

MITEK SYSTEMS INC
Form 8-A12G
October 23, 2018

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

FORM 8-A

FOR REGISTRATION OF CERTAIN CLASSES OF SECURITIES
PURSUANT TO SECTION 12(b) OR (g) OF THE
SECURITIES EXCHANGE ACT OF 1934

Mitek Systems, Inc.

(Exact name of registrant as specified in its charter)

Delaware 81-0418827

(State of incorporation or organization) (I.R.S. Employer Identification No.)

600 B Street, Suite 100

San Diego, California 92101

(Address of principal executive offices) (Zip Code)

Securities Act registration statement or Regulation A offering statement file number to which this form relates: Not applicable

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

Title of each class to be so registered	Name of exchange on which each class is to be registered
None	None

If this form relates to the registration of a class of securities pursuant to Section 12(b) of the Exchange Act and is effective pursuant to General Instruction A.(c), check the following box. "

If this form relates to the registration of a class of securities pursuant to Section 12(g) of the Exchange Act and is effective pursuant to General Instruction A.(d), check the following box. y

If this form relates to the registration of a class of securities concurrently with a Regulation A offering, check the following box.

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

Preferred Stock Purchase Rights

(Title of Each Class)

Item 1. Description of Registrant's Securities to be Registered.

On October 23, 2018, Mitek Systems, Inc., a Delaware corporation (the “Company”) entered into a Section 382 Rights Agreement (the “Rights Agreement”), between the Company and Computershare Trust Company, N.A., a federally chartered trust company, as Rights Agent. Pursuant to the Rights Agreement, the Company will issue a dividend of one preferred share purchase right (a “Right”) for each share of the Company’s common stock, par value \$0.001 per share (a “Common Share”) payable on November 2, 2018 (the “Record Date”) to the stockholders of record on that date. Each Right entitles the registered holder to purchase from the Company one one-thousandth of a share of Series B Junior Preferred Stock, par value \$0.001 per share (the “Preferred Shares”), of the Company, at a price of \$35.00 per one one-thousandth of a Preferred Share represented by a Right (the “Purchase Price”), subject to adjustment. The description and terms of the Rights are set forth in the Rights Agreement.

In connection with the adoption of the Rights Agreement, the Board approved a Certificate of Designation of Series B Junior Preferred Participating Stock, par value \$0.001 per share, of the Company (the “Certificate of Designation”). The Certificate of Designation was filed with the Secretary of the State of Delaware on October 23, 2018. The Certificate of Designation is attached hereto as Exhibit 3.1 and incorporated herein by reference.

The Rights are in all respects subject to and governed by the provisions of the Rights Agreement. The following description of the Rights does not purport to be complete and is qualified in its entirety by reference to the full text of the Rights Agreement, which is attached hereto as Exhibit 4.1 and incorporated herein by reference. Capitalized terms used but not defined in this summary have the meanings ascribed to such terms in the Rights Agreement.

The Rights

The Rights are not exercisable until the Distribution Date. The Distribution Date will be the earlier of (i) the Close of Business on the 10th day following a public announcement that an Acquiring Person (as defined below) has become such (or, in the event an exchange is effected in accordance with Section 24 of the Rights Agreement and the Board determines that a later date is advisable, then such later date) or (ii) the Close of Business on the 10th Business Day (or such later date as may be determined by action of the Board prior to such time as any Person becomes an Acquiring Person) following the commencement of a tender offer or exchange offer, the consummation of which would result in the Beneficial Ownership by a Person or group of 4.9% or more of the then outstanding Common Shares.

Until the Distribution Date, the Rights will be transferred with and only with the Common Shares, and (unless the Rights are redeemed or expire) the surrender or transfer of any Common Shares outstanding on or after the Record Date will constitute the transfer of the Rights associated with such Common Shares. Upon the Distribution Date, the Rights may be transferred separately from the Common Shares, and each Right, other than Rights held by an Acquiring Person, will entitle its holder to purchase from the Company one one-thousandth of a Preferred Share in exchange for the Purchase Price.

The Rights will be evidenced, with respect to any of the Common Share certificates outstanding as of the Record Date, by such Common Share certificate with a copy of the Summary of Rights to Purchase Preferred Shares substantially in the form attached as Exhibit C to the Rights Agreement (unless such Rights are recorded in book entry).

