

# SECURITIES & EXCHANGE COMMISSION EDGAR FILING

## BIO KEY INTERNATIONAL INC

**Form: 8-K**

**Date Filed: 2008-11-20**

Corporate Issuer CIK: 1019034  
Symbol: BKYI

**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 17, 2008**

**BIO-key International, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation)

**1-13463**  
(Commission File Number)

**41-1741861**  
(I.R.S. Employer Identification No.)

**3349 Highway 138, Building D, Suite B  
Wall, NJ 07719**

(Address of principal executive offices)

**(732) 359-1100**

(Registrant's 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 (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 Exchange Act (17 CFR 240.13e-4(c))
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**Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers**

(b) On November 17, 2008, BIO-key International, Inc. (the "Company") and Francis J. Cusick, the Company's Chief Financial Officer, agreed that Mr. Cusick would be leaving the Company as of such date.

(c) On November 17, 2008, the Company appointed Thomas J. Colatosti to serve as acting Chief Financial Officer of the Company effective as of such date, while a search is conducted for Mr. Cusick's replacement.

In connection with such appointment, the Company entered into a Compensation Agreement (the "Agreement") with Mr. Colatosti, pursuant to which Mr. Colatosti will be paid \$12,500 per month while serving as acting Chief Financial Officer. A copy of the Agreement is furnished herewith as Exhibit 99.1.

Mr. Colatosti has served as a Director of the Company since September 2002 and as Chairman of the Board since January 3, 2003. He served as Co-Chief Executive Officer of the Company from July 2005 to August 2006. Mr. Colatosti also currently serves as the Chief Executive Officer of American Security Ventures, a Lexington, Massachusetts based consulting firm he founded which

specializes in providing strategic management consulting services to emerging and developing companies in the homeland security industry. From 1997 through June 2002, Mr. Colatosti served as the Chief Executive Officer of Viisage Technology, Inc., a publicly traded biometric technology company focusing on biometric face-recognition technology and delivering highly secure identification documents and systems. Mr. Colatosti is an active industry security spokesperson testifying before Congressional Committees and advising the White House and other Federal security agencies on homeland security issues. Since August 18, 2005, Mr. Colatosti has served as a Director and Chief Financial Officer of Good Harbor Partners Acquisition Corp., a publicly-traded blank check company formed to acquire businesses in the security sectors.

**Item 9.01 Financial Statements and Exhibits**

(d) Exhibits:

99.1 Compensation Agreement, dated as of November 17, 2008, by and between the Company and Thomas J. Colatosti

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**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.

Date: November 20, 2008

BIO-KEY INTERNATIONAL, INC.

By: /s/ Michael W. DePasquale  
Michael W. DePasquale  
Chief Executive Officer

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**EXHIBIT INDEX**

<b>Exhibit No.</b>	<b>Description</b>
99.1	Compensation Agreement, dated as of November 17, 2008, by and between the Company and Thomas J. Colatosti

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## COMPENSATION AGREEMENT

This Compensation Agreement (this "Agreement") is entered into as of November 17, 2008 by and between BIO-key International, Inc., a Delaware corporation (the "Company"), and Thomas J. Colatosti ("Colatosti").

### Introduction

Colatosti is currently the Chairman of the Company's Board of Directors. The Company desires to retain the services of Colatosti as described herein and Colatosti desires to provide such services to the Company.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Term; Time Commitment. The term of this Agreement will be for one year, commencing effective as of November 17, 2008 (the "Term"), unless earlier terminated pursuant to Section 6. Colatosti will serve as acting Chief Financial Officer of the Company and provide services to the Company and its subsidiaries and affiliates during the Term at such times as may be agreed by the Company and Colatosti, in their mutual discretion.

2. Duties. Colatosti will provide services with respect to such matters as the Company and Colatosti may agree. As an integral part of the services to be provided for herein, during the Term, Colatosti will adhere to the provisions of Section 4.

3. Compensation. From and after October 15, 2008, the Company will pay Colatosti at a rate of \$12,500 per month, payable in arrears, during the Term. Such payments shall be made on the last business day of each month during the Term with the first and second payments due on November 30, 2008 and the last payment due on December 31, 2009. This cash compensation is intended to comprise all of the cash compensation to be paid to Colatosti for services rendered to the Company, including service on the Company's Board of Directors. Colatosti shall be reimbursed by the Company for reasonable expenses incurred in performing his duties hereunder. Colatosti will not be eligible for any Company benefits. Colatosti shall have the responsibility for the payment of all federal, state and local taxes for compensation payable to Colatosti hereunder; *provided, however*, to the extent required by law, the Company may withhold from compensation payable to Colatosti all applicable federal, state and local withholding taxes.

