

NEWTEK BUSINESS SERVICES INC
Form 10-K/A
April 01, 2005

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

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, 2004

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 [NO FEE REQUIRED]

For the transition period from _____ to _____

Commission file number: 001-16123

NEWTEK BUSINESS SERVICES, INC.

New York
(State or other jurisdiction of
incorporation or organization)

11-3504638
(I.R.S. Employer Identification No.)

11530

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100 Quentin Roosevelt Boulevard Suite
408 Garden City NY
(Address of principal executive offices)

(Zip Code)

Registrant's telephone number, including area code: (516) 390-2260

Securities Registered Pursuant to Section 12(b) of the Act:

None

Securities Registered Pursuant to Section 12(g) of the Act:

Common Stock, par value \$0.02 per share

(Title of class)

Check whether the issuer (1) filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the past 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

Check if there is no disclosure of delinquent filers in response to Item 405 of Regulation S-K contained herein, and no disclosure will be contained, to the best of 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 an accelerated filer (as defined in Rule 12b-2 of the Act). Yes No

The aggregate market value of the voting stock held by non-affiliates of the registrant computed by reference to the price at which the common equity was sold on June 30, 2004, was approximately \$43,473,000.

As of March 31, 2005 there were 33,905,172 shares issued and outstanding of the registrant's Common Stock, par value \$0.02 per share.

The Company's Annual Report on Form 10-K previously filed contained three exhibits showing the incorrect date due to human or technical error. The Exhibit Index and the correctly dated Exhibits 31.1, 31.2 and 32.1, pursuant to Sections 302 and 906 of the Sarbanes-Oxley Act of 2002, respectively, have been attached hereto.

EXHIBITS INDEX

| Number | Description |
|---------------|--|
| 2.1 | Agreement and Plan of Merger between REXX Environmental Corporation and Newtek Business Services, Inc.(formerly known as TWG, Inc.) dated December 9, 1999. (Incorporated by Reference to Exhibit 2.1 to Registration Statement No. 333-43550). |
| 2.2 | Plan of Merger between BJB Holdings and Whitestone Acquisition Corp. dated January 14, 2000. (Incorporated by reference to Exhibit No. 2.2 to Registration Statement No. 333-43550). |
| 2.3 | Stock Purchase Agreement among Greg S. Watkins, Daren J. Barone and REXX Environmental Corporation dated June 10, 1999. (Incorporated by reference to Exhibit No. 2.3 to Registration Statement No. 333-43550). |
| 2.4 | Letter Agreements amending the term of the Stock Purchase Agreement dated November 29, 1999, January 6, 2000, April 27, 2000 and June 28, 2000. (Incorporated by reference to Exhibit No. 2.4 to Registration Statement No. 333-43550). |
| 2.5 | Agreement and Plan of Merger among Newtek Capital, Inc., Exponential Business Development Company, Inc. and the Shareholders of Exponential Business Development Company, Inc., January 9, 2002 (Incorporated by reference to Exhibit 99.1 to the Company's Quarterly Report on Form 10-QSB for the quarter ended March 31, 2002.) |
| 2.6 | Agreement and Plan of Merger among Newtek Capital, Inc., Wilshire New York Partners III, LLC, Comcap Holdings Corp., Charles Freeman, Craig Reynolds, the Majority Shareholders of Comcap Holdings Corp., and the Green Family Entities, and to be Joined in by SBA Holdings, Inc., August 8, 2002 (Incorporated by reference to Exhibit 2.1 to Newtek's Current Report on Form 8-K, filed October 2, 2002.) |
| 2.7 | Amended and Restated Guaranty Agreement, dated June 22, 2004, between Newtek Business Services, Inc. and DB Structured Products, Inc. (Incorporated by reference to Exhibit 10.2 to Newtek's Report on Form 8-K, dated June 25, 2004.) |
| 2.8 | Agreement and Plan of Merger, August 7, 2003, among Newtek Business Services, Inc., Automated Merchant Services Acquisition Corp., Automated Merchant Services, Inc., Martin Blank, Michael Rothman and Ellen Rothman, Trustees, and Michael Rothman (Incorporated by reference to Exhibit 2.1 to Newtek's Report on Form 8-K, filed October, 2003.) |
| 2.9 | Asset Purchase Agreement, dated April 28, 2004, between Newtek Business Services, Inc., and CrystalTech Web Hosting, Inc. (including a listing of omitted schedules). (Incorporated by reference to Exhibit 2.1 to Newtek's Report on Form 8-K dated April 30, 2004.) |
| 2.10 | Amended and Restated Master Loan and Security Agreement, dated December 31, 2002 between Newtek Small Business Finance, Inc. and DB Structured Products, Inc., and Amendments thereto, dated January 23, 2004, March 22, 2004 and June 22, 2004. (Incorporated by reference to Exhibit 10.1 to Newtek's Report on Form 8-K, dated June 25, 2004.) |
| 3.1 | Certificate of Incorporation of Newtek Business Services, Inc., as revised and restated through November 25, 2002. (Incorporated by reference to Exhibit 3i-2 of Newtek's Report on Form 10-Q, filed May 14, 2004.) |
| 3.2 | Bylaws of Newtek Business Services, Inc. (Incorporated by reference to Exhibit No. 3.2 to Registration Statement No. 3.2.) |
| 10.1 | Employment Agreement with Jeffrey G. Rubin, May 14, 2004. (Incorporated by reference to Exhibit No. 10.1 to Newtek's Registration Statement No. 333-115615.) |
| 10.2 | Employment Agreement with Barry Sloane, May 14, 2004. (Incorporated by reference to Exhibit No. 10.2 to Newtek's Registration Statement No. 333-115615.) |
| 10.3 | Employment Agreement with Brian A. Wasserman, May 14, 2004. (Incorporated by reference to Exhibit No. 10.3 to Newtek's Registration Statement No. 333-115615.) |
| 10.4 | Employment Agreement with John R. Cox, dated as of December 31, 2002. (Incorporated by reference to Exhibit 10.5 to Registration Statement No. 333-115615.) |
| 10.5 | Employment Agreement between CrystalTech Web Hosting, Inc. and Tim Uzzanti dated July 9, 2004. (Incorporated by reference to Exhibit 10.6 to Registration Statement No. 333-115615.) |

- 21.1 Subsidiaries of the Registrant.*
- 23.1 Consent of PricewaterhouseCoopers LLP.*
- 31.1 Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 31.2 Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 32.1 Certification of Chief Executive and Chief Financial Officers pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
* previously filed.