

SECURITIES & EXCHANGE COMMISSION EDGAR FILING

BIO KEY INTERNATIONAL INC

Form: 8-K

Date Filed: 2018-03-28

Corporate Issuer CIK: 1019034

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): March 23, 2018

BIO-KEY INTERNATIONAL, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation)

001-13463
(Commission File Number)

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

3349 Highway 138, Building A, Suite E
Wall, NJ 07719
(Address of principal executive offices) (Zip Code)

(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 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 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR 240.12b-2).

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 .

The information provided under Item 3.02 regarding the unregistered sale of equity securities is incorporated herein by reference.

Item 3.02 Unregistered Sales of Equity Securities.

On March 23, 2018, BIO-key International, Inc. (the "Company", "we" or "us") received a conversion notice from Giant Leap International, Ltd. ("Giant Leap") to convert 29,280 shares of the Company's Series B-1 Convertible Preferred Stock (the "Series B-1 Preferred") and a conversion notice from Micron Technology Development Limited ("Micron") to convert 31,140 shares of Series B-1 Preferred. Each share of Series B-1 Preferred has an original issue price of \$100.00 and is convertible into shares of Company common stock ("Common Stock") at a conversion price of \$3.60 per share. The forgoing conversions resulted in the issuance of 1,678,334 shares of Common Stock.

On March 23, 2018, we entered into a securities purchase agreement with Giant Leap to purchase 33,102 shares of Common Stock in consideration of the conversion of an accrued dividend payable on the Series B-1 Preferred in the amount of \$119,167 resulting in a per share purchase price of \$3.60. Yao Jianhui, a director of the Company, is chairman of the board of directors of China Goldjoy Limited, the parent company of Giant Leap, a principal stockholder of the Company, and may, therefore, be deemed to have an interest in the transactions described herein.

The Series B-1 Preferred contain a blocker provision which prohibits the holder of such shares from converting such shares into Common Stock if after giving effect to such conversion, the holder would beneficially own in excess of 9.99% of our issued and outstanding shares of Common Stock. On March 23, 2018, we received notice from Micron of its desire to increase the maximum percentage from 9.99% to 19.99% effective on the 61st day following the date such notice was provided to us. In connection with this request, we entered into a securities purchase agreement with Micron to purchase 82,755 shares of Common Stock in consideration of the conversion of an accrued dividend payable on the Company's Series B-1 Preferred in the amount of \$297,917 resulting in a per share purchase price of \$3.60. Effectiveness of the increase in the maximum beneficial ownership of Micron and conversion of dividends required us to waive the standstill provision (the "Standstill Provision") included in the Securities Purchase Agreement dated November 11, 2015 by and between the Company and Micron. The Standstill Provision prevents Micron, either alone or together with any other person, from acquiring additional shares of Common Stock or any of the Company's assets, soliciting proxies, or seeking further representation on the Company's board of directors. We waived the Standstill for the purpose of permitting Micron to convert additional shares of Series B-1 Preferred into Common Stock so long as after giving effect to any such conversions, Micron does not beneficially own in excess of 19.99% of our Common Stock.

The foregoing shares were issued in private placement transactions pursuant to an exemption from registration provided by Section 4(a)(2) of the Securities Act of 1933, as amended, without general solicitation or advertising of any kind and without payment of placement agent or brokerage fees to any person.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

On March 23, 2018, we adopted an incentive bonus plan for our named executive officers, Michael DePasquale, our Chief Executive Officer, Cecilia Welch, our Chief Financial Officer, and Mira LaCous, our Chief Technology Officer, as well as Barbara Rivera, our Chief Operations Officer, Kelvin Wong, our Managing Director of Hong Kong Operations, and Scott Mahnken, our Vice President of Marketing. The plan provides for the payment of a cash bonus equal to 10% of our EBITDA in the event that our 2018 revenue exceeds \$11,900, 12% of our EBITDA in the event that our 2018 revenue exceeds \$15,800,000, and 15% of our EBITDA in the event that our 2018 revenue exceeds \$18,900,000. The forgoing amount, if any, will be allocated among our named executive officers and other participants in the plan based on the relative base salaries of the participants.

