

FIBERSTARS INC /CA/
Form 8-A12G/A
February 10, 2004

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 8-A/A
(AMENDMENT NO. 3)**

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

Fiberstars, Inc.

(Exact Name of Registrant as Specified in Its Charter)

California

(State of Incorporation or Organization)

94-3021850

(IRS Employer Identification No.)

44259 Nobel Drive, Fremont, California 94538

(Address of Principal Executive Offices) (Zip Code)

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

**Title Of Each Class
To Be So Registered**

**Name Of Each 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.

Securities Act registration statement file number to which this form relates: N/A

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

Series A Participating Preferred Stock Purchase Rights

(Title of class)

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

This Amendment No. 3 to Registration Statement on Form 8-A is being filed by Fiberstars, Inc. to amend and restate Item 1 and to file the exhibits listed under Item 2 to reflect Amendment No. 3 to the Rights Agreement, dated December 8, 2003, by and between Fiberstars, Inc., a California corporation, and Mellon Investor Services LLC, a New Jersey limited liability company, as Rights Agent ("Amendment No. 3"). Amendment No. 1 to the Rights Agreement, dated March 26, 2002 ("Amendment No. 1"), was superseded by Amendment No. 2 to the Rights Agreement, dated June 17, 2003 ("Amendment No. 2"), which is superseded by Amendment No. 3.

SUMMARY OF RIGHTS

On September 12, 2001, the Board of Directors of Fiberstars, Inc. (the "Company") declared a dividend distribution of one "Right" for each outstanding share of common stock (the "Common Stock") of the Company to shareholders of record at the close of business on September 26, 2001 (the "Record Date"). Except as set forth below, each Right, when exercisable, entitles the registered holder to purchase from the Company one one-thousandth of a share of a new series of preferred stock, designated as Series A Participating Preferred Stock (the "Preferred Stock"), at a price of Thirty Dollars (\$30.00) per one one-thousandth of a share (the "Purchase Price"), subject to adjustment. The description and terms of the Rights are set forth in a Rights Agreement (as amended from time to time, the "Rights Agreement") between the Company and Mellon Investor Services LLC, as "Rights Agent," as amended by Amendment No. 3 thereto, a copy of which is attached as Exhibit 4.2 hereto.

Amendment No. 1 amended, among other things, the definition of the term "Acquiring Person" set forth in section 1(a) of the Rights Agreement by restating in its entirety section 1(a)(ii) of the Rights Agreement. Amendment No. 2 superseded Amendment No. 1, and among other things, (i) amended the definition of the term "Acquiring Person" set forth in section 1(a) of the Rights Agreement by restating in its entirety section 1(a)(ii) of the Rights Agreement, (ii) amended the definition of the term "Beneficial Owner" set forth in section 1(c) of the Rights Agreement by restating in its entirety section 1(c)(ii) of the Rights Agreement and (iii) restated in its entirety section 28 of the Rights Agreement to include in the calculation of beneficial ownership with respect to each of ADLT and Trigran (each as defined below) all shares of Common Stock issuable upon exercise of warrants which each may respectively hold at any given time.

Amendment No. 3 supersedes Amendment No. 2, and among other things, (a) further amends the definition of the term "Acquiring Person" set forth in section 1(a) of the Rights Agreement by restating in its entirety section 1(a)(ii) of the Rights Agreement and (b) restates in their entirety sections 1(c)(ii) and 28 of the Rights Agreement as those provisions were set forth in Amendment No. 2.

On December 4, 2003, the Board of Directors approved the amendments to the terms and conditions of the Rights contained in Amendment No. 3 that, among other things, (i) expand the definition of Advanced Lighting Technologies, Inc., together with its affiliated or associated persons or entities ("ADLT"), in the Rights Agreement to include a trust (including any trustee of such trust) established to hold shares of Common Stock pursuant to a confirmed and effective plan of reorganization of ADLT under chapter 11 of the Bankruptcy Code in the matter fashioned *In re VENTURE LIGHTING INTERNATIONAL, et. al., Debtors, Case No. 03-0525*, pending in the United States Bankruptcy Court, Northern District of Illinois, Eastern Division (the "Trust") and (ii) allow a transfer of beneficial ownership of the shares of Common Stock held by ADLT to the Trust without triggering the occurrence of a "Distribution Date" (defined below). The Rights Agreement provides that the Company retains broad authority to supplement or amend the Rights Agreement; however, following any Distribution Date, any amendment may not adversely affect the interests of holders of Rights.

