



Edgar Filing: BIO KEY INTERNATIONAL INC - Form 8-K

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))

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**Item 1.01 Entry into a Material Definitive Agreement.**

The information provided in Item 3.02 is hereby incorporated by reference.

**Item 3.02 Unregistered Sales of Equity Securities.**

On October 22 and 29, 2015, BIO-Key International, Inc. (the “Company,” “we” or “us”),

pursuant to a Convertible Preferred Stock Purchase Agreement (the “CPSPA”), issued 84,500 shares (the “Series A-1 Shares”) of Series A-1 Convertible Preferred Stock at a purchase price of \$100.00 per share, for aggregate gross proceeds of \$8,450,000.

The Series A-1 Shares are convertible at any time at the option of the holder into shares of common stock at an initial conversion price of \$0.30 per share, subject to adjustment for stock dividends, stock splits, combinations, and reclassifications of our capital stock, and subject to a “blocker provision” which prohibits conversion if such conversion would result in the holder being the beneficial owner of in excess of 9.99% of our common stock. The Series A-1 Shares accrue dividends at the rate of 6% per annum payable quarterly on April 1, July 1, October 1, and January 1 of each year. Until October 1, 2017, the dividends are payable in cash provided that if payment in cash would be prohibited under applicable Delaware corporation law or cause the Company to breach any agreement for borrowed money, such dividends are payable in kind through the issuance of additional shares of common stock having a value equal to the volume weighted average trading price of the Company’s common stock for the ten (10) days preceding the applicable dividend payment date. Commencing January 1, 2018, dividends are payable at the option of the Company in cash or kind through the issuance of additional shares of common valued as described above. The holders of the Series A-1 shares are entitled to designate one person to serve on the Board of Directors of the Company. The holders of the Series A-1 Shares are entitled to vote on an as converted to common stock basis together with the holders of our common stock on all matters presented to our stockholders. Upon any liquidation or dissolution of the Company, any merger or consolidation involving the Company or any subsidiary of the Company in which the shares of capital stock of the Company outstanding immediately prior to such merger or consolidation do not represent immediately following such merger or consolidation at least a majority of the voting power of the capital stock of the resulting or surviving corporation, or the sale of all or substantially all assets in a single transaction or a series of related transactions, unless the holders of at least a majority of the outstanding Series A-1 Shares elect otherwise, holders of Series A-1 Shares shall be entitled to receive prior to any payment to any holders of the Company’s common stock an amount per share equal to \$100.00 per share plus any declared and unpaid dividends.

The shares of common stock issuable upon conversion of the Series A-1 Shares are subject to a registration rights agreement (the “Registration Rights Agreement”) pursuant to which we are obligated to seek registration of the public resale of such shares.



Under the CPSPA, we have agreed to seek stockholder approval to affect a reverse split of our outstanding shares of common stock. In the event that such split is effective and the Company otherwise satisfies the initial listing standards of the Nasdaq Capital Market, the Company will use commercially reasonable efforts to cause its shares to be listed on the Nasdaq Capital Market. The CPSPA contains standstill provisions which prevent the investor, either alone or together with any other person, from acquiring additional shares of our stock or any of our assets, soliciting proxies, or seeking further representation on our board of directors.

The securities were issued in a private placement transaction to one accredited investor pursuant to the exemption from registration provided by Section 4(a)(2) of the Securities Act of 1933, as amended, without engaging in any advertising or general solicitation of any kind.

The descriptions of the CPSPA, Registration Rights Agreement, and Certificate of Designations of Preferences of the Series A-1 Convertible Preferred Stock set forth above are qualified in their entirety by reference to copies of such agreements filed as exhibits to this report and incorporated herein by this reference.

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

The information provided in Item 3.02 is hereby incorporated by reference.

**Item 9.01 Financial Statements and Exhibits**

(d) Exhibits

Exhibit No. Description

3.1	Certificate of Designation of Preferences, Rights and Limitations of Series A-1 Convertible Preferred Stock
10.1	Form of Convertible Preferred Stock Purchase Agreement
10.2	Form of Registration Rights Agreement



**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.

BIO-Key International, Inc.

Date: November 2, 2015 By: /s/ Cecilia C. Welch  
Cecilia C. Welch  
Chief Financial Officer