

BIO KEY INTERNATIONAL INC
Form DEF 14A
April 30, 2018
SCHEDULE 14A

**Proxy Statement Pursuant to Section 14(a) of the
Securities Exchange Act of 1934**

Filed by the Registrant Filed by a Party other than the Registrant

Check the appropriate box:

Preliminary Proxy Statement

Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))

Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material Pursuant to ss.240.14a-11(c) or ss.240.14a-12

BIO-KEY INTERNATIONAL, INC.

(Name of Registrant as Specified in its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

No fee required.

Fee computed on table below per Exchange Act Rules 14a-6(i)(4) and 0-11.

Title of each class of securities to which transaction applies:

(1)

Aggregate number of securities to which transaction applies:

(2)

Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

(3)

Proposed maximum aggregate value of transaction:

(4)

Total fee paid:

(5)

Fee paid previously with preliminary materials.

Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid:

(1)

Form, Schedule or Registration Statement No.:

(2)

Filing Party:

(3)

Date Filed:

(4)

April 30, 2018

Dear Stockholder:

You are cordially invited to attend the 2018 Annual Meeting of Stockholders of BIO-key International, Inc., on Friday, June 22, 2018, at 10:00 a.m., local time, at the offices of Fox Rothschild LLP, 997 Lenox Drive, Building 3, Lawrenceville, NJ 08648.

The Notice of Annual Meeting of Stockholders and Proxy Statement on the following pages describe the matters to be presented at the meeting.

It is important that your shares be represented at the meeting, regardless of the number of shares you hold and whether or not you plan to attend the meeting in person. Accordingly, please exercise your right to vote by signing, dating and returning your proxy card in the enclosed envelope, voting by internet, or voting by telephone as described in the Proxy Statement. Your shares will be voted in accordance with the instructions you have given in your proxy.

Our board of directors and management look forward to seeing you at the meeting. Thank you for your continued support.

Sincerely yours,

/s/ Michael W. DePasquale
Michael W. DePasquale
Chairman and Chief Executive Officer

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

Notice of Annual Meeting of Stockholders
Friday, June 22, 2018

To Our Stockholders:

The Annual Meeting of Stockholders of BIO-key International. Inc., a Delaware corporation (the “Company”), will be held on Friday, June 22, 2018, at 10:00 a.m., local time, at the offices of Fox Rothschild LLP, 997 Lenox Drive, Building 3, Lawrenceville, NJ 08648, for the following purposes:

1. To elect eight members of the board of directors to serve until the 2019 Annual Meeting of Stockholders and until their successors have been duly elected and qualified;
2. To ratify the selection of Rotenberg Meril Solomon Bertiger & Guttilla, P.C. as the Company’s independent registered public accounting firm for the year ending December 31, 2018;
3. To approve, on an advisory basis, our executive compensation;
4. To approve, on an advisory basis, the frequency of the advisory approval of our executive compensation; and
5. To transact such other business as may properly come before the meeting or any continuation, adjournment or postponement thereof.

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All stockholders are invited to attend the meeting. Holders of record of the Company's common stock, series A-1 convertible preferred stock, and series B-1 convertible preferred stock at the close of business on April 25, 2018, are entitled to notice of, and to vote at, the meeting.

By Order of the Board of Directors

/s/ Michael W. DePasquale

Michael W. DePasquale
Chairman of the Board of Directors
Wall, NJ
April 30, 2018

WHETHER OR NOT YOU EXPECT TO ATTEND THE MEETING, PLEASE SUBMIT YOUR PROXY AS SOON AS POSSIBLE SO THAT YOUR SHARES WILL BE REPRESENTED AT THE MEETING.

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

PROXY STATEMENT
2018 ANNUAL MEETING OF STOCKHOLDERS

The enclosed proxy is solicited by the board of directors of BIO-key International, Inc. (the “Company,” “we” or “us”) for use at the 2018 Annual Meeting of Stockholders (the “Annual Meeting”) to be held on Friday, June 22, 2018, at 10:00 a.m., local time, at the offices of Fox Rothschild LLP, 997 Lenox Drive, Building 3, Lawrenceville, NJ 08648, and at any continuation, adjournment or postponement thereof.

