

BIO KEY INTERNATIONAL INC

Form S-3/A

September 25, 2018

As filed with the Securities and Exchange Commission on September 25, 2018

**Registration No. 333-227108**

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**UNITED STATES**

**SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

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**Amendment No. 1**

**to**

**Form S-3**

**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)**



(609) 896-4571

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**Approximate date of commencement of proposed sale to the public:** From time to time after this registration statement becomes effective.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box:

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, other than securities offered only in connection with dividend or interest reinvestment plans, 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 of 1933, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

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If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act of 1933, 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 registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

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		Accelerated filer
Non-accelerated filer	(Do not check if a smaller reporting company)	Smaller reporting company
		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 7(a)(2)(B) of Securities Act

**CALCULATION OF REGISTRATION FEE**

<b>Title of each class of securities to be registered</b>	<b>Amount to be registered(1)</b>	<b>Proposed maximum offering price per Share (2)</b>	<b>Proposed Maximum aggregate offering price (2)(3)</b>	<b>Amount of registration fee</b>
Common stock, par	2,559,172	1.66	\$4,248,226	\$529 (4)

value  
\$0.0001  
per share

- (1) Pursuant to Rule 416, there are also being registered such indeterminable additional securities as may be issued to prevent dilution as a result of stock splits, stock dividends, or similar transactions.  
Estimated solely for the purpose of calculating the registration fee. The estimate is made pursuant to Rule 457(c) of the Securities Act of 1933 based on \$1.66 per share, which represents the average of the high and low sales prices of the Registrant's common stock on August 27, 2018 as reported on The Nasdaq Capital Market.
- (2) the Securities Act of 1933 based on \$1.66 per share, which represents the average of the high and low sales prices of the Registrant's common stock on August 27, 2018 as reported on The Nasdaq Capital Market.
- (3) The Registrant will not receive any proceeds from the sale of its common stock by the selling stockholders.
- (4) Amount previously paid.
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**The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.**

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**The information in this prospectus is not complete and may be changed. We may not sell these securities until the Securities and Exchange Commission declares our registration statement effective. This prospectus is not an offer to sell these securities and is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.**

**SUBJECT TO COMPLETION, DATED SEPTEMBER 25, 2018**

**PRELIMINARY PROSPECTUS**

**2,559,172 Shares of Common Stock**

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This prospectus relates to the resale, from time to time, by the selling stockholders identified in this prospectus under the caption “Selling Stockholders,” of up to 2,559,172 shares of common stock, par value \$0.0001 per share, of BIO-key International, Inc. (“BIO-key,” “we,” “us” or “our”) issuable upon exercise of certain outstanding common stock purchase warrants issued and sold by us in private placement transactions.

All of the proceeds from the sale of the shares covered by this prospectus will be received by the selling stockholders. We will not receive any proceeds from the sale of these shares.

Our common stock is listed on the Nasdaq Capital Market under the symbol “BKYI.” On September 24, 2018, the closing price of our common stock was \$1.26 per share.

We will bear all costs, expenses and fees in connection with the registration of the shares. See “Plan of Distribution” beginning on page 11 for more information about how the selling stockholders may sell or dispose of the shares of common stock offered hereby.

**INVESTING IN OUR SECURITIES INVOLVES RISKS. YOU SHOULD REVIEW CAREFULLY THE RISKS AND UNCERTAINTIES DESCRIBED HEREIN UNDER THE HEADING “RISK FACTORS”**

**BEGINNING ON PAGE 7 OF THIS PROSPECTUS AND UNDER SIMILAR HEADINGS IN THE OTHER DOCUMENTS THAT ARE INCORPORATED BY REFERENCE INTO THIS PROSPECTUS.**

**NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED THESE SECURITIES OR DETERMINED IF THIS PROSPECTUS IS TRUTHFUL OR COMPLETE. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.**

The date of this prospectus is \_\_\_\_\_, 2018

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## **ABOUT THIS PROSPECTUS**

This prospectus relates to the resale, from time to time, by the selling stockholders identified in this prospectus under the caption "Selling Stockholders," of up to 2,559,172 shares of common stock, par value \$0.0001 per share, of BIO-key International, Inc. issuable upon exercise of certain outstanding common stock purchase warrants issued and sold by us. All of the proceeds from the sale of the shares covered by this prospectus will be received by the selling stockholders. We will not receive any proceeds from the sale of these shares.

