

FRANKLIN ELECTRONIC PUBLISHERS INC
Form 8-K
May 03, 2006

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported) May 1, 2006

Franklin Electronic Publishers, Incorporated

(Exact name of registrant as specified in its charter)

Pennsylvania
(State or other jurisdiction
of incorporation)

1-13198
(Commission File Number)

22-2476703
(I.R.S. Employer
Identification No.)

One Franklin Plaza, Burlington, New Jersey
(Address of principal executive offices)

08016-4907
(Zip Code)

Registrant's telephone number, including area code (609)386-2500

(Former name or former address, if changed since last report.)

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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ITEM 4.02. NON-RELIANCE ON PREVIOUSLY ISSUED FINANCIAL STATEMENTS OR A RELATED AUDIT REPORT OR COMPLETED INTERIM REVIEW.

On May 1, 2006 the management of Franklin Electronic Publishers, Incorporated (the Company or we) concluded that we should restate the previously issued consolidated financial statements contained in our Quarterly Reports on Form 10-Q for the quarters ended June 30, 2005, September 30, 2005 and December 31, 2005 to adjust the timing of revenue recognized on the licensing of certain software in May 2005. On May 1, 2006, the Audit Committee of our Board of Directors met and discussed this matter with management and our independent accounting firm, Radin, Glass & Co., LLP, and concurred with management's conclusion.

In May 2005, we entered into an agreement with a customer to license certain software for \$800,000 for a four year period. The agreement also provided for maintenance and support service to be provided by the Company during the period of the contract for an additional \$160,000. The customer had the option of accepting or declining the maintenance and support service. Pursuant to our understanding, at that time, of the authoritative literature on the subject (Statement of Position 97-2 published by the American Institute of Certified Public Accountants) we recognized the \$800,000 license fee in our fiscal quarter ended June 30, 2005 as revenue when the agreement was signed. We are recognizing the maintenance fee at the rate of \$3,333 per month for 48 months.

We now believe that, absent definitive Vendor Specific Objective Evidence (VSOE) to support the separate price of the maintenance, we should have recognized the entire \$960,000 (licensing fee and maintenance and support) ratably over the four year period of the contract. The entire payment was received in July 2005.

Because we have concluded that our previously filed Quarterly Reports noted above should be revised to make the change discussed above, investors should no longer rely upon our Quarterly Reports on Form 10-Q filed with the Securities and Exchange Commission for the quarters ended June 30, 2005, September 30, 2005, and December 31, 2005.

The effect of the change discussed above is shown below:

| Period Ended | Revenue from License | | |
|---------------------|-------------------------------|-------------------------|------------------------|
| | As Originally Reported | Amount of Change | Adjusted Amount |
| June 30, 2005 | \$ 800,000 | (\$ 766,667) | \$ 33,333 |
| September 30, 2005 | 0 | 50,000 | 50,000 |
| December 31, 2005 | 0 | 50,000 | 50,000 |

The remainder of the revenue from the contract will be recognized as shown below:

| Periods | Revenue to be Recognized | |
|----------------|---------------------------------|---------------|
| Quarter Ending | March 31, 2006 | \$ 50,000 |
| Years Ending | March 31, 2007 | 200,000 |
| | March 31, 2008 | 200,000 |
| | March 31, 2009 | 200,000 |
| | Quarter Ending | June 30, 2009 |

The changes described above are all non-cash and will have no effect on the previously reported amounts of cash in the Company's financial statements. Current direct expenses pertaining to the transaction approximate 3% of revenue and will be adjusted accordingly.

We intend to file amendments to our Quarterly Reports on Form 10-Q for the quarters ended June, 30, 2005, September 30, 2005 and December 31, 2005 as soon as practicable.

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Franklin Electronic Publishers, Incorporated

Date: May 3, 2006

By: /s/ Arnold D. Levitt
Name: Arnold D. Levitt
Title: Senior Vice President,
Chief Financial Officer