Acquiring Person

An “Acquiring Person” is any Person or group of Affiliated or Associated Persons that has acquired Beneficial Ownership (as defined below) of 4.9% or more of the Common Shares then outstanding. However, a Person shall not be deemed to be an Acquiring Person if such Person, at the time of the first public announcement of the Rights Agreement, is a Beneficial Owner of 4.9% or more of the Common Shares then outstanding (a “Grandfathered Stockholder”); provided, however, that if a Grandfathered Stockholder increases its Beneficial Ownership of the Common Shares of the Company as of any date on or after the date of the public announcement of

this Agreement, then such Grandfathered Stockholder shall no longer be deemed to be a Grandfathered Stockholder unless, upon such acquisition of Beneficial Ownership of additional Common Shares of the Company, such Person is not then the Beneficial Owner of 4.9% or more of the Common Shares of the Company then outstanding; provided, further, that upon the first decrease of a Grandfathered Stockholder's Beneficial Ownership below 4.9% of the Common Shares of the Company then outstanding, such Grandfathered Stockholder shall no longer be deemed to be a Grandfathered Stockholder and this proviso shall have no further force or effect with respect to such Person.

In general, "Beneficial Ownership" under the Rights Agreement includes any securities a Person, or any of such Person's Affiliates or Associates, (i) would be deemed to actually or constructively own for purposes of Section 382 of the Code and the regulations promulgated thereunder (to the extent ownership of such securities would be attributed to such Persons under Section 382 of the Code and the regulations promulgated thereunder), (ii) beneficially owns, directly or indirectly, within the meaning of Rules 13d-3 or 13d-5 promulgated under the Securities Exchange Act of 1934, as amended, (iii) has the right to acquire or vote pursuant to any agreement, arrangement or understanding (except under limited circumstances), (iv) which are directly or indirectly beneficially owned by any other Person with whom such Person is Acting in Concert or (v) in respect of which such Person has a Derivative Position.

From and after the time any Person becomes an Acquiring Person, if the Rights evidenced by a Right Certificate are or were acquired or Beneficially Owned by an Acquiring Person, an Associate or Affiliate of an Acquiring Person or any Person with whom such Person is Acting in Concert, such Rights shall become void, and any holder of such Rights shall thereafter have no right to exercise such Rights.

Flip-in Event

If any Person becomes an Acquiring Person, proper provision shall be made so that each holder of a Rights, other than Rights Beneficially Owned by an Acquiring Person, an Associate or Affiliate of the Acquiring Person or any Person with whom such Person is Acting in Concert (all of which will thereafter be void), will thereafter have the right to receive, upon exercise thereof, that number of Common Shares having a market value equal to two times the Purchase Price of the Right. If the Board so elects, the Company shall deliver, upon payment of the Purchase Price, an amount of cash or securities equivalent in value to the number of Common Shares issuable upon exercise of a Right.

Flip-over Event

If, at any time after a Person becomes an Acquiring Person, the Company is acquired in a merger or other business combination transaction or 50% or more of its consolidated assets or earning power are sold, proper provision will be made so that each holder of a Right will thereafter have the right to receive, upon the exercise thereof at the then current Purchase Price, that number of shares of common stock of the acquiring company which at the time of such transaction will have a market value of two times the Purchase Price.

Exchange

At any time after any Person becomes an Acquiring Person and prior to the acquisition by any Person or group of a majority of the outstanding Common Shares, the Board may exchange the Rights (other than Rights owned by an Acquiring Person, which shall have become void), in whole or in part, at an exchange ratio of one Common Share per Right (subject to adjustment). The exchange of the Rights by the Board may be made effective at such time, on such basis and with such conditions as the Board in its sole discretion may establish.

