

# SECURITIES & EXCHANGE COMMISSION EDGAR FILING

## BIO KEY INTERNATIONAL INC

**Form: S-1MEF**

**Date Filed: 2020-07-20**

Corporate Issuer CIK: 1019034

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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

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**FORM S-1**  
**REGISTRATION STATEMENT**  
*UNDER*  
*THE SECURITIES ACT OF 1933*

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**BIO-key International, Inc.**  
(Exact name of registrant as specified in its charter)

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Delaware  
(State or other jurisdiction of  
incorporation or organization)

8071  
(Primary Standard Industrial  
Classification Code Number)

41-1741861  
(I.R.S. Employer  
Identification Number)

3349 HIGHWAY 138, BUILDING A, SUITE E  
WALL, NJ 07719  
(732) 359-1100  
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

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Michael DePasquale  
Chief Executive Officer  
BIO-key International, Inc.  
3349 HIGHWAY 138, BUILDING A, SUITE E  
WALL, NJ 07719  
(732) 359-1100  
(Name, address, including zip code, and telephone number, including area code, of agent for service)

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*Copies to:*

Vincent A. Vietti  
Fox Rothschild LLP  
997 Lenox Drive, Building 3  
Lawrenceville, NJ 08648  
(609) 896-3600

Barry I. Grossman  
Sarah E. Williams  
Ellenoff Grossman & Schole LLP  
1345 Avenue of the Americas  
New York, NY 10105  
(212) 370-1300

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**Approximate date of commencement of proposed sale to the public :** As soon as practicable after the effective date of this registration statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box. ☒

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☒ (File No. 333-239782)

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act:

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input checked="" type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

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 7(a)(2)(B) of the Securities Act. ☐

## CALCULATION OF REGISTRATION FEE

Title of Securities being Registered	Proposed Maximum Aggregate Offering Price (1) (2) (3)	Amount of Registration Fee
Shares of common stock, \$0.0001 par value per share	\$4,140,000	\$537.38
Warrants to purchase shares of common stock <sup>(4)</sup>		
Shares of common stock issuable upon exercise of the Warrants	\$4,140,000	\$537.38
Pre-Funded Warrants to purchase shares of common stock	(5)	
Shares of common stock issuable upon exercise of the Pre-Funded Warrants <sup>(4)</sup>		
Total	\$8,280,000	\$1,074.76(6)

- (1) Estimated solely for the purpose of calculating the amount of the registration fee in accordance with Rule 457(o) under the Securities Act of 1933, as amended, or the Securities Act.
- (2) Pursuant to Rule 416, the securities being registered hereunder include such indeterminate number of additional securities as may be issuable to prevent dilution resulting from stock splits, stock dividends or similar transactions.
- (3) Includes the offering price of any additional shares of common stock and warrants to purchase shares of common stock that the underwriters have the right to purchase from the Registrant.
- (4) No fee is required pursuant to Rule 457(i) under the Securities Act.
- (5) The proposed maximum aggregate offering price of the common stock proposed to be sold in the offering will be reduced on a dollar-for-dollar basis based on the offering price of any Pre-Funded Warrants offered and sold in the offering, and, as such, the proposed maximum aggregate offering price of the common stock and Pre-Funded Warrants (including the common stock issuable upon exercise of the Pre-Funded Warrants), if any, is \$24,840,000.
- (6) The registrant previously registered securities having a proposed maximum aggregate offering price of \$20,700,000 on its Registration Statement on Form S-1, as amended (File No. 333-239782) (the "Related Registration Statement"), which was declared effective by the Securities and Exchange Commission on July 20, 2020 and paid a fee of \$5,373.72. In accordance with Rule 462(b) under the Securities Act, an additional number of securities having a proposed maximum offering price of no more than 20% of the maximum aggregate offering price of the remaining securities eligible to be sold under the Related Registration Statement is hereby registered.

