

Perseon Corp
Form DEF 14A
April 16, 2015

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of the
Securities Exchange Act of 1934

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Pursuant to §240.14a-12

PERSEON CORPORATION
(Name of Registrant as Specified in Its Charter)

(Name of Person(s) Filing Proxy Statement if other than Registrant)

Payment of Filing Fee (Check the appropriate box):

- No fee required.
- Fee computed on table below per Exchange Act Rules 14a-6(i)(4) and 0-11.

(1) Title of each class of securities to which transaction applies:

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- (3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):
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(4) Proposed maximum aggregate value of transaction:

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(1) Amount previously paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

PERSEON CORPORATION
2188 West 2200 South, Salt Lake City, Utah 84119

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS OF
PERSEON CORPORATION

April 17, 2015

TO THE STOCKHOLDERS OF PERSEON CORPORATION:

A special meeting (the "Special Meeting") of stockholders of Perseon Corporation (the "Company" or "Perseon") will be held on May 12, 2015, at the corporate offices of Perseon located at 2188 West 2200 South, Salt Lake City, Utah 84119. The Special Meeting will convene at 9:00 a.m., Mountain Time, to consider and take action on the following proposals, which are more fully described in the Proxy Statement:

1. to approve an amendment to the Company's Amended and Restated Certificate of Incorporation to effectuate a reverse split of our issued and outstanding shares of common stock at a ratio of between 1-for-6 and 1-for-12, inclusive, which ratio will be selected at the sole discretion of our Board of Directors at any whole number in the above range, with any fractional shares that would otherwise be issued as a result of the reverse split being rounded up to the nearest whole share (the "Reverse Stock Split"); provided, that our Board of Directors may abandon the Reverse Stock Split in its sole discretion;
2. to authorize an adjournment of the Special Meeting, if necessary, if a quorum is present, to solicit additional proxies if there are not sufficient votes in favor of Proposal 1; and
3. to transact other such business as may properly come before the Special Meeting or any adjournment or postponement thereof.

Only owners of record of the Company's issued and outstanding common stock as of the close of business on April 14, 2015 (the "Record Date") will be entitled to notice of and to vote at the Special Meeting. Each share of common stock is entitled to one vote.

THE ATTENDANCE AT AND/OR VOTE OF EACH STOCKHOLDER AT THE SPECIAL MEETING IS IMPORTANT, AND EACH STOCKHOLDER IS ENCOURAGED TO ATTEND. TO ASSURE THAT YOUR VOTE IS COUNTED, PLEASE COMPLETE, SIGN, DATE AND PROMPTLY MAIL THE ENCLOSED PROXY WHETHER OR NOT YOU PLAN TO ATTEND THE SPECIAL MEETING.

PERSEON CORPORATION
BY ORDER OF THE BOARD OF
DIRECTORS

Salt Lake City, Utah, April 17, 2015

William Barth, Secretary

PERSEON CORPORATION
2188 West 2200 South, Salt Lake City, Utah 84119

PROXY STATEMENT

PERSEON CORPORATION
SPECIAL MEETING OF STOCKHOLDERS
TO BE HELD ON May 12, 2015

This Proxy Statement is furnished in connection with the solicitation of proxies by and on behalf of the Board of Directors (the “Board of Directors” or the “Board”) of Perseon Corporation, a Delaware corporation (the “Company” or “Perseon”), for use at the special meeting of the stockholders (the “Special Meeting”) to be held on May 12, 2015 at the corporate offices of Perseon, located at 2188 West 2200 South, Salt Lake City, Utah 84119, at 9:00 a.m., Mountain Time. Directions to the Special Meeting can be obtained by calling Tina Ouimette at (801) 972-5555.

THIS PROXY STATEMENT, THE NOTICE OF SPECIAL MEETING OF STOCKHOLDERS AND FORM OF PROXY ARE FIRST BEING MAILED TO THE COMPANY’S STOCKHOLDERS ON OR ABOUT APRIL 17, 2015.

Important Notice Regarding the Availability of Proxy Materials for
the Special Meeting to be Held on May 12, 2015.

