

BIO-PATH HOLDINGS INC
Form 424B3
August 16, 2011

This filing is made pursuant to Rule 424(b)(3)
under the Securities Act of 1933, as amended, in connection
with Registration No. 333-167600

PROSPECTUS SUPPLEMENT
(To Prospectus Dated July 29, 2010)

Bio-Path Holdings, Inc.

7,000,000 SHARES OF COMMON STOCK

This prospectus supplement supplements that certain prospectus dated July 29, 2010 (the "Prospectus") relating to the offer and sale, from time to time, of up to 7,000,000 shares of common stock, no par value, of Bio-Path Holdings, Inc., a Utah corporation (the "Company"), held by or issuable to Lincoln Park Capital Fund, LLC.

This prospectus supplement contains the Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2011 filed by the Company with the Securities and Exchange Commission on August 15, 2011 (the "10-Q"). This prospectus supplement is not complete without, and may not be delivered or used except in connection with, the Prospectus. This prospectus supplement is qualified by reference to the Prospectus except to the extent that the information in this prospectus supplement updates and supersedes the information contained in the Prospectus, including any supplements or amendments thereto.

INVESTING IN OUR COMMON STOCK INVOLVES SUBSTANTIAL RISKS. SEE THE SECTION TITLED "RISK FACTORS" BEGINNING ON PAGE 3 OF THE PROSPECTUS AND PAGE 18 OF OUR MOST RECENTLY FILED ANNUAL REPORT ON FORM 10-K TO READ ABOUT FACTORS YOU SHOULD CONSIDER BEFORE BUYING SHARES OF THE COMPANY'S COMMON STOCK.

NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED OF THESE SECURITIES OR PASSED UPON THE ADEQUACY OR ACCURACY OF THE PROSPECTUS OR THIS PROSPECTUS SUPPLEMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

The date of this prospectus supplement is August 15, 2011.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended June 30, 2011

Or

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

For the transition period from _____

Commission file number: 000-53404

Bio-Path Holdings, Inc.
(Exact name of registrant as specified in its charter)

Utah
(State or other jurisdiction of
incorporation or organization)

87-0652870
(I.R.S. employer
identification No.)

2626 South Loop, Suite 180, Houston, TX 77054
(Address of principal executive offices)

Registrant's telephone no., including area code: (801) 580-2326

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 and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted 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 and post such files). Yes No

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

Large accelerated filer
Non-accelerated filer (Do not check if a smaller reporting company)

Accelerated filer
Smaller reporting company

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

At August 12, 2011, the Company had 56,146,296 outstanding shares of common stock, no par value.

Forward-Looking Statements

Statements in this quarterly report on Form 10-Q that are not strictly historical in nature are forward-looking statements. These statements may include, but are not limited to, statements about: the timing of the commencement, enrollment, and completion of our anticipated clinical trials for our product candidates; the progress or success of our product development programs; the status of regulatory approvals for our product candidates; the timing of product launches; our ability to protect our intellectual property and operate our business without infringing upon the intellectual property rights of others; and our estimates for future performance, anticipated operating losses, future revenues, capital requirements, and our needs for additional financing. In some cases, you can identify forward-looking statements by terms such as “anticipates,” “believes,” “could,” “estimates,” “expects,” “intends,” “may,” “potential,” “predicts,” “projects,” “should,” “will,” “would,” “goal,” and similar expressions intended to identify forward-looking statements. These statements are only predictions based on current information and expectations and involve a number of risks and uncertainties. The underlying information and expectations are likely to change over time. Actual events or results may differ materially from those projected in the forward-looking statements due to various factors, including, but not limited to, those set forth under the caption “Risk Factors” in “ITEM 1. BUSINESS” of our Annual Report on Form 10-K as of and for the fiscal year ended December 31, 2010, and those set forth in our other filings with the Securities and Exchange Commission. Except as required by law, we undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

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PART I - FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

BIO-PATH HOLDINGS, INC.
(A Development Stage Company)