This prospectus is part of a registration statement on Form S-3 that we have filed with the Securities and Exchange Commission, or SEC. It omits some of the information contained in the registration statement, and reference is made to the full registration statement for further information with regard to us and the securities being offered by the selling stockholders. Any statement contained in the prospectus concerning the provisions of any document filed as an exhibit to the registration statement or otherwise filed with the SEC is not necessarily complete, and in each instance, reference is made to the copy of the document filed. You should review the complete document to evaluate these statements.

Neither the delivery of this prospectus nor any sale made under it implies that there has been no change in our affairs or that the information in this prospectus is correct as of any date after the date of this prospectus. You should assume that the information in this prospectus is accurate only as of the date on the front of the document and that any information we have incorporated by reference is accurate only as of the date of the document incorporated by reference, regardless of the time of delivery of this prospectus, or any sale of a security.

Neither we nor the selling stockholders are making an offer to sell or seeking an offer to buy shares of our common stock under this prospectus in any jurisdiction where the offer or sale is not permitted. You should not consider this prospectus to be an offer or solicitation relating to the securities in any jurisdiction in which such an offer or solicitation relating to the securities is not authorized. Furthermore, you should not consider this prospectus to be an offer or solicitation relating to the securities if the person making the offer or solicitation is not qualified to do so, or if it is unlawful for you to receive such an offer or solicitation.

We urge you to read carefully this prospectus, together with the information incorporated herein by reference as described under the heading "Where You Can Find Additional Information," before buying any of the securities being offered.

This prospectus contains summaries of certain provisions contained in some of the documents described herein, but reference is made to the actual documents for complete information. All of the summaries are qualified in their entirety by the actual documents. Copies of some of the documents referred to herein have been filed, will be filed or

will be incorporated by reference as exhibits to the registration statement of which this prospectus is a part, and you may obtain copies of those documents as described below under “Where You Can Find Additional Information.”

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## SPECIAL NOTE REGARDING FORWARD LOOKING STATEMENTS

This prospectus and the documents and information incorporated by reference herein may contain “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. All statements other than statements of historical facts included in or incorporated by reference into this prospectus supplement that address activities, events or developments that we expect, believe or anticipate will or may occur in the future are forward-looking statements. Our forward-looking statements generally include statements about our plans, objectives, strategies and prospects regarding, among other things, our business, results of operations, liquidity and financial condition. In some cases, we have identified these forward-looking statements with words like “believe,” “may,” “could,” “might,” “possible,” “potential,” “project,” “will,” “should,” “expect,” “intend,” “plan,” “predict,” “anticipate,” “estimate,” “appear,” “contemplate” or “continue” or the negative of these words or other words and terms of similar meaning.

We refer you to the risks described in the “**RISK FACTORS**” section on page 7 of this prospectus and under similar sections in the documents we incorporate by reference into this prospectus.

We wish to caution readers not to place undue reliance on any forward-looking statement that speaks only as of the date made and to recognize that forward-looking statements are predictions of future results, which may not occur as anticipated. All forward-looking statements are subject to risks and uncertainties that may cause actual results to differ materially from those that we expect. Such factors include: our history of losses and limited revenue; our ability to raise additional capital; our ability to protect our intellectual property; market acceptance of biometric products generally and our products under development; our ability to market our consumer products 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 between us and other companies in the biometric technology industry; delays in the development of products, statements of assumption underlying any of the foregoing, and the risks and uncertainties described under the section entitled “**RISK FACTORS**” included elsewhere in this prospectus and under similar sections in the documents we incorporate by reference into this prospectus, as well as others that we may consider immaterial or do not anticipate at this time. Although we believe that the expectations reflected in our forward-looking statements are reasonable, we do not know whether our expectations will prove correct. We assume no obligation to update forward-looking statements to reflect actual results or changes in factors or assumptions affecting such forward-looking statements, except if we otherwise are required by law. We advise you, however, to review any further disclosures we make on related subjects in our annual reports on Form 10-K, quarterly reports on Form 10-Q, and current reports on Form 8-K we file with or furnish to the Securities and Exchange Commission.

