

RATEXCHANGE CORP  
Form 10-K/A  
May 01, 2003

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## SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

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### FORM 10-K/A

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

For the Fiscal Year ended December 31, 2002

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

For the Transition Period from to

Commission File Number 1-15831

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## RATEXCHANGE CORPORATION

(Exact Name of Registrant as Specified in its Charter)

Delaware  
(State or Other Jurisdiction of  
Incorporation or Organization)  
  
100 Pine Street, Suite 500  
  
San Francisco, CA  
(Address of Principal Executive Offices)

11-2936371  
(I.R.S. Employer  
Identification No.)  
  
94111  
(Zip Code)

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(415) 274-5650

(Registrant's Telephone Number, Including Area Code)

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

**Common Stock, \$0.0001 per share**

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

**None**

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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 if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not 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 Exchange Act Rule 12b-2). Yes  No

The aggregate market value of the 19,967,559 shares of common stock of the Registrant issued and outstanding as of June 28, 2002, the last business day of the registrant's most recently completed second fiscal quarter, excluding 828,300 shares of common stock held by affiliates of the Registrant was \$7,987,024. This amount is based on the closing price of the common stock on the American Stock Exchange of \$0.40 per share on June 28, 2002.

The number of shares of Registrant's common stock outstanding as of March 28, 2003 was 23,521,580.

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## Explanatory Note

This Amendment No. 1 on Form 10-K/A (this Amendment) amends the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2002, originally filed on March 31, 2003 (the Original Filing). The Company is refiling a portion of Part III to include the information required by Items 10, 11, 12 and 13 to Part III because the Company's proxy statement will not be filed within 120 days of the end of the Company's fiscal year ended December 31, 2002. In addition, in connection with the filing of this Amendment and pursuant to the rules of the Securities and Exchange Commission, the Company is including with this Amendment certain currently dated certifications.

Except as described above, no other changes have been made to the Original Filing. This Amendment continues to speak as of the date of the Original Filing, and the registrant has not updated the disclosures contained therein to reflect any events which occurred at a date subsequent to the filing of the Original Filing. The filing of this Form 10-K/A is not a representation that any statements contained in items of Form 10-K other than Part III Items 10 through 13 are true or complete as of any date subsequent to the date of the original filing of Form 10-K.

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## PART III

### ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

The table below sets forth certain information concerning each of the Directors and executive officers of Rateexchange:

| <u>Name</u>          | <u>Age</u> | <u>Position</u>  |
|----------------------|------------|--|
| D. Jonathan Merriman | 42         | Chairman of the Board of Directors and Chief Executive Officer |
| Patrick Arbor        | 66         | Director   |
| Gregory S. Curhan    | 41         | Executive Vice President and Chief Financial Officer           |
| Robert E. Ford       | 41         | President and Chief Operating Officer                          |
| Donald H. Sledge     | 63         | Director   |
| Ronald E. Spears     | 54         | Director   |
| Steven W. Town       | 43         | Director   |

D. Jonathan Merriman has served as our Chief Executive Officer since October 2000 and served as our President from October 2000 through June 2001. He has served as a Director since February 2000 and became Chairman of the Board in June 2001. From June 1998 to October 2000, Mr. Merriman was Managing Director and Head of the Equity Capital Markets Group and member of the Board of Directors at First Security Van Kasper. In this capacity, he oversaw the Research, Institutional Sales, Equity Trading, Syndicate and Derivatives Trading departments. He is currently on the Board of Directors of Leading Brands, Inc. From June 1997 to June 1998, Mr. Merriman served as Managing Director and head of Capital Markets at The Seidler Companies in Los Angeles, where he also served on the firm's Board of Directors. Before Seidler, Mr. Merriman was Director of Equities for Dabney/Resnick/Imperial, LLC. In 1989, Mr. Merriman co-founded the hedge fund company Curhan, Merriman Capital Management, Inc., which managed money for high net worth individuals and corporations. Before Curhan, Merriman Capital Management, Inc., he worked in the Risk Arbitrage Department at Bear Stearns & Co. as a trader/analyst. He has completed coursework at New York University's Graduate School of Business. Mr. Merriman received his Bachelor of Arts in Psychology from Dartmouth College.

