

INTELLI CHECK INC
Form PRER14A
February 05, 2008

**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 x

Filed by a Party other than the Registrant o

Check the appropriate box:

x Preliminary Proxy Statement

o Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))

o Definitive Proxy Statement

o Definitive Additional Materials

o Soliciting Material Pursuant to Section 240.14a-12.

INTELLI-CHECK, INC.

(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):

o No fee required.

o Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies: none

(2) Aggregate number of securities to which transaction applies: none

(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): Calculated based upon the purchase price of \$50,722,000, consisting of \$43,477,000 of Common Stock, \$7,045,000 of options to purchase Common Stock and \$200,000 of expenses.

(4) Proposed maximum aggregate value of transaction: \$50,722,000

(5)

Total fee paid: \$1993.38

Fee paid previously with preliminary materials:

Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

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

(3) Filing Party:

(4) Date Filed:

**INTELLI-CHECK, INC.
246 CROSSWAYS PARK WEST
WOODBURY, NY 11797**

TO THE STOCKHOLDERS OF
INTELLI-CHECK, INC.:

You are cordially invited to attend a special meeting of stockholders of Intelli-Check, Inc. (referred to in this proxy statement as Intelli-Check) to be held on March 14, 2008. At the meeting, you will be asked to consider proposals to approve the merger of a wholly-owned subsidiary of Intelli-Check into Mobilisa, Inc., referred to in this proxy statement as Mobilisa, resulting in Mobilisa becoming a wholly-owned subsidiary of Intelli-Check. Mobilisa is in the business of providing mobile and wireless technology solutions for document authentication and over-water communications.

The special meeting will be held at 10:00 a.m., Eastern Standard Time, on March 14, 2008, at 246 Crossways Park West, Woodbury, NY 11797. At this important meeting, you will be asked to consider and vote upon the following:

- The proposed merger of a wholly-owned subsidiary of Intelli-Check into Mobilisa, resulting in Mobilisa becoming a wholly-owned subsidiary of Intelli-Check, and the transactions contemplated by the merger agreement dated November 20, 2007 among Intelli-Check, the wholly-owned subsidiary of Intelli-Check, Mobilisa and certain common shareholders of Mobilisa;
 - Amending Intelli-Check's Certificate of Incorporation to increase the number of Intelli-Check's authorized shares of Common Stock (the "Common Stock") to 40,000,000;
- Amending Intelli-Check's 2006 Stock Option and Equity Incentive Plan (the "Plan") to increase the number of shares of Common Stock authorized to be issued under the plan by 3,000,000;
- Amending Intelli-Check's Certificate of Incorporation to change the name of the corporation to Intelli-Check - Mobilisa, Inc.; and
- The approval of any adjournment or postponement of the special meeting for the purpose of soliciting additional proxies.

As of November 21, 2007, the date the definitive agreement was announced, the aggregate value of the consideration to be paid was \$50,722,000. If the any of the first three proposals are not approved, Intelli-Check will not be able to consummate the merger with Mobilisa.

The Proxy Statement following this letter is dated February 6, 2008 and is first being mailed to Intelli-Check stockholders on or about, February 11, 2008. The holders of record on January 31, 2008 will be entitled to vote at the meeting.

Under the merger agreement, Intelli-Check Merger Sub, Inc. (referred to in this proxy statement as Merger Sub), a wholly-owned subsidiary of Intelli-Check, will merge into Mobilisa, resulting in Mobilisa becoming a wholly-owned subsidiary of Intelli-Check. The current shareholders of Mobilisa will receive an aggregate of 12,281,728 shares of Intelli-Check's Common Stock, or exactly half of the post-transaction company. Mobilisa's current option and warrant holders will receive an aggregate of 2,469,494 options and warrants to purchase shares of Intelli-Check's Common Stock, which will be approximately 50% of the outstanding derivative securities of the post-transaction company.

Intelli-Check's Common Stock is traded on AMEX under the symbol "IDN." Mobilisa is a private company incorporated in the state of Washington. Intelli-Check expects its securities to continue to be traded on AMEX.

After careful consideration of all relevant factors, Intelli-Check's Board of Directors has determined that these proposals are fair to and in the best interests of Intelli-Check and its stockholders and has recommended that you vote or give instruction to vote **"FOR"** adoption of each of them.