## SUMMARY

*The following summary highlights information contained elsewhere in this prospectus. Because it is only a summary, it does not contain all of the detailed information contained elsewhere in this prospectus or all of the information that may be important to you. Accordingly, please read carefully this entire prospectus and the documents incorporated by reference in this prospectus, including our consolidated financial statements and related notes, and the risk factors beginning on page 7 before deciding whether to purchase shares of our common stock.*

## OUR COMPANY

### Overview

We develop and market advanced fingerprint biometric identification and identity verification technologies, as well as related identity management and credentialing hardware and software solutions. We were pioneers in developing automated, finger identification technology that supplements or complements other methods of identification and verification, such as personal inspection identification, passwords, tokens, smart cards, ID cards, PKI, credit card, passports, driver's licenses, OTP or other form of possession or knowledge-based credentialing. We have developed what we believe is the most discriminating and effective commercially available finger-based biometric technology.

We market and sell our technology solutions into commercial, logical and physical privilege entitlement and access control markets. Our primary market focus includes enterprise security, mobile payments and credentialing, healthcare records and data security, among other things. Our secondary focus includes government markets, large scale identity projects such as voter's registration, driver's license, national ID programs, and SIM card registration.

More recently, we have developed a robust products business. Our line of finger print readers, which we market under the brand names SideSwipe™, EcoID™ and SideTouch™, can be used on any laptop, tablet or other device which contains a USB port. We also market and sell a line of biometric and Bluetooth enabled padlocks, luggage locks, and bicycle locks.

We maintain a direct sales force and also utilize distributors, resellers, integrators and partners with substantial experience in selling technology solutions to government and corporate customers. We have built a global footprint which includes our executive offices in Wall, NJ, our research and development facility in Eagan, MN, and international operations in Hong Kong.

We continue to develop advancements in our capabilities and explore potential strategic relationships, including business combinations and acquisitions, which could help us leverage our capability to deliver our solutions.

### **Finger-based Biometric Identification and Personal Identity Verification**

We are a leader in finger-based biometric identification and personal identity verification, as well as authentication-transaction security. Stand-alone, or in partnerships with OEMs, integrators, and solution providers, we provide biometric security solutions to private and public sector customers. We help customers reduce risk by providing the ability to control access to facilities and services, in either the logical or physical domain. Our solutions positively identify individuals and verify, or confirm, their identity before granting access to, among other things, corporate resources, subscribed data and services, web portals, applications, physical locations or assets.

Our biometric identification technology improves both the accuracy and speed of screening individuals, for identification purposes or for personal identity verification, by extracting unique data from a fingerprint and comparing it to existing similar fingerprint data. The technology has been built to be scalable and to handle databases containing millions of fingerprints. We achieve the highest levels of discrimination without requiring any other identifying data (multi-factor) such as a user ID, smart ID cards, or tokens, although our technology can be used in conjunction with such additional factors. Users of our technology have the option of on device or cloud authentication. This flexible authentication option in conjunction with our interoperable capabilities, is another key differentiator of our biometric identification solutions.

We also develop and distribute hardware components that are used in conjunction with our software, and sell third-party hardware components with our software in various configurations required by our customers. Our products are interoperable with all major fingerprint reader and hardware manufacturers and across Windows, Linux, and the Android mobile operating systems enabling application developers, value added resellers, and channel partners to integrate our fingerprint biometrics into their applications, while dramatically reducing maintenance, upgrade and life-cycle costs. This interoperability is unique in the industry, is a key differentiator for our products in the biometric market and, in our opinion, makes our technology more viable than competing technologies and expands the size of the overall market for our products.

We support industry standards, such as FIDO, BioAPI, and have received National Institute of Standards and Technology independent laboratory certification of our ability to support Homeland Security Presidential Directive #12 (HSPD-12) and ANSI/INCITS-378 templates, as well as validation of our fingerprint match speed and accuracy in large database environments.