On March 23, 2018, we issued options to purchase share of Common Stock to our named executive officers as follows:

<u>Executive Officer</u>	<u>Number of Options</u>
Michael DePasquale	33,334
Cecilia Welch	25,000
Mira LaCous	12,500

The options were issued under the Company's 2015 Equity Incentive Plan. The options are exercisable at \$1.96 per share, the last sale price of the Common stock as reported on the Nasdaq Capital Market on the date of grant, have a term of seven years, and vest in three equal annual installments on each of the next three anniversaries of the grant date, subject to the continued employment with or service to the Company through the applicable vesting date.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits

10.1 [Securities Purchase Agreement, dated March 23, 2018, by and between BIO-key International, Inc. and Giant Leap International, Ltd.](#)

10.2 [Securities Purchase Agreement, dated March 23, 2018, by and between BIO-key International, Inc. and Micron Technology Development Limited](#)

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: March 28, 2018

By: /s/ Cecilia Welch

Cecilia Welch
Chief Financial Officer

EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
10.1	Securities Purchase Agreement, dated March 23, 2018, by and between BIO-key International, Inc. and Giant Leap International, Ltd.
10.2	Securities Purchase Agreement, dated March 23, 2018, by and between BIO-key International, Inc. and Micron Technology Development Limited

CONFIDENTIAL

SECURITIES PURCHASE AGREEMENT

THIS SECURITIES PURCHASE AGREEMENT (this "Agreement") is entered into and effective simultaneously with the execution of this Agreement on this 23rd day of March 2018, by and between BIO-key International, Inc., a Delaware corporation (the "Company"), and Giant Leap International Limited (the "Purchaser").

RECITALS:

WHEREAS, subject to the terms and conditions of this Agreement and pursuant to Section 4(a)(2) of the Securities Act of 1933, as amended (the "Securities Act"), Purchaser desires to purchase and the Company desires to sell securities on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises hereof and the agreements set forth herein below, the parties hereto hereby agree as follows:

1. Sale and Purchase of Securities.

(a) Purchase and Sale. Subject to the terms and conditions hereof, the Company agrees to sell, and Purchaser agrees to purchase Thirty Three Thousand One Hundred Two (33,102) shares (the "Shares") of the Company's common stock, \$0.0001 par value per share (the "Common Stock"), at a purchase price of \$3.60 per Share for an aggregate purchase price of \$119,167 (the "Purchase Price"). The Purchase Price shall be paid by the conversion of a dividend payable in the amount of \$119,167 on the Company's Series B-1 Convertible Preferred Stock (the "Series B-1 Preferred") presently due and payable to the Purchaser. Within a reasonable time following the date hereof, the Company shall deliver to the Purchaser, a certificate evidencing the Shares.

2. Representations and Warranties of Purchaser. Purchaser represents and warrants to the Company as follows:

(a) Authority Validity and Effect of Agreement. The execution and delivery of each of this Agreement by Purchaser and the performance by Purchaser of its obligations hereunder have been duly authorized by all necessary organizational proceedings on the part of the Purchaser. This Agreement has been duly and validly executed and delivered by Purchaser and, assuming that it has been duly authorized, executed and delivered by the Company, constitutes a legal, valid and binding obligation of Purchaser, in accordance with its terms.

(b) Acknowledgement Regarding Conversion of Dividend Payable. Purchaser acknowledges that the accrued dividend payable on the Series B-1 Preferred due and owing to Purchaser as of February 2, 2018 is \$119,167 (the "Dividend Payable") and hereby releases and relinquishes any right, title and interest to the Dividend Payable as consideration for the payment of the Shares.

(c) Accredited Investor. Purchaser is an "accredited investor" as that term is defined in Rule 501(a) of Regulation D under the Securities Act.

(d) Investment Intent. The Securities are being acquired for Purchaser's own account for investment purposes only, not as a nominee or agent and not with a view to the resale or distribution of any part thereof, and Purchaser has no present intention of selling, granting any participation in or otherwise distributing the same.

