

NETWORK 1 SECURITY SOLUTIONS INC
Form SC 13D/A
April 27, 2004

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

SCHEDULE 13D
(RULE 13D-101)

INFORMATION TO BE INCLUDED IN STATEMENTS FILED PURSUANT
TO RULE 13D-1(a) AND AMENDMENTS THERETO FILED PURSUANT TO
RULE 13D-2(a)

(Amendment No. 2)1

NETWORK-1 SECURITY SOLUTIONS, INC.

(Name of Issuer)

Common Stock, \$.01 Par Value

(Title of Class of Securities)

64121N 10 9

(CUSIP Number)

SAM SCHWARTZ, ESQ.
OLSHAN GRUNDMAN FROME ROSENZWEIG & WOLOSKY LLP

Park Avenue Tower
65 East 55th Street
New York, New York 10022
(212) 451-2306

(Name, Address and Telephone Number of Person
Authorized to Receive Notices and Communications)

April 13, 2004

(Date of Event Which Requires Filing of This Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of Rule 13d-1(e), 13d-1(f) or 13d-1(g), check the following box .

NOTE. Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. SEE Rule 13d-7 for other parties to whom copies are to be sent.

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5,574,084 (1) (2)

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES
CERTAIN SHARES*

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

32.5%

14 TYPE OF REPORTING PERSON*

IN

*SEE INSTRUCTIONS BEFORE FILLING OUT!

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- (1) Includes (a) (i) 486,303 shares of Common Stock, (ii) 85,220 shares of Common Stock issuable upon exercise of warrants and (iii) 992,500 shares of Common Stock issuable upon exercise of options, all of which are held by Mr. Horowitz and (b) (i) 2,867,800 shares of Common Stock, (ii) 550,000 shares of Common Stock issuable upon exercise of warrants and (iii) 500,000 shares of Common Stock issuable upon exercise of options, all of which are held by CMH Capital Management Corp.
- (2) Includes (a) 89,970 shares of Common Stock held by Donna Slavitt, Mr. Horowitz's spouse and (b) 2,291 shares of Common Stock held by Horowitz Partners, a general partnership of which Mr. Horowitz is a partner. Mr. Horowitz disclaims beneficial ownership of the shares held by Horowitz Partners except to the extent of his pecuniary interest therein.

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1	NAME OF REPORTING PERSONS I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY)	
	CMH Capital Management Corp.	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP*	(a) <input type="checkbox"/> (b) <input type="checkbox"/>
3	SEC USE ONLY	
4	SOURCE OF FUNDS*	
	WC	
5	CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e)	<input type="checkbox"/>
6	CITIZENSHIP OR PLACE OF ORGANIZATION	
	New York	
	7	SOLE VOTING POWER
		-0-
NUMBER OF	8	SHARED VOTING POWER
SHARES		3,917,800 (1)
BENEFICIALLY	9	SOLE DISPOSITIVE POWER
OWNED BY		-0-
EACH	10	SHARED DISPOSITIVE POWER
REPORTING		3,917,800 (1)
PERSON		
WITH		
11	AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON	
	3,917,800 (1)	
12	CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES*	<input type="checkbox"/>
13	PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)	
	24.4%	
14	TYPE OF REPORTING PERSON*	

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SIGNATURES

After reasonable inquiry and to the best of his knowledge and belief, each of the undersigned certifies that the information set forth in this statement is true, complete and correct.

Dated: April 26, 2004

/s/ Corey M. Horowitz

Corey M. Horowitz

CMH CAPITAL MANAGEMENT CORP.

By: /s/ Corey M. Horowitz

Name: Corey M. Horowitz
Title: President

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EXHIBIT INDEX

Document	Page
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1. Securities Purchase Agreement by and between CMH Capital Management Corp. and FalconStor Software, Inc., dated November 18, 2003 (previously filed).	--
2. Joint Filing Agreement by and between Corey M. Horowitz and CMH Capital Management Corp., dated November 26, 2003 (previously filed).	--
3. Offer Letter, dated December 22, 2003, by and between the Issuer and Corey M. Horowitz, including Incentive Stock Option, dated December 22, 2003, by and between the Issuer and Corey M. Horowitz, Non-Qualified Stock Option, dated December 22, 2003, by and between the Issuer and Corey M. Horowitz and Issuer Capitalization (previously filed).	--
4. Exchange Agreement between the Issuer and its Preferred Stockholders, dated April 13, 2004.	9 - 23

