

# SECURITIES & EXCHANGE COMMISSION EDGAR FILING

## BIO KEY INTERNATIONAL INC

**Form: 8-K**

**Date Filed: 2020-07-23**

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): July 20, 2020

**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 A, Suite E**  
**Wall, NJ 07719**

(Address of principal executive offices)

**(732) 359-1100**  
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock	BKYI	Nasdaq Capital Market

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))

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.**

On July 20, 2020, BIO-key International, Inc. (the "Company") entered into an underwriting agreement (the "Underwriting Agreement") with Maxim Group LLC, as representative of the several underwriters named therein (the "Underwriters") with respect to the issuance and sale of: (i) 29,130,000 shares (the "Shares") of common stock, \$0.0001 par value per share ("Common Stock"), (ii) pre-funded warrants to purchase 4,100,000 shares of Common Stock at an exercise price of \$0.01 per share (the "Pre-Funded Warrants"), and (iii) warrants to purchase an aggregate of 33,230,000 shares of Common Stock at an exercise price of \$0.65 per share (the "Common Warrants" and, together with the Pre-Funded Warrants, the "Warrants" and, together with the Shares and the Pre-Funded Warrants, the "Securities"), in an underwritten public offering (the "Offering") pursuant to the Underwriting Agreement.

Each Share was sold together with a Common Warrant to purchase one share of Common Stock, at a combined price to the public of \$0.65 per share of Common Stock and accompanying Warrant. Each Pre-Funded Warrant was sold together with a Common Warrant to purchase one share of Common Stock, at a combined price to the public of \$0.64 per Pre-Funded Warrant and accompanying Warrant.

Each Pre-Funded Warrant is immediately exercisable upon issuance and will expire when exercised in full. The Common Warrants have a term of five years and are immediately exercisable. If a registration statement under the Securities Act of 1933, as amended (the "Securities Act"), registering the issuance of the shares of Common Stock underlying the Common Warrants is not effective or available and an exemption from registration under the Securities Act is not available for the issuance of such shares, the holders of the Common Warrants may, in their sole discretion, elect to exercise their Common Warrants through a cashless exercise. The exercise of the Common Warrants are subject to certain beneficial ownership limitations. The warrants were issued pursuant to the terms of a warrant agency agreement between the Company and Broadridge Issuer Solutions, Inc., as warrant agent.

Pursuant to the Underwriting Agreement, the Company granted the Underwriters a 45-day option to purchase up to an additional 4,984,500 shares of Common Stock and/or 4,984,500 Warrants to cover over-allotments, if any (the "Over-Allotment"). On July 21, 2020, the Underwriter exercised its Over-Allotment option in full on both the Common Stock and the Warrants.

Pursuant to the Underwriting Agreement, the Company paid the Underwriter a cash fee equal to 8% of the aggregate gross proceeds sold in the Offering and also agreed to reimburse the Underwriter for reasonable out-of-pocket expenses related to the Offering, including the reasonable fees and expenses of counsel to the Underwriters, in the aggregate maximum amount of up to \$80,000.

The Underwriting Agreement contains customary representations, warranties and agreements by the Company, customary conditions to closing, indemnification obligations of the Company and the Underwriters, including for liabilities under the Securities Act, other obligations of the parties and termination provisions. The representations, warranties and agreements made by the parties in the Underwriting Agreement were made solely for the benefit of the parties to such agreement, including, in some cases, for the purpose of allocating risk among the parties, and should not be deemed to be a representation, warranty or agreement to or in favor of any party. In addition, the assertions embodied in any representations, warranties and agreements contained in the Underwriting Agreement may be subject to qualifications with respect to knowledge and materiality different from those applicable to security holders generally. Moreover, such representations, warranties and agreements should not be relied on as accurately representing the current state of the Company's affairs at any time.

The Securities were offered by the Company pursuant to an effective registration statement on Form S-1, as amended, which was originally filed with the Securities and Exchange Commission on July 9, 2020, and was declared effective on July 20, 2020 (File No. 333-239782) (the "Registration Statement"), and registration statement on Form S-1MEF (File No. 333-239966). The Company filed a final prospectus with the SEC on July 22, 2020 in connection with the sale of the Securities.