GENERAL INFORMATION ABOUT THE ANNUAL MEETING AND VOTING

Who Can Attend and Vote

Only holders of our common stock and convertible preferred stock of record at the close of business on April 25, 2018, the record date, are entitled to notice of and to vote at the Annual Meeting, and at any continuation(s), postponement(s) or adjournment(s) thereof. As of the record date, 10,671,534 shares of our common stock, par value \$.0001 per share (“common stock”), 23,508 shares of our series A-1 convertible preferred stock, \$.0001 par value per share (“series A-1 stock”), and 44,580 shares of our Series B-1 Convertible Preferred Stock, \$.0001 par value per share (“series B-1 stock”), were issued and outstanding. Holders of our common stock are entitled to one vote per share for each proposal presented at the Annual Meeting. Holders of our series A-1 stock and series B-1 stock are entitled to one vote for each share of common stock issuable upon conversion of the such shares on the record date for each proposal presented at the Annual Meeting. As of April 25, 2018, the record date, the holder of our series A-1 stock is not entitled to any votes and the holders of our series B-1 stock are entitled to an aggregate of 1,238,334 votes for each proposal presented at the Annual Meeting. Neither the common stock, series A-1 stock, nor series B-1 stock have cumulative voting rights.

Voting Your Shares

If you are a registered holder, meaning that you hold our stock directly (not through a bank, broker or other nominee), you may vote in person at the Annual Meeting or by completing, dating and signing the proxy and promptly returning it, by telephone, or electronically through the internet by following the instructions included on your proxy card. All

signed, returned proxies that are not revoked will be voted in accordance with the instructions contained therein. Signed proxies that give no instructions as to how they should be voted on a particular proposal at the Annual Meeting will be counted as votes “for” such proposal or, in the case of the election of directors, as a vote “for” election of the eight nominees presented by the board of directors, and in the case of the preferred frequency of our “say-on-pay” voting, as a vote to select “every year” as the frequency.

If your shares are held through a bank, broker or other nominee, you are considered the beneficial owner of those shares. You may be able to vote by telephone or electronically through the internet in accordance with the voting instructions provided by that nominee. You must obtain a legal proxy from the nominee that holds your shares if you wish to vote in person at the Annual Meeting.

Applicable stock exchange rules restrict when brokers who are record holders of shares may exercise discretionary authority to vote those shares in the absence of instructions from beneficial owners. Brokers are not permitted to vote on non-discretionary items such as director elections, executive compensation, and other significant matters absent instructions from the beneficial owner. As a result, if you are a street name stockholder, and you do not give voting instructions, the holder of record will not be permitted to vote your shares with respect to Proposal No. 1—Election of Directors, Proposal, No. 3—Advisory Vote on Executive Compensation, or Proposal No. 4—Advisory Vote on Frequency Of Future “Say-On-Pay” Advisory Votes and your shares will be considered “broker non-votes” with respect to these proposals. Although any broker non-votes would be counted as present at the Annual Meeting for purposes of determining a quorum, they will be treated as not entitled to vote with respect to each of Proposal Nos. 1, 3 and 4. If you are a street name stockholder, and you do not give voting instructions, the record holder will be entitled to vote your shares with respect to Proposal No. 2—Ratification of the Appointment of Rotenberg Meril Solomon Bertiger & Guttilla, P.C. as our Independent Registered Public Accounting Firm for the Year Ending December 31, 2018 in its discretion.

In the event that sufficient votes in favor of the proposals are not received by the date of the Annual Meeting, the Chairman of the Annual Meeting may adjourn the Annual Meeting to permit further solicitations of proxies.