A copy of this Proxy Statement is available at:
<https://materials.proxyvote.com/715270>

At the Special Meeting, the stockholders of the Company will be asked to vote on one proposal (the “Reverse Stock Split Proposal”), to amend our Amended and Restated Certificate of Incorporation to effectuate a reverse split of our issued and outstanding shares of common stock, par value \$0.001 per share.

A proxy for use at the Special Meeting is enclosed. If you execute and deliver a proxy by mailing a proxy card, or by voting via the internet or telephone, you have the right to revoke your proxy at any time before it is exercised by delivering to the Secretary of the Company an instrument revoking it or a duly executed proxy bearing a later date, or by attending the Special Meeting and voting in person. Subject to revocation, the proxy holders will vote all shares represented by a properly executed proxy received in time for the Special Meeting in accordance with the instructions on the proxy. If no instruction is specified with respect to a matter to be acted upon, the shares represented by the proxy will be voted FOR the Reverse Stock Split Proposal.

We will bear the expenses of preparing, assembling, printing and mailing this Proxy Statement and the materials used in the solicitation of proxies. Proxies will be solicited through the mail and may be solicited by our officers, directors and employees in person or by telephone. They will not receive additional compensation for this effort. We do not anticipate paying any compensation to any other party for the solicitation of proxies, but may reimburse brokerage firms and others for their reasonable expenses in forwarding solicitation material to beneficial owners.

RECORD DATE AND QUORUM REQUIREMENTS

April 14, 2015 has been fixed as the record date (the “Record Date”) for the determination of stockholders entitled to notice of and to vote at the Special Meeting. As of the Record Date, 39,689,209 shares of our common stock

(“Common Stock”) were issued and outstanding. Each outstanding share of common stock will be entitled to one vote on each matter submitted to a vote of the stockholders at the Special Meeting.

The holders of one-third of the shares of the Common Stock outstanding on the Record Date, present in person or by proxy, will constitute a quorum for the transaction of business at the Special Meeting and at any adjournment or postponement thereof. Any abstentions and broker non-votes will be deemed as present for purposes of determining a quorum.

Approval of the Reverse Stock Split Proposal requires the affirmative vote of a majority of the Common Stock outstanding and entitled to vote at the Special Meeting. Abstentions will have the same effect as votes against the proposal. Your broker or nominee will have discretionary authority to vote your shares with respect to “routine” proposals but not with respect to “non-routine” proposals. The Reverse Stock Split Proposal is a routine matter and may be voted on by your broker if you do not submit voting instructions.

MAIL VOTING PROCEDURES

To vote by mail, you should complete, sign and date your proxy card and mail it in the pre-addressed postage-paid envelope that accompanies the delivery of the proxy card. A proxy card submitted by mail must be received by the time of the Special Meeting in order for the shares to be voted.

TELEPHONE VOTING PROCEDURES

The telephone authorization procedure is designed to authenticate identity to allow you to vote your shares and confirm that your instructions have been properly recorded. Specific instructions to be followed are set forth on the enclosed proxy card. Telephone voting facilities for stockholders of record are available 24 hours a day and will close at 11:59 p.m. Eastern Time on May 11, 2015.

INTERNET VOTING PROCEDURES

The internet authorization procedure is designed to authenticate identity to allow you to vote your shares and confirm that your instructions have been properly recorded. Specific instructions to be followed are set forth on the enclosed proxy card. Internet voting facilities for stockholders of record are available 24 hours a day and will close at 11:59 p.m. Eastern Time on May 11, 2015.

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth information known to us with respect to beneficial ownership of our Common Stock as of February 28, 2015 for (i) each director, (ii) each holder of 5.0% or greater of our Common Stock, (iii) our named executive officers as determined under Item 402 of Regulation S-K, and (iv) all executive officers and directors as a group. Beneficial ownership is determined in accordance with the rules of the Securities and Exchange Commission (the "Commission"), and generally includes voting or investment power with respect to securities. Shares subject to options that are exercisable within 60 days following February 28, 2015 are deemed to be outstanding and beneficially owned by the optionee or group of optionees for the purpose of computing share and percentage ownership of that optionee or group of optionees, but are not deemed to be outstanding for the purpose of computing the percentage ownership of any other person. Except as indicated by footnote, the persons named in the table have sole voting and investment power with respect to all shares of Common Stock shown beneficially owned by them. The inclusion of any shares as beneficially owned does not constitute an admission of beneficial ownership of those shares. The percentage calculation of beneficial ownership is based on 39,689,209 shares of Common Stock outstanding as of February 28, 2015. Except as otherwise noted, the address of each person listed on the following table is 2188 West 2200 South, Salt Lake City, Utah 84119.