Preferred Shares

Preferred Shares purchasable upon exercise of the Rights will not be redeemable. Each Preferred Share will be entitled to a quarterly dividend payment of 1,000 multiplied by the dividend declared per Common Share. In the event of liquidation, the holders of the Preferred Shares will be entitled to a payment per share equal to 1,000 multiplied by the aggregate payment made per Common Share. Each Preferred Share will have 1,000 votes, voting

together with the Common Shares. In the event of any merger, consolidation or other transaction in which Common Shares are exchanged, each Preferred Share will be entitled to receive 1,000 multiplied by the amount received per Common Share. Because of the nature of the dividend, liquidation and voting rights of the Preferred Shares, the value of the one one-thousandth of a Preferred Share purchasable upon exercise of each Right should approximate the value of one Common Share.

Purchase Price Adjustments

The Purchase Price payable, and the number of Preferred Shares or other securities or property issuable, upon exercise of the Rights is subject to adjustment from time to time to prevent dilution (i) in the event of a stock dividend on the Preferred Shares payable in Preferred Shares or a subdivision or combination of the Preferred Shares, (ii) upon the grant to holders of the Preferred Shares of certain rights or warrants to subscribe for or purchase Preferred Shares at a price, or securities convertible into Preferred Shares with a conversion price, less than the then current market price of the Preferred Shares, or (iii) upon the distribution to holders of the Preferred Shares of evidences of indebtedness or assets (excluding regular periodic cash dividends paid out of earnings or retained earnings or dividends payable in Preferred Shares) or of subscription rights or warrants (other than those referred to above). The number of outstanding Rights and the number of Preferred Shares issuable upon exercise of each Right are also subject to adjustment in the event of a stock split of the Common Shares or a stock dividend on the Common Shares payable in Common Shares or subdivisions, consolidations or combinations of the Common Shares occurring, in any such case, prior to the Distribution Date.

With certain exceptions, no adjustment in the Purchase Price will be required until cumulative adjustments require an adjustment of at least 1% in such Purchase Price. No fractional Preferred Shares will be issued (other than fractions which are integral multiples of one one-thousandth of a Preferred Share, which may, at the election of the Company, be evidenced by depositary receipts), and in lieu thereof, an adjustment in cash will be made based on the market price of the Preferred Shares on the last trading day prior to the date of exercise.

Expiration

The Rights will expire on the earlier of (i) the Close of Business on October 22, 2021, (ii) the time at which the Rights are redeemed, (iii) the time at which the Rights are exchanged, and (iv) if the Rights Agreement has not been approved by the stockholders prior to the conclusion of the Company's 2019 annual meeting, the Close of Business on such date.

Redemption

At any time prior to the time any Person becomes an Acquiring Person, the Board may redeem the Rights in whole, but not in part, at a price of \$0.0001 per Right (the "Redemption Price"). The redemption of the Rights may be made effective at such time, on such basis and with such conditions as the Board in its sole discretion may establish. Immediately upon any redemption of the Rights, the right to exercise the Rights will terminate and the only right of the holders of Rights will be to receive the Redemption Price.

Amendment

The terms of the Rights may be amended by the Board without the consent of the holders of the Rights. However, from and after such time as any Person becomes an Acquiring Person, the Rights Agreement shall not be amended or supplemented in any manner which would adversely affect the interests of the holders of Rights (other than Rights owned by an Acquiring Person, which shall have become void).

Rights of Holders

Until a Right is exercised, the holder thereof, as such, will have no rights as a stockholder of the Company, including, without limitation, the right to vote or to receive dividends.

Item 2. Exhibits.

The documents listed below are filed as exhibits to this Registration Statement:

Exhibit No. Description

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|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3.1 | <u>Certificate of Designation of Series B Junior Participating Preferred Stock (Incorporated by reference to Exhibit 3.1 to Mitek Systems, Inc. Current Report on Form 8-K filed on October 23, 2018).</u> |
| 4.1 | <u>Section 382 Rights Agreement, dated October 23, 2018, between the Company and Computershare Trust Company, N.A., as Rights Agent, which includes the form of Rights Certificate as Exhibit B and the Summary of Rights to Purchase Preferred Shares as Exhibit C (Incorporated by reference to Exhibit 4.1 to Mitek Systems, Inc. Current Report on Form 8-K filed on October 23, 2018).</u> |
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SIGNATURE

Pursuant to the requirements of Section 12 of the Securities Exchange Act of 1934, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, hereto duly authorized.

Mitek Systems, Inc.

October 23, 2018 By: /s/ Jason Gray
Jason Gray
General Counsel