

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): November 8, 2019

USA TECHNOLOGIES, INC.

(Exact name of registrant as specified in its charter)

Pennsylvania
(State or other jurisdiction of incorporation or
organization)

001-33365
(Commission File Number)

232679963
(I.R.S. Employer Identification No.)

100 Deerfield Lane, Suite 300
Malvern, Pennsylvania 19355
(Address of principal executive offices and zip code)

Registrant's telephone number, including area code: 610-989-0340

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))

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, no par value	USAT	The NASDAQ Stock Market LLC
Series A Convertible Preferred Stock, no par value	USATP	The NASDAQ Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

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

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

On November 8, 2019, the Board of Directors of USA Technologies, Inc. (the “Company”) amended Section 3.03(a) of the Amended and Restated Bylaws of the Company (the “Bylaws”), which became effective on the same date. The amendment provides that notwithstanding anything to the contrary contained in the Bylaws, any shareholder or shareholders of the Company may not call or otherwise request a special meeting of the shareholders before the first annual meeting of shareholders that is held after November 8, 2019.

This summary description of the amendment to the Bylaws does not purport to be complete and is qualified in its entirety by reference to the text of the amendment to the Bylaws, a copy of which is attached hereto as Exhibit 3.1 and is incorporated herein by reference. Attached hereto as Exhibit 3.2 is the marked version of the Bylaw amendment, comparing the Bylaw amendment to Section 3.03(a) of the Bylaws as in effect immediately prior to such Bylaw amendment.

Item 8.01 Other Events.

On November 11, 2019, the Company announced (i) the Bylaw amendment referred to in Item 5.03 above, and (ii) the Board of Director’s determination, in consultation with legal counsel, that Hudson Executive Capital LP’s announced solicitation to call a special meeting of shareholders is invalid under the Company’s Bylaws as in effect prior to the Bylaw amendment which explicitly prohibited the calling of special meetings for the purpose of removing directors, and issued a press release related to the foregoing, a copy of which is attached to this Current Report on Form 8-K as Exhibit 99.1, and is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

[Exhibit 3.1](#) Text of the Amendment to Amended and Restated Bylaws

[Exhibit 3.2](#) Marked comparison of the text of the Amendment to the Amended and Restated Bylaws

[Exhibit 99.1](#) Press release dated November 11, 2019

SIGNATURES

Pursuant to the Securities Exchange Act of 1934, the Company has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Dated: November 12, 2019

USA TECHNOLOGIES, INC.

By: /s/ Donald W. Layden, Jr.
Donald W. Layden, Jr.,
Interim Chief Executive Officer

Exhibit 3.1

Section 3.03. Special Meetings.

(a) A special meeting of the shareholders for any purpose or purposes shall be called only by the chairman of the board of directors, the chief executive officer, or the board of directors. Only such business shall be conducted at a special meeting of shareholders as shall have been brought before the meeting pursuant to the corporation's notice of meeting. Special meetings of the shareholders may also be called by the holders of at least 20% of the combined voting power of the then outstanding shares entitled to vote at the particular meeting; provided, however, that a special meeting may not be called by any shareholder or shareholders for the purpose of electing or removing any director or directors of the corporation. Upon request in writing sent by registered mail to the chairman of the board of directors or chief executive officer of the corporation by any shareholder or shareholders entitled to call a special meeting of the shareholders pursuant to this Section 3.03(a), the board of directors shall determine a place and time for such meeting, which time shall not be less than ninety (90) nor more than one hundred and twenty (120) days after the receipt of such request, and a record date for the determination of shareholders entitled to vote at such meeting in the manner set forth in Section 3.12 hereof. Following such receipt, it shall be the duty of the secretary of the corporation to cause notice to be given to the shareholders entitled to vote at such meeting, in the manner set forth in Section 2.03 hereof, that a meeting will be held at the time and place so determined. Notwithstanding anything to the contrary in these Bylaws, a special meeting of the shareholders may not be called or otherwise requested by any shareholder or shareholders before the first annual meeting of shareholders that is held after November 8, 2019.

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USA Technologies Responds To Hudson Executive Capital's Invalid Attempt to Seize Control of the Company Through a Special Meeting

MALVERN, Pa. — November 11, 2019 — USA Technologies, Inc. (OTC: USAT) (“USAT” or the “Company”), a cashless payments and software services company that provides end-to-end technology solutions for the self-service retail market, today announced that the USAT Board of Directors, in consultation with legal counsel, has determined that Hudson Executive Capital LP’s (“Hudson”) announced solicitation to call a special meeting of shareholders is invalid under the Company’s bylaws. The Board issued the following statement:

The USAT management team, with the assistance and oversight of the Board of Directors, is continuing to take necessary actions to advance our market leadership position, accelerate our growth and deliver value for our shareholders.

