

SPICY PICKLE FRANCHISING INC
Form 10-K/A
March 12, 2010

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, 2009

OR

TRANSITION REPORT UNDER SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934
For the transition period from _____ to _____

Commission File Number 000-53000

SPICY PICKLE FRANCHISING, INC.
(Exact name of registrant as specified in its charter)

Colorado
(State or other jurisdiction
of incorporation or organization)

38-3750924
(I.R.S. Employer
Identification No.)

90 Madison Street, Suite 700, Denver, Colorado
(Address of principal executive offices)

80206
(Zip code)

Registrant's telephone number, including area code: (303) 297-1902

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

Securities registered pursuant to Section 12(g) of the Act: Common Stock, \$.001 par value

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 Section 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

Edgar Filing: SPICY PICKLE FRANCHISING INC - Form 10-K/A

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 during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No (not required)

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 the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendments of this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definitions of “large accelerated filer,” “accelerated filer,” and “smaller reporting 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"/> (Do not check if a smaller reporting company)	Smaller reporting company <input type="radio"/>
--	--	---	--

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

State the aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was last sold, or the average bid and asked price of such common equity, as of the last business day of the registrant’s most recently completed second fiscal quarter. As of June 30, 2009 aggregate market value of the voting and non-voting common equity held by non-affiliates was \$7,310,539.

Indicate the number of shares outstanding of each of the registrant’s classes of common stock, as of the latest practicable date. As of March 10, 2010, there were 83,994,274 shares of common stock outstanding.

EXPLANATORY NOTE

We are filing this Amendment No. 1 to Form 10-K for the fiscal year ended December 31, 2009, as originally filed with the SEC on March 11, 2010 to (1) correct an error contained in Item 13 and (2) file currently dated certifications by our principal executive and principal financial officer.

This Amendment No. 1 continues to speak as of the date of the original Form 10-K for the fiscal year ended December 31, 2009 and we have not updated or amended the disclosures contained herein to reflect events that have occurred since the filing of the Form 10-K, or modified or updated those disclosures in any way other than as described in the preceding paragraph.

Item 13. Certain Relationships and Related Transactions, and Director Independence.

On December 14, 2007, Raymond BonAnno and Presley Reed, two of our directors, Keith and Angela Oxenreider, the son-in-law and daughter of director Raymond BonAnno, and R. James BonAnno, Jr., the son of director Raymond BonAnno, participated in the transaction pursuant to which we sold an aggregate of 705 shares of Series A Preferred Stock and warrants to purchase an aggregate of 5,287,500 shares of common stock for an aggregate purchase price of \$5,992,500. Mr. BonAnno and his wife purchased 12 shares of Series A Preferred Stock and warrants to purchase 90,000 shares of common stock for \$102,000. Dr. Reed and his wife purchased 120 shares of Series A Preferred Stock and warrants to purchase 900,000 shares of common stock for \$1,020,000. Mr. and Mrs. Oxenreider purchased 12 shares of Series A Preferred Stock and warrants to purchase 90,000 of common stock for \$102,000. Mr. BonAnno, Jr. purchased 12 shares of Series A Preferred Stock and warrants to purchase 90,000 of common stock for \$102,000.

On September 22, 2009, Raymond BonAnno and Presley Reed, Keith and Angela Oxenreider, and R. James BonAnno, Jr. participated in an Amendment, Redemption and Conversion Agreement related to the then outstanding 638.88 shares of the Series A Preferred Stock pursuant to which we redeemed 94.12 shares for a total of \$799,998 and convert their remaining 544.76 shares of Series A Preferred Stock into 2,093,601 shares of our Common Stock. Mr. BonAnno and his wife converted 12 shares of Series A Preferred Stock in exchange for 240,000 shares of common stock. Dr. Reed and his wife converted 120 shares of Series A Preferred Stock in exchange for 2,400,000 shares of common stock. Mr. and Mrs. Oxenreider converted 12 shares of Series A Preferred Stock in exchange for 240,000 shares of common stock. Mr. BonAnno, Jr. converted 12 shares of Series A Preferred Stock in exchange for 240,000 shares of common stock. We lowered the exercise price of the warrants that were purchased with the Series A Preferred Stock to \$0.20 to per share and extended the expiration date of the warrants to September 22, 2014. None of these individuals participated in the cash redemption.

