

ASTROTECH Corp
Form 8-K
April 23, 2019

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of report (Date of earliest event reported): April 17, 2019

Astrotech Corporation

(Exact Name of Registrant as Specified in Charter)

| | | |
|------------------------------|--------------|---------------------|
| Delaware | 001-34426 | 91-1273737 |
| (State or Other Jurisdiction | (Commission | (I.R.S. Employer |
| of Incorporation) | File Number) | Identification No.) |

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201 West 5th Street, Suite 1275, Austin,
Texas 78701
(Address of Principal Executive Offices) (Zip Code)

(512) 485-9530

Registrant's Telephone Number, Including Area Code

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

Written communication pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

Pre-commencement communication pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

Pre-commencement communication pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 1.01. Entry into a Material Definitive Agreement.

On April 17, 2019, Astrotech Corporation (the “Company”) entered into a Securities Purchase Agreement (the “Agreement”) with Thomas B. Pickens III, the Chief Executive Officer and Chairman of the Board of Directors of the Company, and an accredited investor (each individually, an “Investor” and, collectively, the “Investors”).

Pursuant to the Agreement, the Company agreed to sell an aggregate of 280,898 shares of its series C convertible preferred stock, par value \$0.001 per share (the “Series C Preferred Shares”) and 280,898 of its series D convertible preferred stock, par value \$0.001 per share (the “Series D Preferred Shares”) for aggregate gross proceeds of \$1,999,993.76 (the “Offering”). Pursuant to the Agreement, the Company agreed to sell to Mr. Pickens an aggregate of 280,898 Series D Preferred Shares and sell to the other Investor an aggregate of 280,898 Series C Preferred Shares, each at a purchase price equal to \$3.56 per share which was equal to the closing consolidated bid price on The NASDAQ Capital Market on April 16, 2019. The terms of the Series C Preferred Shares and Series D Preferred Shares are set forth under Item 5.03 below.

The transactions contemplated by the Agreement were approved by the Company’s board of directors and its audit committee and the closing of the Offering occurred on April 17, 2019.

The information contained in Item 5.03 of this Current Report on Form 8-K is incorporated by reference into this Item 1.01.

The Agreement contains customary representations, warranties and agreements by the Company, indemnification obligations of the Company, including for liabilities under the Securities Act of 1933, as amended (the “Securities Act”), and other obligations of the parties. The representations, warranties, and covenants contained in the Agreement were made only for purposes of such Agreement and are made as of specific dates; are solely for the benefit of the parties (except as specifically set forth therein); may be subject to qualifications and limitations agreed upon by the parties in connection with negotiating the terms of the Agreement, including being qualified by confidential disclosures made for the purpose of allocating contractual risk between the parties, instead of establishing matters as facts; and may be subject to standards of materiality and knowledge applicable to the contracting parties that differ from those applicable to the investors generally. Investors should not rely on the representations, warranties, and covenants or any description thereof as characterizations of the actual state of facts or condition of the Company.

The securities issued by the Company pursuant to the Agreement and to be issued upon conversion of the Series C Preferred Shares and Series D Preferred Shares have not been registered under the Securities Act and may not be offered or sold in the United States absent registration or an applicable exemption from registration requirements. The Company relied and will rely on the private placement exemption from registration provided by Section 4(a)(2) of the Securities Act and by Rule 506 of Registration D, promulgated by the SEC, and on similar exemptions under applicable state laws.

The foregoing summaries do not purport to be complete and are qualified in their entirety by reference to the Agreement, which is filed as Exhibit 10.1, to this Current Report on Form 8-K.

Item 3.02. Unregistered Sales of Equity Securities.

The information contained in Items 1.01 and 5.03 of this Current Report on Form 8-K is incorporated by reference into this Item 3.02.

Item 5.03 Amendment to Articles of Incorporation or Bylaws; Change in Fiscal Year

On April 17, 2019, the Company filed Certificates of Designation of Preferences, Rights and Limitations of the Series C Preferred Shares and Series D Preferred Shares (collectively, the “Preferred Shares”) with the Secretary of State of the State of Delaware (the “Certificates of Designation”). The following is only a summary of the Certificates of Designation and is qualified in its entirety by reference to the full text of the Certificates of Designation, which are filed as Exhibit 3.1 and Exhibit 3.2 to this Current Report on Form 8-K and are incorporated by reference herein.