| Name of Beneficial Owner | Common Stock Beneficially Owned | |
|---|---------------------------------|---------|
| | Shares | Percent |
| 5% or Greater Stockholders | | |
| Dr. Gerhard W. Sennewald(1) | 6,483,226 | 16.3 % |
| Officers and Directors | | |
| Dr. Michael Nobel(2) | 469,545 | 1.2 % |
| Steven G. Stewart(3) | 246,368 | * |
| Timothy C. McQuay(4) | 180,836 | * |
| Damian E. Dupuy, MD | 69,330 | * |
| Harold R. Wolcott(5) | 898,260 | 2.2 % |
| William S. Barth(6) | 153,333 | * |
| Clinton E. Carnell Jr. (7) | - | - |
| All Executive Officers and Directors as a Group (10 persons)(8) | 2,244,089 | 5.4 % |

* Less than 1%

- (1) Includes 90,000 shares subject to stock options that are currently exercisable or exercisable within 60 days after March 6, 2015. Dr. Sennewald resigned as a director on February 4, 2015
- (2) Includes 115,000 shares subject to stock options that are currently exercisable or exercisable within 60 days after March 6, 2015.
- (3) Includes 106,368 shares subject to stock options that are currently exercisable or exercisable within 60 days after March 6, 2015.
- (4) Includes 47,457 shares subject to stock options that are currently exercisable or exercisable within 60 days after March 6, 2015.
- (5) Includes 885,760 shares subject to stock options that are currently exercisable or exercisable within 60 days after March 6, 2015. Mr. Wolcott resigned his positions as President and Chief Executive Officer effective November 10, 2014.

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- (6) Includes 133,333 shares subject to stock options that are currently exercisable or exercisable within 60 days after March 6, 2015.
 - (7) Mr. Carnell was appointed Chief Executive Officer and President, effective November 10, 2014.
 - (8) Includes 1,509,585 shares subject to stock options that are currently exercisable or exercisable within 60 days after March 6, 2015.
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REVERSE STOCK SPLIT PROPOSAL

General

Our Board has approved, and is hereby soliciting stockholder approval of, an amendment to our Amended and Restated Certificate of Incorporation in the form set forth in APPENDIX A to this Proxy Statement (the “Reverse Stock Split Amendment”) to effect a reverse split of our issued and outstanding shares of common stock at a ratio of between 1-for-6 and 1-for-12 (the “Reverse Stock Split”), inclusive, which ratio will be selected at the sole discretion of our Board at any whole number in the above range, with any fractional shares that would otherwise be issuable as a result of the Reverse Stock Split being rounded up to the nearest whole share. A vote “FOR” the Reverse Stock Split Proposal will constitute approval of the Reverse Stock Split Amendment providing for the combination of between six (6) and twelve (12) shares of common stock, inclusive, as determined in the sole discretion of our Board, into one (1) share of common stock. If our stockholders approve this proposal, our Board will have the authority, but not the obligation, in its sole discretion and without further action on the part of our stockholders, to select the Reverse Stock Split ratio in the above range and implement the Reverse Stock Split by filing the Reverse Stock Split Amendment with the Secretary of State of the State of Delaware at any time after the approval of the Reverse Stock Split Amendment but prior to June 30, 2015. The Board reserves the right to abandon the Reverse Stock Split at any time prior to filing the Reverse Stock Split Amendment if it determines, in its sole discretion, that this proposal is no longer in the best interests of the Company and its stockholders. Except for any changes as a result of the treatment of fractional shares, each stockholder will hold the same percentage of common stock outstanding immediately following the Reverse Stock Split as such stockholder held immediately prior to the Reverse Stock Split.