Enclosed is a notice of special meeting and proxy statement containing detailed information concerning the acquisition, the other proposals and the meeting.

Your vote is important. Whether or not you plan to attend the special meeting, please authorize the individuals named on your proxy card to vote your shares, by completing and promptly mailing your proxy card in the return envelope enclosed, or if available, by toll-free telephone number or Internet, as described in the instructions included with your proxy card. This will not prevent you from voting in person at the special meeting, if you so desire.

I look forward to seeing you at the meeting.

Sincerely,

Jeffrey Levy
Interim Chairman and CEO

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

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SUMMARY OF THE MATERIAL TERMS OF THE MERGER

This Proxy relates to the terms of a merger of a wholly-owned subsidiary of Intelli-Check into Mobilisa resulting in Mobilisa becoming a wholly-owned subsidiary of Intelli-Check. The most material terms of the acquisition are as follows:

- Mobilisa is in the business of identity management and providing mobile and wireless technology solutions. Intelli-Check is in the business of developing and marketing an advanced identity document verification system as part of its identity management and productivity enhancement solutions. See the sections entitled “Information about Mobilisa” and “Information about Intelli-Check.”
- Intelli-Check, through the merger of its wholly-owned subsidiary into Mobilisa, will acquire Mobilisa and all its assets and liabilities. See the section entitled “Proposal to Acquire Mobilisa.”
- The former shareholders of Mobilisa will receive a number of shares of Intelli-Check Common Stock such that they will own 50% of Intelli-Check’s Common Stock post-merger. The former Mobilisa optionholders and warrant holders will also receive replacement options to purchase shares of Intelli-Check’s Common Stock with substantially equivalent value to Mobilisa’s outstanding options and warrants. See the section entitled “Proposal to Acquire Mobilisa.”
- The consummation of the transaction is subject to: (i) Intelli-Check stockholder approval of the transactions contemplated by the Merger Agreement; (ii) Intelli-Check stockholder approval of an amendment to Intelli-Check’s certificate of incorporation increasing the number of authorized shares of Intelli-Check’s Common Stock; (iii) Intelli-Check stockholder approval of an increase in the number of shares of Intelli-Check Common Stock authorized to be issued pursuant to the Plan; and (iv) Mobilisa shareholder approval of the transactions contemplated by the Merger Agreement. See the sections entitled “The Intelli-Check Special Meeting” and “Proposal to Acquire Mobilisa.”
- The merger agreement contains representations by Intelli-Check, Mobilisa, and Nelson Ludlow and Bonnie Ludlow, Mobilisa’s principal shareholders, and representations to be made by Mobilisa’s other shareholders upon closing. Mobilisa also makes certain covenants relating to the conduct of its business between the time the merger agreement was signed and the consummation of the merger, including that it will not take certain actions without the permission of Intelli-Check and that Intelli-Check will have access to Mobilisa’s records. The parties to the merger agreement also make covenants relating to confidentiality, non-solicitation and non-competition. See the section entitled “Proposal to Acquire Mobilisa.”
- The Board of Directors of the combined corporation will be composed of eight (8) members, four (4) selected by Intelli-Check’s Board of Directors and four (4) selected by Mobilisa’s Board of Directors. The Chief Financial Officer, Chief Technology Officer and the Chairman of the Board of Directors of the combined corporation will be selected by Intelli-Check’s Board of Directors and the Chief Executive Officer and the Vice Chairman of the Board of Directors of the combined corporation will be selected by Mobilisa’s Board of Directors. See the section entitled “Proposal to Acquire Mobilisa.”

**QUESTIONS AND ANSWERS ABOUT THE ACQUISITION
AND THE INTELLI-CHECK SPECIAL MEETING**

These Questions and Answers are only summaries of the matters they discuss. Please read this entire proxy statement.

**Q. Why is
Intelli-Check
proposing the
acquisition?**

A. Intelli-Check is in the business of developing and marketing an advanced identity document verification system as part of its identity management and productivity enhancement solutions. Mobilisa is in the business of identity management and providing mobile and wireless technology solutions. Intelli-Check believes that the combination with Mobilisa will create an organization with greater overall strength in identity verification and authentication and productivity enhancement as well as the emerging market of high-speed wireless communications.

