

PHOENIX TECHNOLOGIES LTD  
Form 10-Q/A  
October 07, 2005

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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D. C. 20549

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**FORM 10-Q/A**

(Amendment No. 1)

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(Mark One)

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

For the quarterly period ended December 31, 2004

or

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

For the transition period \_\_\_\_\_ to \_\_\_\_\_.

Commission file number 0-17111

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**PHOENIX TECHNOLOGIES LTD.**

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(Exact name of Registrant as specified in its charter)

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

**04-2685985**  
(I.R.S. Employer  
Identification Number)

**915 Murphy Ranch Road, Milpitas, CA 95035**

(Address of principal executive offices, including zip code)

**(408) 570-1000**

(Registrant's telephone number, including area code)

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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 whether the Registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act). YES  NO

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

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

<b>Class</b>	<b>Number of Shares Outstanding at</b>
	<b>January 31, 2005</b>
Common Stock, par value \$0.001	24,725,510

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## EXPLANATORY NOTE

Phoenix Technologies Ltd. (the Company) is filing this Amendment No. 1 on Form 10-Q/A (this Amendment) to amend the Company's Quarterly Report on Form 10-Q for the fiscal quarter ended December 31, 2004, as filed with the Securities and Exchange Commission on February 9, 2005 (the Original Form 10-Q), to revise the Company's disclosure in Part I Item 4, Controls and Procedures, relating to the effectiveness of the Company's disclosure controls and procedures and the remedial steps the Company is taking to correct the specifically identified internal control deficiencies and to file new officers' certifications pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. This Amendment amends and restates Part I Item 4, Controls and Procedures, and Part II Item 6, Exhibits, in the Original Form 10-Q in their entirety as set forth below. This Amendment does not update any other information presented in the Original Form 10-Q, except where specifically noted.

## PART I FINANCIAL INFORMATION

### ITEM 4. CONTROLS AND PROCEDURES

#### *(a) Evaluation of Disclosure Controls and Procedures.*

Our Chief Executive Officer and Chief Financial Officer have reviewed, as of the end of the period covered by this report, the effectiveness of the Company's disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the Exchange Act)), which are designed to ensure that information relating to the Company that is required to be disclosed by us in the reports that we file or submit under the Exchange Act, is recorded, processed, summarized and reported within the time periods specified in the Exchange Act and related regulations. Based on this review, our chief executive officer and our chief financial officer have concluded that, for the reasons discussed below, our disclosure controls and procedures were not effective as of the end of the period covered by this report to ensure that information relating to the Company that is required to be disclosed by us in the reports that we file or submit under the Exchange Act is communicated to the Company's management, including our chief executive officer and our chief financial officer, as appropriate to allow timely decisions regarding required disclosure.

In connection with the audit of our consolidated financial statements for the fiscal year ended September 30, 2004, Ernst & Young LLP, our independent registered public accounting firm, identified and reported to management and our audit committee on December 27, 2004 certain matters relating to internal control design and operation that it considered to be reportable conditions under standards established by the American Institute of Certified Public Accountants.

Specifically, Ernst & Young reported that (i) documentation supporting management's tax conclusions was inadequate and (ii) management's proposed accounting for certain tax related issues was not in accordance with U.S. generally accepted accounting principals. As a result, based on the completion of Ernst & Young's audit procedures, the Company recorded audit adjustments to the tax accounts totaling approximately \$600,000. The internal control design and operation deficiencies described above constituted material weaknesses that began to affect the Company's financial reporting process during the preparation of our consolidated financial statements for the fiscal year ended September 30, 2004.

In addition, Ernst & Young reported that the lack of formalized and detailed management level reviews during the financial statement close process and the lack of sufficient technical accounting resources to adequately perform certain significant non-routine financial reporting processes were deficiencies in the Company's internal control design and operation. In particular, Ernst & Young recommended that the design

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and operation of the Company's financial statement close process should be re-evaluated to ensure (i) that all significant account balances, including judgmental areas, affected by the Company's non-routine and estimation processes are reviewed for appropriate accounting support by management as part of the Company's financial statement close process, and (ii) that reviews of significant account balance analyses and SEC or other regulatory filings are conducted by technically proficient Company personnel in a timely manner. These deficiencies resulted in audit adjustments under U.S. generally accepted accounting principals, impacting several U.S. and international accounts, but did not constitute material weaknesses.

In order to correct the specifically identified internal control deficiencies, we are taking the following steps, among others:

evaluating the skills and depth of our technical accounting staff to determine if our accounting resources are sufficient to perform our financial reporting processes adequately and to identify the additional resources, if any, that may be required to perform our financial reporting processes. We will subsequently initiate a search for any position that we identify as an appropriate addition to our accounting staff;

strengthening the controls around those financial reporting processes that we determined are material weaknesses or internal control deficiencies;

reviewing the documentation and review procedures relating to our tax accounts; and

revising our financial statement close process to include more robust reviews of all account balance and non-recurring or infrequent items and to require a more thorough evaluation of compliance with U.S. generally accepted accounting principles prior to finalizing our financial statements. Such reviews or evaluations will be performed by the controller or higher-level member of our finance organization.

In addition to undertaking the steps described above, the Company has engaged outside consultants to assist with the Company's quarterly financial statement close process and will conduct more robust reviews of all account balances and non-recurring or infrequent items prior to finalizing its financial statements.

We believe that the steps we are taking to strengthen our system of internal controls and our disclosure controls and procedures will be adequate to provide reasonable assurance that the objectives of these control systems will be met. However, because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues, if any, within the Company have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of simple error or mistake.

*(b) Changes in Internal Controls.*

Except as described above, there were no changes in our internal control over financial reporting that occurred during our last fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## **PART II OTHER INFORMATION**

### **ITEM 6. EXHIBITS**

- 31.1 Certification of Principal Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.\*\*
- 31.2 Certification of Principal Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.\*\*

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- 31.3 Certification of Principal Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 31.4 Certification of Principal Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 32.1 Certification of Principal Executive Officer Pursuant to 18 U.S.C. Section 1350.\*\*
- 32.2 Certification of Principal Financial Officer Pursuant to 18 U.S.C. Section 1350.\*\*

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\*\* Previously filed as an exhibit to the Original Form 10-Q.

**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, thereunto duly authorized.

**PHOENIX TECHNOLOGIES LTD.**

By: /s/ Albert E. Sisto

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Albert E. Sisto  
Chairman, President and Chief Executive Officer

Date: October 6, 2005

By: /s/ Randall Bolten

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Randall Bolten  
Senior Vice President, Finance and Administration,  
and Chief Financial Officer

Date: October 6, 2005

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