The telephone and internet voting procedures are designed to authenticate stockholders' identities, to allow stockholders to give their voting instructions and to confirm that stockholders' instructions have been recorded properly. Stockholders voting via the telephone or internet should understand that there may be costs associated with telephonic or electronic access. These charges include usage charges from telephone companies and internet access providers. The stockholder will bear the cost of these charges.

Procedural Matters

If you are a registered stockholder, you may vote your shares or submit a proxy to have your shares voted by one of the following methods:

By Internet. You may submit a proxy electronically via the internet by following the instructions provided on the proxy card. Please have your proxy card in hand when you access the website. Internet voting facilities will close at 11:59 p.m. ET on June 21, 2018.

By Telephone. You may submit a proxy by telephone using the toll-free number listed on the proxy card. Please have the proxy card in hand when you call. Telephone voting facilities will close at 11:59 p.m. ET on June 21, 2018.

By Mail. You may submit a proxy by signing, dating and returning your proxy card in the provided pre-addressed envelope in accordance with the enclosed instructions. We encourage you to sign and return the proxy or voter instruction card even if you plan to attend the Annual Meeting so that your shares will be voted even if you are unable to attend.

In Person. If you plan to attend the Annual Meeting and vote in person, we will provide you with a ballot at the Annual Meeting. You may vote in person at the Annual Meeting by completing a ballot; however, attending the Annual Meeting without completing a ballot will not count as a vote.

If your shares are held in street name, you will receive instructions from the holder of record that you must follow in order for your shares to be voted. Internet and/or telephone voting will also be offered to stockholders owning shares through most banks and brokers.

Quorum

The presence at the Annual Meeting in person or by proxy of holders of a majority of our common stock, series A-1 stock, and series B-1 stock outstanding and entitled to vote at the Annual Meeting will constitute a quorum.

Required Vote, Abstentions and Broker Non-Votes

Only stockholders of record at the close of business on April 25, 2018 have the right to vote at the Annual Meeting. The proposals at the Annual Meeting will require the following votes:

Directors will be elected by a plurality of all votes cast. You may vote “FOR ALL NOMINEES,” “WITHHOLD FOR ALL NOMINEES” or “FOR ALL EXCEPT” for the director nominees. Withheld votes and broker non-votes will have no effect on Proposal No. 1.

Ratification of the selection of Rotenberg Meril Solomon Bertiger & Guttilla, P.C. as our independent registered public accounting firm will require the affirmative vote of a majority of the shares present in person or represented by proxy at the Annual Meeting and entitled to vote on this matter. You may vote “FOR,” “AGAINST” or “ABSTAIN” on the proposal to ratify the selection of Rotenberg Meril Solomon Bertiger & Guttilla, P.C. as our independent registered public accounting firm. Abstentions will have the same effect as a vote against Proposal No. 2. We do not expect any broker non-votes in connection with respect to Proposal No. 2.

Approval, on an advisory basis, of our executive compensation will require the affirmative vote of a majority of the shares present in person or represented by proxy at the Annual Meeting and entitled to vote on this matter. You may vote “FOR,” “AGAINST” or “ABSTAIN” on the proposal to approve, on an advisory basis, our executive compensation. Abstentions will have the same effect as a vote against Proposal No. 3 and broker non-votes will have no effect on Proposal No. 3.

The frequency of advisory approval of our executive compensation will be approved, on an advisory basis, based upon which option receives the highest number of votes cast by stockholders. You may vote “1 YEAR,” “2 YEARS,” “3 YEARS” or “ABSTAIN” on the proposal to approve, on an advisory basis, the frequency of advisory approval of our executive compensation. Abstentions and broker non-votes will have no effect on Proposal No. 4.

A “withheld vote,” in the case of the proposal regarding the election of directors, or an “abstention,” in the case of the proposal regarding the ratification of the selection of our independent registered public accounting firm, the proposal regarding the approval, on an advisory basis, of our executive compensation, or the proposal regarding the approval, on an advisory basis, of the frequency of advisory votes of our executive compensation, represents a stockholder’s affirmative choice to decline to vote on a proposal.