## **Our Core Technology**

Our finger identification algorithm, Vector Segment Technology (VST™), is the core intellectual property behind our full suite of biometric products that include:

Vector Segment Technology SDK (VST)—Our biometric software development kit (“SDK”) provides developers with the ability to incorporate our biometric capabilities into their respective product offerings or infrastructure. VST is available as a low level SDK for incorporation into any application architecture to increase security while not sacrificing convenience. VST runs on Windows and Linux as well as within WEB-key® on iOS and Android systems.

Intelligent Image Indexing®—Our biometric identification solution offers both large-scale one-to-many and one-to-one user identification. This solution enables customers to perform false alias and fast entry checks, including preventing fraudulent access to systems and privileges. Intelligent image indexing scales identification capabilities from thousands to millions of users. The solution runs on commercially available hardware making it scalable for any size system.

Biometric Service Provider—We provide support for the BioAPI (a standards-based solution meeting worldwide needs) for a compliant interface to applications using biometrics for verification and identification. We enhance the traditional use of BioAPI by adding 64-bit support and other advanced features, supporting identification calls and also providing a single user interface for multiple fingerprint readers.

ID Director™—Our Single Sign On (SSO) is a suite of solutions for integration with CA Technologies SiteMinder, Oracle’s Fusion Middleware SSO, IBM Tivoli Access Manager as well as ISAM and other solutions, utilizing the power and security of WEB-key. This solution provides a simple to implement, custom authentication scheme for companies looking to enhance authentication. ID Director is designed to add a level of security and convenience to the transaction level of any application. Versions of ID Director include ID Director for Windows that provides enterprise customers the ability to integrate our biometric solutions into their MS Active Directory platform, and ID Director for Epic and Allscripts that allows healthcare customers to utilize our biometrics with the leading EMR EHR platforms.

In 2015, Microsoft announced native support for biometrics in the Windows 8.1 and Windows 10 Operating platforms as well as Office 2016. With Microsoft Hello, users can replace their PIN or password to access their device without any special software downloads by using our finger scanners which are plug and play compatible with the Microsoft platforms. We were the exclusive biometric partner at the Microsoft “Ignite your Business” Windows 10 and Office 2016 launch events, which generated a number opportunities for both our hardware and software offerings.

### **Authentication Transaction Security**

Our authentication-transaction security technology, WEB-key®, provides the ability to conduct identification and identity verification transactions in potentially insecure environments, including the World Wide Web or in off-site cloud environments. We have developed our technology to enable on-device authentication as well as network or cloud-based authentication and believe we may be one of the few if not only technology vendors capable of providing this flexibility and capability.

WEB-key makes cloud-based biometric user-authentication viable and eliminates technology constraints on online service providers, who are otherwise dependent on handset provider hardware and software platform decisions. It extends all features and functionalities of the VST algorithm to customers looking to add an enhanced level of security to their thin client and client/server applications. WEB-key is currently supported by both Windows and Linux operating systems. Clients are available on Windows and Android operating systems.

## **Our Products**

Since 2016, we have developed a products business which accounted for approximately 30% of our revenue in 2017. We believe that focused execution of our products business represents an opportunity for substantial future growth.

We offer a full line of easy to use finger scanners for both enterprise and consumer markets. Our SideSwipe, SideTouch and EcoID scanners are plug and play compatible with Microsoft Windows and our Q-180 Touch reader is a Micro USB compatible fingerprint reader for Android devices. The readers are currently sold in the Microsoft stores, as well as through their on-line channel, on Amazon, and through our website.

At the Consumer Electronics Show 2017, we introduced a number of new products, including our TouchLock™ line of fingerprint biometric and bluetooth enabled padlocks. These products include IP45 compliant, all weather padlocks TouchLock BTXL, that can be opened with your smartphone, and TouchLock Fingerprint Smart Lock, that can be opened with your fingerprint. We also offer TouchLock TSA Smart Luggage Lock, a TSA compliant padlock, and TouchLock Bike Smart Cable Lock. In 2018, we introduced Touchlock XL Plus, a Bluetooth and fingerprint enabled padlock that can be opened with either your smart phone or fingerprint. We are currently distributing these products in both the Asia Pacific and domestic markets.

