

DGT HOLDINGS CORP.

FORM 8-K (Current report filing)

Filed 09/15/04 for the Period Ending 09/10/04

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 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) September 10, 2004

DEL GLOBAL TECHNOLOGIES CORP.

(Exact name of registrant as specified in charter)

New York ----- (State or other jurisdiction of incorporation)	0-3319 ----- (Commission File Number)	13-1784308 ----- (IRS Employer Identification No.)
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One Commerce Park, Valhalla, NY ----- (Address of Principal Executive Offices)	10595 ----- (Zip Code)
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Registrant's telephone number, including area code (914) 686-3600

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

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 (see General Instruction A.2. below):

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))

ITEM 1.01. ENTRY INTO OF A MATERIAL DEFINITIVE AGREEMENT.

On September 10, 2004, the registrant entered into a separation agreement and release (the "Separation Agreement") with Thomas V. Gilboy, the former Chief Financial Officer of the registrant. The Separation Agreement, which is attached hereto as EXHIBIT 99.01 and incorporated herein by reference, provides for a payment of \$140,000 by the registrant to Mr. Gilboy. In consideration for this payment, the Change in Control Agreement between the registrant and Mr. Gilboy dated October 28, 2002 (the "Gilboy Change in Control Agreement") was terminated and Mr. Gilboy agreed to release and discharge the registrant, as more fully described in the Separation Agreement.

ITEM 1.02. TERMINATION OF A MATERIAL DEFINITIVE AGREEMENT.

See ITEM 1.01 for a discussion of the termination of the Gilboy Change in Control Agreement. The parties terminated the Gilboy Change in Control Agreement in connection with Mr. Gilboy's resignation from the position of Chief Financial Officer of the registrant effective August 30, 2004.

ITEM 9.01 FINANCIAL STATEMENTS AND EXHIBITS

(a) Financial Statements of Businesses Acquired.

Not Applicable.

(b) Pro Forma Financial Information.

Not Applicable.

(c) Exhibits.

99.01 Separation Agreement and Release dated September 10, 2004.

SIGNATURES

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.

DEL GLOBAL TECHNOLOGIES CORP.
(Registrant)

Date: September 15, 2004

By: /s/ Walter Schneider

Walter Schneider
Chief Executive Officer and President

EXHIBIT INDEX

EXHIBIT NO.

DESCRIPTION

99.01	Separation Agreement and Release dated September 10, 2004
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SEPARATION AGREEMENT AND RELEASE

This Separation Agreement and Release (the "Agreement") is dated as of September 1, 2004, by and between, Del Global Technologies Corp., a New York corporation (the "Company"), and Thomas V. Gilboy ("Gilboy").

WHEREAS, on or about August 23, 2004, Gilboy tendered his voluntary resignation to the Company.

WHEREAS, the Company and Gilboy are parties to an agreement dated October 28, 2002 (the "Change in Control Agreement").

WHEREAS, this Agreement governs the terms of Gilboy's separation from the Company.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. As of the close of business August 31, 2004, Gilboy's employment by the Company shall cease. As severance, Gilboy will receive a payment of one hundred and forty-thousand dollars (\$140,000) which payment shall be made as follows: (i) fifty-thousand dollars (\$50,000) within five (5) business days of Gilboy's execution and delivery of an executed Agreement to the Company, and (ii) ninety-thousand dollars (\$90,000) within sixty (60) days of Gilboy's execution and delivery of an executed Agreement to the Company. Such payments shall be made net of applicable state and federal withholding and other taxes customarily withheld by the Company. Gilboy further understands that the Change in Control Agreement is hereby terminated and is of no further force and effect and that he is entitled to no payment from the Company of any kind or nature pursuant to the Change in Control Agreement.