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EXCHANGE AGREEMENT

AGREEMENT, dated as of April 13, 2004, by and among NETWORK-1 SECURITY SOLUTIONS, INC. (the "Company"), a Delaware corporation with offices at 445 Park Avenue, Suite 1028, New York, New York 10022, and the holders of the Company's Series E Convertible Stock (the "Series E Preferred Stock") and the Series D Convertible Preferred Stock (the "Series D Preferred Stock") signatory hereto (collectively, the "Preferred Stockholders").

WHEREAS, as part of a recapitalization of the Company, the Board of Directors of the Company has determined that it is in the best interest of the Company to eliminate its outstanding shares of Preferred Stock (the "Preferred Stock") by exchanging such securities for shares of Common Stock, par value \$.01 per share, of the Company (the "Common Stock"), upon the terms and subject to the conditions set forth herein;

WHEREAS, each of the Preferred Stockholders and the Company desire that the Preferred Stockholders exchange (i) 2,483,508 shares of Series E Preferred Stock which is convertible into 4,967,016 shares of Common Stock and (ii) 231,054 shares of Series D Preferred Stock which is convertible into 391,478 shares of Common Stock, for an aggregate of 6,698,118 shares of Common Stock, or 1.25 times the number of shares of Common Stock for each share of Common Stock that each Preferred Stockholder would have received upon conversion of their Preferred Stock, all upon the terms and subject to the conditions set forth therein. The Common Stock issuable in exchange for the shares of Preferred Stock are referred to herein as the "Shares."

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

Issuance of Shares for Preferred Stock

1.1 Exchange Agreement. At the Closing provided for in Section 1.2, the Company will issue to each Preferred Stockholder and, subject to the terms and conditions of this Agreement, each Preferred Stockholder will exchange the Preferred Stock for the number of Shares set forth in Exhibit A hereto (the "Exchange") in accordance with Schedule A hereto.

1.2 The Closing. The closing of the Exchange (the "Closing") shall take place at the offices of Olshan Grundman Frome Rosenzweig & Wolosky, LLP, Park Avenue Tower, 65 East 55th Street, New York, New York on the date that this Agreement is executed by the parties hereto (the time and date of the Closing being herein referred to as the "Closing Date"). On the Closing Date there will be delivered to the Preferred Stockholders the Shares on the Closing Date against delivery and cancellation of the original Preferred Stock in accordance with Schedule A hereto.

ARTICLE II

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value \$.01 per share (the "Preferred Stock"), of which 1,250,000 shares have been designated Series D Convertible Preferred Stock and 3,500,000 shares have been designated Series E Convertible Preferred Stock, having the designations, dividend rights, voting powers, conversion and redemption rights, rights on liquidation or dissolution, and other preferences and relative, participating, optional, or other preferences and relative, participating, optional, or other special rights, and the qualifications, limitations or restrictions thereof, set forth in their respective Certificates of Designations. Immediately prior to the Closing, the Company shall have 8,314,458 shares of Common Stock, 2,483,508 shares of Series E Convertible Preferred Stock, and 231,054 shares of Series D Convertible Preferred Stock outstanding. All issued and outstanding shares of Common Stock and Preferred Stock have been validly issued and are fully paid and nonassessable and have not been issued in violation of any Federal or state securities laws. Except for (a) upon the exercise of the options and warrants which are currently outstanding to purchase 5,481,860 shares of Common Stock (including options to purchase 3,297,370 under the Company's Stock Option Plan), there are not, as of the date hereof, any outstanding or authorized subscriptions, options, warrants, calls, rights, commitments, or any other agreements obligating the Company to issue (i) any additional shares of its capital stock or (ii) any securities convertible into, or exercisable or exchangeable for, or evidencing the right to subscribe for, any shares of its capital stock. Other than the Company's Stock Option Plan, the Company has not adopted or authorized any plan for the benefit of its officers, employees, or directors which require or permit the issuance, sale, purchase, or grant of any shares of the Company's capital stock, any securities convertible into, or exercisable or exchangeable for, or evidencing the right to subscribe for any shares of the Company's capital stock, or any phantom shares or any stock appreciation rights.