In 2018, we introduced OmniPass Consumer, a secure biometric-enabled application to manage multiple passwords for online apps, services or accounts.

## **General**

Our principal executive office is located at 3349 Highway 138, Building A, Suite E, Wall, New Jersey 07719 and our telephone number is (732) 359-1100. Our website is located at [www.bio-key.com](http://www.bio-key.com). The information on our website or any other website is not incorporated by reference into this prospectus supplement or the accompanying base prospectus. Our website address is included as an inactive textual reference only.

The BIO-key logo is our trademark. This prospectus supplement, the base prospectus and the documents we incorporate by reference into this prospectus supplement and the accompanying base prospectus may also contain trademarks and trade names of others.





## THE OFFERING

Issuer	BIO-key International, Inc.
Common stock offered by selling stockholders:	2,559,172 shares of common stock
Shares of common stock outstanding before this offering:	13,972,158 shares of common stock
Shares of common stock outstanding after completion of this offering (assuming full exercise of the common stock purchase warrants that are exercisable for the shares of common stock offered hereby):	16,531,330 shares of common stock
Terms of this offering:	<p>The selling stockholders, including their transferees, donees, pledgees, assignees and successors-in-interest, may sell, transfer or otherwise dispose of any or all of the shares of common stock offered by this prospectus from time to time on the Nasdaq Capital Market or any other stock exchange, market or trading facility on which the shares are traded or in private transactions. The shares of common stock may be sold at fixed prices, at market prices prevailing at the time of sale, at prices related to prevailing market price or at negotiated prices.</p> <p>The proceeds from the sale of the securities covered by this prospectus will be received by the selling stockholders. We will not receive any of the proceeds from any sale of the shares of common stock offered by this prospectus. See <b>“USE OF PROCEEDS.”</b></p>
Use of proceeds:	
Listing of common stock:	<p>Our common stock is listed on the Nasdaq Capital Market under the ticker symbol <b>“BKYI”</b>.</p> <p>Investing in our securities involves a high degree of risk and purchasers of our securities may lose their entire investment. See the information under the caption <b>“Risk Factors”</b> beginning on page 7 of this prospectus and the other information included elsewhere in this prospectus and incorporated by reference herein for a discussion of factors you should consider before deciding to invest in our securities.</p>
Risk factors:	

## **RISK FACTORS**

Investing in our common stock involves risk. Before you invest in our common stock you should carefully consider the specific risks set forth below and under similar sections in the documents we incorporate by reference into this prospectus, including those set forth under the caption “Risk Factors” in our Annual Report on Form 10-K for our fiscal year ended December 31, 2017. You should also carefully consider the information set forth under “Risk Factors” in our filings with the SEC pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to our most recent Annual Report on Form 10-K, incorporated by reference herein. Any of these risks could cause our actual results to vary materially from recent results or from anticipated future results or could materially and adversely affect our business, financial condition and results of operations. This effect could be compounded if multiple risks were to occur. The occurrence of any of these risks might cause you to lose all or part of your investment.

*Sales of a substantial number of shares of our common stock in the public market, including the shares offered under this prospectus and under other registration statements, could lower our stock price and impair our ability to raise funds in new stock offerings.*

If our stockholders sell substantial amounts of our common shares, the market price of our common shares could decrease. We have 13,972,158 common shares outstanding as of September 24, 2018. Under this registration statement, we are registering the resale of 2,559,172 common shares held by the selling stockholders, which represents approximately 18% of our outstanding common stock. In addition, we may sell additional common shares in subsequent offerings.

We cannot predict the size of future issuances of common shares or the effect, if any, that future issuances and sales of common shares, including the shares offered under this registration statement, other registration statements, and shares available for resale under Rule 144 under the Securities Act, or the perception that such sales could occur, may have on the market price of our common shares or our ability to raise additional capital through the sale of equity securities. With any additional issuance of common shares, investors will suffer dilution and we may experience dilution in our earnings per share.

