

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 August 31, 2022

OR

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

For the transition period from _____ to _____

SEC File No. 024-10557

SHIFTPIXY, INC.

(Exact name of registrant as specified in its charter)

| | |
|---|---|
| <u>Wyoming</u> (State of incorporation or organization) | <u>47-4211438</u> (I.R.S. Employer Identification No.) |
| <u>501 Brickell Key Drive, Suite 300, Miami, FL 33131</u> (Address of principal executive offices) | <u>33131</u> (Zip Code) |

Registrant's telephone number: **(888) 798-9100**

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

| | | |
|---|---------------------------------------|--|
| <u>Common Stock, par value \$0.0001 per share</u> Title of each class registered | <u>Trading Symbol(s) PIXY</u> | <u>The NASDAQ Stock Market LLC</u> Name of each exchange on which each class is registered |
|---|---------------------------------------|--|

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

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

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

| | | | |
|-------------------------|-------------------------------------|---------------------------|-------------------------------------|
| Large accelerated filer | <input type="checkbox"/> | Accelerated filer | <input type="checkbox"/> |
| Non-accelerated filer | <input checked="" type="checkbox"/> | Smaller reporting company | <input checked="" type="checkbox"/> |
| Emerging growth company | <input checked="" type="checkbox"/> | | |

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. §7262(b)) by the registered public accounting firm that prepared or issued its audit report.

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

As of February 28, 2022, the aggregate market value (based on the Nasdaq quoted closing price of \$85.10) of the common stock held by non-affiliates of the registrant was approximately \$39.87 million.

The number of outstanding shares of Registrant's Common Stock, \$0.0001 par value, was 9,671,196 shares as of December 12, 2022.

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| <u>Auditor Name</u> Marcum LLP | <u>Auditor Location</u> New York, NY | <u>Auditor Firm ID</u> (PCAOB NO 688) |
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Explanatory Note

The purpose of this Amendment No. 1 (the “Amendment”) to the Annual Report on Form 10-K of ShiftPixy, Inc. (the “Company”) for the year ended August 31, 2022 (the “Original Form 10-K”) is to re-file the consent of the Company’s independent registered public accounting firm. In connection with the filing of this Amendment, the Company is also including with this Amendment certain currently dated certifications. Except as otherwise set forth in this Explanatory Note, no other information included in the Original Form 10-K is amended or changed by this Amendment.

Item 15. Exhibits

| Exhibit No. | Document Description |
|------------------------|---|
| 3.1 | Articles of Incorporation of ShiftPixy, Inc., as filed with the Wyoming Secretary of State on June 3, 2015 (incorporated by reference from Exhibit 2.1 to our Offering Circular filed with the SEC on Form 1-A on May 31, 2016) |
| 3.2 | Articles of Amendment to Articles of Incorporation of ShiftPixy, Inc., dated September 28, 2016(incorporated by reference from Exhibit 2.6 to our Form 1-A/A filed with the SEC on October 18, 2016) |
| 3.3 | Articles of Amendment to Articles of Incorporation of ShiftPixy, Inc., dated January 7, 2020 (incorporated by reference from Exhibit 3 to our current Report on Form 8-K, filed with the SEC on January 23, 2020) |
| 3.4 | Amended and Restated Articles of Incorporation of ShiftPixy, Inc., dated March 20, 2020 (incorporated by reference from Exhibit 3.1 to our Current Report on Form 8-K, filed with the SEC on March 26, 2020) |
| 3.5 | Articles of Amendment to Amended and Restated Articles of Incorporation of ShiftPixy, Inc., dated May 7, 2021 (incorporated by reference from Exhibit 3.1 to our Current Report on Form 8-K, filed with the SEC on May 17, 2021) |
| 3.6 | Articles of Amendment to Amended and Restated Articles of Incorporation of ShiftPixy, Inc, dated August 2, 2022(incorporated by reference from Exhibit 3.1 to our Current Report on Form 8-K, filed with the SEC on August 31, 2022) |
| 3.7 | Articles of Correction to Articles of Amendment to Amended and Restated Articles of Incorporation of ShiftPixy, Inc, dated August 15, 2022 (incorporated by reference from Exhibit 3.1.1 to our Current Report on Form 8-K, filed with the SEC on August 31, 2022) |
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| 3.8 | Bylaws of ShiftPixy, Inc., as amended through July 15, 2022 (incorporated by reference from Exhibit 10.2 to our Form 8-K, filed with the SEC on July 19, 2022) |
| 4.1 | Amended Principal Shareholder Option for Preferred Stock (incorporated by reference as Exhibit 3.5 to our 1-A/A, filed with the SEC on October 18, 2016) |
| 4.2 | Description of the Registrant’s Securities (incorporated by reference as Exhibit 4.2 to our Annual Report on Form 10-K, filed with the SEC on November 30, 2020) |
| 10.1 | Stock Option and Stock Issuance Plan (incorporated by reference as Exhibit 3.8 to our 1-A POS, filed with the SEC on April 4, 2017) |
| 10.2† | First Amendment to Director Agreement, by and between ShiftPixy, Inc. and Kenneth W. Weaver Agreement, dated August 1, 2017(incorporated by reference from Exhibit 10.7 to our Annual Report on form 10-K/A, Amendment No. 2, filed with the SEC on October 18, 2018) |
| 10.03† | Offer Letter to Scott W. Absher, dated March 23, 2016(incorporated by reference from Exhibit 10.27 to our registration statement on Form S-1, filed with the SEC on March 30, 2020) |
| 10.04† | Appointment of Manuel Rivera to the position of Treasurer and Acting Chief Financial Officer of ShiftPixy, Inc (as announced in our Form 8K filed with the SEC on May 24, 2022) |
| 10.05† | Scott W. Absher Surrender of ShiftPixy's Preferred Options (incorporated by reference from Exhibit 10.1 our Form 8K filed with the SEC on July 19, 2022) |
| 10.6 | Form of Warrant (incorporated by reference from Exhibit 4.1 to our Current Report on Form 8-K, filed with the SEC on May 17, 2021) |
| 10.7 | Form of Pre-Funded Warrant (incorporated by reference from Exhibit 4.2 to our Current Report on Form 8-K, the SEC on May 17, 2021) |
| 10.8 | Form of Securities Purchase Agreement (incorporated by reference from Exhibit 10.1 to our Current Report on Form 8-K, filed with SEC on May 17, 2021). |
| 10.9 | Placement Agent Agreement, dated May 13, 2021, by and between ShiftPixy, Inc. and A.G.P./Alliance Global Partners (incorporated by reference from Exhibit 10.2 to our Current Report on Form 8-K, filed with the SEC on May 17, 2021). |
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| 10.10 | Form of Letter Agreement (incorporated by reference from Exhibit 10.1 to our Current Report on Form 8-K, filed with the SEC on August 18, 2021). |
| 10.11 | Form of Warrant (incorporated by reference from Exhibit 4.1 to our Current Report on Form 8-K, filed with the SEC on September 2, 2021) |
| 10.12 | Form of Pre-Funded Warrant (incorporated by reference as Exhibit 4.2 to our Current Report on Form 8-K, filed with the SEC on September 2, 2021) |