Designation, Amount and Par Value. The number of Series C Preferred Shares designated shall be up to 280,898. The number of Series D Preferred Shares designated shall be up to 280,898. Each share of Series C Preferred Shares and Series D Preferred Shares have a par value of \$0.001 per share and a stated value equal to \$3.56 (the “Stated Value”).

Dividends. The holder shall be entitled to receive, and the Company shall pay, dividends on the Preferred Shares equal (on an as-if-converted-to-common-stock basis) to and in the same form as dividends actually paid on shares of the common stock when, as and if such dividends are paid on shares of the common stock. No other dividends shall be paid on the Series C Preferred Shares and Series D Preferred Shares.

Voting Rights. Except as otherwise provided herein or as otherwise required by law, the Preferred Shares shall have no voting rights. However, as long as any Series C Preferred Shares or Series D Preferred Shares are outstanding, the Company shall not, without the affirmative vote of the holders (the "Holders") of the respective series of Preferred Shares (a) alter or change adversely the powers, preferences or rights given to such series of Preferred Shares or alter or amend its respective Certificates of Designation, (b) authorize or create any class of stock ranking as to dividends, redemption or distribution of assets upon a Liquidation senior to, or otherwise pari passu with, such series of Preferred Shares, (c) amend its certificate of incorporation or other charter documents in any manner that adversely affects any rights of the respective Holders, (d) increase the number of authorized Series C Preferred Shares and Series D Preferred Shares, respectively, or (e) enter into any agreement with respect to any of the foregoing.

Liquidation. Upon any Liquidation (as defined in the Certificates of Designation), each Holder shall be entitled to receive out of the assets, whether capital or surplus, of the Company an amount equal to the Stated Value, plus any other fees or liquidated damages then due and owing thereon under the Certificates of Designation, for each Series C Preferred Share and Series D Preferred Share before any distribution or payment shall be made to the holders of any Junior Securities (as defined in the Certificates of Designation). A Fundamental Transaction or Change of Control Transaction (each as defined in the Certificates of Designation) shall be deemed a Liquidation.

Fundamental Transaction. If, at any time while the Series C Preferred Shares and Series D Preferred Shares are outstanding, upon a Fundamental Transaction, each Holder shall have the right to receive, for each Conversion Share (as defined in the Certificates of Designation) that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction, the number of shares of common stock of the successor or acquiring corporation or of the Corporation, if it is the surviving corporation, and any Alternate Consideration (as defined in the Certificates of Designations) receivable as a result of such Fundamental Transaction by a holder of the number of shares of common stock for which the Series C Preferred Shares and Series D Preferred Shares are convertible immediately prior to such Fundamental Transaction. For purposes of any such conversion, the determination of the Conversion Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction.

Conversion. The Series C Preferred Shares are convertible into an aggregate of 280,898 Common Shares; however the Series C Preferred Shares contains a provision that restricts the Holder's ability to convert the Series C Preferred Shares if the number of shares of the Company's common stock held by such Holder and its affiliates after such conversion would exceed 9.99% of the Company's then issued and outstanding shares of common stock. The Series D Preferred Shares are convertible into an aggregate of 280,898 Common Shares at the option of the holder.

Item 8.01. Other Events.

On April 17, 2019, the Company issued a press release regarding the Offering. A copy of the press release is attached hereto as Exhibit 99.1, and is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

| Exhibit No. | Description |
|-------------|---|
| 3.1 | <u>Certificate of Designations of Preferences, Rights and Limitations of Series C Convertible Preferred Stock, as filed with the Delaware Secretary of State on April 17, 2019.</u> |
| 3.2 | <u>Certificate of Designations of Preferences, Rights and Limitations of Series D Convertible Preferred Stock, as filed with the Delaware Secretary of State on April 17, 2019.</u> |
| 10.1 | <u>Securities Purchase Agreement, dated April 17, 2019, by and between Astrotech Corporation and the Investors signatory thereto.</u> |
| 99.1 | <u>Press Release dated April 17, 2019.</u> |

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Astrotech Corporation

By: /s/ Thomas B. Pickens III

Thomas B.
Name: Pickens III
Chairman of the
Title: Board and Chief
Executive Officer

Date: April 23, 2019