## **DESCRIPTION OF CAPITAL STOCK**

### **Common Stock**

The following summary description of our common stock is based on the provisions of our certificate of incorporation and bylaws, which are incorporated by reference into the registration statement which includes this prospectus, and the applicable provisions of the Delaware General Corporation Law. This information may not be complete in all respects and is qualified in its entirety by reference to the provisions of our certificate of incorporation, bylaws and the Delaware General Corporation Law. For information on how to obtain copies of our certificate of incorporation and bylaws, see the information below under the heading “**Where You Can Find Additional Information.**”

*Authorized.* We currently have authority to issue up to 170,000,000 shares of common stock, \$0.0001 par value per share. As of September 24, 2018, we had 13,972,158 shares of common stock outstanding. From time to time we may amend our certificate of incorporation to increase the number of authorized shares of common stock. Any such amendment would require the approval of the holders of a majority of the voting power of the shares entitled to vote thereon.

*Voting.* For all matters submitted to a vote of stockholders, each holder of common stock is entitled to one vote for each share registered in the holder’s name on our books. Our common stock does not have cumulative voting rights. Holders of a plurality of our outstanding common stock can elect all of the directors who are up for election in a particular year. Holders of a majority of our outstanding common stock act by a majority for all other matters, except as limited by our certificate of incorporation, bylaws and the Delaware General Corporation Law.

*Dividends.* If our board of directors declares a dividend, holders of common stock will receive payments from our funds that are legally available to pay dividends. However, this dividend right is subject to any preferential dividend rights we may grant to the persons who hold preferred stock, if any is outstanding.

*Liquidation and Dissolution.* If we are liquidated or dissolve, the holders of our common stock will be entitled to share ratably in all the assets that remain after we pay our liabilities and any amounts we may owe to the persons who hold preferred stock, if any is outstanding.

*Fully Paid and Nonassessable.* All shares of our outstanding common stock are fully paid and nonassessable and any additional shares of common stock that we issue will be fully paid and nonassessable.

*Other Rights and Restrictions.* Holders of our common stock do not have preemptive or subscription rights, and they have no right to convert their common stock into any other securities. Our common stock is not subject to redemption by us. The rights, preferences and privileges of common stockholders are subject to the rights of the stockholders of any series of preferred stock which we may designate in the future. Our charter and bylaws do not restrict the ability of a holder of common stock to transfer his or her shares of common stock.

*Listing.* Our common stock is listed on The Nasdaq Capital Market under the symbol “BKYYI.”

*Transfer Agent and Registrar.* The transfer agent and registrar for our common stock is Broadridge Corporate Issuer Solutions, Inc.

## **Preferred Stock**

The following summary description of our preferred stock is based on the provisions of our certificate of incorporation and bylaws, which are incorporated by reference into the registration statement which includes this prospectus, and the applicable provisions of the Delaware General Corporation Law. This information may not be complete in all respects and is qualified in its entirety by reference to the provisions of our certificate of incorporation, bylaws and the Delaware General Corporation Law. For information on how to obtain copies of our certificate of incorporation and bylaws, see the information below under the heading “**Where You Can Find Additional Information.**”

*General.* We currently have authority to issue up to 5,000,000 shares of preferred stock, \$0.0001 par value per share, none of which are outstanding. We may amend from time to time our certificate of incorporation to increase the number of authorized shares of preferred stock or to designate a new class of preferred stock. Unless required by law, the authorized shares of preferred stock will be available for issuance without further action by you. Our Board of Directors is able to determine, with respect to any series of preferred stock, the powers (including voting powers), preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, including, without limitation:

the designation of the series;

the number of shares of the series, which our Board of Directors may, except where otherwise provided in the preferred stock designation, increase (but not above the total number of authorized shares of the class) or decrease (but not below the number of shares then outstanding);

whether dividends, if any, will be cumulative or non-cumulative and the dividend rate of the series;

the dates at which dividends, if any, will be payable;

the redemption rights and price or prices, if any, for shares of the series;

the terms and amounts of any sinking fund provided for the purchase or redemption of shares of the series;

the amounts payable on shares of the series in the event of any voluntary or involuntary liquidation, dissolution or winding-up of our affairs;

whether the shares of the series will be convertible into shares of any other class or series, or any other security, of the Company or any other corporation, and, if so, the specification of the other class or series or other security, the conversion price or prices or rate or rates, any rate adjustments, the date or dates as of which the shares will be convertible and all other terms and conditions upon which the conversion may be made;

restrictions on the issuance of shares of the same series of any other class or series; and

the voting rights, if any, of the holders of the series.