**Q. What is being
voted on?**

A. You are being asked to vote on four proposals:

- The proposed merger of a wholly-owned subsidiary of Intelli-Check into Mobilisa, resulting in Mobilisa becoming a wholly-owned subsidiary of Intelli-Check and the transactions contemplated by the merger agreement dated November 20, 2007 among Intelli-Check, the wholly-owned subsidiary of Intelli-Check, Mobilisa and certain common shareholders of Mobilisa;
- Amending Intelli-Check's Certificate of Incorporation to increase the number of Intelli-Check's authorized shares of Common Stock to 40,000,000;
- Amending Intelli-Check's 2006 Stock Option and Equity Incentive Plan (the "Plan") to increase the number of shares of Common Stock authorized to be issued by 3,000,000;
- Amending Intelli-Check's Certificate of Incorporation to change the name of the corporation to Intelli-Check - Mobilisa, Inc.; and

1 The approval of any adjournment or postponement of the special meeting for the purpose of soliciting additional proxies.

Pursuant to the American Stock Exchange Rules, on which Intelli-Check's shares are listed, Intelli-Check is required to obtain stockholder approval of the acquisition of Mobilisa. If the proposal relating to the merger is not approved, Intelli-Check will not be able to go forward with the acquisition of Mobilisa. In addition, the approval of this proposal is contingent upon stockholder approval of the proposal relating to the amendment to Intelli-Check's certificate of incorporation to increase Intelli-Check's authorized shares of Common Stock and the proposal relating to increasing the number of shares issuable under Intelli-Check's Plan. The proposal approving the merger is contingent on these other proposals being approved since, if these

other proposals are not approved, Intelli-Check will not be able to pay Mobilisa's stockholders, option holders and warrant holders the consideration required by the merger agreement.

Q. Why is Intelli-Check proposing to increase its authorized shares of Common Stock?

A. Currently, Intelli-Check's certificate of incorporation allows it to issue up to 20,000,000 shares of Common Stock. Intelli-Check currently has 12,281,728 shares of Common Stock issued and outstanding and 2,382,853 shares of Common Stock issuable upon exercise of convertible securities. If the merger were completed, Mobilisa's stockholders would be entitled to receive 12,281,728 shares of Intelli-Check Common Stock, and its holders of derivative securities would be entitled to receive derivative securities exercisable for 2,469,494 shares of Intelli-Check's Common Stock. Therefore, Intelli-Check will need to amend its certificate of incorporation to authorize the issuance of up to an additional 9,415,803 shares of Common Stock to be able to pay the merger consideration. Intelli-Check is requesting that 20,000,000 additional shares of Common Stock be authorized so that Intelli-Check would be able to use such additional authorized shares in the future for general corporate purposes, including financing transactions.

Q. Why is Intelli-Check proposing to increase the number of shares of Common Stock issuable under its Plan?

A. Currently, the Plan permits the issuance of up to 2,470,491 shares of Common Stock. Intelli-Check has already issued options exercisable for 1,460,509 shares of its Common Stock and 22,884 shares of restricted stock under the plan. If the merger were completed, Mobilisa's stockholders would be entitled to receive options to purchase 2,408,398 shares of Intelli-Check's Common Stock. Therefore, Intelli-Check would need to amend the Plan to increase the number of shares of Common Stock issuable under the Plan by 951,583. Intelli-Check is requesting that the number of shares of Common Stock issuable under the Plan be increased by 3,000,000 so that Intelli-Check would be able to use such additional shares as incentives to its employees, directors and independent contractors in future option grants.

Q. Why is Intelli-Check proposing to amend its certificate of incorporation to change its name to Intelli-Check - Mobilisa, Inc.?

A. Intelli-Check is proposing to change its name to Intelli-Check - Mobilisa, Inc. so that its name reflects the combination of the two companies.