In addition, USAT has regained compliance with its financial reporting obligations and significantly strengthened its corporate governance, while also implementing a series of measures to bring USAT’s oversight and control functions in line with best practices.

In tandem with this work, the USAT Board engaged in good faith discussions with Hudson, and in the interest of reaching a constructive path forward, proposed to work with Hudson in the Company’s ongoing Board refreshment process, including considering Board candidates that Hudson may propose.

To further its effort to take control of the Company without payment of a premium to USAT shareholders, Hudson recently announced a complex plan to replace eight Board members with a slate of nominees that includes three candidates who formerly worked for JPMorgan Chase & Co., where Hudson’s Founder and Managing Partner Douglas Braunstein served in a number of roles. Two other purportedly independent candidates, in addition to Mr. Braunstein, turn out to be investors in Hudson.

Following careful review of Hudson’s preliminary consent solicitation materials, and in consultation with our legal counsel, the Board has concluded that Hudson’s plan is invalid under USAT’s bylaws, which expressly prohibit the calling of special meetings for the purpose of removing directors.

Furthermore, in order to enable the Company to focus on operating the business without unnecessary distraction and waste of resources at this critical time, the Board has amended the USAT bylaws so that no special meeting may be called before the next annual meeting.

The Board of Directors and management team remain open to a constructive dialogue with Hudson, but are not prepared to turn control of the Company over to Hudson and its nominees.

About USA Technologies, Inc.

USA Technologies, Inc. is a cashless payments and software services company that provides end-to-end technology solutions for the self-service retail market. With approximately 1.2 million connections, USAT is transforming the unattended retail community by offering one solution for payments processing, logistics, and back-office management solutions. The company's enterprise-wide platform is designed to increase consumer engagement and sales revenue through digital payments, digital advertising and customer loyalty programs, while providing retailers with control and visibility over their operations and inventory. As a result, customers ranging from vending machine companies, to operators of micro-markets, gas and car charging stations, laundromats, metered parking terminals, kiosks, amusements and more, can run their businesses more proactively, predictably, and competitively.

Forward-looking Statements

"Safe Harbor" Statement under the Private Securities Litigation Reform Act of 1995: All statements other than statements of historical fact included in this release, including without limitation the business strategy and the plans and objectives of USAT's management for future operations, are forward-looking statements. When used in this release, words such as "anticipate", "believe", "estimate", "expect", "intend", and similar expressions, as they relate to USAT or its management, identify forward looking statements. Such forward-looking statements are based on the beliefs of USAT's management, as well as assumptions made by and information currently available to USAT's management. Actual results could differ materially from those contemplated by the forward-looking statements as a result of certain factors, including but not limited to, the incurrence by USAT of any unanticipated or unusual non-operational expenses which would require us to divert our cash resources from achieving our business plan; the ability of USAT to retain key customers from whom a significant portion of its revenues is derived; the ability of USAT to compete with its competitors to obtain market share; whether USAT's customers continue to utilize USAT's transaction processing, route scheduling, inventory management, and related services, as our customer agreements are generally cancelable by the customer on thirty to sixty days' notice; the risk associated with the currently pending litigation or possible regulatory action arising from the internal investigation and its findings, from the failure to timely file USAT's periodic reports with the Securities and Exchange Commission, from the restatement of the affected financial statements, from allegations related to the registration statement for the follow-on public offering, or from potential litigation or other claims arising from the shareholder demands for derivative actions; whether any appeal to the Nasdaq Listing and Hearing Council of the delisting of USAT's securities on The Nasdaq Stock Market LLC will be successful or result in the reinstatement of trading of USAT's securities; or whether USAT's existing or anticipated customers purchase, rent or utilize ePort or Seed devices or our other products or services in the future at levels currently anticipated by USAT. Readers are cautioned not to place undue reliance on these forward-looking statements. Any forward-looking statement made by us in this release speaks only as of the date of this release. Unless required by law, USAT does not undertake to release publicly any revisions to these forward-looking statements to reflect future events or circumstances or to reflect the occurrence of unanticipated events.

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