CONSOLIDATED BALANCE SHEETS

	June 30, 2011 (Unaudited)	December 31, 2010
ASSETS		
Current assets		
Cash	\$ 1,221,659	\$ 238,565
Grants receivable	-	244,479
Prepaid drug product for testing	-	88,400
Other current assets	45,147	72,993
Total current assets	1,266,806	644,437
Other assets		
Technology licenses - related party	3,081,368	3,043,821
Less Accumulated Amortization	(684,226)	(579,754)
	2,397,142	2,464,067
TOTAL ASSETS	\$3,663,948	\$ 3,108,504
LIABILITIES & SHAREHOLDERS' EQUITY		
Current liabilities		
Accounts payable	24,197	88,400
Accrued expense	146,526	84,141
Accrued license payments - related party	50,000	74,217
Total current liabilities	220,723	246,758
Long term debt	-	-
TOTAL LIABILITIES	220,723	246,758
Shareholders' Equity		
Preferred Stock, \$.001 par value 10,000,000 shares authorized, no shares issued and outstanding	-	-
Common Stock, \$.001 par value, 200,000,000 shares authorized 56,146,296 and 49,400,605 shares issued and outstanding as of 6/30/11 and 12/31/10, respectively	56,146	49,401
Additional paid in capital	11,627,956	9,719,147
Additional paid in capital for shares to be issued a/		278,600 a/

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Accumulated deficit during development stage	(8,240,877)	(7,185,402)
Total shareholders' equity	3,443,225	2,861,746
TOTAL LIABILITIES & SHAREHOLDERS' EQUITY	\$3,663,948	\$ 3,108,504

a/ Represents 928,667 shares of common stock

SEE ACCOMPANYING NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

BIO-PATH HOLDINGS, INC.
(A Development Stage Company)

CONSOLIDATED STATEMENTS OF OPERATIONS
Unaudited

	Second Quarter April 1 to June 30 2011	Year to Date from inception January 1 to June 30, 2010 2010 2011 2010 6/30/11
--	--	---

Revenue	\$	-		\$-	\$-	\$-	\$ -
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Operating expense

Total

	Number of Shares of common stock Beneficially Owned Prior to the Offering (1)	Number of Shares to be Offered for the Account of the Selling Stockholder (2)	Number of Shares to be Owned after this Offering (3)	Percentage to be Owned after this Offering (3) (4)			
--	--	--	--	--	--	--	--

Common Stock

Five Points Fund, LP ⁽⁵⁾	None	162,946	47,168	115,778	1.8%		
Five Points Offshore Fund, Ltd. ⁽⁶⁾	None	27,054	7,832	19,222	<1%		
Guerilla Partners, LP ⁽⁷⁾	None	98,862	95,000	3,862	<1%		
Peter J. Siris	None	65,000	65,000	-0-	-0-		
Outpoint Offshore Fund, Ltd. ⁽⁸⁾	None	50,000	50,000	-0-	-0-		
Clarus Capital, LLC ⁽⁹⁾	None	105,000	80,000	25,000	<1%		
WestEnd Partners, LP ⁽¹⁰⁾	None	40,000	40,000	-0-	-0-		
WestEnd II ⁽¹¹⁾	None	25,000	25,000	-0-	-0-		
Stony Point Fund, LP ⁽¹²⁾	None	50,000	20,000	30,000	<1%		
Bald Eagle Fund, Ltd. ⁽¹³⁾	None	4,810	4,810	-0-	-0-		
Kensington Partners, LP ⁽¹⁴⁾	None	105,190	105,190	-0-	-0-		
Toro Holdings, LLC ⁽¹⁵⁾	None	135,000	135,000	-0-	-0-		
Fairfield Investments Group, LLC	None	231,361 ⁽¹⁶⁾	15,806	215,555	3.5%		
TOTAL			690,806				

