

Resonant Inc
Form 10-K/A
March 19, 2018

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

FORM 10-K/A
(Amendment No. 1)

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2017

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____.

Commission file number 001-36467

RESONANT INC.
(Exact Name of Registrant as Specified in Its charter)

Delaware 45-4320930
(State or Other Jurisdiction of (I.R.S. Employer
Incorporation or Organization) Identification No.)

110 Castilian Drive, Suite 100, Goleta, California 93117
(Address of Principal Executive Offices) (Zip Code)

(805) 308-9803
(Registrant's Telephone Number, Including Area Code)

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

| Title of each class | Name of each exchange on which registered |
|---------------------------------|---|
| Common Stock, \$0.001 par value | The NASDAQ Stock Market LLC |

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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: (Check one):

| | |
|---|--|
| Large accelerated filer <input type="radio"/> | Accelerated filer <input type="radio"/> |
| Non-accelerated filer <input type="radio"/> | Smaller reporting company <input checked="" type="radio"/> |
| (Do not check if smaller reporting company) | Emerging growth company <input checked="" type="radio"/> |

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.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes No
As of June 30, 2017, the aggregate market value of the voting and non-voting common equity held by non-affiliates was \$46 million, based on the closing price on that date. As of February 26, 2018, the registrant had 19,911,602 shares of common stock issued and outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

None

EXPLANATORY NOTE

Resonant Inc. (the “Company”) is filing this Amendment No. 1 on Form 10-K/A (this “Amendment No.1”) to its Annual Report on Form 10-K for the fiscal year ended December 31, 2017, originally filed with the Securities and Exchange Commission (the “SEC”) on February 28, 2018 (the “Original Form 10-K”), to amend Exhibit 23.1, the Consent of Crowe Horwath LLP, to correct a typographical error in Exhibit 23.1 included in the Original Form 10-K, which resulted in Exhibit 23.1 not conforming to the consent provided by the auditors. We are also including with this Amendment No. 1 certain new certifications by our principal executive officer and principal financial officer, and including footnotes to our list of Exhibits that were inadvertently omitted from the Original Form 10-K. Accordingly, Part IV, Item 15 of the Original Form 10-K is being amended to reflect the filing of a new Exhibit 23.1, the filing of new certifications as Exhibits 31.1 and 31.2, and the inclusion of the omitted footnotes.

Except as described above, no other changes have been made to the Original Form 10-K. Except as otherwise indicated herein, this Amendment No. 1 continues to speak as of the date of the Original Form 10-K, and the Company has not updated the disclosures contained therein to reflect any events that occurred subsequent to the date of the Original Form 10-K. Accordingly, this Amendment No. 1 should be read in conjunction with the Original Form 10-K and the Company’s filings made with the SEC subsequent to the filing of the Original Form 10-K.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a)(3) Exhibits.

| Exhibit Number | Exhibit Description | Incorporated by Reference | | | Filed | |
|-------------------|---|---------------------------|-------------|---------|-------------|----------|
| | | Form | File Number | Exhibit | Filing Date | Herewith |
| 2.1 | <u>Share Purchase Agreement, dated July 6, 2016, between the Registrant and Victor Plessky</u> | 8-K | 001-36467 | 2.1 | 7/8/2016 | |
| 3.1 | <u>Amended and Restated Certificate of Incorporation of the Registrant</u> | 8-K | 001-36467 | 3.1 | 6/5/2014 | |
| 3.2 | <u>Amended and Restated Bylaws of the Registrant</u> | 8-K | 001-36467 | 3.2 | 6/5/2014 | |
| 4.1 | <u>Form of the Registrant's common stock certificate</u> | S-1/A | 333-193552 | 4.1 | 4/11/2014 | |
| 4.2 | <u>Form of Underwriter's Warrant</u> | S-1/A | 333-193552 | 4.2 | 5/16/2014 | |
| 4.3 | <u>Form of Warrant, dated April 25, 2016</u> | 8-K | 001-36467 | 10.3 | 4/26/2016 | |
| 4.4 | <u>Form of Agent Warrant, dated April 25, 2016</u> | 8-K | 001-36467 | 10.4 | 4/26/2016 | |
| 4.5 | <u>Form of Underwriter's Warrant</u> | 8-K | 001-36467 | 4.1 | 9/9/2016 | |
| 4.6 | <u>Amended and Restated Warrant to Purchase Common Stock, dated November 15, 2013, issued by the Registrant in favor of MDB Capital Group LLC for 222,222 shares of common stock</u> | S-1 | 333-193552 | 10.25 | 1/24/2014 | |
| 4.7 | <u>Amended and Restated Warrant to Purchase Common Stock, dated November 15, 2013, issued by the Registrant in favor of MDB Capital Group LLC for a to-be-determined number of shares of common stock</u> | S-1 | 333-193552 | 10.26 | 1/24/2014 | |
| 4.8 | <u>Warrant Agreement issued to Investors Relations Consultant</u> | 10-K | 001-36467 | 10.40 | 3/27/2015 | |
| 4.9 | <u>Warrant to Purchase Common Stock, dated February 22, 2017, issued by the Registrant to Grayboard Investments, Ltd.</u> | 8-K | 001-36467 | 10.3 | 2/24/2017 | |
| 4.10 | <u>Form of Warrant issued to investors</u> | 8-K | 001-36467 | 10.3 | 9/29/2017 | |
| 4.11 | <u>Placement Agent Warrant, dated September 28, 2017</u> | 8-K | 001-36467 | 10.4 | 9/29/2017 | |
| 4.12 | <u>Placement Agent Warrant, dated October 2, 2017</u> | 8-K | 001-36467 | 10.1 | 10/3/2017 | |
| 10.1* | <u>Form of Indemnification Agreement between the Registrant and each of its directors and officers</u> | S-1 | 333-193552 | 10.1 | 1/24/2014 | |
| 10.2.1* | <u>Registrant's Amended and Restated 2014 Omnibus Incentive Plan</u> | S-1/A | 333-193552 | 10.2 | 4/11/2014 | |
| 10.2.2* | <u>Amendment No. 1 to Registrant's Amended and Restated 2014 Omnibus Incentive Plan</u> | S-8 | 333-211893 | 10.1 | 6/7/2016 | |
| 10.2.3* | <u>Amendment No. 2 to Registrant's Amended and Restated 2014 Omnibus Incentive Plan</u> | S-8 | 333-218542 | 10.3 | 6/7/2017 | |
| 10.3* | <u>Offer Letter between the Registrant and Robert Hammond, dated June 17, 2013</u> | S-1 | 333-193552 | 10.4 | 1/24/2014 | |