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The Offering and the Over-Allotment option closed on July 23, 2020. The net proceeds of the Offering including the full exercise of the Over-Allotment were approximately \$22.8 million, after deducting the underwriting discounts and commissions and estimated offering expenses. The Company used approximately \$4.2 million of the net proceeds of the Offering to satisfy all outstanding amounts due under convertible promissory notes previously issued to Lind Global Macro Fund, L.P. and there are no longer any remaining amounts due.

A copy of the legal opinion and consent of Fox Rothschild LLP relating to the legality of the issuance and sale of the Securities in the Offering is attached hereto as Exhibit 5.1.

On July 20, 2020, the Company issued a press release announcing that the Company had priced the Offering described above, a copy of which is attached hereto as Exhibit 99.1.

The foregoing summaries of the terms of the Underwriting Agreement, the Pre-Funded Warrants, and the Warrants are subject to, and qualified in their entirety by such documents, the forms of which are attached herewith as Exhibits 1.1, 4.1 and 4.2, respectively, to this Current Report on Form 8-K and are incorporated by reference herein.

#### Item 9.01. Financial Statements and Exhibits.

##### (d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
1.1 *	<a href="#"><u>Form of Underwriting Agreement (incorporated by reference to Exhibit 1.1 to Amendment No. 1 to the Registration Statement on Form S-1/A, filed with the SEC on July 16, 2020).</u></a>
4.1	<a href="#"><u>Form of Pre-Funded Warrant (incorporated by reference to Exhibit 4.2 to Amendment No. 1 to the Registration Statement on Form S-1/A, filed with the SEC on July 16, 2020).</u></a>
4.2	<a href="#"><u>Form of Warrant (incorporated by reference to Exhibit 4.3 to Amendment No. 1 to the Registration Statement on Form S-1/A, filed with the SEC on July 16, 2020).</u></a>
5.1	<a href="#"><u>Opinion of Fox Rothschild LLP.</u></a>
23.1	<a href="#"><u>Consent of Fox Rothschild LLP (included as part of Exhibit 5.1).</u></a>
99.1	<a href="#"><u>Press Release, dated July 20, 2020.</u></a>

\* The exhibits or schedules to the Agreement have been omitted from this filing pursuant to Item 601(a)(5) of Regulation S-K. The Company will furnish copies of any such schedules to the SEC upon request.

#### 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: July 23, 2020

BIO-KEY INTERNATIONAL, INC.

By: /s/ Cecilia C. Welch  
Cecilia C. Welch  
Chief Financial Officer

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

July 23, 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"), the related final prospectus filed pursuant to Rule 424(b)(4) promulgated under the 1933 Act (the "Prospectus"), 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 Registration Statement relates to the registration of (i) up to 34,114,500 shares (the "Shares") of common stock, \$0.0001 par value per share (the "Common Stock"), and pre-funded warrants ("Pre-Funded Warrants") to purchase up to 4,100,000 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 38,214,500 shares of Common Stock (the "Purchase Warrant Shares", and, collectively with the Pre-Funded Warrant Shares, the "Warrant Shares"). The Shares, the Warrants, and the Warrant Shares are to be sold by the Company as described in the Registration Statement and 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 Shares, the Warrants, and the Warrant 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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July 23, 2020

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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. 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



## **BIO-key Announces Pricing of Upsized \$21.6 Million Underwritten Public Offering**

**Wall, NJ, July 20, 2020** - BIO-key International, Inc. (NASDAQ: BKYI), an innovative provider of biometric authentication and security solutions, announced today the pricing of an underwritten public offering of 33,230,000 shares of its common stock (or pre-funded warrants to purchase common stock in lieu thereof) and common warrants to purchase up to an aggregate of 33,230,000 shares of the Company's common stock. Each share of common stock or pre-funded warrant is being sold together with one common warrant to purchase one share of common stock at a combined price to the public of \$0.65 per share and common warrant. Gross proceeds before deducting underwriting discounts, commissions and other offering expenses are expected to be \$21.6 million.