2.4 SEC Filings. The Company has filed all forms, reports, statements and other documents required to be filed with (i) the SEC including, without limitation, (A) all Annual Reports on Form 10-KSB, (B) all Quarterly Reports on Form 10-QSB, (C) all Reports on Form 8-K, (D) all other reports or registration statements and (E) all amendments and supplements to all such reports and registration statements (collectively referred to as the "SEC Reports") and (ii) any other applicable state securities authorities (all such forms, reports, statements and other documents in (i) and (ii) of this Section 2.4 being referred to herein, collectively, as the "Reports"). The Reports (i) were prepared in all material respects in accordance with the requirements of applicable law (including, with respect to the SEC Reports, the Securities Act of 1933, as amended (the "Securities Act"), and the Securities Exchange Act of 1934, as amended (the "Exchange Act"), as the case may be, and the rules and regulations of the SEC thereunder applicable to such SEC Reports) and (ii) did not at the time they were filed contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. In addition, since the last quarterly report of the Company on Form 10-QSB filed with the SEC, there have been no material events that require disclosure under the Exchange Act.

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ARTICLE III

Representations and Warranties of the Preferred Stockholders

Each of the Preferred Stockholders, severally and not jointly, represents and warrants to the Company as follows:

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Attention: Corey M. Horowitz, Chairman and Chief Executive Officer

With a copy to:

Olshan Grundman Frome Rosenzweig & Wolosky, LLP
Park Avenue Tower
65 East 55th Street
New York, New York 10022
Attention: Sam Schwartz, Esq.

If to the Preferred Stockholders, at their respective addresses as set forth on Exhibit A hereto, or such other address as any party may designate to the other in accordance with the aforesaid procedure. All notices and other communications sent by overnight courier service shall be deemed to have been given as of the next business day after delivery thereof to such courier service, those given by telex or facsimile transmission shall be deemed given when sent, and all notices and other communications sent by mail shall be deemed given as of the third business day after the date of deposit in the United States mail.

4.3 Successors and Assigns. The Company may not sell, assign, transfer, or otherwise convey any of its rights or delegate any of its duties under this Agreement, except to a corporation which has succeeded to substantially all of the business and assets of the Company

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and has assumed in writing its obligations under this Agreement, and this Agreement shall be binding on the Company and such successor. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the Preferred Stockholders and their successors and assigns.

4.4 Amendments and Waivers. Neither this Agreement nor any term hereof may be changed or waived (either generally or in a particular instance and either retroactively or prospectively) absent the written consent each party hereto.

4.5 Survival of Representations. The representations, warranties, covenants, and agreements made herein or in any certificate or document executed in connection herewith shall survive the execution and delivery of this Agreement and the issuance and delivery of the Shares to the Preferred Stockholders.

4.6 Delays or Omissions; Waiver. No delay or omission to exercise any right, power, or remedy accruing to either the Company or the Preferred Stockholders upon any breach or default by the other under this Agreement shall impair any such right, power, or remedy no shall it be construed to be a waiver of any such breach or default, or any acquiescence therein or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring.

4.7 Entire Agreement; Binding Effect. This Agreement (together with Schedule A attached hereto) contains the entire understanding of the parties with respect to their respective subject matter and all prior negotiations, discussions, commitments, and understandings heretofore had between them with respect thereto are merged herein and therein. This Agreement and the Exchange shall be binding on each Preferred Stockholder who executes this Agreement, provided, that, Preferred Stockholders holding at least 75% of the outstanding shares of Preferred Stock have executed this Agreement (the "Required

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CMH CAPITAL MANAGEMENT CORP.