On September 22, 2009, Raymond BonAnno and Presley Reed participated in a transaction pursuant to which we sold an aggregate of 22.5 Units for cash in the amount of \$2,250,000. Each Unit consisted of 769,231 shares of our Common Stock and a warrant to purchase an additional 384,615 shares of Common Stock at \$.19 per share. The warrants expire September 22, 2014. Mr. BonAnno and his wife purchased 2 units for \$200,000 and received 1,538,462 shares of common stock and 769,230 warrants. Dr. Reed and his wife purchased 16 units for \$1,600,000 and received 12,307,696 shares of common stock and 6,153,840 warrants.

In December 2008, Raymond BonAnno and Presley Reed granted the Company a line of credit which was to expire January 31, 2010. The line of credit was for an aggregate of \$550,000 and bore interest at a rate of one percent above the prime rate and was secured by certain assets of the Company. At December 31, 2008, the interest rate on the borrowings was 4.25% and balance outstanding was \$100,000. Both Mr. BonAnno and Dr. Reed increased the amount of the line.

On September 30, 2009, the line of credit was renegotiated and the outstanding principal and accrued interest totaling \$817,252, was converted into a convertible promissory note ("Convertible Note"). The Convertible Note is due January 31, 2012, bears interest at the same rate that the line of credit did, one percent above the prime rate. Interest is payable semi-annually. The balance owed to Mr. BonAnno is \$307,656.89 and the balance owed to Dr. Reed is \$509,594.79. Mr. BonAnno and Dr. Reed may convert any amount of the principal and accrued interest due into our common stock at the rate of \$0.13 per share. In addition, for every two dollars converted into Common Stock, we will issue to the holder of the Convertible Note a warrant to purchase one share of Common Stock. The exercise price of the warrant will be equal to 120% of the price per share of the Common Stock calculated using the average of the volume weighted average prices per share for the 10 trading days prior to the election to convert.

The conversion feature in the Convertible Note is considered to be a beneficial conversion feature. We have accounted for the beneficial conversion feature in accordance with GAAP. We accounted for a portion of the

proceeds, \$157,164, from the Convertible Note which related to the intrinsic value of the beneficial conversion feature by allocating that amount to additional paid in capital. The following summarizes the carrying amount of the Convertible Promissory Note:

3

Face value of the note to be repaid if not converted	\$817,252
Amount allocated to additional paid in capital, net of amortization	(140,325)
Note payable to related parties	\$676,927

In accordance with GAAP, the amount allocated to the beneficial conversion will be amortized as interest expense over the life of the note in such a way as to result in a constant rate of interest.

The annual interest rate giving effect to the amortization of the beneficial conversion is 9.188% per annum. When combined with the stated interest rate of one percent above the prime rate, the effective rate is 10.188% over the prime rate. At December 31, 2009, the interest rate on the borrowings was 12.438%.

Director Independence

The following members of the Company's Board of Directors are independent directors as that term is defined by NASDAQ Marketplace Rule 5605(a)(2): Raymond BonAnno and Presley Reed. Neither member of the Company's Audit Committee, whose members are Marc Geman and Raymond BonAnno, meets the Audit Committee independence requirements of NASDAQ Marketplace Rule 5605(c).

PART IV

Item 15. Exhibits, Financial Statements Schedules.

(a) Documents filed as a part of this report

(1) Financial Statements

The Consolidated Financial Statements of Spicy Pickle Franchising, Inc. and its subsidiaries and the Independent Registered Public Accounting Firm's report dated March 10, 2010, are incorporated by reference to Item 8 of this report.

(2) Financial Statement Schedules

Not required.