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- (1) Includes shares of common stock for which the selling security holder has the right to acquire beneficial ownership within 60 days.
- (2) This table assumes that each selling security holder will sell all shares offered for sale by it under this registration statement. Security holders are not required to sell their shares.
- (3) Assumes that all shares of Common Stock registered for resale by this prospectus have been sold.
- (4) Based on 6,123,842 shares of Common stock issued and outstanding as of April 25, 2007.
- (5) Paul McNulty, Managing Member of the General Partner, is the natural person with investment decision and voting power for this entity.
- (6) Paul McNulty, Director, is the natural person with investment decision and voting power for this entity.
- (7) Peter Siris is the natural person with investment decision and voting power for this entity.
- (8) Jordan Grayson is the natural person with investment decision and voting power for this entity.
- (9) Ephraim Fields is the natural person with investment decision and voting power for this entity.
- (10) Sean Cooper is the natural person with investment decision and voting power for this entity.
- (11) George Bolton is the natural person with investment decision and voting power for this entity.
- (12) C. Peter Marin is the natural person with investment decision and voting power for this entity.
- (13) Richard Keim is the natural person with investment decision and voting power for this entity.
- (14) Richard Keim is the natural person with investment decision and voting power for this entity.
- (15) Paul J. Pollack is the natural person with investment decision and voting power for this entity. Mr. Pollack is the President of Montgomery Street Research, an entity with which we currently have a Consulting Agreement.
- (16) Includes 189,557 shares of common stock held indirectly by Fairfield Investment Group, LLC that are issuable upon the conversion of a convertible debenture, and 41,804 shares of common stock held indirectly by Fairfield Investment Group, LLC. Jeff Benton is the Managing Director of Fairfield Advisors, LLC, the manager of Fairfield Investment Group, LLC, and has investment decision and voting authority for this entity.

PLAN OF DISTRIBUTION

We have not been advised by the selling stockholders as to any plan of distribution. Shares owned by the selling stockholders, or by their partners, pledgees, donees (including charitable organizations), transferees or other successors in interest, may from time to time be offered for sale either directly by such individual, or through underwriters, dealers or agents or on any exchange on which the shares may from time to time be traded, in the over-the-counter market, or in independently negotiated transactions or otherwise. The methods by which the shares may be sold include:

· a block trade (which may involve crosses) in which the broker or dealer so engaged will attempt to sell the securities as agent but may position and resell a portion of the block as principal to facilitate the transaction;

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· purchases by a broker or dealer as principal and resale by such broker or dealer for its own account pursuant to this prospectus;

· exchange distributions and/or secondary distributions;

· sales in the over-the-counter market;

· underwritten transactions;

· ordinary brokerage transactions and transactions in which the broker solicits purchasers; and

· privately negotiated transactions.

Such transactions may be effected by the selling stockholders at market prices prevailing at the time of sale or at negotiated prices. The selling stockholders may effect such transactions by selling the common stock to underwriters or to or through broker-dealers, and such underwriters or broker-dealers may receive compensations in the form of discounts or commissions from the selling stockholders and may receive commissions from the purchasers of the common stock for whom they may act as agent. The selling stockholders may agree to indemnify any underwriter, broker-dealer or agent that participates in transactions involving sales of the shares against certain liabilities, including liabilities arising under the Securities Act. We have agreed to register the shares for sale under the Securities Act and to indemnify the selling stockholders, certain representatives of the selling stockholders and each person who participates as an underwriter in the offering of the shares against certain civil liabilities, including certain liabilities under the Securities Act. We are required to pay certain fees and expenses incurred by us incident to the registration of the shares.

In connection with sales of the common stock under this prospectus, upon effectiveness of the registration statement, the selling stockholders may enter into hedging transactions with broker-dealers, who may in turn engage in short sales of the common stock in the course of hedging the positions they assume. Upon effectiveness of the registration statement, the selling stockholders also may sell shares of common stock short and deliver them to close out the short positions, or loan or pledge the shares of common stock to broker-dealers that in turn may sell them.

Because selling stockholders may be deemed to be statutory “underwriters” within the meaning of the Securities Act, they will be subject to the prospectus delivery requirements of the Securities Act. The selling stockholders are subject to the applicable provisions of the Securities Act, and the rules and regulations thereunder which may restrict certain activities of, and limit the timing of purchases and sales of securities by, selling stockholders and other persons participating in a distribution of securities.

The selling stockholders may also sell shares under Rule 144 of the Securities Act, if available, rather than under this prospectus. There is no underwriter or coordinating broker acting in connection with the proposed sale of the shares by the selling stockholders.

The selling stockholders and any underwriters, dealers or agents that participate in distribution of the shares may be deemed to be underwriters, and any profit on sale of the shares by them and any discounts, commissions or concessions received by any underwriter, dealer or agent may be deemed to be underwriting discounts and commissions under the Securities Act. The selling stockholders do not expect these commissions and discounts to exceed what is customary in the types of transactions involved.