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Patrick Arbor has served as Director of Rateexchange since February 2001 and has served as a member of the audit committee since April 2001. Currently an independent futures trader, Mr. Arbor is a principal of the trading firm of Shatkin, Arbor, Karlov & Co. He is a longtime member of the Chicago Board of Trade (CBOT), the world's oldest derivatives exchange, serving as the organization's Chairman from 1993 to 1999. During that period, Mr. Arbor also served on the Board of Directors of the National Futures Association. Prior to that, he served as Vice Chairman of the CBOT for three years and ten years as a Director. Mr. Arbor's other exchange memberships include the Chicago Board Options Exchange, the Mid-America Commodity Exchange and the Chicago Stock Exchange. Mr. Arbor received his undergraduate degree in business and economics from Loyola University.

Gregory S. Curhan is our Executive Vice President and Chief Financial Officer. Previously he served as Chief Financial Officer of WorldRes.com from May 1999 through June 2001. Prior to joining WorldRes.com, Mr. Curhan served as Director of Global Technology Research Marketing and Managing Director Specialty Technology Institutional Equity Sales at Merrill Lynch & Co. from May 1998 to May 1999. Prior to joining Merrill Lynch, Mr. Curhan was a partner in the investment banking firm of Volpe Brown Whelan & Co., serving in various capacities including Internet research analyst and Director of Equities from May 1993 to May 1998. Mr. Curhan was a founder and principal of the investment advisor Curhan, Merriman Capital Management from July 1988 through December 1992. Prior to founding Curhan, Merriman, Mr. Curhan was a Vice President institutional equity sales for Montgomery Securities from June 1985 through June 1988. From August 1983 to

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May 1985, Mr. Curhan was a financial analyst in the investment banking group at Merrill Lynch. Mr. Curhan earned his Bachelor of Arts degree from Dartmouth College.

Robert E. Ford serves as President and Chief Operating Officer for Rateexchange. He brings 18 years of executive and operations experience to the Company. Prior to joining Rateexchange, Mr. Ford was a co-Founder and CEO of Metacat, Inc., a content management ASP that specializes in enabling supplier catalogs for Global 2000 private exchanges and eMarketplaces. Previously, he was President/COO and on the founding team of JobDirect.com, a leading resume and job matching service for university students, now a wholly-owned subsidiary of Korn Ferry International. Previously, Mr. Ford co-founded and managed an education content company. Prior to that, he headed up a turnaround and merger as General Manager of a 65 year-old manufacturing and distribution company. Mr. Ford started his career as VP of Business Development at Lazar Enterprises, a technology-consulting firm. He earned his Masters in International Business and Law from the Fletcher School of Law and Diplomacy at Tufts University and a BA with high distinction from Dartmouth College.

Donald H. Sledge has served as one of our Directors since September 1999 and Chairman of our Board of Directors from February 2000 to June 2001. He has served as a member of the compensation committee since April 2001. He also served as Chief Executive Officer from February 2000 until October 2000. From September 1999 until February of 2000 he served as President, Chief Executive Officer and Chairman of our subsidiary Rateexchange I, Inc. Mr. Sledge is currently a general partner in Fremont Communications, a venture capital fund, based in San Francisco. From 1996 to September 1999, Mr. Sledge was president and Chief Executive Officer of TeleHub Communications Corporation, a next generation ATM-based telecommunications company. From 1994 to 1995, Mr. Sledge served as President and Chief Operating Officer of WCT, a \$160-million long distance telephone company that was one of Fortune Magazine's 25 fastest growing public companies before it was acquired by Frontier Corporation. From 1993 to 1994, Mr. Sledge was head of operations for New T&T, a Hong Kong-based start-up. He was Chairman and Chief Executive Officer of New Zealand Telecom International from 1991 to 1993 and a member of the executive board of TCNZ, where he led privatization and public offerings and served as managing director of New Zealand's largest operating telephone company, Telecom Auckland Ltd. One of the subsidiaries of Telehub Communications, Telehub Network Services Corporation, filed for bankruptcy several months after Mr. Sledge resigned from Telehub. Mr. Sledge also served as president and Chief Executive Officer of Pacific Telesis International. Since November 1997, Mr. Sledge also has served on the Board of Directors of eGlobe, Inc., a voice-based applications services provider. Mr. Sledge holds a Masters of Business Administration and Bachelor of Arts degree in industrial management from Texas Technological University.