2. In exchange for the consideration received under this Agreement, Gilboy hereby irrevocably and unconditionally releases and forever discharges the Company, its predecessors, parents, subsidiaries, affiliates, and past, present and future officers, directors, agents, consultants, employees, representatives, attorneys, and insurers, as applicable, together with all successors and assigns of any of the foregoing (collectively, the "Releasees"), of and from all claims, demands, actions, causes of action, rights of action, contracts, controversies, covenants, obligations, agreements, damages, penalties, interest, fees, expenses, costs, remedies, reckonings, extents, responsibilities, liabilities, suits, and proceedings of whatsoever kind, nature, or description, direct or indirect, vested or contingent, known or unknown, suspected or unsuspected, in contract, tort, law, equity, or otherwise, under the laws of any jurisdiction, that Gilboy or his predecessors, legal representatives, successors or assigns, ever had, now has, or hereafter can, shall, or may have, against the Releasees, as set forth above, jointly or severally, for, upon, or by reason of any matter, cause, or thing whatsoever from the beginning of the world through, and including, the date of this Agreement (the "Claims"), arising out of Gilboy's employment with the Company.

It is understood and agreed that Gilboy hereby expressly waives any and all laws or statutes, of any jurisdiction whatsoever, which may provide that a general release does not extend to claims not known or suspected to exist at

the time of executing a release which if known would have materially affected the decision to give said release. It is expressly intended and agreed that this Release does in fact extend to such unknown or unsuspected Claims arising out of Gilboy's employment with the Company related to anything which has happened to the date hereof even if knowledge thereof would have materially affected the decision to give said release.

Furthermore, this Release includes, but is not limited to, any and all:

(a) employment and/or benefit related claims under any federal, state or local law, employment law or civil rights law, including, but not limited to, the Americans with Disabilities Act, the National Labor Relations Act, the Fair Labor Standards Act and any other federal, state or local wage, wage hour or wage payment law, the Employee Retirement Income Security Act of 1974 ("ERISA") including, but not limited to, breach of fiduciary duty and equitable claims arising under ss.1132(a)(3) of ERISA, Title VII of the Civil Rights Act of 1964, the Vocational Rehabilitation Act of 1973, the Civil Rights Acts of 1866, 1871 and 1991, including Section 1981 of the Civil Rights Act, the Family and Medical Leave Act, the Worker Adjustment and Retraining Notification Act (all as amended); and

(b) employment and/or benefit related claims arising under common or other law including any policy, procedure or practice of the Releasees, and any contract or tort (including but not limited to claims of defamation, intentional or negligent infliction of emotional distress, tortious interference, wrongful or abusive discharge, conversion, fraud, negligence, loss of consortium) claims; and

(c) claims of retaliation under all federal, state, local or common or other law;

Except to enforce this Agreement, Gilboy agrees that he will not pursue, file or assert or permit to be pursued, filed or asserted any civil action, suit or legal proceeding seeking equitable or monetary relief (nor will he seek or in any way obtain or accept any such relief in any civil action, suit or legal proceeding) in connection with any matter concerning his employment relationship with the Company and/or the termination thereof with respect to all of the claims released herein arising from the beginning of the world up to and including the date of execution of this Agreement (whether known or unknown to him and including any continuing effects of any acts or practices prior to the date of execution of this Agreement). Gilboy further agrees that should any class action or collective action lawsuit be brought against the Company in which he may be a participant, he will opt-out (or not opt-in) to the class. Except for the payments and benefits set forth herein, Gilboy acknowledges that he has been paid all wages and other amounts due to him and that he is not entitled to any other payments or benefits of any kind.

If Gilboy should bring any action arising out of the subject matter covered by this Agreement, except to enforce this Agreement, he understands and recognizes that he will, at the option of Company, be considered in breach of this Agreement and shall be required to immediately return any and all funds received pursuant to this Agreement.