Under applicable rules and regulations under the Exchange Act, any person engaged in the distribution of the resale shares may not simultaneously engage in market making activities with respect to the common stock for the applicable

restricted period, as defined in Regulation M, prior to the commencement of the distribution. In addition, the Selling Stockholders will be subject to applicable provisions of the Exchange Act and the rules and regulations thereunder, including Regulation M, which may limit the timing of purchases and sales of shares of the common stock by the Selling Stockholders or any other person. We will make copies of this prospectus available to the Selling Stockholders and have informed them of the need to deliver a copy of this prospectus to each purchaser at or prior to the time of the sale (including by compliance with Rule 172 under the Securities Act).

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We agreed to keep this prospectus effective until the earlier of (i) the two-year anniversary of the effective date, or (ii) the time that all of the shares have been sold pursuant to the prospectus or Rule 144 under the Securities Act or any other rule of similar effect.

There can be no assurances that the selling stockholders will sell any or all of the shares offered under this prospectus.

DESCRIPTION OF SECURITIES TO BE REGISTERED

The following is a description of certain provisions relating to our capital stock. For additional information regarding our stock, please refer to our Articles of Incorporation and Bylaws which have previously been filed with the SEC.

General

Our authorized capital stock consists of 16,000,000 shares of which there are 15,000,000 shares of common stock, par value \$.01 per share, and 1,000,000 shares of preferred stock, par value \$.10 per share.

Common Stock

As of May 7, 2007, there were 6,123,842 shares of common stock outstanding. We are registering 690,806 shares of common stock herewith. The rights of all holders of the common stock are identical in all respects. The holders of the common stock are entitled to receive ratably such dividends, if any, as may be declared by the Board of Directors out of legally available funds. The current policy of the Board of Directors, however, is to retain earnings, if any, for reinvestment.

Upon liquidation, dissolution or winding up of the Company, the holders of the common stock are entitled to share ratably in all aspects of the Company that are legally available for distribution, after payment of or provision for all debts and liabilities.

The holders of the common stock do not have preemptive subscription, redemption or conversion rights under our Articles of Incorporation. Cumulative voting in the election of Directors is not permitted. The outstanding shares of common stock are validly issued, fully paid and nonassessable. The rights, preferences and privileges of holders of common stock will be subject to, and may be adversely affected by, the rights of holders of shares of any series of preferred stock that are presently outstanding or that may be designated and issued by us in the future.

EXPERTS

The financial statements of Rick's Cabaret International, Inc. for the years ended September 30, 2006 and 2005, incorporated by reference, have been audited by Whitley Penn LLP, independent registered public accounting firm, as set forth in their report included in such financial statements, in reliance upon such report given on the authority of such firm as experts in accounting and auditing.

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LEGAL MATTERS

The validity of the issuance of the common stock offered under this prospectus has been passed upon for us by Axelrod, Smith & Kirshbaum, P.C., Houston, Texas.

MATERIAL CHANGES

There have been no material changes in the Registrant's affairs since the end of the last fiscal year.

INCORPORATION OF CERTAIN INFORMATION BY REFERENCE

This prospectus is a part of a registration statement on Form S-3 that we filed with the SEC with respect to the shares offered by this prospectus. This prospectus does not contain all of the information that is in the registration statement. We omitted certain parts of the registration statement as allowed by the SEC. We refer you to the registration statement and its exhibits for further information about us and the shares offered by the selling shareholders.

The SEC allows us to "incorporate by reference" the information we file with the SEC, which means that we can disclose important information to you by referring to those documents. The information incorporated by reference is an important part of this prospectus. The information that we file later with the SEC will automatically update and supersede this information. We incorporate by reference the documents listed below and any future filings made with the SEC under Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934 until this offering is completed:

- our Annual Report on Form 10-KSB for the year ended September 30, 2006;
- our Quarterly Reports on Form 10-QSB for the quarters ended December 31, 2006 and March 31, 2007;
- our Current Reports on Form 8-K filed on October 12, 2006; November 14, 2006; February 6, 2007; April 5, 2007 and April 25, 2007, and on Form 8-K/A on November 14, 2006 and May 11, 2007; and
- our Proxy Statement for the 2006 Annual Meeting of Shareholders.