Ronald E. Spears has served as one of our Directors since March 2000 and has served as a member of the audit committee since April 2001. Throughout his 20-year career, he has managed telecommunications and professional service start-ups, as well as established long distance powerhouses. Since June 2000, Mr. Spears has led the formulation and implementation of corporate-wide development related to strategic

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planning, marketing and communications, business alliances as Vaultus, formerly MobileLogic, President and Chief Executive Officer. Mr. Spears joined Vaultus after serving as the President and Chief Executive Officer of CMGI Solutions, an enterprise focused Internet solutions provider from April 1999 to May 2000. Before joining CMGI Solutions, Mr. Spears served as president and COO of e.spire Communications, one of the nation's fastest growing integrated communications providers, from February 1998 to April 1999 where he managed day-to-day business operations and saw significant growth in revenue and market share. From June 1995 to January 1998 he was corporate vice president at Citizens Utilities, managing that company's independent telephone company operations in 13 states. He also served as President of MCI WorldCom, Inc.'s Midwest Division from 1984 to 1990. A pioneer of the competitive long distance industry, Mr. Spears began his career in telecommunications as a manager of AT&T Longlines in 1978, following eight years as an officer in the U.S. Army. He is a graduate of the United Military Academy at West Point and also holds a Master's Degree in Public Service from Western Kentucky University.

Steven W. Town has served as one of our Directors since October 2000 and has served as a member of the compensation committee since April 2001. Mr. Town currently serves as Co-Chief Executive Officer of the

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Amerex Natural Gas, Amerex Power and Amerex Bandwidth, Ltd. Mr. Town began his commodities career in 1987 in the retail futures industry prior to joining the Amerex Group of Companies. He began the Amerex futures and forwards brokerage group in natural gas in 1990, in Washington D.C., and moved this unit of Amerex to Houston in 1992. During Mr. Town's tenure as Co-Chief Executive Officer, the Amerex companies have become the leading brokerage organizations in their respective industries. Amerex currently provides energy, power and bandwidth brokerage services to many of the energy companies. Mr. Town is a graduate of Oklahoma State University.

### **Section 16(a) Beneficial Ownership Reporting Compliances**

There is no family relationship among any of the foregoing officers or between any of the foregoing executive officers and any Director of the Company.

Section 16(a) of the Securities Exchange Act of 1934 required the Company's directors and executive officers to file reports with the SEC on Forms 3, 4 and 5 for the purpose of reporting their ownership of and transactions in the Company's equity securities. During 2002, there were no late filings.

## **ITEM 11. EXECUTIVE COMPENSATION**

### **Compensation of Directors**

Directors may receive stock option grants for service on the Board. In March 2002 the members of the Board received the following option grants to purchase shares of the Company's common stock as compensation for their services as Board members in 2002: Mr. Sledge received an option to purchase 140,000 shares, Mr. Spears an option to purchase 200,000 shares, Mr. Arbor received an option to purchase 125,000 shares and Mr. Town received an option to purchase 115,000 shares. Each of these grants were made with an exercise price of \$0.41 per share. The variation in the number of shares granted to each member of the Board was based upon the number of years of service and average weighted exercise price of grants made to the individual member for past service. Former Board member Mr. John McConnaughy, Jr. received an option to purchase 100,000 shares of common stock at an exercise price of \$0.56 per share in December 2001. The option grant to Mr. McConnaughy was cancelled in April 2003, 90 days after his resignation from the Board, according to the terms of our Company's option plan. Former Board member Mr. E. Russell Braziel received an option to purchase 125,000 shares of common stock at an exercise price of \$0.41 per share in March 2002. The option grant to Mr. Braziel was cancelled in April 2003, 90 days after his resignation from the Board, according to the terms of our Company's option plan. All of these options have terms of ten years and vest over one year from the date of grant. Vesting is accelerated upon

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change of control of our Company. Rateexchange's Directors also receive reimbursement of travel and other out-of-pocket expenses related to board meeting attendance. The members of the Board do not receive salaries or other cash compensation for service on the Board.

