

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 21, 2023**

Charles & Colvard, Ltd.

(Exact name of registrant as specified in its charter)

North Carolina
(State or other jurisdiction of
incorporation)

000-23329
(Commission File
Number)

56-1928817
(I.R.S. Employer
Identification No.)

170 Southport Drive
Morrisville, North Carolina
(Address of principal executive offices)

27560
(Zip Code)

(919) 468-0399
(Registrant's telephone number, including area code)

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 per share	CTHR	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 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

On June 21, 2023, Charles & Colvard, Ltd. (the “Company”), renewed a \$5,000,000 cash secured credit facility (as renewed, the “Credit Facility”) from JPMorgan Chase Bank, N.A. (“JPMC”), with an effective date of June 21, 2023. If not renewed, the Credit Facility would have expired by its terms on July 31, 2023. The Credit Facility may be used for general corporate and working capital purposes, including, subject to certain limitations set forth under the Credit Facility, for permitted acquisitions, additional indebtedness for borrowed money, installment obligations, and obligations under capital and operating leases. The Credit Facility will mature on July 31, 2024, and is secured by a deposit account held by JPMC in the amount of \$5,050,000.

The Credit Facility is evidenced by a credit agreement, (the “Credit Agreement”) executed on July 12, 2021, a First Amendment to Credit Agreement executed on June 21, 2023, a Line of Credit Note (the “Note”) executed on July 29, 2022 (effective July 28, 2022), a Note Modification Agreement executed on June 21, 2023, and other customary ancillary documents related thereto, executed on July 12, 2021 and July 29, 2022 (such documents executed on July 29, 2022 effective July 28, 2022). The Credit Agreement, Note, and ancillary documents contain customary covenants, representations, fees, as well as indemnity, expense reimbursement, and confidentiality provisions. The Credit Facility contains no financial covenants. JPMC is permitted to assign the Credit Facility. The Company’s obligations under the Credit Facility are guaranteed by the Company’s wholly-owned subsidiaries, Charles & Colvard Direct, LLC, charlesandcolvard.com, LLC, and moissaniteoutlet.com, LLC.

The Company has not requested any advances under the Credit Facility and there is currently no outstanding balance.

There are no mandatory prepayments or line reductions. The Company may elect to prepay advances in whole or in part at any time without penalty.

Amounts advanced under the Credit Facility will accrue interest at a variable rate equal to the sum of the monthly secured overnight financing rate plus a margin of 1.25% per annum and an unsecured to secured interest rate adjustment of 0.10% per annum. Interest is calculated monthly based on the actual days elapsed in a year of 360 days and payable monthly in arrears. Upon and during the continuance of a default under the Credit Facility, JPMC may increase the interest to an amount which is 3% in excess of the interest rate otherwise applicable.

Events of default under the Credit Facility include, without limitation, a change in control, a material adverse change in the business of the Company or in its ability to perform its obligations under the Credit Facility, and other circumstances that JPMC believes may impair the prospect of repayment. If an event of default occurs, JPMC is entitled to take enforcement actions, including accelerating amounts due under the Credit Facility and exercising setoff rights.

The foregoing description of the Credit Facility does not purport to be complete and is qualified in its entirety by reference to the Credit Agreement, First Amendment to Credit Agreement, Note, and Note Modification Agreement, a copy of each of which is filed as Exhibits 10.1, 10.2, 10.3 and 10.4, respectively, to this Form 8-K and are incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description of Document
10.1	Credit Agreement, dated as of July 12, 2021, by and among Charles & Colvard, Ltd., and JPMorgan Chase Bank, N.A. (incorporated herein by reference to Exhibit 10.1 to our Current Report on Form 8-K, as filed with the SEC on July 13, 2021)
10.2	First Amendment to Credit Agreement, dated as of June 16, 2023 (effective June 21, 2023), by and among Charles & Colvard, Ltd. and JPMorgan Chase Bank, N.A.
10.3	Line of Credit Note, dated as of July 28, 2022, by Charles & Colvard, Ltd. to JPMorgan Chase Bank, N.A. (incorporated herein by reference to Exhibit 10.2 to our Current Report on Form 8-K, as filed with the SEC on August 2, 2022)
10.4	Note Modification Agreement, dated as of June 16, 2023 (effective June 21, 2023), by and among Charles & Colvard, Ltd. and JPMorgan Chase Bank, N.A.
104	Cover Page Interactive Data File – the cover page XBRL tags are embedded within the Inline XBRL document

SIGNATURE

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.

Charles & Colvard, Ltd.

June 27, 2023

By: /s/ Clint J. Pete
Clint J. Pete
Chief Financial Officer



This First Amendment to Credit Agreement (this "Amendment") is dated as of June 16, 2023, by and between Charles & Colvard, Ltd. (the "**Borrower**") and JPMorgan Chase Bank, N.A. (together with its successors and assigns the "**Bank**"). The provisions of this Amendment are effective on the date that this Amendment has been executed by all of the signers and delivered to the Bank (the "**Effective Date**").