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| 10.13 | <u>Form of Securities Purchase Agreement (incorporated by reference as Exhibit 10.1 to our Current Report on Form 8-K, filed with the SEC on September 2, 2021).</u> |
| 10.14 | <u>Placement Agent Agreement, dated May 13, 2021, by and between ShiftPixy, Inc. and A.G.P./Alliance Global Partners (incorporated by reference from Exhibit 10.2 to our Current Report on Form 8-K, filed with the SEC on September 2, 2021).</u> |
| 10.15 | <u>Form of Warrants (incorporated by reference from Exhibit 4.1 to our Current Report on Form 8-K, filed with the SEC on January 27, 2022).</u> |
| 10.16 | <u>Form of Warrant Exercise Agreement (incorporated by reference from Exhibit 10.1 to our Current Report on Form 8-K, filed with the SEC on January 27, 2022).</u> |
| 10.17 | <u>Form of Registration Rights Agreement (incorporated by reference from Exhibit 10.2 to our Current Report on Form 8-K, filed with SEC on January 27, 2022).</u> |
| 10.18 | <u>Form of Warrant (incorporated by reference from Exhibit 10.1 to our Current Report on Form 8-K, filed with the SEC on July 19, 2022).</u> |
| 10.19 | <u>Form of Warrant Exercise Agreement (incorporated by reference from Exhibit 10.2 to our Current Report on Form 8-K, filed with the SEC on July 19, 2022).</u> |
| 10.20 | <u>Form of Registration Rights Agreement (incorporated by reference from Exhibit 10.3 to our Current Report on Form 8-K, filed with the SEC on July 19, 2022).</u> |
| 10.21 | <u>Amendment No. 1 to Common Stock Purchase Warrant(incorporated by reference form Exhibit 10.1 to our Current Report on Form 8-K, filed with the SEC on July 26, 2022).</u> |
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| 10.22 | <u>Unregistered Sale of Equity Securities (as announced in our Current Report on Form 8-K filed with the SEC on September 6, 2022).</u> |
| 10.23 | <u>Form of Securities Purchase Agreement (incorporated by reference from Exhibit 10.1 to our Current Report on Form 8-K, filed with SEC on September 23, 2022).</u> |
| 10.24 | <u>Form of Warrant (incorporated by reference from Exhibit 10.2 to our Current Report on Form 8-K, filed with SEC on September 23, 2022).</u> |
| 10.25 | <u>Form of Registration Rights Agreement(incorporated by reference from Exhibit 10.3 to our Current Report on Form 8-K, filed with SEC on September 23, 2022).</u> |
| 10.26 | <u>Amendment No. 1 to Warrants (incorporated by reference from Exhibit 10.4 to our Current Report on Form 8-K, filed with SEC on September 23, 2022).</u> |
| 10.27 | <u>Placement Agent Agreement (incorporated by reference from Exhibit 10.5 to our Current Report on Form 8-K, filed with SEC on September 23, 2022).</u> |
| 10.28 | <u>Form of Placement Agent Warrant (incorporated by reference from Exhibit 10.6 to our Current Report on Form 8-K, filed with SEC on September 23, 2022).</u> |
| 21.1 | <u>List of Subsidiaries of ShiftPixy, Inc. (incorporated by reference From Exhibit 21.1 to our Form 10-K and Form 10-K/A, filed with SEC on December 2, 2021 and February 28,2022, respectively).</u> |
| 23.1* | <u>Consent of Independent Registered Public Accounting Firm—Marcum LLP, New York, New York, PCAOB ID No. 688</u> |
| 31.1* | <u>CERTIFICATION of CEO PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002</u> |
| 31.2** | <u>CERTIFICATION of CFO PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002</u> |
| 32.1* | <u>CERTIFICATION of CEO PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002</u> |
| 32.2** | <u>CERTIFICATION of CFO PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002</u> |
| 101*** | Inline XBRL Document Set for the consolidated financial statements and accompanying notes in Part II, Item 8, |
| 104*** | Inline XBRL for the cover page of this Annual Report on Form 10-K, included in the Exhibit 101 Inline XBRL Document Set. |