### Compensation of Executives

The following table sets forth information regarding the compensation paid to our Chief Executive Officer and each of the Company's other executive officers whose total salary and bonus for 2002 exceeded \$100,000.

#### SUMMARY COMPENSATION TABLE

| Name and Principal Position  | Annual Compensation |            |            | Long-Term<br>Compensation<br>Awards |
|--|---------------------|------------|------------|-------------------------------------|
|  | Year                | Salary     | Bonus      | Securities<br>Underlying<br>Options |
| D. Jonathan Merriman (1)<br>Chairman and Chief Executive                         | 2002                | \$ 241,881 | \$ 14,000  | 1,387,500                           |
|  | 2001                | \$ 99,831  | \$ 200,000 |                                     |
| Officer  | 2000                | \$ 59,039  |            | 2,100,000                           |
| Gregory S. Curhan (2)<br>Executive Vice President and<br>Chief Financial Officer | 2002                | \$ 122,195 | \$ 33,334  | 1,000,000                           |
|  | 2001                | n/a        | n/a        | n/a                                 |
|  | 2000                | n/a        | n/a        | n/a                                 |
| Robert E. Ford (3)<br>President and Chief Operating                              | 2002                | \$ 125,000 | \$ 45,000  | 670,270                             |
|  | 2001                | \$ 88,741  |            | 820,000                             |
| Officer  | 2000                | n/a        | n/a        | n/a                                 |

(1) Mr. Merriman was appointed to the Board of Directors in February 2000. Mr. Merriman was hired on October 5, 2000 as President and Chief Executive Officer. Effective May 28, 2001, Mr. Merriman was appointed Chairman of our Board of Directors. The Board ratified his appointment on June 28, 2001. Mr. Merriman's annual salary was \$300,000, plus a bonus under his employment agreement from 2000. Effective March 15, 2001, Mr. Merriman reduced his annual salary to \$1.00, plus a bonus tied to performance. Mr. Merriman's salary was raised to \$150,000 per year after our company secured private financing in November 2001. In July 2002, Mr. Merriman's salary was changed to be in line with other revenue producing registered representatives of the company such that his annual base salary is equal to \$75,000 and he receives a draw of \$75,000 per year. Mr. Merriman also earned \$91,880.68 in commissions in 2002. Commissions earned are included in the salary total set forth in the table above.

(2) Mr. Curhan was hired on January 9, 2002 as Executive Vice President and Chief Financial Officer with an annual salary of \$125,000, plus bonus under his employment agreement. In July 2002, Mr. Curhan's salary was changed to be in line with other revenue producing registered representatives of the company such that his annual base salary is equal to \$62,500 and he receives a draw of \$62,500 per year.

(3) Mr. Ford was hired on February 19, 2001 as Chief Operating Officer with an annual salary of \$125,000, plus a bonus under his employment agreement. Effective June 28, 2001, Mr. Ford was appointed President by the Board of Directors. In January 2002, Mr. Ford

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entered into a new employment agreement with the Company. His annual salary under this new agreement is \$125,000, plus bonus. In July 2002, Mr. Ford's salary was changed to be in line with other revenue producing registered representatives of the Company such that his annual base salary is equal to \$62,500 and he receives a draw of \$62,500 per year.