We could issue a series of preferred stock that could, depending on the terms of the series, impede or discourage an acquisition attempt or other transaction that some, or a majority, of the holders of our common stock might believe to be in their best interests or in which the holders of our common stock might receive a premium for their common stock over the market price of that common stock. Additionally, the issuance of preferred stock may adversely affect the holders of our common stock by restricting dividends on the common stock, diluting the voting power of the common stock, or subordinating the liquidation rights of the common stock. As a result of these or other factors, the issuance of preferred stock could have an adverse impact on the market price of our common stock.

*Anti-Takeover Provisions of the Company's Certificate of Incorporation; Blank Check Preferred Stock.* As described above, our Board of Directors is authorized without further stockholder action, to designate any number of series of preferred stock with such rights, preferences and designations as determined by the Board of Directors. Shares of preferred stock issued by the Board of Directors could be utilized, under certain circumstances, to make an attempt to gain control of the Company more difficult or time-consuming. For example, shares of preferred stock could be issued with certain rights that might have the effect of diluting the percentage of common stock owned by a significant stockholder or issued to purchasers who might side with management in opposing a takeover bid that the Board of Directors determines is not in the best interests of the Company and its stockholders. The existence of the preferred stock may, therefore, be viewed as having possible anti-takeover effects.

### **Certain Effects of Authorized But Unissued Stock**

As described in above, we have shares of common stock and preferred stock available for future issuance without stockholder approval, subject to any limitations imposed by the listing standards of the Nasdaq Capital Market. We may use these additional shares for a variety of corporate purposes, including for future public or private offerings to raise additional capital or facilitate corporate acquisitions or for payment as a dividend on our capital stock. The existence of unissued and unreserved common stock and preferred stock may enable our board of directors to issue shares to persons friendly to current management that could render more difficult or discourage a third-party attempt to obtain control of us by means of a merger, tender offer, proxy contest or otherwise, thereby protecting the continuity of our management.

### **Delaware Law and Charter and Bylaw Provisions**

*Business Combinations.* We are subject to the provisions of Section 203 of the Delaware General Corporation Law. Subject to certain exceptions, Section 203 prohibits a publicly held Delaware corporation from engaging in a "business combination" with an "interested stockholder" for a period of three years after the person became an interested stockholder, unless the business combination is approved in a prescribed manner. A "business combination" includes mergers, asset sales and other transactions resulting in a financial benefit to the interested stockholder. Subject to exceptions, an "interested stockholder" is a person who, together with affiliates and associates, owns, or within the prior three years did own, 15% or more of the corporation's voting stock. This provision could have the effect of delaying or preventing a change in control of our company.

*Indemnification.* Our charter and bylaws contain provisions to indemnify our directors and officers to the fullest extent permitted by the Delaware General Corporation Law. These provisions do not limit or eliminate our right or the right of any stockholder of ours to seek non-monetary relief, such as an injunction or rescission in the event of a breach by a director or an officer of his duty of care to us.

*Advance Notice Requirements for Stockholder Proposals and Director Nominations.* Our bylaws provide that stockholders who desire to nominate a person for election to our board of directors must comply with specified notice and information provisions. Our bylaws contain similar advance notice provisions for stockholder proposals for action at stockholder meetings. These provisions prevent stockholders from making nominations for directors and stockholder proposals from the floor at any stockholder meeting and require any stockholder making a nomination or proposal to submit the name of the nominees for board seats or the stockholder proposal, together with specified information about the nominee or any stockholder proposal, prior to the meeting at which directors are to be elected or action is to be taken. These provisions ensure that stockholders have adequate time to consider nominations and proposals before action is required, and they may also have the effect of delaying stockholder action.