By: /s/ Corey M. Horowitz

Name: Corey M. Horowitz
Title: President

/s/ Andrew Fingerhut

Andrew Fingerhut

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/s/ Barry Fingerhut

Barry Fingerhut

/s/ Robert Gladstone

Robert Gladstone

/s/ Amy Katz

Amy Katz

/s/ Irwin Lieber

Irwin Lieber

/s/ Jonathan Lieber

Jonathan Lieber

/s/ Seth Lieber

Seth Lieber

/s/ David Nussbaum

David Nussbaum

/s/ Jennifer Olsen

Jennifer Olsen

/s/ Harvey Pollak

Harvey Pollak

/s/ Barry Rubenstein

Barry Rubenstein

/s/ Marilyn Rubenstein

Marilyn Rubenstein

/s/ James Scibelli

James Scibelli

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SENECA VENTURES

By: /s/ Barry Rubenstein

Name: Barry Rubenstein
Title: General Partner

/s/ Donna Slavitt

Donna Slavitt

/s/ John Slavitt

John Slavitt

WHEATLEY PARTNERS, L.P.

By: /s/ Barry Rubenstein

Name: Barry Rubenstein
Title: CEO, WHEATLEY PARTNERS LLC
General Partner

WHEATLEY PARTNERS II, L.P.

By: /s/ Barry Rubenstein

Name: Barry Rubenstein
Title: General Partner

WHEATLEY FOREIGN PARTNERS, L.P.

By: /s/ Barry Rubenstein

Name: Barry Rubenstein
Title: CEO, WHEATLEY PARTNERS LLC
General Partner

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WOODLAND PARTNERS

By: /s/ Barry Rubenstein

Name: Barry Rubenstein
Title: General Partner

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WOODLAND VENTURE FUND

By: /s/ Barry Rubenstein

Name: Barry Rubenstein
Title: General Partner

/s/ Emanuel Pearlman

Emanuel Pearlman

SANDLER COMPANY INVESTMENT PARTNERS

By: Sandler Capital Management, General Partner

By: MJDM Corp., a General Partner

By: /s/ Moira Mitchell

Name: Moira Mitchell
Title: President

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SCHEDULE A

PREFERRED STOCKHOLDERS

Series E Convertible Preferred Stock

Name and Address of Preferred Stockholder	Number of Shares of Preferred Stock	Number of Shares of Common Stock Upon Conversion of Preferred Stock	Number of Shares of Common Stock Upon Exchange
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83 Village Road
Roslyn Heights, NY 11577

Jennifer Olsen c/o Lawrence S. Dolin 16111 Parkland Drive Shaker Heights, OH 44120	11,792	23,584	29,480
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Harvey Pollak 14 Pine Drive North Roslyn, NY 11576	11,792	23,584	29,480
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Barry Rubenstein 68 Wheatley Road Brookville, NY 11545	47,169	94,338	117,922
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James Scibelli Roberts & Greene, Inc. One Hollow Lane, Suite 208 Lake Success, NY 11040	23,584	47,168	58,960
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Seneca Ventures 68 Wheatley Road Brookville, NY 11545	165,094	330,188	412,735
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Donna Slavitt 1085 Park Avenue, Apt. 3B New York, NY 10028	35,377	70,754	88,442
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John Slavitt 250 Baldwin Avenue, Apt. 801 San Mateo, CA 94401	9,433	18,866	23,582
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Wheatley Partners, L.P. 80 Cuttermill Road, Suite 311 Great Neck, NY 11021	86,792	173,584	216,980
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Wheatley Partners II, L.P. 80 Cuttermill Road, Suite 311 Great Neck, NY 11021	94,339	188,678	235,848
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Wheatley Foreign Partners, L.P. 80 Cuttermill Road, Suite 311 Great Neck, NY 11021	7,547	15,094	18,868
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Name and Address of Preferred Stockholder -----	Number of Shares of Preferred Stock -----	Number of Shares of Common Stock Upon Conversion of Preferred Stock -----	Number of Shares of Common Stock Upon Exchange -----
Woodland Partners 68 Wheatley Road Brookville, NY 11545	94,339	188,678	235,848

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Brookville, NY 11545

Marilyn Rubenstein 68 Wheatley Road Brookville, NY 11545	495	839	1,049
Sandler Company Investment Partners 767 Fifth Avenue - 45th Floor New York, NY 10153	9,159 -----	15,518 -----	19,398 -----
Total Series D Preferred Stock	231,054 -----	391,478 -----	489,348 -----
TOTAL PREFERRED STOCK (SERIES E AND SERIES D)	2,714,562 =====	5,358,494 =====	6,698,118 =====