(e) Restrictions on Transfer. Purchaser understands that the Securities are "restricted securities" as such term is defined in Rule 144 under the Securities Act and have not been registered under the Securities Act or registered or qualified under any state securities law, and may not be, directly or indirectly, sold, transferred, offered for sale, pledged, hypothecated or otherwise disposed of without registration under the Securities Act and registration or qualification under applicable state securities laws or the availability of an exemption therefrom.

(f) Short Sales. Purchaser has not directly or indirectly, nor has any person acting on behalf of or pursuant to any understanding with Purchaser, executed any disposition, including Short Sales (as such term is defined in Rule 200 of Regulation SHO under the Securities Exchange Act of 1934, as amended (the "Exchange Act")), in the securities of the Company during the period commencing from the time that Purchaser first received written or oral notice of the transactions contemplated hereby until the date hereof ("Discussion Time").

(g) No Disqualification Events. Purchaser is not subject to any of the "Bad Actor" disqualifications described in Rule 506(d)(1)(i) to (viii) under the Securities Act (a "Disqualification Event"), except for a Disqualification Event covered by Rule 506(d)(2) under the Securities Act.

3. Representations and Warranties of the Company. The Company represents and warrants to Purchaser as follows:

(a) Authority Validity and Effect of Agreement. The execution and delivery of each of this Agreement by the Company and the performance by the Company of its obligations hereunder have been duly authorized by all necessary corporate proceedings on the part of the Company. This Agreement has been duly and validly executed and delivered by the Company and, assuming that it has been duly authorized, executed and delivered by Purchaser, constitutes a legal, valid and binding obligation of the Company, in accordance with its terms.

(b) Issuance of the Securities. The Shares have been duly authorized and, when issued and paid for in accordance with the terms of this Agreement, will be duly and validly issued, fully paid and nonassessable, free and clear of all liens, other than restrictions on transfer provided for in this Agreement or imposed by applicable securities laws, and shall not be subject to preemptive or similar rights of shareholders.

4. Other Agreements of the Parties.

(a) Legends. The certificates and agreements evidencing the Shares shall have endorsed thereon a standard and customary legend respecting the Securities Act and stop transfer instructions reflecting these restrictions on transfer will be placed with the transfer agent of the Securities.

(b) Notice of Disqualification Events. Purchaser will notify the Company in writing, of (i) any Disqualification Event relating to Purchaser and (ii) any event that would, with the passage of time, become a Disqualification Event relating to Purchaser.

5 . Non-Public Information. Purchaser acknowledges that certain information concerning the matters that are the subject matter of this Agreement constitute material non-public information under United States federal securities laws, and that United States federal securities laws prohibit any person who has received material non-public information relating to the Company from purchasing or selling securities of the Company, or from communicating such information to any person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell securities of the Company. Accordingly, until such time as any such non-public information has been adequately disseminated to the public, Purchaser shall not purchase or sell any securities of the Company, or communicate such information to any other person

6 . Entire Agreement. This Agreement contains the entire agreement between the parties and supersedes all prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereto.

7 . Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey, without regard to the laws that might otherwise govern under applicable principles of conflicts of laws thereof, except to the extent that the General Corporation Law of the State of Delaware shall apply to the internal corporate governance of the Company.

8 . Arbitration. If a dispute arises as to the interpretation of this Agreement, it shall be decided in an arbitration proceeding conforming to the Rules of the American Arbitration Association applicable to commercial arbitration then in effect at the time of the dispute. The arbitration shall take place in the State of New Jersey. The decision of the arbitrators shall be conclusively binding upon the parties and final and such decision shall be enforceable as a judgment in any court of competent jurisdiction. The parties shall share equally the costs of the arbitration.

9 . Counterparts. This Agreement may be executed and delivered by facsimile in counterparts, each of which shall be deemed to be an original, and both of which together shall constitute one and the same agreement.

WITNESS WHEREOF, intending to be legally bound, the parties hereto have caused this Agreement to be executed as of the date set forth above.

PURCHASER

GIANT LEAP INTERNATIONAL LIMITED

By: /s/ Yao Jianhui

Name: Yao Jianhui

Title: Director

BIO-KEY INTERNATIONAL, INC.