In determining which Reverse Stock Split ratio to implement, if any, following receipt of stockholder approval, our Board may consider, among other things, various factors such as:

- the historical trading price and trading volume of our common stock;
- the then prevailing trading price and trading volume of our common stock and the expected impact of the Reverse Stock Split on the trading market for our common stock;
- our ability to continue our listing on The NASDAQ Capital Market;
- which Reverse Stock Split ratio would result in the least administrative cost to us; and
- prevailing general market and economic conditions.

The Reverse Stock Split will not change the number of authorized shares of common stock or preferred stock as designated by our Amended and Restated Certificate of Incorporation. Therefore, because the number of issued and outstanding shares of common stock will decrease, the number of shares of common stock remaining available for future issuance will increase which will enable us to raise additional capital in the future through the issuance and sale of equity securities from time to time as our Board may deem advisable.

If our stockholders approve the Reverse Stock Split, it is expected that the Reverse Stock Split will be implemented promptly. However, the Board reserves the right to abandon the Reverse Stock Split at any time prior to filing the Reverse Stock Split Amendment if it determines, in its sole discretion, that this proposal is no longer in the best interests of the Company and its stockholders. The Board also reserves the right to delay the Reverse Stock Split until June 30, 2015.

Our Board believes that a Reverse Stock Split at a ratio of between 1-for-6 and 1-for-12, inclusive, as currently proposed, will be effective to increase the per share trading price of our common stock above NASDAQ's minimum bid price requirement of \$1.00 per share to be listed on The NASDAQ Capital Market, as further discussed below.

Purpose of the Reverse Stock Split Amendment

Our common stock currently trades on The NASDAQ Capital Market under the symbol "PRSN." The NASDAQ Marketplace Rules contain various continued listing criteria that companies must satisfy in order to remain listed on the exchange. One of these criteria is that a company's common stock has a bid price that is greater than or equal to \$1.00 per share.

On August 8, 2014, we received a letter from NASDAQ indicating that the bid price of our common stock for the last 30 consecutive trading days had closed below the minimum \$1.00 per share required for continued listing under NASDAQ Listing Rule 5550(a)(2). We were provided an initial period of 180 calendar days, or until February 4, 2015, during which to regain compliance. We did not regain compliance with NASDAQ Listing Rule 5550(a)(2) by February 4, 2015, and we requested, and were granted, an additional 180 days. We qualified for a timing extension by meeting NASDAQ's continued listing requirement for market value of publicly held shares and all other initial listing standards for The NASDAQ Capital Market, with the exception of the bid price requirement, and we provided NASDAQ with written notice of our intention to cure the deficiency. If we do not regain compliance during the additional period, NASDAQ will provide us with written notice that our securities are subject to delisting. At that time, we may appeal the determination to delist our securities to a Listing Qualifications Panel, which would require that we provide the Listing Qualifications Panel with a plan to regain compliance. We believe, however, that the only credible plan would be a reverse stock split to increase the per share trading price of our common stock above NASDAQ's minimum bid price requirement of \$1.00 per share.

Our Board has considered the potential harm to us and our stockholders should NASDAQ delist our common stock on The NASDAQ Capital Market. Delisting from NASDAQ would adversely affect our ability to raise additional financing through the public or private sale of equity securities and would significantly affect the ability of investors to trade our securities. Delisting would also negatively affect the value and liquidity of our common stock because alternatives, such as the OTC Bulletin Board and the pink sheets, are generally considered to be less efficient markets.

The purpose of the Reverse Stock Split is to increase the per share trading price of our common stock. We believe that stockholder approval of the proposed Reverse Stock Split would allow us to regain compliance with the minimum bid price requirement. If our stockholders approve the Reverse Stock Split, it is expected that the Reverse Stock Split will be promptly implemented. However, the Board reserves the right to abandon the Reverse Stock Split if it determines, in its sole discretion, that this proposal is no longer in the best interests of the Company and its stockholders.

IF OUR STOCKHOLDERS DO NOT APPROVE THIS PROPOSAL, WE WOULD LIKELY BE DELISTED FROM THE NASDAQ CAPITAL MARKET DUE TO OUR FAILURE TO MAINTAIN A MINIMUM BID PRICE FOR OUR COMMON STOCK OF \$1.00 PER SHARE AS REQUIRED BY THE NASDAQ MARKETPLACE RULES.