(b) Exhibits

Regulation

S-K Number Exhibit

- | | |
|------|---|
| 2.1 | Asset Purchase Agreement between SPBG Franchising, Inc. and Bread Garden Franchising, Inc. dated September 30, 2008 (1) |
| 3.1 | Amended and Restated Articles of Incorporation (2) |
| 3.2 | Bylaws (3) |
| 4.1 | Certificate of Designation of Series A Variable Rate Convertible Preferred Stock (4) |
| 4.2 | Form of warrant to be issued to Midtown Partners & Co, LLC and assigns (5) |
| 4.3 | Form of warrant to be issued to private placement investors (6) |
| 10.1 | Employment Agreement – Marc Geman (3) |
| 10.2 | Employment Agreement – Anthony Walker (3) |
| 10.3 | Employment Agreement – Kevin Morrison (3) |
| 10.4 | 2006 Stock Option Plan (3) |
| 10.5 | Promissory Note to Spicy Pickle, LLC (3) |
| 10.6 | Securities Purchase Agreement dated as of December 14, 2007 (7) |
| 10.7 | Form of Warrant (8) |
| 10.8 | Registration Rights Agreement dated as of December 14, 2007 (9) |

- 10.9 Lock-Up Agreement of Marc Geman (10)
- 10.10 Form of Lock-Up Agreement executed by other officers and directors (11)
- 10.11 Amendment No. 1 to Securities Purchase Agreement dated as of May 22, 2008 (12)
- 10.12 Amendment, Redemption and Conversion Agreement (13)
- 10.13 Agreement with Midtown Partners & Co, LLC and assigns (14)
- 10.14 2009 Stock Option Plan (15)

Regulation

S-K Number Exhibit

10.15	2009 Restricted Stock Plan (15)
31.1	Rule 13a-14(a)/15d-14(a) Certification of Chief Executive Officer (16)
31.2	Rule 13a-14(a)/15d-14(a) Certification of Chief Financial Officer (16)
32.1	Section 1350 Certification of Chief Executive Officer (16)
32.2	Section 1350 Certification of Chief Financial Officer (16)

-
- (1) Incorporated by reference to Exhibit 2.1 to the registrant's Current Report on Form 8-K filed on October 2, 2008.
- (2) Incorporated by reference to the exhibit of the same number to Amendment No. 1 to the registrant's registration statement on Form SB-2 filed on December 12, 2006.
- (3) Incorporated by reference to the exhibit of the same number to the registrant's registration statement on Form SB-2 filed on October 26, 2006.
- (4) Incorporated by reference to the exhibit of the same number to the registrant's Current Report on Form 8-K filed on December 19, 2007
- (5) Incorporated by reference to exhibit 4.1 in the registrant's Current Report on Form 8-K filed on September 23, 2009.
- (6) Incorporated by reference to exhibit 4.2 in the registrant's Current Report on Form 8-K filed on September 23, 2009.
- (7) Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed on December 19, 2007.
- (8) Incorporated by reference to Exhibit 10.2 to the registrant's Current Report on Form 8-K filed on December 19, 2007.
- (9) Incorporated by reference to Exhibit 10.3 to the registrant's Current Report on Form 8-K filed on December 19, 2007.
- (10) Incorporated by reference to Exhibit 10.4 to the registrant's Current Report on Form 8-K filed on December 19, 2007.
- (11) Incorporated by reference to Exhibit 10.5 to the registrant's Amendment No. 1 to Current Report on Form 8-K filed on December 27, 2007.
- (12) Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed on May 23, 2008.
- (13) Incorporated by reference to exhibit 10.1 in the registrant's Current Report on Form 8-K filed on September 23, 2009.
- (14) Incorporated by reference to exhibit 10.2 in the registrant's Current Report on Form 8-K filed on September 23, 2009.
- (15) Incorporated by reference to exhibit 10.1 in the registrant's Current Report on Form 8-K filed on January 6, 2010.
- (16) 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 report to be signed on its behalf by the undersigned, thereunto duly authorized.

SPICY PICKLE FRANCHISING, INC.