Generally, “broker non-votes” occur when shares held by a broker in street name for a beneficial owner are not voted with respect to a particular proposal because the broker (1) has not received voting instructions from the beneficial owner and (2) lacks discretionary voting power to vote those shares. A broker is entitled to vote shares held for a beneficial owner on routine matters, such as the ratification of the appointment of our independent registered public accounting firm, without instructions from the beneficial owner of those shares. As a result, we do not expect any broker non-votes in connection with the ratification of our independent registered public accounting firm.

Default Voting

A proxy that is properly completed and returned will be voted at the Annual Meeting in accordance with the instructions on the proxy. If you properly complete and return a proxy, but do not indicate any contrary voting instructions, your shares will be voted in accordance with the board’s recommendations, which are as follows:

FOR the election of the eight persons named in this proxy statement as the board’s nominees for election as directors;

FOR the ratification of the selection of Rotenberg Meril Solomon Bertiger & Guttilla, P.C. as our independent registered public accounting firm for the year ending December 31, 2018;

FOR the approval, on an advisory basis, of our executive compensation;

FOR the approval, on an advisory basis, of holding the advisory vote on our executive compensation every year; and

FOR approval of authority to transact such other business as may properly come before the Annual Meeting.

If any other business properly comes before the stockholders for a vote at the Annual Meeting, your shares will be voted at the discretion of the holders of the proxy. The board knows of no matters, other than those previously stated herein, to be presented for consideration at the Annual Meeting.

How to Revoke

Any person giving a proxy in the form accompanying this proxy statement has the power to revoke it at any time before its exercise. The proxy may be revoked by filing with the Secretary of the Company an instrument of revocation or a duly executed proxy bearing a later date, or by electing to vote in person at the Annual Meeting. A stockholder who attends the Annual Meeting need not revoke the proxy and vote in person unless he or she wishes to do so. The mere presence at the Annual Meeting of the person appointing a proxy does not, however, revoke the appointment. If you are a stockholder whose shares are not registered in your own name, you will need additional documentation from your record holder to vote personally at the Annual Meeting.

Expenses of Solicitation

We will bear all costs incurred in the solicitation of proxies, including the preparation, printing and mailing of the Notice of Annual Meeting of Stockholders, proxy statement and the related materials. In addition to solicitation by mail, our directors, officers and employees may solicit proxies personally or by telephone, e-mail, facsimile or other means, without additional compensation.

Stockholder List

A list of stockholders entitled to vote at the Annual Meeting will be available for inspection at the Annual Meeting and at our corporate offices located at 3349 Highway 138, Building A, Suite E, Wall, NJ 07719 beginning June 11, 2018, during normal business hours for examination by any stockholder registered on our stock ledger as of the record date for any purpose germane to the Annual Meeting.

Householding/Delivery of Documents to Stockholders

The SEC rules permit registrants to adopt a procedure called “householding.” Under this procedure, stockholders of record who have the same address and last name will receive only one set of proxy materials, unless one or more of these stockholders notifies the registrant that they wish to continue receiving individual sets. This procedure reduces printing costs and postage fees incurred by the registrant.

We have not adopted this householding procedure with respect to our record holders; however, a number of brokerage firms have instituted householding which may impact certain beneficial owners of our common stock. If your family has multiple accounts by which you hold common stock, you may have received a householding notification from your broker. Please contact your broker directly if you have any questions, require additional copies of the proxy materials, or wish to revoke your decision to household, and thereby receive multiple sets. Those options are available to you at any time.

Beginning on or about April 30, 2018, we mailed to our stockholders our Annual Report on Form 10-K for the year ended December 31, 2017, which includes our audited consolidated financial statements, together with these proxy materials.

PRINCIPAL STOCKHOLDERS**Common Stock**

The following table sets forth, as of April 25, 2018, information with respect to the securities holdings of all persons that we, pursuant to filings with the SEC and our stock transfer records, have reason to believe may be deemed the beneficial owner of more than 5% of our common stock. The following table also sets forth, as of such date, the beneficial ownership of our common stock by all of our current officers and directors, both individually and as a group.

