROGRAMS AND SYSTEMS, INC. 2005 RESTRICTED STOCK PLAN

(Full title of the plan)

David A. Dye
President and Chief Executive Officer
Computer Programs and Systems, Inc.
6600 Wall Street
Mobile, Alabama 36695
(251) 639-8100
(Name, address, including zip code, and telephone number, including area code, of agent for service)

With a Copy to:
Gregory S. Curran
Maynard, Cooper & Gale, P.C.
1901 Sixth Avenue North
Suite 2400
Birmingham, Alabama 35203
(205) 254-1000

CALCULATION OF REGISTRATION FEE

	Proposed maximum	Proposed		
	Amount to be	offering price	maximum aggregate	Amount of
Title of securities to be registered	registered (1)(2)	per share (2)(3)	offering price (3)	registration fee (3)
Common Stock, par value \$0.001 per share	300,000 shares	\$40.72 per share	\$12,216,000	\$ 1,307

- (1) This registration statement (the Registration Statement) registers the issuance of 300,000 shares of the common stock, par value \$0.001 per share (the Common Stock) of Computer Programs and Systems, Inc. (the Registrant), which are issuable pursuant to the Computer Programs and Systems, Inc. 2005 Restricted Stock Plan (the Plan).
 - (2) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the Securities Act), this Registration Statement also covers such indeterminate number of additional shares of Common Stock as may be issued in connection with stock splits, stock dividends, recapitalizations or other similar transactions or pursuant to the anti-dilution provisions of the Plan.
 - (3) Estimated pursuant to paragraphs (c) and (h) of Rule 457 under the Securities Act solely for the purpose of calculating the registration fee on the basis of the average of the high and low sales prices of the Common Stock on The Nasdaq National Market on January 17, 2006.
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PART I

INFORMATION REQUIRED IN THE SECTION 10(A) PROSPECTUS

Item 1. Plan Information.*

Item 2. Registrant Information and Employee Plan Annual Information.*

* The documents containing the information specified in Part I of Form S-8 will be sent or given to participants in the Computer Programs and Systems, Inc. 2005 Restricted Stock Plan (the Plan) in accordance with Rule 428(b)(1) under the Securities Act of 1933, as amended (the Securities Act). Such documents are not required to be, and are not, filed with the Securities and Exchange Commission (the Commission), either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act. These documents, and the documents incorporated by reference into this Registration Statement pursuant to Item 3 of Part II of this Form S-8 Registration Statement, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

Upon written or oral request, any of the documents incorporated by reference in Item 3 of Part II of this Registration Statement, which are also incorporated by reference in the Section 10(a) prospectus, other documents required to be delivered to eligible participants pursuant to Rule 428(b) under the Securities Act, or additional information about the Plan, will be available without charge by contacting Computer Programs and Systems, Inc., 6600 Wall Street, Mobile, Alabama 36695; telephone (251) 639-8100, Attention: Corporate Secretary.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

Computer Programs and Systems, Inc. (the Registrant) hereby incorporates by reference into this Registration Statement the following documents previously filed with the Commission:

- (i) The Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2004.
- (ii) The Registrant's Quarterly Reports on Form 10-Q for the fiscal quarters ended March 31, 2005, June 30, 2005 and September 30, 2005.
- (iii) The Registrant's Current Reports on Form 8-K dated February 4, 2005, March 1, 2005 and May 12, 2005.
- (iv) The description of the Registrant's capital stock contained in the Registrant's Registration Statement on Form 8-A filed on May 3, 2002 with the Commission under Section 12 of the Securities Exchange Act of 1934, as amended (the Exchange Act) (File No.

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000-49796), including any amendment or report filed for the purpose of updating such description.

The Registrant is not incorporating by reference any Current Reports on Form 8-K through which it furnished, rather than filed, information with the Commission.

All documents filed by the Registrant pursuant to Section 13(a), 13(c), 14 and 15(d) of the Exchange Act, subsequent to the effective date of this Registration Statement, and prior to the filing of a

post-effective amendment to this Registration Statement which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be part hereof from the date of filing of such documents.

Any statement contained herein or in any document to be incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Item 4. Description of Securities.

Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

Subsection (a) of Section 145 of the General Corporation Law of the State of Delaware (the "DGCL") empowers a corporation to indemnify any person who by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, was or is a party or is threatened to be made a party to any action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation), against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement, actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful.

Subsection (b) of Section 145 empowers a corporation to indemnify any person who was or is a party or is threatened to be made a party to any action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he acted in any of the capacities set forth in subsection (a) of Section 145, against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification may be made in respect of any claim, issue or matter as to which such person has been adjudged to be liable to the corporation unless and only to the extent that the Delaware Court of Chancery or the court in which such action or suit was brought determines upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court deems proper.