Dated: March 12, 2010

By:

/s/ Marc Geman

Marc Geman, Chief Executive Officer

7

EXHIBIT INDEX

Regulation

S-K Number Exhibit

- 2.1 Asset Purchase Agreement between SPBG Franchising, Inc. and Bread Garden Franchising, Inc. dated September 30, 2008 (1)
- 3.1 Amended and Restated Articles of Incorporation (2)
- 3.2 Bylaws (3)
- 4.1 Certificate of Designation of Series A Variable Rate Convertible Preferred Stock (4)
- 4.2 Form of warrant to be issued to Midtown Partners & Co, LLC and assigns (5)
- 4.3 Form of warrant to be issued to private placement investors (6)
- 10.1 Employment Agreement – Marc Geman (3)
- 10.2 Employment Agreement – Anthony Walker (3)
- 10.3 Employment Agreement – Kevin Morrison (3)
- 10.4 2006 Stock Option Plan (3)
- 10.5 Promissory Note to Spicy Pickle, LLC (3)
- 10.6 Securities Purchase Agreement dated as of December 14, 2007 (7)
- 10.7 Form of Warrant (8)
- 10.8 Registration Rights Agreement dated as of December 14, 2007 (9)
- 10.9 Lock-Up Agreement of Marc Geman (10)
- 10.10 Form of Lock-Up Agreement executed by other officers and directors (11)
- 10.11 Amendment No. 1 to Securities Purchase Agreement dated as of May 22, 2008 (12)
- 10.12 Amendment, Redemption and Conversion Agreement (13)
- 10.13 Agreement with Midtown Partners & Co, LLC and assigns (14)
- 10.14 2009 Stock Option Plan (15)
- 10.15 2009 Restricted Stock Plan (15)

- 31.1 Rule 13a-14(a)/15d-14(a) Certification of Chief Executive Officer (16)
- 31.2 Rule 13a-14(a)/15d-14(a) Certification of Chief Financial Officer (16)
- 32.1 Section 1350 Certification of Chief Executive Officer (16)
- 32.2 Section 1350 Certification of Chief Financial Officer (16)

-
- (1) Incorporated by reference to Exhibit 2.1 to the registrant's Current Report on Form 8-K filed on October 2, 2008.
 - (2) Incorporated by reference to the exhibit of the same number to Amendment No. 1 to the registrant's registration statement on Form SB-2 filed on December 12, 2006.
 - (3) Incorporated by reference to the exhibit of the same number to the registrant's registration statement on Form SB-2 filed on October 26, 2006.

- (4) Incorporated by reference to the exhibit of the same number to the registrant's Current Report on Form 8-K filed on December 19, 2007
- (5) Incorporated by reference to exhibit 4.1 in the registrant's Current Report on Form 8-K filed on September 23, 2009.
- (6) Incorporated by reference to exhibit 4.2 in the registrant's Current Report on Form 8-K filed on September 23, 2009.
- (7) Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed on December 19, 2007.
- (8) Incorporated by reference to Exhibit 10.2 to the registrant's Current Report on Form 8-K filed on December 19, 2007.
- (9) Incorporated by reference to Exhibit 10.3 to the registrant's Current Report on Form 8-K filed on December 19, 2007.
- (10) Incorporated by reference to Exhibit 10.4 to the registrant's Current Report on Form 8-K filed on December 19, 2007.
- (11) Incorporated by reference to Exhibit 10.5 to the registrant's Amendment No. 1 to Current Report on Form 8-K filed on December 27, 2007.
- (12) Incorporated by reference to Exhibit 10.1 to the registrant's Current Report on Form 8-K filed on May 23, 2008.
- (13) Incorporated by reference to exhibit 10.1 in the registrant's Current Report on Form 8-K filed on September 23, 2009.
- (14) Incorporated by reference to exhibit 10.2 in the registrant's Current Report on Form 8-K filed on September 23, 2009.
- (15) Incorporated by reference to exhibit 10.1 in the registrant's Current Report on Form 8-K filed on January 6, 2010.
- (16) Filed herewith.