You may request a copy of these filings, at no cost, by writing to or telephoning us at the address below. However, we will not provide copies of the exhibits to these filings unless we specifically incorporated by reference the exhibits in this prospectus.

Eric Langan, CEO/President
Rick's Cabaret International, Inc.
10959 Cutten Road
Houston, Texas 77066
281-397-6730

**COMMISSION POSITION ON
INDEMNIFICATION FOR SECURITIES ACT LIABILITIES**

Our certificate of incorporation provides that we shall indemnify our directors and officers to the fullest extent permitted by Texas law and that none of our directors will be personally liable to the Company or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability:

- for any breach of the director's duty of loyalty to the Company or its stockholders;

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- for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of the law;
 - under the Texas Business Organization Code for the unlawful payment of dividends; or
 - for any transaction from which the director derives an improper personal benefit.

These provisions require us to indemnify our directors and officers unless restricted by Texas law and eliminate our rights and those of our stockholders to recover monetary damages from a director for breach of his fiduciary duty of care as a director except in the situations described above. The limitations summarized above, however, do not affect our ability or that of our stockholders to seek non-monetary remedies, such as an injunction or rescission, against a director for breach of his fiduciary duty.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to our directors, officers and controlling persons pursuant to the foregoing provisions, we have been advised that in the opinion of the Securities and Exchange Commission, such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

WHERE YOU CAN FIND MORE INFORMATION

We have filed with the SEC a registration statement on Form S-3 under the Securities Act, and the rules and regulations promulgated thereunder, with respect to the common stock offered hereby. This prospectus, which constitutes a part of the registration statement, does not contain all of the information set forth in the registration statement and the exhibits thereto. Statements contained in this prospectus as to the contents of any contract or other document that is filed as an exhibit to the registration statement are not necessarily complete and each such statement is qualified in all respects by reference to the full text of such contract or document. For further information with respect to us and the common stock, reference is hereby made to the registration statement and the exhibits thereto, which may be inspected and copied at the SEC's Public Reference Room located at 100 F Street, N.E., Washington, D.C. 20549, and copies of all or any part thereof may be obtained at prescribed rates from the Commission at such addresses. Also, the SEC maintains a World Wide Web site on the Internet at <http://www.sec.gov> that contains reports, proxy and information statements and other information regarding registrants that file electronically with the SEC. Additional information can also be obtained through our website at www.Ricks.com. We also make available free of charge our annual, quarterly and current reports, proxy statements and other information upon request. To request such materials, please contact Mr. Eric Langan, our President and Chief Executive Officer, at 10959 Cutten Road, Houston, Texas 77066.

We are in compliance with the information and periodic reporting requirements of the Exchange Act and, in accordance therewith, will file periodic reports, proxy and information statements and other information with the SEC. Such periodic reports, proxy and information statements and other information will be available for inspection and copying at the principal office, public reference facilities and Web site of the SEC referred to above.

Table of Contents**PART II - INFORMATION NOT REQUIRED IN PROSPECTUS****Item 14. Other Expenses of Issuance and Distribution.**

The following table sets forth estimated expenses expected to be incurred in connection with the issuance and distribution of the securities being registered. All such expenses will be paid by us.

Securities and Exchange Commission Registration Fee	\$	173.46
Printing and Engraving Expenses		-0-
Accounting Fees and Expenses	\$	3,000.00
Legal Fees and Expenses	\$	10,000.00
Blue Sky Qualification Fees and Expenses		-0-
Miscellaneous		-0-
TOTAL	\$	13,173.46

Item 15. Indemnification of Directors and Officers.

The officers and directors of the Company are indemnified as provided by the Texas Business Corporation Act (the "TBCA") and the Bylaws of the Company. Unless specifically limited by a corporation's articles of incorporation, the TBCA automatically provides directors with immunity from monetary liabilities. Our Articles of Incorporation do not contain any such limiting language. Excepted from that immunity are:

- a. willful failure to deal fairly with the corporation or its shareholders in connection with a matter in which the director has a material conflict of interest;
- b. a violation of criminal law unless the director had reasonable cause to believe that his or her conduct was lawful or no reasonable cause to believe that his or her conduct was unlawful;
- c. a transaction from which the director derived an improper personal profit; and
- d. willful misconduct.

