

NEON SYSTEMS INC
Form 10-K/A
November 16, 2004

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 10-K/A

(Amendment No. 1)

(Mark One)

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

For the Fiscal Year Ended March 31, 2004

OR

**o 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: 0-25457

NEON Systems, Inc.

(Exact name of Registrant as specified in its charter)

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Delaware
(State or other jurisdiction of
incorporation or organization)

76-0345839
(I.R.S.Employer Identification No.)

14100 Southwest Freeway, Suite 500,
Sugar Land, Texas
(Address of principal executive offices)

77478
(zip code)

(281) 491-4200

(Registrant's telephone number, including area code)

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

| Title of Each Class | Name of each exchange on which registered |
|----------------------------|------------------------------------------------------|
| None | None |

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

Common Stock, par value \$0.01 per share

(Title of Class)

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Act). Yes No

Indicate by check mark whether 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 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 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.

The aggregate market value of the common stock held by non-affiliates of Registrant as of September 30, 2003 was \$ 17,858,326 based on the last sale price of \$3.91 for Registrant's Common Stock on the Nasdaq National Market on May 28, 2004.

As of May 28, 2004, 8,914,877 shares of the Registrant's Common Stock were outstanding.

DOCUMENTS INCORPORATED BY REFERENCE:

Selected portions of the Proxy Statement for the Annual Meeting of Stockholders to be held on September 20, 2004 to be filed with the Securities and Exchange Commission not later than 120 days after the end of Registrant's fiscal year ended March 31, 2004 are incorporated by reference into Part III of this Form 10-K.

This Amendment No. 1 on Form 10-K/A is being filed to amend NEON's Annual Report on Form 10-K for the fiscal year ended March 31, 2004, filed with the Securities and Exchange Commission on June 29, 2004 (the Original 10-K). The checked box on the cover page of the Original 10-K, reflecting that disclosure of delinquent filers pursuant to Item 405 of Regulation S-K was not contained therein or in any proxy statement incorporated by reference in Part III of the Form 10-K or in any amendment to the Form 10-K, is amended to be an unchecked box as shown in the cover page to this Form 10-K/A. In addition, Part III, Item 10 is hereby amended by adding the following disclosure of delinquent Section 16 filers for the fiscal year ended March 31, 2004 pursuant to the provisions of Item 405 of Regulation S-K. This Amendment No. 1 does not otherwise alter the disclosures set forth in the Original 10-K.

PART III

ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF REGISTRANT

Added Section:

Section 16(a) Beneficial Ownership Reporting Compliance

Section 16 of the Securities Exchange Act of 1934, as amended, requires NEON's executive officers (as defined under Section 16), directors, and persons who beneficially own greater than 10% of a registered class of NEON's equity securities to file reports of ownership and changes in ownership with the Securities and Exchange Commission. Based solely on our review of these reports and written representations from NEON's executive officers and directors, we believe that each of NEON's executive officers, directors, and 10% securityholders filed all of the required reports during the fiscal year ended March 31, 2004, except as follows:

Beginning in September 2003, NEON began filing electronically the Section 16(a) reports of beneficial ownership and changes of beneficial ownership on Form 3, Form 4, and Form 5 on behalf of its officers and directors. Due to an administrative error, NEON failed to report the automatic grant of Annual Options to the non-employee independent directors pursuant to the 2002 Director Option Plan on September 22, 2003 and again on September 20, 2004.

Pursuant to the terms of the 2002 Director Option Plan, each independent director who is re-elected at NEON's annual meeting of stockholders is automatically granted an option to acquire 12,500 shares of NEON common stock (the Annual Options). Such Annual Options vest quarterly over a two year term, expire in 10 years and carry an exercise price of the closing price of NEON's common stock on the NASDAQ Stock Market on the date of such Annual Meeting.

Upon the automatic grant to the independent directors on September 20, 2003 and again on September 20, 2004, NEON failed to file the requisite Forms 4 for each of George Ellis, Richard Holcomb, Dave Cary and Loretta Cross. Such grant of Annual Options for September 22, 2003 was subsequently reported by NEON on Forms 5 filed for such individuals on April 7, 2004. Such Annual Options carry an exercise price of \$4.23 and were properly reflected in NEON's Proxy Statement filed with the Securities and Exchange Commission on July 28, 2004. The Annual Options granted at NEON's most recent Annual Meeting on September 20, 2004 were reported on a Form 4 for each of such independent directors on October 29, 2004. Such Annual Options for the current fiscal year ending March 31, 2005 carry an exercise price of \$3.64. NEON has taken internal measures to ensure that future reports are filed on behalf of such independent directors in an accurate and timely manner.

PART IV

ITEM 15. EXHIBITS, FINANCIAL STATEMENTS, SCHEDULES, AND REPORTS ON FORM 8-K

| Exhibit Number | Description |
|---------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 31.1+ | Certification of Mark Cresswell, principal executive officer of NEON Systems, Inc. pursuant to 18 U.S.C. SECTION 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. |
| 31.2+ | Certification of Brian D. Helman, Chief Financial Officer of NEON Systems, Inc. pursuant to 18 U.S.C. SECTION 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. |
| 32.1+ | Certification of Mark Cresswell, principal executive officer of NEON Systems, Inc. pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. |

32.2+ Certification of Mark Cresswell, principal executive officer of NEON Systems, Inc. pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.

+ Filed herewith

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this Form 10-K/A amended Report to be signed on its behalf by the undersigned, thereunto duly authorized.

NEON SYSTEMS, INC.

By: /s/ MARK CRESSWELL
MARK CRESSWELL
PRESIDENT AND
CHIEF OPERATING OFFICER

Date: November 16, 2004

POWER OF ATTORNEY

Each person whose signature appears below hereby authorizes and constitutes Brian D. Helman and Mark Cresswell, and each of them singly, his true and lawful attorneys-in-fact with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities to sign and file any and all amendments to this report with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, and he hereby ratifies and confirms all that said attorneys-in-fact or any of them, or their substitutes, may lawfully do or cause to be done by virtue hereof.

| Signatures | Title | Date |
|----------------------------------------|-------------------------------------------------------------------------|-------------------|
| /s/ MARK CRESSWELL Mark Cresswell | President and Chief Operating Officer (Principal Executive Officer) | November 16, 2004 |
| /s/ BRIAN D. HELMAN Brian D. Helman | Chief Financial Officer (Principal Financial and Accounting Officer) | November 16, 2004 |
| /s/ RICHARD HOLCOMB Richard Holcomb | Director | November 16, 2004 |
| /s/ GEORGE ELLIS George Ellis | Director | November 16, 2004 |
| /s/ DAVID F. CARY David F. Cary | Director | November 16, 2004 |
| /s/ LORETTA CROSS Loretta Cross | Director | November 16, 2004 |