By: /s/ Michael W. DePasquale

Name: Michael W. DePasquale

Title: Chief Executive Officer

CONFIDENTIAL

SECURITIES PURCHASE AGREEMENT

THIS SECURITIES PURCHASE AGREEMENT (this "Agreement") is entered into and effective simultaneously with the execution of this Agreement on this 23rd day of March 2018, by and between BIO-key International, Inc., a Delaware corporation (the "Company"), and Micron Technology Development Limited (the "Purchaser").

RECITALS:

WHEREAS, subject to the terms and conditions of this Agreement and pursuant to Section 4(a)(2) of the Securities Act of 1933, as amended (the "Securities Act"), Purchaser desires to purchase and the Company desires to sell securities on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises hereof and the agreements set forth herein below, the parties hereto hereby agree as follows:

1. Sale and Purchase of Securities.

(a) Purchase and Sale. Subject to the terms and conditions hereof, the Company agrees to sell, and Purchaser agrees to purchase Eighty Two Thousand Seven Hundred Fifty Five (82,755) shares (the "Shares") of the Company's common stock, \$0.0001 par value per share (the "Common Stock"), at a purchase price of \$3.60 per Share for an aggregate purchase price of \$297,197 (the "Purchase Price"). The Purchase Price shall be paid by the conversion of a dividend payable in the amount of \$297,197 on the Company's Series B-1 Convertible Preferred Stock (the "Series B-1 Preferred") presently due and payable to the Purchaser. Within a reasonable time following the date hereof, the Company shall deliver to Purchaser, a certificate evidencing the Shares.

2. Representations and Warranties of Purchaser. Purchaser represents and warrants to the Company as follows:

(a) Authority Validity and Effect of Agreement. The execution and delivery of each of this Agreement by Purchaser and the performance by Purchaser of its obligations hereunder have been duly authorized by all necessary organizational proceedings on the part of the Purchaser. This Agreement has been duly and validly executed and delivered by Purchaser and, assuming that it has been duly authorized, executed and delivered by the Company, constitutes a legal, valid and binding obligation of Purchaser, in accordance with its terms.

(b) Acknowledgement Regarding Conversion of Dividend Payable. Purchaser acknowledges that the accrued dividend payable on the Series B-1 Preferred due and owing to Purchaser as of February 2, 2018 is \$297,197 (the "Dividend Payable") and hereby releases and relinquishes any right, title and interest to the Dividend Payable as consideration for the payment of the Shares.

(c) Accredited Investor. Purchaser is an "accredited investor" as that term is defined in Rule 501(a) of Regulation D under the Securities Act.

(d) Investment Intent. The Securities are being acquired for Purchaser's own account for investment purposes only, not as a nominee or agent and not with a view to the resale or distribution of any part thereof, and Purchaser has no present intention of selling, granting any participation in or otherwise distributing the same.

(e) Restrictions on Transfer. Purchaser understands that the Securities are "restricted securities" as such term is defined in Rule 144 under the Securities Act and have not been registered under the Securities Act or registered or qualified under any state securities law, and may not be, directly or indirectly, sold, transferred, offered for sale, pledged, hypothecated or otherwise disposed of without registration under the Securities Act and registration or qualification under applicable state securities laws or the availability of an exemption therefrom.

(f) Short Sales. Purchaser has not directly or indirectly, nor has any person acting on behalf of or pursuant to any understanding with Purchaser, executed any disposition, including Short Sales (as such term is defined in Rule 200 of Regulation SHO under the Securities Exchange Act of 1934, as amended (the "Exchange Act")), in the securities of the Company during the period commencing from the time that Purchaser first received written or oral notice of the transactions contemplated hereby until the date hereof ("Discussion Time").

(g) No Disqualification Events. Purchaser is not subject to any of the "Bad Actor" disqualifications described in Rule 506(d)(1)(i) to (viii) under the Securities Act (a "Disqualification Event"), except for a Disqualification Event covered by Rule 506(d)(2) under the Securities Act.