Section 145 further provides that to the extent that a director or officer of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b) of Section 145, or in the defense of any claim, issue or matter therein, he is entitled to indemnification against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

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Section 145 also states that any indemnification and advancement of expenses provided by, or granted pursuant to, Section 145 are not exclusive of any other rights to which

those seeking indemnification may be entitled, and the section empowers the corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liabilities under Section 145.

As permitted by the DGCL, the Registrant's Certificate of Incorporation provides that (1) it is required to indemnify its directors and officers to the fullest extent permitted by the DGCL; (2) it is permitted to indemnify its other employees to the extent that it indemnifies its officers and directors; (3) it is required to advance expenses, as incurred, to its directors and officers in connection with a legal proceeding to the fullest extent permitted by the DGCL, subject to certain very limited exceptions; and (4) the rights conferred in its Certificate of Incorporation are not exclusive.

As permitted by the DGCL, the Registrant's Certificate of Incorporation includes a provision that eliminates the personal liability of its directors for monetary damages for breach of fiduciary duty as a director, except for liability (1) for any breach of the director's duty of loyalty to the Registrant or its stockholders; (2) for acts or omissions not in good faith or that involve intentional misconduct or knowing violation of law; (3) under Section 174 of the DGCL regarding unlawful dividends, stock purchases and redemptions; or (4) for any transaction from which the director derived an improper personal benefit.

The Registrant maintains directors' and officers' liability insurance covering the directors and officers of the Registrant against claims arising out of the performance of their duties as such. The Registrant also has entered into indemnification agreements with its non-employee directors providing such individuals with rights to indemnification and expense advancement to the fullest extent permitted under the law.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

For a list of all exhibits filed or included as part of this Registration Statement, see [Index to Exhibits](#) at the end of this Registration Statement.

Item 9. Undertakings.

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

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- (i) to include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

- (ii) to reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered

would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement; and

- (iii) to include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

provided, however, paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the registration statement is on Form S-8 and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new Registration Statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the Registration Statement shall be deemed to be a new Registration Statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Mobile, State of Alabama, as of the 20th day of January, 2006.

COMPUTER PROGRAMS AND SYSTEMS, INC.

By: /s/ David A. Dye

 David A. Dye
 President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints John Morrissey, David A. Dye and M. Stephen Walker, and each of them severally, his true and lawful attorneys-in-fact for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement, and to file the same, with exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
/s/ John Morrissey _____	Chairman of the Board and Director	January 20, 2006
John Morrissey		
/s/ David A. Dye _____	President, Chief Executive	January 20, 2006
David A. Dye	Officer and Director	
/s/ J. Boyd Douglas _____	Executive Vice President, Chief	January 20, 2006
J. Boyd Douglas	Operating Officer and Director	
/s/ M. Stephen Walker _____	Vice President - Finance and	January 20, 2006
M. Stephen Walker	Chief Financial Officer	

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/s/ Darrell G. West	Controller (principal accounting officer)	January 20, 2006
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Darrell G. West		
/s/ Dennis P. Wilkins	Director	January 20, 2006
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Dennis P. Wilkins		
/s/ M. Kenny Muscat	Director	January 20, 2006
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M. Kenny Muscat		
/s/ Hal L. Daugherty	Director	January 20, 2006
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Hal L. Daugherty		
/s/ Charles P. Huffman	Director	January 20, 2006
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Charles P. Huffman		
/s/ John C. Johnson	Director	January 20, 2006
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John C. Johnson		
/s/ Ernest F. Ladd, III	Director	January 20, 2006
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Ernest F. Ladd, III		
/s/ W. Austin Mulherin, III	Director	January 20, 2006
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W. Austin Mulherin, III		
/s/ William R. Seifert, II	Director	January 20, 2006
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William R. Seifert, II		

INDEX TO EXHIBITS

No.	Item
4.1	Certificate of Incorporation of the Registrant (incorporated by reference to Exhibit 3.4 to the Registrant's Registration Statement on Form S-1 (File No. 333-84726) filed March 21, 2002, as amended).
4.2	Bylaws of the Registrant (incorporated by reference to Exhibit 3.6 to the Registrant's Registration Statement on Form S-1 (File No. 333-84726) filed March 21, 2002, as amended).
4.3	Computer Programs and Systems, Inc. 2005 Restricted Stock Plan (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K dated May 12, 2005).
5.1	Opinion of Maynard, Cooper & Gale, P.C., counsel to the Registrant
23.1	Consent of Grant Thornton LLP, independent registered public accounting firm
23.2	Consent of Ernst & Young LLP, independent registered public accounting firm
23.3	Consent of Maynard, Cooper & Gale, P.C. (contained in Exhibit 5.1 to this Registration Statement)