3. Upon execution of this Agreement, the Company hereby irrevocably and unconditionally releases and forever discharges Gilboy of and from all claims, demands, actions, causes of action, rights of action, contracts, controversies,

covenants, obligations, agreements, damages, penalties, interest, fees, expenses, costs, remedies, reckonings, extents, responsibilities, liabilities, suits, and proceedings of whatsoever kind, nature, or description, direct or indirect, vested or contingent, which are presently known in contract, tort,

law, equity, or otherwise, under the laws of any jurisdiction, that the Company now has, or hereafter can, shall, or may have, against Gilboy, for, upon, or by reason of any matter, cause, or thing whatsoever from the beginning of the world through, and including, the date of this Agreement (the "Claims"). The Company represents that, as of the date of this Agreement, it is not aware of any claims that may be made against Gilboy by reason of his employment with the Company.

4. Gilboy agrees that, upon reasonable request, he will cooperate with the Company so long as such cooperation does not interfere in any material respects with any full-time job he may have. Such cooperation shall include, without limitation, assisting the Company in the year-end audit process and the preparation of its Annual Report on Form 10-K for the fiscal year ended July 31, 2004.

5. Gilboy agrees that he will not disclose, directly or indirectly, the underlying facts that led up to this Agreement or the terms or existence of this Agreement. Notwithstanding the foregoing, this paragraph shall not bar Gilboy from disclosure to the extent legally necessary to enforce this Agreement, nor does it prohibit disclosures to the extent otherwise legally required (but only if Gilboy promptly notifies the Company of such a disclosure obligation such that the Company may take whatever action it deems appropriate to prevent or limit the required disclosure).

6. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to its conflicts of law principles. Any dispute regarding this Agreement, or relating to Gilboy's employment with the Company, shall be brought in the courts located in New York County, New York which will be the exclusive jurisdiction for such disputes. Gilboy hereby expressly waives a right to a jury in any such actions.

7. This Agreement may not be changed or altered, except by a writing signed by both parties. Until such time as this Agreement has been executed and subscribed by both parties hereto: (i) its terms and conditions and any discussion relating thereto, without any exception whatsoever, shall not be binding nor enforceable for any purpose upon any party; and (ii) no provision contained herein shall be construed as an inducement to act or to withhold an action, or be relied upon as such.

8. This Agreement constitutes an integrated, written contract, expressing the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes any and all prior agreements and understandings, oral or written, between the parties.

9. Any and all notices or other communications required or permitted hereunder shall be in writing and shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile to the Company's facsimile prior to 5:30 p.m. (New York City time) on a Business Day, (ii) the Business Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile telephone number specified in this Agreement later than 5:30 p.m. (New York city time) on any date and earlier than 11:59 p.m. (New York City time) on

such date, (iii) the Business Day following the date of mailing, if sent by nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given. The address for such notices and communications shall be Gilboy's current residence and the Company's current office address.

10. Gilboy represents that has not assigned or transferred any Claim he is releasing. This Agreement binds Gilboy's heirs, administrators, representatives, executors, successors, and assigns, and will insure to the benefit of all

Releasees and their respective heirs, administrators, representatives, executors, successors, and assigns.

11. If any provision in this Agreement is found to be unenforceable, all other provisions will remain fully enforceable.

12. Gilboy acknowledges that he has consulted with, or had a full and fair opportunity to consult with, independent legal counsel regarding the legal effect of this Agreement, and is entering into this Agreement freely and voluntarily.

13. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Gilboy hereby certifies that he has read the terms of this Agreement and that he understands the terms and effects of this Agreement. Gilboy acknowledges that he is executing this Agreement without relying on any representations other than those contained within this Agreement. Gilboy acknowledges that he has been afforded a reasonable time to review, consider, and execute this Agreement and understands that this Agreement becomes effective immediately upon execution.

Gilboy understands and agrees that he has until September 22, 2004, to sign and return this Agreement to the Company.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the first date set forth above.

DEL GLOBAL TECHNOLOGIES CORP.

By: /s/ Walter F. Schneider

Walter F. Schneider, Chief Executive Officer

/s/ Thomas V. Gilboy

Thomas V. Gilboy