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| Exhibit Number | Exhibit Description | Incorporated by Reference | | | Filed |
|----------------|--|---------------------------|-------------|---------|----------------------|
| | | Form | File Number | Exhibit | Filing Date Herewith |
| 10.4* | <u>Offer Letter between the Registrant and Neal Fenzi, dated June 17, 2013</u> | S-1 | 333-193552 | 10.5 | 1/24/2014 |
| 10.5* | <u>Offer Letter between the Registrant and George B. Holmes, dated February 9, 2016</u> | 8-K | 001-36467 | 10.1 | 3/4/2016 |
| 10.6* | <u>Offer Letter between the Registrant and Jeffrey Killian, dated October 6, 2016</u> | 8-K | 001-36467 | 10.1 | 10/12/2016 |
| 10.7* | <u>Form of Severance/Change-in-Control Agreement Restricted Stock Unit Agreement, with a grant date of</u> | 10-K | 001-36467 | 10.41 | 3/27/2015 |
| 10.8* | <u>February 29, 2016 between the Registrant and George B. Holmes</u> | 8-K | 001-36467 | 10.2 | 3/4/2016 |
| 10.9* | <u>Restricted Stock Unit Agreement, with a grant date of April 25, 2016, between the Registrant and George B. Holmes</u> | S-8 | 333-211894 | 10.2 | 6/7/2016 |
| 10.10* | <u>Restricted Stock Unit Agreement, with a grant date of August 8, 2016, between the Registrant and George B. Holmes</u> | 8-K | 001-36467 | 10.1 | 8/12/2016 |
| 10.11* | <u>Restricted Stock Unit Agreement, with a grant date of October 24, 2016, between the Registrant and Jeff A. Killian</u> | S-8 | 333-214571 | 10.1 | 11/10/2016 |
| 10.12* | <u>Outside Director Compensation Policy</u> | 10-K | 001-36467 | 10.6 | 3/25/2016 |
| 10.13* | <u>Separation Agreement, dated July 28, 2016, between John Philpott and the Registrant</u> | 10-Q | 001-36467 | 10.1 | 11/10/2016 |
| 10.14* | <u>Letter Agreement, dated July 26, 2016, between Bridgepoint Consulting and the Registrant</u> | 10-Q | 001-36467 | 10.2 | 11/10/2016 |
| 10.15.1 | <u>Multi-Tenant Industrial Lease, dated August 9, 2013, between the Registrant and Nassau Land Company, L.P.</u> | S-1 | 333-193552 | 10.33 | 1/24/2014 |
| 10.15.2 | <u>First Amendment to Lease, dated March 20, 2014, between Registrant and Nassau Land Company, L.P.</u> | 10-K | 001-36467 | 10.33.2 | 3/27/2015 |
| 10.15.3 | <u>Second Amendment to Lease, dated September 15, 2014, between Registrant and Nassau Land Company, L.P.</u> | 10-K | 001-36467 | 10.33.3 | 3/27/2015 |
| 10.15.4 | <u>Third Amendment to Lease, dated June 1, 2016, between Registrant and Nassau Land Company, L.P.</u> | 10-K | 001-36467 | 10.15.4 | 3/30/2017 |
| 10.15.5 | <u>Forth Amendment to Lease, dated June 1, 2016, between Registrant and Nassau Land Company, L.P.</u> | 10-K | 001-36467 | 10.15.5 | 3/30/2017 |
| 10.16 | <u>Standard Multi-Tenant Office Lease - Gross, dated December 16, 2016, between the Registrant and SeaBreeze I Venture - TIC.</u> | 8-K | 001-36467 | 10.1 | 1/6/2017 |
| 10.17 | <u>Securities Purchase Agreement, dated April 20, 2016, between the Registrant and the Investors listed on the schedule of buyers attached thereto</u> | 8-K | 001-36467 | 10.1 | 4/26/2016 |
| 10.18 | <u>Registration Rights Agreement, dated April 25, 2016</u> | 8-K | 001-36467 | 10.2 | 4/26/2016 |
| 10.19 | <u>Registration Rights Agreement for Investors, dated June 17, 2013, by and among the Registrant and the persons listed on Schedule A thereto</u> | S-1 | 333-193552 | 10.23 | 1/24/2014 |