Q. What vote is required to approve the proposals?

A. Approval of the acquisition requires the affirmative vote of holders of a majority of the shares of Intelli-Check Common Stock present in person or by proxy at the special meeting. Approval of the amendments to Intelli-Check's Second Amended and Restated Certificate of Incorporation will require the affirmative vote of holders of a majority of the shares of Intelli-Check Common Stock outstanding on the record date. Approval of the amendment to the Plan will require the affirmative vote of holders of a majority of the shares of Intelli-Check's Common Stock represented in person or by proxy and entitled to vote at the special meeting, provided that there is a quorum. However, if the proposal relating to the merger is approved and either of the two other proposals are not approved, the merger will not be consummated since the other proposals must be approved in order for Intelli-Check to pay the merger consideration to Mobilisa's security holders.

Q Who will manage Intelli-Check, Inc. after the merger?

A. Post merger, Nelson Ludlow will become Intelli-Check's Chief Executive Officer, Peter Mundy will remain Intelli-Check's Chief Financial Officer, and Russell Embry will remain Intelli-Check's Chief Technology Officer. In addition, Intelli-Check's Board of Directors will consist of four persons nominated by Intelli-Check's pre-transaction Board of Directors and four persons nominated by Mobilisa's pre-transaction Board of Directors. Jeffrey Levy will become Chairman of Intelli-Check's Board of Directors.

Q. How much of Intelli-Check will its current stockholders own post-acquisition?

A. Based on the consideration to be paid to the shareholders of Mobilisa, Intelli-Check's pre-acquisition holders of Common Stock will own in the aggregate 50% of Intelli-Check's post-acquisition Common Stock. On a fully diluted basis (assuming all the options and warrants owned by all of Intelli-Check's securities holders post-transaction exercise such securities), Intelli-Check's pre-transaction security holders would own in the aggregate approximately 50% of Intelli-Check's post-acquisition Common Stock.

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- Q. Do Intelli-Check stockholders have dissenter or appraisal rights under Delaware law?**
- A. No.
- Q. When do you expect the acquisition to be completed?**
- A. If the acquisition is approved at the special meeting, Intelli-Check expects to consummate the acquisition promptly thereafter.
- Q. If I am not going to attend the special meeting in person, should I return my proxy card instead?**
- A. Yes. After carefully reading and considering the information in this document, please fill out and sign your proxy card. Then return it in the return envelope as soon as possible, so that your shares may be represented at the special meeting. If you are a street name holder of our securities, you may also vote by telephone or internet, as explained on the proxy card. A properly executed proxy will be counted for the purpose of determining the existence of a quorum.
- Q. How do I change my vote?**
- A. Send a later-dated, signed proxy card to Intelli-Check’s secretary prior to the date of the special meeting or attend the special meeting in person and vote. You also may revoke your proxy by sending a notice of revocation to Jeffrey Levy, Intelli-Check, Inc., 246 Crossways Park West, Woodbury NY, 11797.
- Q. If my shares are held in “street name,” will my broker automatically vote them for me?**
- A. No. Your broker can vote your shares only if you provide instructions on how to vote. You should instruct your broker to vote your shares. Your broker can tell you how to provide these instructions.
- Q. Who can help answer my questions?**
- A. If you have questions, you may write or call Intelli-Check, Inc., 246 Crossways Park West, Woodbury NY, 11797, Attention: Peter J. Mundy or Jeffrey Levy.
- Q. Where will the special meeting be held?**
- A. The meeting will be held at 246 Crossways Park West, Woodbury NY, 11797.

SUMMARY

This section summarizes information related to the proposals to be voted on at the special meeting and to the consideration to be offered to the Intelli-Check stockholders. These items are described in greater detail elsewhere in this proxy statement. **This entire proxy statement and the other documents to which it refers should be carefully read.**

The Companies

Mobilisa, Inc. was incorporated in the state of Washington in March 2001. Mobilisa is currently designated as a woman- and veteran-owned, small business. Mobilisa's headquarters in Port Townsend, Washington are located in a Historically Underutilized Business Zone ("HUBZone"). Mobilisa specializes in custom software development for mobile and wireless devices and Wireless Over Water ("WOW") technology implementation and is comprised of two business units—ID systems and wireless technologies—designed to address the following issues:

- Access Control: Mobilisa's Defense ID[®] system is designed to increase security at access points manned by law enforcement and military personnel.