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NIGHTHAWK SYSTEMS INC
Form 8-K
September 03, 2004

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) August 10, 2004

Nighthawk Systems, Inc.
(Exact name of registrant as specified in its charter)

Nevada
(State or other
jurisdiction of
incorporation
or organization)

0-30786
(Commission File Number)

87-0627349
(I.R.S. employer
identification
number)

10715 Gulfdale, Suite 200
San Antonio, Texas 78216
(210) 341-4811

(Address, including zip code of registrant's principal executive offices
and telephone number, including area code)

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 (see General Instruction A.2. below):

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))

Item 1.01 Entry into a Material Definitive Agreement.

On August 10, 2004, Nighthawk Systems, Inc. entered into a series of
definitive agreements with Dutchess Private Equities Fund, II, L.P., a Delaware
corporation. The agreements include a Subscription Agreement, an Investment
Agreement and a Registration Rights Agreement pursuant to which Nighthawk
Systems, Inc. issued to Dutchess Private Equities Fund convertible debentures
and a warrant to purchase the company's common stock in the future.

Pursuant to the Subscription Agreement, Dutchess Private Equities Fund will
provide \$250,000 to Nighthawk in three tranches of \$125,000 upon execution of

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the agreement, \$100,000 upon filing of a registration statement with the SEC and \$25,000 upon the effectiveness of the registration statement. For this investment, Dutchess will receive \$250,000 of convertible debentures with a maturity date of August 10, 2007. The debentures include interest at 8% and can be converted at a price determined by a formula of the lesser of (i) 75% of the lowest closing bid price or (ii) twelve and a half cents (\$0.125). The amount of shares converted at any time is limited so as not to exceed 4.99% of the outstanding shares of Nighthawk common stock.. In addition, Dutchess is issued a warrant to purchase up to 250,000 shares of common stock at a price of twelve and a half cents (\$0.125) for a period of up to five years. This offering was made in accordance with the exemptions from registration provided for under Section 4(2) of the Securities Act of 1933, as amended (the "1933 Act") and Rule 506 of Regulation D promulgated under the 1933 Act.

Under the Investment Agreement, Dutchess can invest up to \$10,000,000 to purchase common stock pursuant to put notices by Nighthawk. This agreement effectively provides an equity line of credit to be drawn upon at Nighthawk's discretion.

Under the Registration Rights Agreement, Nighthawk agrees to register all the shares that could be issued pursuant to the Convertible Debentures, the warrants and the Investment Agreement within ninety (90) days of the execution of the agreements.

Item 9.01 Financial Statements and Exhibits.

Exhibit Description

- 10.1 Debenture Agreement between the Registrant and Dutchess Private Equities Fund, II, LP, dated August 10, 2004.
- 10.2 Subscription Agreement between the Registrant and Dutchess Private Equities Fund, II, LP, dated August 10, 2004.
- 10.3 Warrant Agreement between the Registrant and Dutchess Private Equities Fund, II, LP, dated August 10, 2004.
- 10.4 Registration Rights Agreement for Debenture between the Registrant and Dutchess Private Equities Fund, II, LP, dated August 10, 2004.
- 10.5 Investment Agreement between the Registrant and Dutchess Private Equities Fund, II, LP, dated August 10, 2004.
- 10.6 Registration Rights Agreement for the Equity Line between the Registrant and Dutchess Private Equities Fund, II, LP, dated August 10, 2004.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant had duly caused this registration statement to be signed on its behalf by the undersigned, hereunto duly authorized.

Nighthawk Systems, Inc.
Dated: September 3, 2004

By: /s/ H. Douglas Saathoff

H. Douglas Saathoff
Chief Executive Officer