The Rights are attached to all Common Stock certificates representing shares outstanding, and no separate Rights certificates have been or will be distributed until after the Distribution Date. The Rights will separate from the Common Stock and a "Distribution Date" will occur upon the earliest of the following: (i) a public announcement that a person, entity or group of affiliated or associated persons and/or entities (an "Acquiring Person") has acquired, or obtained the right to acquire, beneficial ownership of fifteen percent (15%) or more of the outstanding shares of Common Stock (other than (A) as a result of repurchases of stock by the Company or certain inadvertent actions by institutional or certain other shareholders, (B) the Company, any subsidiary of the Company or any employee benefit plan of the Company or any subsidiary, (C) ADLT, so long as ADLT is not the beneficial owner of a percentage of the outstanding shares of Common Stock greater by more than one percent (1%) than the percentage of outstanding shares of Common Stock as to which ADLT has beneficial ownership immediately prior to December 4, 2003 (although this exception will terminate at such time as ADLT beneficially owns less than fifteen percent (15%) of the outstanding shares of Common Stock), (D) Trigran Investments LP, together with its affiliated or associated persons or entities ("Trigran"), if Trigran is not the beneficial owner of a percentage of outstanding shares of Common Stock greater by more than one percent (1%) than the percentage of the outstanding share of Common Stock as to which Trigran has beneficial ownership immediately prior to December 4, 2003

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(although this exception will terminate at such time as Trigran beneficially owns less than fifteen percent (15%) of the outstanding shares of Common Stock), and (E) certain other instances set forth in the Rights Agreement); or (ii) ten (10) business days (unless such date is extended by the Board of Directors) following the commencement of a tender offer or exchange offer which would result in any person, entity or group of affiliated or associated persons and/or entities becoming an Acquiring Person (unless such tender offer or exchange offer is a Permitted Offer (defined below)).

Until the Distribution Date (or earlier redemption or expiration of the Rights, if applicable), (i) the Rights will be evidenced by certificates for Common Stock and will be transferred only with such Common Stock certificates, (ii) new Common Stock certificates issued after the Record Date upon transfers or new issuances of the Common Stock will contain a notation incorporating the Rights Agreement by reference and (iii) the surrender for transfer of any certificates for outstanding Common Stock will also constitute the transfer of the Rights associated with such Common Stock. As soon as practicable following the Distribution Date, separate certificates evidencing the Rights ("Rights Certificates") will be mailed to holders of record of the Common Stock as of the close of business on the Distribution Date, and the separate Rights Certificates alone will evidence the Rights.

The Rights are not exercisable until the Distribution Date. The Rights will expire on the earliest of (i) September 20, 2011, (ii) consummation of a merger transaction with a person, entity or group that (x) acquired Common Stock pursuant to a Permitted Offer (as defined below) and (y) is offering in the merger the same price per share and form of consideration paid in the Permitted Offer or (iii) redemption or exchange of the Rights by the Company as described below.

The number of Rights associated with each share of Common Stock shall be proportionately adjusted to prevent dilution in the event of a stock dividend on, or a subdivision, combination or reclassification of, the Common Stock. The Purchase Price payable, and the number of one one-thousandths of a share of Preferred Stock or other securities or property issuable, upon exercise of the Rights are subject to adjustment from time to time to prevent dilution (i) in the event of a stock dividend on, or a subdivision, combination or reclassification of the Preferred Stock, (ii) upon the grant to holders of the Preferred Stock of certain rights, options or warrants to subscribe for Preferred Stock, certain convertible securities or securities having the same or more favorable rights, privileges and preferences as the Preferred Stock at less than the current market price of the Preferred Stock or (iii) upon the distribution to holders of the Preferred Stock of evidences of indebtedness or assets (excluding regular quarterly cash dividends out of earnings or retained earnings) or of subscription rights, options or warrants (other than those referred to above). With certain exceptions, no

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adjustments in the Purchase Price will be required until cumulative adjustments require an adjustment of at least one percent (1%) in such Purchase Price.

In the event that, after the first date of public announcement by the Company or an Acquiring Person that an Acquiring Person has become such, the Company is involved in a merger or other business combination transaction (whether or not the Company is the surviving corporation) or fifty percent (50%) or more of the Company's assets or earning power are sold (in one transaction or a series of transactions), proper provision shall be made so that each holder of a Right (other than an Acquiring Person) shall thereafter have the right to receive, upon the exercise thereof at the then current Purchase Price, that number of shares of common stock of either the Company, in the event that it is the surviving corporation of a merger or consolidation, or the acquiring company (or, in the event there is more than one acquiring company, the acquiring company receiving the greatest portion of the assets or earning power transferred) which at the time of such transaction would have a market value of two (2) times the Purchase Price (such right being called the "Merger Right"). In the event that a person, entity or group becomes an Acquiring Person (unless pursuant to a tender offer or exchange offer for all outstanding shares of Common Stock at a price and on terms determined prior to the date of the first acceptance of payment for any of such shares by at least a majority of the members of the Board of Directors who are not officers of the Company and are not Acquiring Persons (or affiliated or associated persons and/or entities thereof) to be fair to and in the best interests of the Company and its shareholders (a "Permitted Offer")), then proper provision shall be made so that each holder of a Right will, for a sixty (60) day period (subject to extension under certain circumstances) thereafter, have the right to receive upon exercise that number of shares of Common Stock (or, at the election of the Company, which election may be obligatory if sufficient authorized shares of Common Stock are not available, a combination of Common Stock, property, other securities (e.g., Preferred Stock) and/or cash (including by way of a reduction in the Purchase Price)) having a market value of two (2) times the Purchase Price (such right being called the "Subscription Right"). The holder of a Right will continue to have the Merger Right whether or not such holder exercises the Subscription Right. Notwithstanding the foregoing, upon the occurrence of any of the events giving rise to the exercisability of the Merger Right or the Subscription Right, any Rights that are or were at any time after the Distribution Date owned by an Acquiring Person (or affiliated or associated persons and/or entities thereof) shall immediately become null and void.