* Filed herewith

** Furnished herewith

*** Previously filed

†Indicates a management contract or compensatory plan or arrangement.

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.

ShiftPixy, Inc.,

a Wyoming corporation

| <u>Title</u> | <u>Name</u> | <u>Date</u> | <u>Signature</u> |
|-----------------------------|-----------------|-------------------|----------------------------|
| Principal Executive Officer | Scott W. Absher | December 14, 2022 | <u>/s/ Scott W. Absher</u> |

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed by the following persons on behalf of the registrant and in the capacities and on the dates indicated:

| <u>SIGNATURE</u> | <u>NAME</u> | <u>TITLE</u> | <u>DATE</u> |
|------------------------------|-------------------|---|-------------------|
| <u>/s/ Scott W. Absher</u> | Scott W. Absher | Principal Executive Officer and Director (Principal Executive Officer) | December 14, 2022 |
| <u>/s/ Manuel A. Rivera</u> | Manuel A. Rivera | Principal Financial Officer (Principal Financial Officer and Principal Accounting Officer) | December 14, 2022 |
| <u>/s/ Christopher Sebes</u> | Christopher Sebes | Independent Director | December 14, 2022 |
| <u>/s/ Kenneth W. Weaver</u> | Kenneth W. Weaver | Independent Director | December 14, 2022 |
| <u>/s/ Whitney J. White</u> | Whitney J. White | Independent Director | December 14, 2022 |
| <u>/s/ Amanda Murphy</u> | Amanda Murphy | Director | December 14, 2022 |

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S CONSENT

We consent to the incorporation by reference in the Registration Statements of ShiftPixy, Inc. on Form S-3 (File Nos. 333-266401, 333-259619 and 333-256834) and Form S-8 (File No. 333-256835) of our report, dated December 12, 2022, which report on the consolidated financial statements refers to a change in the method of accounting for the adoption of ASU No. 2016-02, Leases (Topic 842) effective September 1, 2021, using the modified retrospective approach and includes an explanatory paragraph as to the Company's ability to continue as a going concern, with respect to our audits of the consolidated financial statements of ShiftPixy, Inc. as of August 31, 2022 and 2021 and for the years then ended, and which report is included in this Annual Report on Form 10-K/A of ShiftPixy, Inc. for the year then ended August 31, 2022. We also consent to the reference to our firm under the heading "Experts" in the Registration Statements.

/s/ Marcum LLP

Marcum LLP
New York, NY
December 14, 2022

CERTIFICATION

I, Scott W. Absher, certify that:

1. I have reviewed this report on Form 10-K/A of ShiftPixy, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

ShiftPixy, Inc.

DATE: December 14, 2022

By: /s/ Scott W. Absher
Scott W. Absher
Chief Executive Officer

CERTIFICATION

I, Manuel A. Rivera, certify that:

1. I have reviewed this report on Form 10-K/A of ShiftPixy, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

ShiftPixy, Inc.

DATE: December 14, 2022

By: /s/ Manuel A. Rivera
Manuel A. Rivera
Acting Chief Financial Officer

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

Pursuant to 18 U.S.C. § 1350, as adopted pursuant to Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned hereby certifies that the Annual Report on Form 10-K/A for the period ended August 31, 2022, of ShiftPixy, Inc. (the "Company") fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 and that the information contained in such Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

ShiftPixy, Inc.

DATE: December 14, 2022

By: /s/ Scott W. Absher
Scott W. Absher
Chief Executive Officer

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to ShiftPixy, Inc., and will be retained by ShiftPixy, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

Pursuant to 18 U.S.C. § 1350, as adopted pursuant to Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, the undersigned hereby certifies that the Annual Report on Form 10-K/A for the period ended August 31, 2022, of ShiftPixy, Inc. (the "Company") fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 and that the information contained in such Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

ShiftPixy, Inc.

DATE: December 14, 2022

By: /s/ Manuel A. Rivera
Manuel A. Rivera
Acting Chief Financial Officer

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to ShiftPixy, Inc., and will be retained by ShiftPixy, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.