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| Exhibit Number | Exhibit Description | Incorporated by Reference Form | File Number | Exhibit | Filing Date | Filed Herewith |
|----------------|--|--------------------------------|-------------|---------|-------------|----------------|
| 10.20 | <u>Registration Rights Agreement for Warrants, dated June 17, 2013, by and among the Registrant and MDB Capital Group LLC</u> | S-1 | 333-193552 | 10.24 | 1/24/2014 | |
| 10.21 | <u>Securities Purchase Agreement, dated February 20, 2017, between the Registrant and Grayboard Investments, Ltd.</u> | 8-K | 001-36467 | 10.1 | 2/24/2017 | |
| 10.22 | <u>Registration Rights Agreement, dated February 20, 2017, between the Registrant and Grayboard Investments, Ltd.</u> | 8-K | 001-36467 | 10.2 | 2/24/2017 | |
| 10.23 | <u>Securities Purchase Agreement, dated September 25, 2017, among the Registrant and the investors identified therein</u> | 8-K | 001-36467 | 10.1 | 9/29/2017 | |
| 10.24 | <u>Registration Rights Agreement, dated September 28, 2017, among the Registrant and the investors identified therein</u> | 8-K | 001-36467 | 10.2 | 9/29/2017 | |
| 10.25 | <u>Warrant Exercise Agreement, dated as of December 19, 2017, by and between the Registrant and Grayboard Investments, Ltd.</u> | 8-K | 001-36467 | 10.1 | 12/26/2017 | |
| 10.26* | <u>Amended and Restated Severance and Change in Control Agreement, dated as of December 21, 2017, by and between the Registrant and George B. Holmes</u> | 8-K | 001-36467 | 10.2 | 12/26/2017 | |
| 21.1 | <u>List of Subsidiaries</u> | 10-K | 001-36467 | 21.1 | 3/30/2017 | |
| 23.1 | <u>Consent of Crowe Horwath LLP</u> | | | | | X |
| 24.1 | <u>Power of Attorney (included on signature page)</u> | 10-K | 001-36467 | 24.1 | 2/28/2018 | |
| 31.1 | <u>Certification of Principal Executive Officer Pursuant to Securities Exchange Act Rules 13a-14(a) and 15d-14(a) as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</u> | | | | | X |
| 31.2 | <u>Certification of Principal Financial Officer Pursuant to Securities Exchange Act Rules 13a-14(a) and 15d-14(a) as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</u> | | | | | X |
| 32.1# | <u>Certification of Principal Executive Officer and Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</u> | 10-K | 001-36467 | 32.1 | 2/28/2018 | |
| 101.INS | XBRL Instance Document | 10-K | 001-36467 | 101.INS | 2/28/2018 | |
| 101.SCH | XBRL Taxonomy Extension Schema Document | 10-K | 001-36467 | 101.SCH | 2/28/2018 | |
| 101.CAL | XBRL Taxonomy Extension Calculation Linkbase Document | 10-K | 001-36467 | 101.CAL | 2/28/2018 | |
| 101.DEF | XBRL Taxonomy Extension Definition Linkbase Document | 10-K | 001-36467 | 101.DEF | 2/28/2018 | |
| 101.LAB | XBRL Taxonomy Extension Label Linkbase Document | 10-K | 001-36467 | 101.LAB | 2/28/2018 | |
| 101.PRE | XBRL Taxonomy Extension Presentation Linkbase Document | 10-K | 001-36467 | 101.PRE | 2/28/2018 | |

* Each a management contract or compensatory plan or arrangement required to be filed as an exhibit to this annual report on Form 10-K.

The information in this exhibit is furnished and deemed not filed with the Securities and Exchange Commission for purposes of section 18 of the Exchange Act of 1934, as amended, and is not to be incorporated by reference into any # filing of Resonant Inc. under the Securities Act of 1933, as amended, or the Exchange Act of 1934, as amended, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Dated: March 16, 2018 Resonant Inc.

By: /s/ Jeff Killian
Jeff Killian
Chief Financial Officer
(Principal Financial Officer)

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