The Articles of Incorporation provide that the Company will indemnify its officers, directors, legal representative, and persons serving at the request of the Company as a director or officer of another corporation, or as its representative in a partnership, joint venture, trust or other enterprise to the fullest extent legally permissible under the laws of the State of Texas against all expenses, liability and loss (including attorney's fees, judgments, fines and amounts paid or to be paid in settlement) reasonably incurred or suffered by that person as a result of that connection to the Company. This right of indemnification under the Articles is a contract right which may be enforced in any manner by such person and extends for such persons benefit to all actions undertaken on behalf of the Company.

The Bylaws of the Company provide that the Company will indemnify its directors and officers to the fullest extent not prohibited by Texas law; provided, however, that the Company may modify the extent of such indemnification by individual contracts with its directors and officers; and, provided, further, that the Company shall not be required to indemnify any director or officer in connection with any proceeding (or part thereof) initiated by such person unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized by the Board of Directors of the Company, (iii) such indemnification is provided by the Company, in its sole discretion, pursuant to the powers vested in the Company under Texas law or (iv) such indemnification is required to be made pursuant to the Bylaws.

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The Bylaws of the Company provide that the Company will advance to any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director or officer, of the Company, or is or was serving at the request of the Company as a director or executive officer of another Company, partnership, joint venture, trust or other enterprise, prior to the final disposition of the proceeding, promptly following request therefor, all expenses incurred by any director or officer in connection with such proceeding upon receipt of an undertaking by or on behalf of such person to repay said amounts if it should be determined ultimately that such person is not entitled to be indemnified under the Bylaws of the Company or otherwise.

Our Bylaws provide that no advance shall be made by the Company to an officer of the Company (except by reason of the fact that such officer is or was a director of the Company in which event this paragraph shall not apply) in any action, suit or proceeding, whether civil, criminal, administrative or investigative, if a determination is reasonably and promptly made (i) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to the proceeding, or (ii) if such quorum is not obtainable, or, even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, that the facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the Company.

Item 16. Exhibits.

The following is a list of exhibits filed as part of this registration statement. Where so indicated by footnote, exhibits which were previously filed are incorporated herein by reference. Any statement contained in an Incorporated Document shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed Incorporated Document modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

Exhibit

NumberDescription

<u>4.1</u>	Subscription Agreement (Form Of) dated February 2007
<u>4.2</u>	Subscription Agreement (Form Of) dated March 2007
<u>5.1</u>	Legal Opinion of Axelrod, Smith & Kirshbaum, P.C.
<u>23.1</u>	Consent of Whitley Penn LLP, Independent Registered Public Accounting Firm
<u>23.2</u>	Consent of Axelrod, Smith & Kirshbaum, P.C. (incorporated in Exhibit 5.1)

Item 17. Undertakings.

- (1) The Company hereby undertakes:
- (a) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new Registration Statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.
- (b) To remove from registration by means of post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

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(2) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Company pursuant to the foregoing provisions, or otherwise, the Company has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Company of expenses incurred or paid by the director, officer or controlling person of the Company in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Company will, unless in the opinion of the counsel the matter has been settled by controlling precedent, submit to the appropriate jurisdiction the question of whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

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SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, on the 17th day of May, 2007.

RICK'S CABARET INTERNATIONAL, INC.

By /s/ Eric Langan
Eric Langan
President and Chief Executive Officer

POWER OF ATTORNEY

Rick's Cabaret International, Inc. and each of the undersigned do hereby appoint Eric Langan his true and lawful attorney to execute on behalf of Rick's Cabaret International, Inc. and the undersigned any and all amendments to this Registration Statement on Form S-3 and to file the same with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission; each of such persons shall have the power to act hereunder with or without the other.

In accordance with the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates stated.

Signature	Title	Date
By <u>/s/ Eric Langan</u> Eric Langan	Chairman of the Board, Director, President, Chief Executive Officer, Chief Financial Officer and Principal Accounting Officer	May 17, 2007
By <u>/s/ Travis Reese</u> Travis Reese	Vice President and Director	May 16, 2007
By <u>/s/ Steven L. Jenkins</u> Steven L. Jenkins	Director	May 17, 2007
By <u>/s/ Alan Bergstrom</u> Alan Bergstrom	Director	May 16, 2007
By _____ Robert Watters	Director	May ____, 2007