### Option Grants in Last Fiscal Year

The following table sets forth information regarding options granted during fiscal year 2002 to the named executive officers. No stock appreciation rights were granted in 2002.

| Name                     | Individual Grants   |   |   |                    | Potential Realizable Value at  |           |
|--------------------------|---|---|---|--------------------|--|-----------|
|                          | Number of<br>Securities<br>Underlying<br>Options<br>Granted | Percent of<br>Total<br>Options to<br>Employees<br>in 2002 | Exercise or<br>Base Price<br>Per Share(1) | Expiration<br>Date | Assumed Annual Rates of<br>Stock Price Appreciation for<br>Option Term |           |
|                          |   |   |   |                    | 5% (\$)  | 10% (\$)  |
| D. Jonathan Merriman (2) | 387,500   | 6.0%  | \$ 0.41                                   | 3/20/12            | 258,791  | 412,081   |
|                          | 1,000,000   | 15.5%   | \$ 0.41                                   | 3/20/12            | 667,847  | 1,063,434 |
| Gregory S. Curhan (3)    | 1,000,000   | 15.5%   | \$ 0.53                                   | 1/9/12             | 863,314  | 1,374,684 |
| Robert E. Ford (4)       | 400,000   | 6.2%  | \$ 0.37                                   | 1/1/12             | 241,076  | 383,874   |
|                          | 270,270   | 4.2%  | \$ 0.37                                   | 1/1/12             | 162,889  | 259,374   |

- (1) The exercise prices of the options included in this table reflect the Board's bona fide estimation of market value of the shares on the various grant dates.
- (2) As compensation for Mr. Merriman's successful completion of the Company's private round of financing in November 2001, he received an option to purchase 387,500 common shares with a strike price of \$0.41 and immediate vesting. In lieu of the cash salary deferred by Mr. Merriman for fiscal years 2001 and 2002, he received an option grant to purchase 1,000,000 common shares with a strike price of \$0.41 and immediate vesting.
- (3) As part of his employment agreement, Mr. Curhan received an option to purchase 1,000,000 common shares with a strike price of \$0.53 and the following vesting schedule: 450,000 shares will vest at the rate of 25% upon the anniversary of his employment with the remainder vesting 1/36<sup>th</sup> per month for three years thereafter and 550,000 shares vesting on January 1, 2007. The vesting of the 550,000 share portion of the grant can be accelerated by the company meeting specific financial milestones.
- (4) As part of his January 2002 employment agreement, Mr. Ford received an option to purchase 400,000 common shares with a strike price of \$0.37 with 100,000 shares vesting immediately, 100,000 shares vesting on the anniversary of his signing his employment agreement and the balance of 200,000 option shares vesting 1/24<sup>th</sup> per month over the remaining two years following the first anniversary of his agreement.

**Aggregate Option Exercises in Last Fiscal Year and Fiscal Year-End Holdings**

The following table sets forth information with respect to each of the named executive officers concerning the number of securities underlying unexercised stock options at the end of fiscal year 2002 and the 2002 fiscal year-end value of all unexercised in the money options held by such individuals. No options were exercised by any named executive officer in fiscal year 2002.

| Name              | Number of<br>Securities Underlying<br>Unexercised<br>Options |               | Value of<br>Unexercised<br>In-the-Money<br>Options (1) |               |
|-------------------|--|---------------|--|---------------|
|                   | Exercisable  | Unexercisable | Exercisable  | Unexercisable |
|                   | D. Jonathan Merriman   | 2,267,500     | 1,250,000  | \$ 0          |
| Gregory S. Curhan | 150,000  | 850,000       | 0  | 0             |
| Robert E. Ford    | 1,135,203  | 267,567       | 4,000  | 0             |

(1) Market value of underlying securities at year-end minus the exercise price.

**ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT**

The following table sets forth information regarding beneficial ownership of each class of our voting securities as of April 30, 2003, by (a) each person who is known by us to own beneficially more than five percent of each of our outstanding classes of voting securities, (b) each of our directors, (c) each of the named executive officers and (d) all directors and executive officers as a group.

| Name and Address of<br>Beneficial Owner                             | Common<br>Stock<br>Beneficially<br>Owned | Percent (1) |
|---|--|-------------|
| Patrick Arbor (2)   | 373,818                                  | 1.4%        |
| Gregory S. Curhan (3)   | 290,000                                  | 1.1%        |
| Robert E. Ford (4)  | 1,259,903                                | 4.6%        |
| D. Jonathan Merriman (5)  | 3,944,453                                | 13.6%       |
| Donald H. Sledge (6)  | 1,440,000                                | 5.2%        |
| Ronald E. Spears (7)  | 410,000                                  | 1.5%        |
| Steven W. Town (8)  | 288,818                                  | 1.1%        |
| John V. Winfield (9)<br>820 Moraga Drive<br>Los Angeles, CA 90049   | 1,626,232                                | 5.9%        |
| All directors and executive officers as a group<br>(7 persons) (10) | 6,669,360                                | 24.4%       |
| Amerex Bandwidth, Ltd.  | 1,985,000                                | 7.0%        |



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1 Sugar Creek Center Blvd.