The beneficial owners and amount of securities beneficially owned have been determined in accordance with Rule 13d-3 under the Exchange Act and, in accordance therewith, include all shares of our common stock that may be acquired by such beneficial owners within 60 days of April 25, 2018 upon the exercise or conversion of any options, warrants or other convertible securities. This table has been prepared based on 10,671,534 shares of common stock outstanding on April 25, 2018.

<u>Name and Address of Beneficial Owner (1)</u>	Amount and Nature of Beneficial Ownership	Percent of Class
Michael W. DePasquale	170,139 (2)	1.6 %
Cecilia Welch	73,888 (3)	*
Mira LaCous	59,723 (4)	*
Barbara Rivera	55,347 (5)	*
Thomas Gilley	22,510 (6)	*
Thomas E. Bush, III	16,700 (6)	*
Pieter Knook	9,198 (7)	*
Robert J. Michel	7,186 (7)	*
Fabian Shin	765 (8)	*
Wong Kwok Fong (Kelvin)	3,730,635 (9)	35 %
Yao Jianhui	2,911 (10)	*
Micron Technology Development Limited	2,166,089 (11)	18.2 %
Giant Leap International, Ltd.	955,311 (12)	8.9 %
All officers and directors as a group (11) persons	4,149,002	37.4 %

* Less than 1%

- (1) Unless otherwise indicated, the address of each person listed below is c/o BIO-key International, Inc., 3349 Highway 138, Building A, Suite E, Wall, NJ 07719.
- (2) Includes 159,723 shares issuable on exercise of options. Does not include 206,947 shares issuable upon exercise of options subject to vesting.
- (3) Consists of shares issuable upon exercise of options. Does not include 114,446 shares issuable upon exercise of options subject to vesting.
- (4) Consists of shares issuable upon exercise of options. Does not include 81,945 shares issuable upon exercise of options subject to vesting.
- (5) Consists of shares issuable upon exercise of options. Does not include 116,945 shares issuable upon exercise of options subject to vesting.
- (6) Includes 7,847 issuable on exercise of options. Does not include 8,862 shares issuable upon exercise of options subject to vesting.
- (7) Includes 3,333 issuable on exercise of options. Does not include 8,167 shares issuable upon exercise of options subject to vesting.
- (8) Does not include 1,500 shares issuable upon exercise of options subject to vesting. The address of Mr. Shin is Flat B, 23/F, Tower 2B, 19 Tong Yin Street, The WINGS IIIA, Tseung Kwan O New Territories, Hong Kong. Includes 49,999 issuable on exercise of options. Does not include 133,335 shares issuable upon exercise of options subject to vesting. Also, does not include shares issuable upon conversion of shares of series A-1 stock as such shares are subject to a “blocker provision” which prohibits conversion if such conversion would result in the holder being the beneficial owner of in excess of 35% of our common stock. Accordingly, Kelvin is prohibited from converting any shares of series A-1 stock until such time as his holdings of common stock fall below 35%. The address of Kelvin is Flat C, 27/F, Block 5, Grand Pacific Views, Siu Lam, Hong Kong N7. Consists of shares of common stock. Does not include 935,311 shares of common stock and 20,000 shares of common stock issuable upon conversion of shares of series B-1 stock owned of record by Giant Leap International, Ltd. Also does not include 88,875 shares of common stock owned by China Goldjoy Group Limited, the parent company of Giant Leap International Ltd. As the chairman of the board of directors of China Goldjoy Group Limited, Mr. Yao shares voting and dispositive power over these shares. The address of Mr. Yao is Suites 2601-2, 26/F Tower 2, Nina Tower, 8 Yeung UK Road, Tsuen Wan, Hong Kong TWTL 353.
- (9) Consists of 947,755 shares of common stock and 1,218,334 shares of common stock issuable upon conversion of shares of series B-1 stock. The address of Micron Technology Development Limited is 5/F., SPA Centre, 53-55 Lockhart Road, Wanchai, Hong Kong 999077.
- (10) Consists of 935,311 shares of common stock and 20,000 shares of common stock issuable upon conversion of shares of series B-1 stock. The address of Giant leap International, Ltd. is Cricket Square, Hutchins Drive P.O. Box 2681 Grand Cayman, Cayman Islands KY7-1111.
- (11) Consists of 947,755 shares of common stock and 1,218,334 shares of common stock issuable upon conversion of shares of series B-1 stock. The address of Micron Technology Development Limited is 5/F., SPA Centre, 53-55 Lockhart Road, Wanchai, Hong Kong 999077.
- (12) Consists of 935,311 shares of common stock and 20,000 shares of common stock issuable upon conversion of shares of series B-1 stock. The address of Giant leap International, Ltd. is Cricket Square, Hutchins Drive P.O. Box 2681 Grand Cayman, Cayman Islands KY7-1111.

