

UNITED STATES
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): June 3, 2026 (June 2, 2026)

Empery Digital Inc.

(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

001-40867
(Commission
File Number)

84-4882689
(I.R.S. Employer
Identification Number)

3121 Eagles Nest Street, Suite 120
Round Rock, TX 78665
(Address of principal executive offices and zip code)

(512) 400-4271
(Registrant's 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)).

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, par value \$0.00001 per share	EMPD	NASDAQ

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 1.01 Entry Into a Material Definitive Agreement.

Amendment of At-The-Market Issuance Sales Agreement

On June 2, 2026, Empery Digital Inc. (the "Company") entered into Amendment No. 2 and Waiver to the At-The-Market Issuance Sales Agreement (the "ATM Amendment") with Aegis Capital Corp. ("Aegis") which, among other matters, extends the term of the At-The-Market Issuance Sales Agreement dated October 18, 2024, between the Company and Aegis, as amended, such that, unless earlier terminated by one of the parties thereto, it will automatically terminate upon the issuance and sale of all of the shares authorized thereunder.

The foregoing description of terms and conditions of the ATM Amendment does not purport to be complete and is qualified in its entirety by the full text of such document, which is attached hereto as Exhibit 10.1.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
10.1	Amendment No. 2 and Waiver to the At-The-Market Issuance Sales Agreement, dated June 2, 2026, by and between Aegis Capital Corp. and Empery Digital Inc.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

SIGNATURES

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

Date: June 3, 2026

EMPERY DIGITAL INC.

/s/ Greg Endo
Greg Endo
Chief Financial Officer

EMPERY DIGITAL INC.

Amendment No. 2 and Waiver to the At-The-Market Issuance Sales Agreement

June 2, 2026

Aegis Capital Corp.
1345 Avenue of the Americas, 27th Floor
New York, NY 10015

Ladies and Gentlemen:

Reference is made to the At-The-Market Issuance Sales Agreement, dated October 18, 2024, between Empery Digital Inc. (f/k/a Volcon, Inc.), a Delaware corporation (the "Company"), and Aegis Capital Corp. ("Aegis" or the "Sales Agent"), as amended by Amendment No.1 to the At-The-Market Issuance Sales Agreement dated July 17, 2025 (as amended, the "Agreement"), with respect to the issuance and sale from time to time through the Sales Agent of the Company's common stock, par value \$0.00001 per share ("Common Stock"), on the terms set forth in the Agreement.

WHEREAS, notwithstanding Section 13(d) of the Agreement, the parties hereto have at all times continued to operate under the Agreement and have treated the Agreement to be in full force and effect in accordance with its terms other than clause (i) of Section 13(d).

WHEREAS, the parties hereto wish to (A) waive clause (i) of Section 13(d) of the Agreement, including any and all rights arising under and in connection therewith, (B) confirm their agreement and acknowledgement that the Agreement has remained, and shall continue to remain, in full force and effect in accordance with its terms, other than as provided herein, and (C) amend the Agreement through this Amendment No. 2 and Waiver to the At-The-Market Issuance Sales Agreement (this "Amendment and Waiver") to delete clause (i) of Section 13(d) of the Agreement.

SECTION 1. Waiver. Each of the parties hereto unconditionally waives clause (i) of Section 13(d) of the Agreement and any and all rights that it may have under or in connection therewith.

SECTION 2. Amendment. The parties hereto agree that Section 13(d) of the Agreement is amended and restated as follows:

Unless earlier terminated pursuant to this Section 13, this Agreement will automatically terminate upon the issuance and sale of all of the Placement Shares through Aegis on the terms and subject to the conditions set forth herein, except that, in such case, the provisions of Section 9, Section 11, Section 12, Section 18 and Section 19 hereof will remain in full force and effect notwithstanding such termination.

SECTION 3. Amendment. The Agreement, as amended by this Amendment and Waiver, is in all respects ratified and confirmed and all the terms, conditions, and provisions thereof shall remain in full force and effect. This Amendment and Waiver is limited precisely as written and shall not be deemed to be an amendment to any other term or condition of the Agreement or any of the documents referred to therein.

SECTION 4. Agreement in Full Force and Effect. For the avoidance of doubt, and without limiting any other provision of this Amendment and Waiver, the parties hereby confirm and agree that the Agreement, as amended by this Amendment and Waiver, is and at all times has been in full force and effect, the Agreement has not terminated, expired or otherwise ceased to be effective at any time and all terms, conditions, representations, warranties, covenants, agreements, indemnities, and other provisions of the Agreement (other than clause (i) of Section 13(d) which is hereby waived and deleted) are and at all times have been operative and enforceable in accordance with their respective terms.

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SECTION 5. Governing Law. This Amendment and Waiver and any claim, counterclaim, controversy or dispute of any kind or nature whatsoever arising out of or in any way relating to this Amendment and Waiver, directly or indirectly, shall be governed by and construed in accordance with the laws of the State of New York.

SECTION 6. Counterparts. This Amendment and Waiver may be signed in counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including any electronic signature covered by the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act or other applicable law, e.g., www.docuSign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

SECTION 7. Headings. The headings herein are included for convenience of reference only and are not intended to be part of, or to affect the meaning or interpretation of, this Amendment and Waiver.

[Signature Page Follows]

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If the foregoing correctly sets forth the understanding between the Company and the Sales Agent, please so indicate in the space provided below for that purpose, whereupon this Amendment and Waiver and your acceptance shall constitute a binding agreement among the Company and the Sales Agent.

Very truly yours,

EMPERY DIGITAL INC.

By: /s/ Greg Endo
Name: Greg Endo
Title: Chief Financial Officer

[Signature Page to Amendment No.2 and Waiver to the At-The-Market Issuance Sales Agreement]

CONFIRMED AND ACCEPTED, as of the date first above written:

AEGIS CAPITAL CORP.

By: /s/ Robert J. Eide
Name: Robert J. Eide
Title: Chief Executive Officer

[Signature Page to Amendment No.2 and Waiver to the At-The-Market Issuance Sales Agreement]