Suite 700

Sugar Land, TX 77478

- (1) Applicable percentage ownership is based on 26,193,341 shares of common stock outstanding as of April 30, 2003. Pursuant to the rules of the Securities and Exchange Commission, shares shown as beneficially owned include all shares of which the persons listed have the right to acquire beneficial ownership within 60 days of April 30, 2003, including (a) shares subject to options, warrants or any other right exercisable within 60 days of April 30, 2003, even if these shares are not currently outstanding, (b) shares attainable through conversion of other securities, even if these shares are not currently outstanding, (c) shares that may be obtained under the power to revoke a trust, discretionary account or similar arrangement and (d) shares that may be obtained pursuant to the automatic termination of a trust, discretionary account or similar arrangement. This information is not necessarily indicative of beneficial ownership for any other purpose. Our directors and executive officers have sole voting and investment power over the shares of common stock held in their names, except as noted in the following footnotes.
- (2) Includes Mr. Arbor's currently exercisable options to purchase 100,000 shares of common stock at \$2.01 per share and 125,000 shares of common stock at \$0.41 per share.
- (3) Includes Mr. Curhan's currently exercisable option to purchase 168,750 shares of common stock at \$0.53 per share. Mr. Curhan holds a warrant to purchase 12,500 common shares with an exercise price of \$0.37 per share. Mr. Curhan holds convertible preferred stock convertible into 50,000 common shares.
- (4) Includes Mr. Ford's currently exercisable option to purchase 150,000 shares of common stock with a strike price of \$2.05, an option to purchase 150,000 shares with a strike price of \$4.00, an option to purchase 20,000 shares with a strike price of \$1.40, an options to purchase 100,000 shares with a strike price of \$0.34, an option to purchase 300,000 shares with a strike price of \$0.34, an option to purchase 12,500 shares with a strike price of \$0.74, an option to purchase 200,000 shares with a strike price of \$0.37 and an option to purchase 202,695 shares with a strike price of \$0.68, all which are currently exercisable. Mr. Ford also holds a warrant to purchase 6,250 common shares with an exercise price of \$0.37 per share and a promissory note that converts at \$0.37 into 67,586 common shares.
- (5) Includes Mr. Merriman's currently exercisable options to purchase 100,000 shares of common stock at \$7.00 per share, an option to purchase 750,000 shares with a strike price of \$3.19, an option to purchase 30,000 shares with a strike price of \$0.74, an options to purchase 387,500 shares with a strike price of \$0.41 and an option to purchase 1,000,000 shares with a strike price of \$0.41, all of which are currently exercisable. Mr. Merriman also holds warrants to purchase 18,750 common shares with an exercise price of \$0.37 per share and 62,500 common shares at \$0.30 per share. He also holds a promissory note that converts at \$0.37 into 202,703 common shares and convertible preferred stock convertible into 250,000 common shares.
- (6) Includes Mr. Sledge's currently exercisable options to purchase 100,000 shares of common stock at \$2.75 per share, an option to purchase 1,200,000 shares of common stock at \$7.00 per share and an option to purchase 140,000 shares with a strike price of \$0.41 per share.
- (7) Includes Mr. Spears' currently exercisable options to purchase 100,000 shares of common stock at \$7.00 per share, an option to purchase 100,000 shares with a strike price of \$2.75 and an option to purchase 200,000 shares with a strike price of \$0.41 per share.
- (8) Includes Mr. Town's currently exercisable options to purchase 100,000 shares of common stock at \$2.87 per share and an option to purchase 115,000 shares of commons stock with a strike price of \$041 per share. Mr. Town also holds a warrant to purchase 6,250 common shares with an exercise price of \$0.37 per share and a promissory note that converts at \$0.37 into 67,586 common shares.
- (9) Includes Mr. Winfield's warrant to purchase 250,000 shares of common stock at \$0.37 per share and a convertible promissory note from the Company that can be converted at Mr. Winfield's discretion into 1,285,432 shares of common stock at \$0.37 per share. These securities

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were received as part of Mr. Winfield's participation in the Company's November 2001 private financing.