At any time prior to the earlier to occur of (i) a person, entity or group becoming an Acquiring Person or (ii) the expiration of the Rights, the Company may redeem the Rights in whole, but not in part, at a price of \$0.001 per Right (the "Redemption Price"), which redemption shall be effective upon the action of the Board of Directors. Additionally, the Company may, following a person, entity or group becoming an

Acquiring Person, redeem the then outstanding Rights in whole, but not in part, at the Redemption Price (i) if such redemption is incidental to a merger or other business combination transaction or series of transactions involving the Company but not involving an Acquiring Person (or certain related persons and/or entities) or (ii) following an event giving rise to, and the expiration of the exercise period for, the Subscription Right if and for as long as the Acquiring Person triggering the Subscription Right beneficially owns securities representing less than fifteen percent (15%) of the outstanding shares of Common Stock and at the time of redemption there are no other Acquiring Persons. The redemption of Rights described in the preceding sentence shall be effective only as of such time when the Subscription Right is not exercisable. Upon the effective date of the 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.

Subject to applicable law, the Board of Directors, at its option, may at any time after a person, group or entity becomes an Acquiring Person (but not after the acquisition by such Acquiring Person of fifty percent (50%) or more of the outstanding shares of Common Stock), exchange all or part of the then outstanding and exercisable Rights (except for Rights which have become void) for shares of

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Common Stock at a rate of one share of Common Stock per Right (subject to adjustment) or, alternatively, for substitute consideration consisting of cash, securities of the Company or other assets (or any combination thereof).

The Preferred Stock purchasable upon exercise of the Rights will be nonredeemable and junior to any other series of preferred stock the Company may issue (unless otherwise provided in the terms of such stock). Each share of Preferred Stock will have a preferential quarterly dividend in an amount equal to one thousand (1,000) times the dividend declared on each share of Common Stock, but in no event less than Twenty-Five Dollars (\$25.00). In the event of liquidation, the holders of shares of Preferred Stock will receive a preferred liquidation payment equal, per share, to the greater of One Thousand Dollars (\$1,000.00) or one thousand (1,000) times the payment made per share of Common Stock. Each share of Preferred Stock will have one thousand (1,000) votes, voting together with the shares of Common Stock. In the event of any merger, consolidation or other transaction in which shares of Common Stock are exchanged, each share of Preferred Stock will be entitled to receive one thousand (1,000) times the amount and type of consideration received per share of Common Stock. The rights of the Preferred Stock as to dividends, liquidation and voting, and in the event of mergers and consolidations, are protected by customary antidilution provisions. Fractional shares of Preferred Stock will be issuable; however, the Company may elect to (i) distribute depository receipts in lieu of such fractional shares and (ii) make an adjustment in cash, in lieu of fractional shares other than fractions that are multiples of one one-thousandth of a share, based on the market price of the Preferred Stock prior to the date of exercise.

Until a Right is exercised, the holder thereof, as such, will have no rights as a shareholder of the Company, including, without limitation, the right to vote or to receive dividends. While the distribution of the Rights should not be taxable to shareholders or to the Company, holders of Rights may, depending upon the circumstances, recognize taxable income in the event (i) that the Rights become exercisable for (x) Common Stock or Preferred Stock (or other consideration) or (y) common stock of an acquiring company in the instance of the Merger Right as set forth above or (ii) of any redemption or exchange of the Rights as set forth above.

The foregoing description does not purport to be complete and is qualified in its entirety by reference to the description of the Rights and their terms set forth in the Rights Agreement and Amendment No. 3 thereto, copies of which are filed or incorporated by reference as exhibits hereto and incorporated herein by reference.

Item 2. Exhibits.

- 4.1 Rights Agreement dated as of September 20, 2001 by and between the Company and Mellon Investor Services LLC as rights agent, which includes as Exhibit B the form of Rights Certificate and as Exhibit C the Summary of Rights (incorporated by reference to Exhibit 4.1 to the Company's Registration Statement on Form 8-A filed on September 21, 2001).
- 4.2 Amendment No. 3 to Rights Agreement, dated as of December 8, 2003, by and between the Company and Mellon Investor Services LLC as rights agent.

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SIGNATURE