The common warrants will be immediately exercisable at a price of \$0.65 per share of common stock and will expire five years from the date of issuance. The shares of common stock and the accompanying common warrants can only be purchased together in the offering but will be issued separately. The offering is expected to close on or about July 23, 2020, subject to customary closing conditions.

Maxim Group LLC is acting as sole book-running manager for the offering.

BIO-key also has granted to the underwriter a 45-day option to purchase up to an additional 4,984,500 shares of common stock and/or common warrants to purchase up to an additional 4,984,500 shares of common stock, at the public offering price less underwriting discounts.

The offering is being conducted pursuant to the Company's registration statement on Form S-1 (File No. 333-239782), as amended, previously filed with and subsequently declared effective by the Securities and Exchange Commission ("SEC"). A final prospectus relating to the offering will be filed with the SEC and will be available on the SEC's website at <http://www.sec.gov>. Electronic copies of the final prospectus relating to this offering, when available, may be obtained from Maxim Group LLC, 405 Lexington Avenue, 2nd Floor, New York, NY 10174, at (212) 895-3745.

This press release shall not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of these securities in any state or jurisdiction in which such offer, solicitation or sale would be unlawful prior to the registration or qualification under the securities laws of any such state or jurisdiction.

**About BIO-key International, Inc. ([www.bio-key.com](http://www.bio-key.com))**

BIO-key is revolutionizing authentication with biometric solutions that enable convenient and secure access to devices, information, applications and high-value transactions. BIO-key's software and hardware finger scanning solutions offer secure, user-friendly and attractively priced alternatives to passwords, PINs, tokens and security cards, enabling enterprises and consumers to secure their networks and devices as well as their information in the cloud.

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## **BIO-key Safe Harbor Statement**

All statements contained in this press release other than statements of historical facts are "forward-looking statements" as defined in the Private Securities Litigation Reform Act of 1995 (the "Act"). The words "estimate," "project," "intends," "expects," "anticipates," "believes" and similar expressions are intended to identify forward-looking statements. Such forward-looking statements are made based on management's beliefs, as well as assumptions made by, and information currently available to, management pursuant to the "safe-harbor" provisions of the Act. These statements are not guarantees of future performance or events and are subject to risks and uncertainties that may cause actual results to differ materially from those included within or implied by such forward-looking statements. These risks and uncertainties include, without limitation, our history of losses and limited revenue; our ability to raise additional capital; our ability to protect our intellectual property; changes in business conditions; changes in our sales strategy and product development plans; changes in the marketplace; continued services of our executive management team; security breaches; competition in the biometric technology industry; market acceptance of biometric products generally and our products under development; our ability to execute and deliver on contracts in Africa; our ability to expand into Asia, Africa and other foreign markets; our ability to integrate the operations and personnel of Pistol Star into our business; the duration and severity of the current coronavirus COVID-19 pandemic and its effect on our business operations, sales cycles, personnel, and the geographic markets in which we operate; delays in the development of products and statements of assumption underlying any of the foregoing as well as other factors set forth under the caption see "Risk Factors" in our Annual Report on Form 10-K for the year ended December 31, 2019 and other filings with the Securities and Exchange Commission. Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date made. Except as required by law, the Company undertakes no obligation to disclose any revision to these forward-looking statements whether as a result of new information, future events, or otherwise. Additionally, there may be other factors of which the Company is not currently aware that may affect matters discussed in forward-looking statements and may also cause actual results to differ materially from those discussed. In particular, the consequences of the coronavirus outbreak to economic conditions and the industry in general and the financial position and operating results of our company in particular have been material, are changing rapidly, and cannot be predicted.

**Facebook – Corporate:** [BIO-key International](#)

**Twitter – Corporate:** [@BIOkeyIntl](#)

**Twitter – Investors:** [@BIO\\_keyIR](#)

**StockTwits:** [BIO\\_keyIR](#)

### **Investor & Media Contacts**

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