

TEL INSTRUMENT ELECTRONICS CORP

Form 8-K

November 16, 2017

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): November 10, 2017

TEL-INSTRUMENT ELECTRONICS CORP.
(Exact name of registrant as specified in its charter)

<u>New Jersey</u>	<u>001-31990</u>	<u>22-1441806</u>
(State or other Jurisdiction of Incorporation)	(Commission File Number)	(IRS Employer Identification No.)

One Branca Road
East Rutherford, New Jersey 07073
(Address of principal executive offices)

(201) 933-1600
(Telephone number, including area code)

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))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 1.01 Entry into a Material Definitive Agreement.

Closing of Subscription Agreements

On November 14, 2017, Tel-Instrument Electronics Corp. (the “Company”) entered into definitive subscription agreements (the “Subscription Agreements”) with two (2) accredited investors (the “Investors”), pursuant to which the Investors purchased an aggregate of 500,000 shares of the Company’s Series A Preferred Stock (the “Series A Preferred”) for an aggregate of \$3 million.

The Company intends to use such proceeds for the payment of any court judgment and/or settlement related to the Aeroflex Wichita, Inc litigation, working capital purposes, and for payment of fees and expenses associated with this transaction. The Closing occurred following the satisfaction of customary closing conditions.

The above description of the Subscription Agreements does not purport to be complete and is qualified in its entirety by the full text of the Subscription Agreements, the form of which is attached as an exhibit to this Current Report on Form 8-K and incorporated herein by reference.

Item 3.02 Unregistered Sales of Equity Securities.

The information set forth in Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 3.02.

The securities issued pursuant to the Subscription Agreements were not registered under the Securities Act of 1933, as amended (the “Securities Act”), but qualified for exemption under Section 4(a)(2) of the Securities Act. The securities were exempt from registration under Section 4(a)(2) of the Securities Act because the issuance of such securities by the Company did not involve a “public offering,” as defined in Section 4(a)(2) of the Securities Act, due to the insubstantial number of persons involved in the transaction, size of the offering, manner of the offering and number of securities offered. The Company did not undertake an offering in which it sold a high number of securities to a high number of investors. In addition, these shareholders had the necessary investment intent as required by Section 4(a)(2) of the Securities Act since they agreed to, and received, share certificates bearing a legend stating that such securities are restricted pursuant to Rule 144 of the Securities Act. This restriction ensures that these securities would not be immediately redistributed into the market and therefore not be part of a “public offering.” Based on an analysis of the above factors, the Company has met the requirements to qualify for exemption under Section 4(a)(2) of the Securities Act.

Item 3.03 Material Modification to Rights of Security Holders.

The information set forth in Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 3.03.

On November 10, 2017, the Secretary of State of the State of New Jersey delivered confirmation of the effective filing of the Company’s Certificate of Amendment to its Certificate of Incorporation (the “Amendment to Certificate”), which established 500,000 shares of the Series A Preferred Stock, having such designations, rights and preferences as set forth therein, as determined by the Company’s Board of Directors in its sole discretion, in accordance with the Company’s Certificate of Incorporation and bylaws.

The shares of Series A Preferred have a stated value of \$6.00 per share and are convertible into Common Stock at a price of \$3.00 per share, subject to adjustment (the “Conversion Price”), in a maximum amount of 600,000 shares of Common Stock or such greater number of shares of Common Stock that has been approved by a majority of the Company’s shareholders (the “Maximum Conversion Amount”). In the event that the Company, for any reason, fails to

obtain such shareholder approval by January 31, 2018, provided that the holder has voted, in its capacity as a shareholder of the Company, all votes available pursuant to all securities of the Company owned by such holder, or voting rights of the holder otherwise held, in favor of such greater number of conversion shares at a meeting of the shareholders of the Company, then the annual dividend rate applicable to the Series A Preferred will automatically be increased to 18%, effective retroactively to the date of issuance, until such time as such increase is approved by the Company's shareholders. The holders of shares of the Series A Preferred shall be entitled to receive dividends out of any assets legally available, to the extent permitted by New Jersey law, at an annual rate equal to 8% of the Series A Stated Value of such shares of Series A Preferred, calculated on the basis of a 360 day year, consisting of twelve 30-day months, and shall accrue from the date of issuance of such shares of Series A Preferred, payable quarterly in cash.

The holders of Series A Preferred rank senior to the Common Stock and will vote together with the holders of the Company's Common Stock on an as-converted basis on each matter submitted to a vote of holders of Common Stock (whether at a meeting of shareholders or by written consent). In any such vote, the number of votes that may be cast by a holder shall be equal to one (1) vote for each share of Common Stock into which such holder's outstanding shares of Series A Preferred may be converted, subject to adjustment based on the applicable Maximum Conversion Amount, as of the record date for such vote or written consent or, if there is no specified record date, as of the date of such vote or written consent. Each holder shall be entitled to notice of all shareholder meetings (or requests for written consent) in accordance with the Company's bylaws. The holders, at their option, shall be entitled to designate one representative of the Holders to attend all meetings of the Board in a non-voting observer capacity, which observation right shall include the ability to participate in discussions of the Board.

The foregoing descriptions of the Amendment to Certificate and the Series A Preferred designations, rights and preferences do not purport to be complete and are subject to, and qualified in their entirety by the Amendment to Certificate, a copy of which is attached as an exhibit to this Current Report on Form 8-K and incorporated herein by reference.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

The information set forth in Item 3.03 of this Current Report on Form 8-K is incorporated by reference into this Item 5.03.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
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3.1	<u>Certificate of Amendment to Certificate of Incorporation*</u>
10.1	<u>Form of Subscription Agreement*</u>

* filed herewith

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 thereunto duly authorized.

TEL-INSTRUMENT ELECTRONICS
CORP.

Date: November 16, 2017 By: /s/ Joseph P. Macaluso
Name: Joseph P. Macaluso
Title: Principal Accounting Officer