**THIS REGISTRATION STATEMENT SHALL BECOME EFFECTIVE UPON FILING WITH THE SECURITIES AND EXCHANGE COMMISSION IN ACCORDANCE WITH RULE 462(B) UNDER THE SECURITIES ACT OF 1933, AS AMENDED.**

### Explanatory Note

This Registration Statement on Form S-1 is being filed with respect to the registration of an additional 3,000,000 shares of common stock, par value \$0.0001 per share, and additional warrants to purchase 3,000,000 shares of our common stock of BIO-key International, Inc., a Delaware corporation, pursuant to Rule 462(b) under the Securities Act of 1933, as amended, including an additional 450,000 shares of common stock and additional warrants to purchase 450,000 shares of common stock that may be purchased by the underwriters to cover over-allotments, if any. This Registration Statement relates to the Registrant's Registration Statement on Form S-1, as amended (File No. 333-239782) (the "Prior Registration Statement"), initially filed by the Registrant on July 9, 2020 and declared effective by the Securities and Exchange Commission on July 20, 2020. The required opinion of counsel and related consent and accountant's consent are attached hereto and filed herewith. Pursuant to Rule 462(b), the contents of the Registration Statement on Form S-1, as amended (File No. 333-239782), including the exhibits thereto, are incorporated by reference into this Registration Statement.

## PART II

### INFORMATION NOT REQUIRED IN PROSPECTUS

#### Item 16. Exhibits and Financial Statement Schedules.

All exhibits filed with or incorporated by reference in Registration Statement No. 333-239782 are incorporated by reference into, and shall be deemed to be part of, this Registration Statement, except for the following, which are filed herewith:

<u>Exhibit No.</u>	<u>Description</u>
5.1	<a href="#"><u>Opinion of Fox Rothschild LLP</u></a>
23.1	<a href="#"><u>Consent of RMSBG</u></a>
23.2	<a href="#"><u>Consent of Penchansky &amp; Co., PLLC</u></a>
23.3	<a href="#"><u>Consent of Fox Rothschild LLP (included in Exhibit 5.1).</u></a>
24.1	<a href="#"><u>Power of Attorney (included on signature page).</u></a>

#### SIGNATURES

Pursuant to the requirements of the Securities Act, the Registrant has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Wall, New Jersey, on the 20th day of July 2020.

BIO-KEY INTERNATIONAL, INC.

By: /s/ Michael DePasquale  
Michael DePasquale  
Chairman of the Board of Directors and Chief Executive Officer (principal executive officer)

By: /s/ Cecilia Welch  
Cecilia Welch  
Chief Financial Officer (principal financial and accounting officer)

#### POWER OF ATTORNEY

We, the undersigned officers and directors of BIO-key International, Inc., hereby severally constitute and appoint Michael W. DePasquale, our true and lawful attorney with full power to sign for us and in our names in the capacities indicated below, the Registration Statement on Form S-1 filed herewith and any and all pre-effective and post-effective amendments to said Registration Statement and any subsequent registration statement filed pursuant to Rule 462(b) under the Securities Act of 1933, as amended, and to file the same with all exhibits thereto, and the other documents in connection therewith, with the Securities and Exchange Commission, and generally to do all such things in our name and behalf in our capacities as officers and directors to enable BIO-key International, Inc. to comply with the provisions of the Securities Act of 1933, as amended, and all requirements of the Securities and Exchange Commission, hereby ratifying and confirming our signatures as they may be signed by our said attorney to said Registration Statement and any and all amendments thereto.

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Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Michael DePasquale</u> Michael DePasquale	Chairman of the Board of Directors and Chief Executive Officer (Principal Executive Officer)	July 20, 2020
<u>/s/ Cecilia Welch</u> Cecilia Welch	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	July 20, 2020
<u>*</u> Robert J. Michel	Director	July 20, 2020
<u>*</u> Thomas E. Bush III	Director	July 20, 2020
<u>*</u> Thomas Gilley	Director	July 20, 2020
<u>*</u> Peter Knook	Director	July 20, 2020
<u>*</u> Wong Kwok Fong	Director	July 20, 2020
<u>*</u> Manny Alia	Director	July 20, 2020

\*By: /s/ Michael DePasquale  
Michael DePasquale  
*Attorney-in-fact*

FOX ROTHSCHILD LLP  
Princeton Pike Corporate Center  
997 Lenox Drive  
Lawrenceville, NJ 08648-2311

July 20, 2020

BIO-key International, Inc.  
3349 Highway 138  
Building A, Suite E  
Wall, New Jersey 07719

Ladies and Gentlemen:

We have acted as counsel to BIO-key International, a Delaware corporation (the "Company"), in connection with the preparation and filing with the Securities and Exchange Commission under the Securities Act of 1933, as amended (the "1933 Act"), of a Registration Statement (No. 333-239782) on Form S-1 (as amended, the "Initial Registration Statement") and a registration statement relating to the Initial Registration Statement filed pursuant to Rule 462(b) promulgated under the 1933 Act (the "Post-Effective Amendment") and together with the Initial Registration Statement, the "Registration Statement"). The Post-Effective Amendment relates to the registration of (i) 3,450,000 shares (the "Shares") of common stock, \$0.0001 par value per share (the "Common Stock"), and pre-funded warrants ("Pre-Funded Warrants") to purchase shares of Common Stock (the "Pre-Funded Warrant Shares") and (ii) warrants (the "Purchase Warrants"), and collectively with the Pre-Funded Warrants, the "Warrants") to purchase up to 3,450,000 shares of Common Stock (the "Purchase Warrant Shares"), and, collectively with the Pre-Funded Warrant Shares, the "Warrant Shares", and the Warrant Shares together with the Shares, the "Additional Shares"), of the Company. The Shares, the Warrants, and the Warrant Shares are to be sold by the Company as described in the Registration Statement and the related prospectus filed with the Initial Registration Statement (the "Prospectus").

As counsel to the Company, we have examined and relied upon originals or copies, authenticated or certified to our satisfaction, of all such corporate records of the Company, including the resolutions of the Company's board of directors and other records relating to the authorization, sale, and issuance of the Additional Shares, communications or certifications of public officials, certificates of officers, directors and representatives of the Company and such other documents as we have deemed relevant and necessary as the basis of the opinions expressed herein. In rendering this opinion, we have assumed the genuineness and authenticity of all signatures on original documents, including signatures made and/or transmitted using electronic signature technology (e.g., via DocuSign or similar electronic signature technology), that any such signed electronic record shall be valid and as effective to bind the party so signing as a paper copy bearing such party's handwritten signature; the legal capacity of all persons executing documents; the authenticity of all documents submitted to us as originals; the conformity to originals of all documents submitted to us as certified or photocopies; the authenticity of the originals of such latter documents; the accuracy and completeness of all documents and records reviewed by us; the accuracy, completeness and authenticity of certificates issued by any governmental official, office or agency and the absence of change in the information contained therein from the effective date of any such certificate.

Based upon the foregoing, we are of the opinion that: (i) the Shares have been duly authorized, and when issued and sold in accordance with the Registration Statement and the Prospectus, will be validly issued, fully paid and non-assessable; (ii) the Warrants, when issued and sold in accordance with the Registration Statement and the Prospectus, will be valid and legally binding obligations of the Company, enforceable against the Company in accordance with their terms, and (iii) the Warrant Shares have been duly authorized, and, when issued and paid for in accordance with the terms and conditions of the Warrants, will be validly issued, fully paid and non-assessable.

Our opinion expressed herein is limited to the laws of the State of Delaware.

This opinion letter has been prepared for your use in connection with the offer and sale of the Additional Shares, speaks as of the date of this letter, and we assume no obligation to advise you of any changes in the foregoing subsequent to that date.

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We consent to the filing of this opinion letter as an exhibit to the Registration Statement and to the reference to this firm under the caption "Legal Matters" in the Prospectus contained therein. In giving this consent, we do not hereby admit that we are in the category of persons whose consent is required under Section 7 of the 1933 Act or the rules and regulations of the Securities and Exchange Commission thereunder.

Very truly yours,

/s/ Fox Rothschild LLP



## CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors  
BIO-key International, Inc.:

We hereby consent to the use of our report in the Registration Statement on Form S-1 (File No: 333-239782) dated May 14, 2020 with respect to the consolidated balance sheets of BIO-key International, Inc. and its subsidiaries as of December 31, 2019 and 2018, and the related consolidated statements of operations, stockholders' equity (deficit) and cash flows for each of the years then ended which are incorporated by reference in this Registration Statement on Form S-1MEF. We also consent to the reference to us under the heading "Experts" in such Registration Statement.



Rotenberg Meril Solomon Bertiger & Guttilla, P.C.  
Saddle Brook, New Jersey  
July 20, 2020

## Consent of Independent Public Accounting Firm

We have issued our reports dated June 18, 2020 and June 5, 2020, with respect to the financial statements of PistolStar, Inc. included in BIO-key International, Inc.'s (the "Company") Registration Statement on Form S-1, as amended (File No. 333-239782), which are incorporated by reference in this Registration Statement on Form S-1MEF. We consent to the incorporation by reference of the aforementioned report in this Registration Statement, and to the use of our name as it appears under the caption "Experts" in the prospectus incorporated by reference in this Registration Statement.

/s/ Penchansky & Co., PLLC

Penchansky & Co., PLLC  
Certified Public Accountants  
Manchester, New Hampshire  
July 20, 2020