Series A-1 Stock

The following table sets forth, as of April 25, 2018, information with respect to the securities holdings of all persons that we, pursuant to filings with the SEC and our stock transfer records, have reason to believe may be deemed the beneficial owner of more than 5% of our series A-1 stock. The following table also sets forth, as of such date, the beneficial ownership of our series A-1 stock by all of our current officers and directors, both individually and as a group. There are no outstanding options, warrants or other convertible securities to acquire any shares of series A-1 stock. This table has been prepared based on 23,508 shares of series A-1 stock outstanding on April 25, 2018.

<u>Name and Address of Beneficial Owner</u>	Amount and Nature of Beneficial Ownership	Percent of Class
Wong Kwok Fong (Kelvin) (1)	23,508	100 %
All officers and directors as a group (11) persons	23,508	100 %

(1) The address of Kelvin is Flat C, 27/F, Block 5, Grand Pacific Views, Siu Lam, Hong Kong N7.

Series B-1 Stock

The following table sets forth, as of April 25, 2018, information with respect to the securities holdings of all persons that we, pursuant to filings with the SEC and our stock transfer records, have reason to believe may be deemed the beneficial owner of more than 5% of our series B-1 stock. The following table also sets forth, as of such date, the beneficial ownership of our series B-1 stock by all of our current officers and directors, both individually and as a group. There are no outstanding options, warrants or other convertible securities to acquire any shares of series B-1 stock. This table has been prepared based on 44,580 shares of series B-1 stock outstanding on April 25, 2018.

<u>Name and Address of Beneficial Owner</u>	Amount and Nature of Beneficial Ownership	Percent of Class
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Yao Jianhui	0	(1)	0	%
Micron Technology Development Limited	43,860	(2)	98.4	%
Giant Leap International, Ltd.	720	(3)	1.6	%
All officers and directors as a group (11) persons	0	(1)	0	%

-
- Does not include 720 shares of series B-1 stock owned of record by Giant Leap International, Ltd., a subsidiary of China Goldjoy Group Limited. As the chairman of the board of directors of China Goldjoy Group Limited, Mr. Yao shares voting and dispositive power over these shares. The address of Mr. Yao is Suites 2601-2, 26/F Tower 2, Nina Tower, 8 Yeung UK Road, Tsuen Wan, Hong Kong TWTL 353.
- (1) Yao shares voting and dispositive power over these shares. The address of Mr. Yao is Suites 2601-2, 26/F Tower 2, Nina Tower, 8 Yeung UK Road, Tsuen Wan, Hong Kong TWTL 353.
- (2) The address of Micron Technology Development Limited is 5/F., SPA Centre, 53-55 Lockhart Road, Wanchai, Hong Kong 999077.
- (3) The address of Giant leap International, Ltd. is Cricket Square, Hutchins Drive P.O. Box 2681 Grand Cayman, Cayman Islands KY7-1111.

PROPOSAL 1: ELECTION OF DIRECTORS