- (10) The total for directors and executive officers as a group includes 5,851,453 shares subject to outstanding stock options that are currently exercisable, 112,500 shares subject to outstanding warrants that are currently exercisable and 705,407 shares resulting from conversion of promissory notes and preferred stock that are presently convertible.

### Equity Compensation Plan Information

The following table gives information about our common stock that may be issued upon the exercise of options and warrants under all of our existing equity compensation plans as of December 31, 2002, including the 1999 Stock Option Plan, the 2000 Stock Option and Incentive Plan, the 2001 Stock Option and Incentive Plan and the 2002 Employee Stock Purchase Plan.

| <u>Plan Category</u>                                | <u>Number of Securities to be Issued Upon Exercise of Outstanding Options and Warrants</u> | <u>Weighted Average Exercise Price of Outstanding Options and Warrants</u> | <u>Number of Securities Remaining Available For Future Issuance Under Equity Compensation Plans</u> |
|---|--|--|---|
| Equity compensation plans approved by stockholders: |  |  |   |
| 1999 Stock Option Plan                              | 1,685,500  | \$ 1.26  | 1,289,500   |
| 2000 Stock Option and Incentive Plan                | 4,251,785  | \$ 2.24  | 748,215   |
| 2001 Stock Option and Incentive Plan                | 4,975,604  | \$ 0.40  | 24,396  |
| 2002 Employee Stock Purchase Plan                   |  | \$   | 1,050,124   |
| Equity compensation not approved by stockholders    | 1,750,000  | \$ 7.00  |   |

### ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

The Company formed a strategic alliance with Amerex Bandwidth, Ltd. in September 2000. Amerex is an over-the-counter broker, providing customers with voice and electronic brokerage services, market liquidity, price discovery, and data services around the globe. Under the terms of the agreement, Amerex Bandwidth, Ltd. received warrants to purchase 2,300,000 shares of the Company's common stock and also received a monthly payment for expenses associated with their bandwidth brokering services. In 2001, the Company paid Amerex Bandwidth, Ltd. \$699,183.63 in expense reimbursements according to the terms of the alliance agreement. In February 2002, the Company's obligation to pay reimbursement expenses to Amerex ended. Amerex holds warrants to purchase 1,985,000 shares of the Company's common stock. Steve Town, Co-CEO of Amerex, joined the Company's Board of Directors in October 2000 and remains on the Board to date.

### SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) 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.

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April 30, 2003

RATEXCHANGE CORPORATION

By: /s/ D. JONATHAN  
MERRIMAN

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**D. Jonathan Merriman,**

**Chairman of the Board  
and Chief Executive  
Officer**

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**CERTIFICATIONS**

I, D. Jonathan Merriman, certify that:

1. I have reviewed this annual report on Form 10-K/A of Ratemchange Corporation;
  
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;
  
3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;
  
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and have:
  - a) Designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;
  
  - b) Evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this annual report (the "Evaluation Date"); and
  
  - c) Presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

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5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this annual report whether there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: April 30, 2003

/s/ D. JONATHAN MERRIMAN

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**D. Jonathan Merriman**

**Chairman of the Board and**

**Chief Executive Officer**

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### CERTIFICATIONS

I, Gregory S. Curhan, certify that:

1. I have reviewed this annual report on Form 10-K/A of Ratemaxchange Corporation;

2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report;

3. Based on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report;

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4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and have:

a) Designed such disclosure controls and procedures to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this annual report is being prepared;

b) Evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this annual report (the "Evaluation Date"); and

c) Presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

6. The registrant's other certifying officers and I have indicated in this annual report whether there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our most recent evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: April 30, 2003

/s/ GREGORY S. CURHAN

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**Gregory S. Curhan**

**Chief Financial Officer**