4. Confidentiality; Intellectual Property.

(a) Colatosti will not at any time, directly or indirectly, disclose or divulge, except as required in connection with the performance of Colatosti's duties for the Company, any Confidential Information (as hereinafter defined). As used herein, "Confidential Information" means all trade secrets and all other information of a business, financial, marketing, technical or other nature pertaining to the Company or any subsidiary or affiliate, including

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information of others that the Company or any subsidiary or affiliate has agreed to keep confidential; provided, that Confidential Information shall not include any information that has entered or enters the public domain through no fault of Colatosti or which Colatosti is required to disclose by legal process. Colatosti shall make no use whatsoever, directly or indirectly, of any Confidential Information, except as required in connection with the performance of Colatosti's duties for the Company.

(b) Upon the Company's request at any time and for any reason, Colatosti shall immediately deliver to the Company all materials (including all copies) in Colatosti's possession which contain or relate to Confidential Information.

(c) All inventions, developments or improvements made by Colatosti, either alone or in conjunction with others, at any time or at any place during the Term, whether or not reduced to writing or practice during such term, which relate to the business in which the Company or any subsidiary or affiliate is engaged or in which the Company or any subsidiary or affiliate intends to engage, shall be the exclusive property of the Company. Colatosti shall promptly disclose any such invention, development or improvement to the Company, and, at the request and expense of the Company, shall assign all of Colatosti's rights to the same to the Company. Colatosti shall sign all instruments necessary for the filing and prosecution of any applications for or extension or renewals of letters patent of the United States or any foreign country which the Company desires to file. All copyrightable work by Colatosti relating to the Company's business or any subsidiary's business during the Term is intended to be "work made for hire" as defined in Section 101 of the Copyright Act of 1976, and shall be the property of the Company. If the copyright to any such copyrightable work is not the property of the Company by operation of law, Colatosti will, without further consideration, assign to the Company all right, title and interest in such copyrightable work and will assist the Company and its nominees in every way, at the Company's expense, to secure, maintain and defend for the Company's benefit copyrights and any extensions and renewals thereof on any and all such work including translations thereof in any and all countries, such work to be and to remain the property of the Company whether copyrighted or not.

5. Remedies. Without limiting the remedies available to the Company, Colatosti acknowledges that a breach of any of the covenants contained in Section 4 herein could result in irreparable injury to the Company for which there might be no adequate remedy at law, and that, in the event of such a breach or threat thereof, the Company shall be entitled to obtain a temporary restraining order and/or a preliminary injunction and a permanent injunction restraining Colatosti from engaging in any activities prohibited by Section 4 herein or such other equitable relief as may be required to enforce specifically any of the covenants of Section 4. The foregoing provisions and the provisions of Section 4 herein shall survive the term of this Agreement and the termination of Colatosti's services with the Company, and shall continue thereafter in full force and effect in accordance with their terms.

6. Termination. Colatosti's engagement by the Company hereunder may be terminated at any time by the Company with or without cause, or by Colatosti upon at least thirty (30) days' prior written notice to the Company. Notwithstanding anything contained herein, if Colatosti's services are terminated for any reason, the Company shall have no further obligation

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to make any payments to Colatosti hereunder except for payments that had accrued but had not been paid prior to the date of termination.

7. Enforceability, etc. This Agreement shall be interpreted so as to be effective under applicable law, but if any portion hereof is prohibited or invalid, such portion shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of this Agreement.

9. Amendments and Waivers. This Agreement may be amended or modified only by a written instrument signed by the Company and Colatosti. No waiver of this Agreement or any provision hereof shall be binding upon the party against whom enforcement of such waiver is sought unless it is made in writing and signed by or on behalf of such party. No delay or omission in exercising any right under this Agreement shall operate as a waiver of that or any other right.

10. Binding Effect; Assignment. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors and administrators, successors and assigns, except that the rights and obligations of Colatosti hereunder are personal and may not be assigned without the Company's prior written consent.

11. Choice of Law and Jurisdiction. This Agreement shall be construed, interpreted and the rights of the parties determined in accordance with the laws of the Commonwealth of Massachusetts. Each of the parties hereto hereby irrevocably consents and submits to the exclusive jurisdiction of the state courts of the Commonwealth of Massachusetts, and of the United States District Court located in Boston, Massachusetts in connection with any suit, action, or other proceeding concerning this Agreement.

12. Independent Contractor. The parties agree that Colatosti is an independent contractor, and nothing herein or in the relationship of the parties shall alter or affect such status.

13. Entire Agreement. This Agreement constitutes the final and entire agreement of the parties with respect to the matters covered hereby, and replaces and supersedes all other agreements and understandings relating thereto.

14. Counterparts. This Agreement may be executed in multiple counterparts, and counterparts by facsimile, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

15. No Conflicts. Colatosti represents to the Company that Colatosti is not a party to or bound by any agreement or commitment that conflicts with the obligations of Colatosti under this Agreement.

[Signature page follows]

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This Agreement has been executed and delivered as a sealed instrument as of the date first above written.

BIO-KEY INTERNATIONAL, INC.

By: /s/ Michael W. DePasquale

Michael W. DePasquale

Chief Executive Officer

/s/ Thomas J. Colatosti

Thomas J. Colatosti

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