## **THE OFFERING**

This prospectus covers the public sale of 2,559,172 shares of common stock to be sold by the selling security holders identified in this prospectus, consisting of shares of common stock underlying warrants we issued in private placement transactions. The warrants have an exercise price of \$1.50 per share and expire five years after the date of issuance.

This prospectus also covers any additional shares of our common stock that we may issue or that may be issuable by reason of any stock split, stock dividend or similar transaction involving our common stock.

The selling security holders may sell the shares covered by this prospectus through public or private transactions at prevailing market prices or at privately negotiated prices. We will not receive any proceeds from this offering.

Set forth below is a description of the private offerings of the warrants that are exercisable for the shares of common stock being registered for resale hereby.



### **November 2014 Private Offering of Common Stock and Warrants to Private Investors**

On November 13, 2014, we issued to certain private investors 664,584 shares of common stock and warrants to purchase an additional 996,877 shares of common stock for aggregate gross proceeds of \$1,595,000 and surrender to us for cancellation of warrants to purchase an aggregate of 664,584 shares of common stock.

The warrants have a term of five years and were initially exercisable at an exercise price of \$3.60 per share. The exercise price and the number of shares issuable upon exercise of the warrants are subject to adjustment upon any stock dividend, stock split, combination, or reclassification of our capital stock. The warrants also contain a “full ratchet” anti-dilution adjustment provision providing for the exercise price and the number of shares issuable upon exercise of the warrants to be adjusted in the event that we issue any shares of common stock at purchase price below the then applicable exercise price of the warrants. As a result of our recent public offering of units, the exercise price of the warrants was reduced to \$1.50 and the number of shares issuable upon exercise of the warrants was increased to 2,392,504.

The warrants are exercisable on a cashless basis if at any time there is no effective registration statement covering the resale of the shares of common stock underlying the warrants.

### **September 2015 Private Offering of Common Stock to a Private Investor**

On September 23, 2015, we issued a warrant to purchase 69,445 shares of common stock to an investor in connection with the issuance of a promissory note in the principal amount of \$250,000.

The warrant has a term of five years and was initially exercisable at an exercise price of \$3.60 per share. The exercise price and the number of shares issuable upon exercise of this warrant are subject to adjustment upon any stock dividend, stock split, combination, or reclassification of our capital stock. The warrant also contains a “full ratchet” anti-dilution adjustment provision providing for the exercise price and the number of shares issuable upon exercise of the warrants to be adjusted in the event that we issue any shares of common stock at purchase price below then the then applicable exercise price of the warrants. As a result of our recent public offering of units, the exercise price of this warrant was reduced to \$1.50 and the number of shares issuable upon exercise of the warrants was increased to 166,668.

The warrant is exercisable on a cashless basis if at any time there is no effective registration statement covering the resale of the shares of common stock underlying the warrants.

## USE OF PROCEEDS

The selling stockholders will receive all proceeds from the sale of the shares of common stock offered hereby. We will not receive any proceeds from the sale of common stock by the selling stockholders.

We will, however, receive cash proceeds equal to the exercise price of the warrants. Accordingly, we may receive aggregate gross proceeds of up to \$3,838,758 assuming that all warrants are exercised in full at an exercise price of \$1.50 per share. We expect to use any proceeds received by us from the exercise of these warrants for working capital purposes.

We will bear all costs, expenses and fees in connection with the registration of the shares, including, without limitation, all registration and filing fees and fees and expenses of our counsel and our accountants.

## SELLING STOCKHOLDERS

*When we refer to the “selling stockholders” in this prospectus, we mean the persons or entities specifically identified in the table below, as well as the permitted transferees, pledges, donees, assignees, successors and other successors-in-interest who may subsequently hold any of the selling stockholders’ interests other than through a public sale.*

The selling security holders identified in the following table are offering for resale 2,559,172 shares of our common stock. All of the securities were previously issued to the selling security holders in private placement transactions described above under the section entitled “**THE OFFERING**”.

The following table sets forth:

The name of each selling security holder and any material relationship between us and such selling security holder based upon information currently available to us;