3. Representations and Warranties of the Company. The Company represents and warrants to Purchaser as follows:

(a) Authority Validity and Effect of Agreement. The execution and delivery of each of this Agreement by the Company and the performance by the Company of its obligations hereunder have been duly authorized by all necessary corporate proceedings on the part of the Company. This Agreement has been duly and validly executed and delivered by the Company and, assuming that it has been duly authorized, executed and delivered by Purchaser, constitutes a legal, valid and binding obligation of the Company, in accordance with its terms.

(b) Issuance of the Securities. The Shares have been duly authorized and, when issued and paid for in accordance with the terms of this Agreement, will be duly and validly issued, fully paid and nonassessable, free and clear of all liens, other than restrictions on transfer provided for in this Agreement or imposed by applicable securities laws, and shall not be subject to preemptive or similar rights of shareholders.

4. Other Agreements of the Parties.

(a) Legends. The certificates and agreements evidencing the Shares shall have endorsed thereon a standard and customary legend respecting the Securities Act and stop transfer instructions reflecting these restrictions on transfer will be placed with the transfer agent of the Securities.

(b) Standstill. Reference is hereby made to that certain Securities Purchase Agreements dated November 11, 2015 (the "Series B-1 Agreement") by and between the Company and the Purchaser, pursuant to which the Purchaser purchased 75,000 shares of Series B-1 Convertible Preferred Stock. The Series B-1 Agreement contains a standstill provision (the "Standstill Provision"), which prevents Purchaser, either alone or together with any other person, from acquiring additional shares of the Company's Common Stock or any of the Company's assets, soliciting proxies, or seeking further representation on the Company's board of directors. The Purchaser hereby acknowledges and agrees that: (i) the Company is hereby waiving the Standstill Provisions solely to permit Purchaser to waive the "blocker provision" set forth in Section 5.1.3 of the Certificate of Designation of Preferences, Rights and Limitations of Series B-1 Convertible Preferred Stock of Bio-key International, Inc. for the purpose of converting additional shares of Series B-1 Preferred provided that after giving effect to any such conversions, Purchaser does not beneficially own in excess of 19.99% of the Company's Common Stock and (ii) notwithstanding the foregoing, the Standstill Provisions remain in full force and effect.

(c) Notice of Disqualification Events. Purchaser will notify the Company in writing, of (i) any Disqualification Event relating to Purchaser and (ii) any event that would, with the passage of time, become a Disqualification Event relating to Purchaser.

5 . Non-Public Information. Purchaser acknowledges that certain information concerning the matters that are the subject matter of this Agreement constitute material non-public information under United States federal securities laws, and that United States federal securities laws prohibit any person who has received material non-public information relating to the Company from purchasing or selling securities of the Company, or from communicating such information to any person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell securities of the Company. Accordingly, until such time as any such non-public information has been adequately disseminated to the public, Purchaser shall not purchase or sell any securities of the Company, or communicate such information to any other person

6 . Entire Agreement. This Agreement contains the entire agreement between the parties and supersedes all prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereto.

7 . Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey, without regard to the laws that might otherwise govern under applicable principles of conflicts of laws thereof, except to the extent that the General Corporation Law of the State of Delaware shall apply to the internal corporate governance of the Company.

8. Arbitration. If a dispute arises as to the interpretation of this Agreement, it shall be decided in an arbitration proceeding conforming to the Rules of the American Arbitration Association applicable to commercial arbitration then in effect at the time of the dispute. The arbitration shall take place in the State of New Jersey. The decision of the arbitrators shall be conclusively binding upon the parties and final and such decision shall be enforceable as a judgment in any court of competent jurisdiction. The parties shall share equally the costs of the arbitration.

9. Counterparts. This Agreement may be executed and delivered by facsimile in counterparts, each of which shall be deemed to be an original, and both of which together shall constitute one and the same agreement.

WITNESS WHEREOF, intending to be legally bound, the parties hereto have caused this Agreement to be executed as of the date set forth above.

PURCHASER

MICRON TECHNOLOGY DEVELOPMENT LIMITED

By: /s/Chen Hoo

Name: Chen Hoo

Title: Director

BIO-KEY INTERNATIONAL, INC.

By: /s/ Michael W. DePasquale

Name: Michael W. DePasquale

Title: Chief Executive Officer