

Avinger Inc
Form 8-K
February 06, 2015

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 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): **February 4, 2015**

AVINGER, INC.

(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

0001-36817
(Commission
File Number)

20-8873453
(I.R.S. Employer
Identification Number)

**400 Chesapeake Drive
Redwood City, California 94063**

(Address of principal executive office) (Zip Code)

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(650) 241-7900

(Registrant's telephone number, including area code)

N/A

(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:

- ☐ Written communications 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 communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

On February 4, 2015, Avinger, Inc. (the "Company") filed an amended and restated certificate of incorporation (the "Amended and Restated Certificate") with the Secretary of State of the State of Delaware in connection with the closing of the initial public offering (the "IPO") of shares of its common stock. The Company's board of directors and stockholders previously approved the Amended and Restated Certificate to be filed in connection with the closing of the IPO.

The Amended and Restated Certificate amends and restates the Company's certificate of incorporation in its entirety to, among other things: (i) increase the authorized number of shares of common stock to 100,000,000 shares; (ii) eliminate all references to the previously existing series of preferred stock; (iii) authorize 5,000,000 shares of undesignated preferred stock that may be issued from time to time by the Company's board of directors in one or more series; (iv) establish a classified board of directors, divided into three classes, each of whose members will serve for staggered three-year terms; (v) provide that directors may be removed from office only for cause; (vi) eliminate the ability of the Company's stockholders to take action by written consent in lieu of a meeting and call special meetings of stockholders; and (vii) designate the Court of Chancery of the State of Delaware to be the sole and exclusive forum for any derivative action or proceeding brought on the Company's behalf, any action asserting a breach of fiduciary duty, any action asserting a claim against the Company arising pursuant to the Delaware General Corporation law, our amended and restated certificate of incorporation or our amended and restated bylaws, or any action asserting a claim against us that is governed by the internal affairs doctrine.

The foregoing description of the Amended and Restated Certificate is qualified by reference to the Amended and Restated Certificate, a copy of which is attached hereto as Exhibit 3.1 and is incorporated herein by reference.

On February 4, 2015, in connection with the closing of the IPO, amended and restated bylaws of the Company (the "Amended and Restated Bylaws"), previously approved by the Company's board of directors and stockholders to become effective in connection with closing of the IPO, became effective. The Amended and Restated Bylaws amend and restate the Company's bylaws in their entirety to, among other things: (i) eliminate the ability of the Company's stockholders to take action by written consent in lieu of a meeting and call special meetings of stockholders; (ii) establish procedures relating to the presentation of stockholder proposals at stockholder meetings; (iii) establish procedures relating to the nomination of directors; and (iv) conform to the provisions of the Amended and Restated Certificate.

The foregoing description of the Amended and Restated Bylaws is qualified by reference to the Amended and Restated Bylaws, a copy of which is attached hereto as Exhibit 3.2 and is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
3.1	Amended and Restated Certificate of Incorporation of Avinger, Inc.
3.2	Amended and Restated Bylaws of Avinger, Inc.

SIGNATURES

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

AVINGER, INC.

Date: February 6, 2015

By:

/s/ Jeffrey M. Soinski
Jeffrey M. Soinski
Chief Executive Officer

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