Impact of the Reverse Stock Split Amendment if Implemented

If approved and implemented, the Reverse Stock Split will be realized simultaneously and in the same ratio for all of our issued and outstanding shares of common stock. Any fractional shares that would otherwise be issuable as a result of the Reverse Stock Split will be rounded up to the nearest whole share. The Reverse Stock Split will affect all holders of our common stock uniformly and will not affect any stockholder's percentage ownership interest in the Company (subject to the treatment of fractional shares). In addition, the Reverse Stock Split will not affect any stockholder's proportionate voting power (subject to the treatment of fractional shares).

Our authorized capital stock currently consists of 80,000,000 shares of common stock, par value \$0.001, and 10,000,000 shares of preferred stock, par value \$0.001. Although the Reverse Stock Split will not affect the rights of stockholders or any stockholder's proportionate ownership interest in the Company (except as a result of rounding in lieu of fractional shares), the number of authorized shares of our common stock and preferred stock will not be reduced. If the Reverse Stock Split is implemented, the number of authorized shares of common stock would remain at 80,000,000 shares, thereby effectively increasing the number of shares of common stock available for future issuance which will enable us to raise additional capital in the future through the issuance and sale of equity securities from time to time as our Board may deem advisable. In addition, the total number of authorized shares of preferred stock would remain at 10,000,000 shares. The conversion ratio of our issued outstanding shares of preferred stock will

adjust proportionately with the ratio of the Reverse Stock Split.

The table below sets forth, as of December 31, 2014 and for illustrative purposes only, certain effects of potential Reverse Stock Split ratios of between 1-for-6 and 1-for-12, inclusive, including on our total outstanding common stock equivalents (without giving effect to the treatment of fractional shares).

| | Common Stock and Equivalents Outstanding Prior to Reverse Stock Split | | Common Stock and Equivalents Outstanding Assuming Certain Reverse Stock Split Ratios | | |
|--|--|---------------------|--|------------|------------|
| | Shares | Percent of Total | 1-for-6 | 1-for-9 | 1-for-12 |
| Common stock outstanding | 39,689,209 | 72.4 % | 6,614,868 | 4,409,912 | 3,307,434 |
| Common stock underlying warrants | 9,857,305 | 18.0 | 1,642,884 | 1,095,256 | 821,442 |
| Common stock underlying options | 5,273,586 | 9.6 | 878,931 | 585,954 | 439,466 |
| Total common stock and equivalents | 54,820,100 | 100.0 % | 9,136,683 | 6,091,122 | 4,568,342 |
| Common stock available for future issuance | 25,179,900 | | 70,863,317 | 73,908,878 | 75,431,658 |

As illustrated by the table above, the Reverse Stock Split would significantly increase the ability of our Board to issue authorized and unissued shares in the future without further stockholder action. As of December 31, 2014, we had cash and cash equivalents of \$5,594,578, and total current assets of \$7,745,352. We do not believe these resources will be sufficient to fully execute our current strategy through at least December 31, 2015. Our current strategy involves significant efforts to expand sales. To become profitable we will need to significantly increase our revenues. We do not expect that sales will increase sufficiently to cover our total costs of operations in 2015. We believe additional funding will be required during 2015. We are not sure if such funding would require authorized shares beyond what is currently authorized without effecting this reverse stock split. This Proxy Statement does not constitute an offer of any securities for sale or a solicitation of an offer to buy any securities.

The issuance in the future of such additional authorized shares may have the effect of diluting the earnings or loss per share and book value per share, as well as the ownership and voting rights of the holders of our then-outstanding shares of common stock. In addition, an increase in the number of authorized but unissued shares of our common stock may have a potential anti-takeover effect, as our ability to issue additional shares could be used to thwart persons, or otherwise dilute the stock ownership of stockholders, seeking to control us. The Reverse Stock Split is not being recommended by our Board as part of an anti-takeover strategy.

The principal effects of the Reverse Stock Split Amendment will be as follows:

- each six (6) to twelve (12) shares of common stock, inclusive, as determined in the sole discretion of our Board, owned by a stockholder, will be combined into one new share of common stock, with any fractional shares that would otherwise be issuable as a result of the split being rounded up to the nearest whole share;

the number of shares of common stock issued and outstanding will be reduced accordingly, as illustrated in the table above;