WHEREAS, the Borrower and the Bank entered into a Credit Agreement dated July 7, 2021, (the "**Credit Agreement**"); and

WHEREAS, the Borrower has requested and the Bank has agreed to amend the Credit Agreement as set forth in this Amendment;

NOW, THEREFORE, in mutual consideration of the agreements contained herein and for other good and valuable consideration, the parties agree as follows:

1. **DEFINED TERMS.** Capitalized terms used in this Amendment shall have the same meanings as in the Credit Agreement, unless otherwise defined in this Amendment.
2. **MODIFICATION OF CREDIT AGREEMENT.** The Credit Agreement is hereby amended as follows:
 - 2.1 Section 1 of the Credit Agreement captioned "**Credit Facilities**" is hereby amended and restated to read as follows:
 1. **Credit Facilities.**
 - 1.1 **Scope.** This agreement, unless otherwise agreed to in writing by the Bank and the Borrower or prohibited by any Legal Requirement, governs the Credit Facilities as defined below. The Bank has established procedures for the Borrower to obtain advances under any Credit Facilities. Any other procedures that the Bank agrees to regarding obtaining advances, including automatic loan sweeps, shall not change the terms or conditions of this agreement or the other Related Documents regarding the Credit Facilities.
3. **RATIFICATION.** The Borrower ratifies and reaffirms the Credit Agreement and the Credit Agreement shall remain in full force and effect as modified by this Amendment.
4. **BORROWER REPRESENTATIONS AND WARRANTIES.** The Borrower represents and warrants that (a) the representations and warranties contained in the Credit Agreement are true and correct in all material respects as of the date of this Amendment, (b) no condition, event, act or omission which could constitute a default or an event of default under the Credit Agreement, as modified by this Amendment, or any other Related Document exists, and (c) no condition, event, act or omission has occurred and is continuing that with the giving of notice, or the passage of time or both, would constitute a default or an event of default under the Credit Agreement, as modified by this Amendment, or any other Related Document.
5. **FEES AND EXPENSES.** The Borrower agrees to pay all fees and out-of-pocket disbursements incurred by the Bank in connection with this Amendment, including legal fees incurred by the Bank in the preparation, consummation, administration and enforcement of this Amendment.
6. **EXECUTION AND DELIVERY BY THE BANK.** The Bank shall not be bound by this Amendment until (i) the Bank has executed this Amendment and (ii) the Borrower has executed and delivered this Amendment together with all other related documents requested by the Bank, and the Borrower has fully satisfied all other conditions precedent, as determined by the Bank in its sole discretion.
7. **ACKNOWLEDGEMENTS OF BORROWER / RELEASE.** The Borrower acknowledges that as of the date of this Amendment it has no offsets with respect to all amounts owed by the Borrower to the Bank arising under or related to the Credit Agreement, as modified by this Amendment, or any other Related Document on or prior to the date of this Amendment. The Borrower fully, finally and forever releases and discharges the Bank, its successors and assigns and their respective directors, officers, employees, agents and representatives (each a "**Bank Party**") from any and all claims, causes of action, debts, demands and liabilities, of whatever kind or nature, in law or in equity, of the Borrower, whether now known or unknown to the Borrower, which may have arisen in connection with the Credit Agreement or the actions or omissions of any Bank Party related to the Credit Agreement on or prior to the date hereof. The Borrower acknowledges and agrees that this Amendment is limited to the terms outlined above, and shall not be construed as an agreement to change any other terms or provisions of the Credit Agreement. This Amendment shall not establish a course of dealing or be construed as evidence of any willingness on the Bank's part to grant other or future agreements, should any be requested.

8. **STATEMENTS.** The Bank may from time to time provide the Borrower with account statements or invoices with respect to any of the Liabilities ("Statements"). The Bank is under no duty or obligation to provide Statements, which, if provided, will be solely for the Borrower's convenience. Statements may contain estimates of the amounts owed during the relevant billing period, whether of principal, interest, fees or other Liabilities. If the Borrower pays the full amount indicated on a Statement on or before the due date indicated on such Statement, the Borrower shall not be in default of payment with respect to the billing period indicated on such Statement; provided, that acceptance by the Bank of any payment that is less than the total amount actually due at that time (including but not limited to any past due amounts) shall not constitute a waiver of the Bank's right to receive payment in full at another time.
9. **INTEGRATION, ENTIRE AGREEMENT, CHANGE, DISCHARGE, TERMINATION, OR WAIVER.** The Credit Agreement, as modified by this Amendment, and the other Related Documents contain the complete understanding and agreement of the Borrower and the Bank in respect of the Credit Facilities and supersede all prior understandings and negotiations. If any one or more of the obligations of the Borrower under this Amendment or the Credit Agreement, as amended by this Amendment, is invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining obligations of the Borrower shall not in any way be affected or impaired, and the invalidity, illegality or unenforceability in one jurisdiction shall not affect the validity, legality or enforceability of the obligations of the Borrower under this Amendment, the Credit Agreement, as modified by this Amendment, or any other Related Document in any other jurisdiction. No provision of the Credit Agreement, as modified by this Amendment, or the other Related Documents, may be changed, discharged, supplemented, terminated, or waived except in a writing signed by the party against whom it is being enforced.
10. **Governing Law and Venue.** This Amendment and (unless stated otherwise therein) all Related Documents shall be governed by and construed in accordance with the laws of the State of New York (without giving effect to its laws of conflicts). The Borrower agrees that any legal action or proceeding with respect to any of its obligations under this Amendment may be brought by the Bank in any state or federal court located in the State of New York, as the Bank in its sole discretion may elect. By the execution and delivery of this Amendment, the Borrower submits to and accepts, for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of those courts. The Borrower waives any claim that the State of New York is not a convenient forum or the proper venue for any such suit, action or proceeding.
11. **NOT A NOVATION.** This Amendment is a modification only and not a novation. Except as expressly modified by this Amendment, the Credit Agreement, any other Related Documents, and all the terms and conditions thereof, shall be and remain in full force and effect with the changes herein deemed to be incorporated therein. This Amendment is to be considered attached to the Credit Agreement and made a part thereof. This Amendment shall not release or affect the liability of any guarantor of any promissory note or credit facility executed in reference to the Credit Agreement or release any owner of collateral granted as security for the Credit Agreement. The validity, priority and enforceability of the Credit Agreement shall not be impaired hereby. To the extent that any provision of this Amendment conflicts with any term or condition set forth in the Credit Agreement, or any other Related Documents, the provisions of this Amendment shall supersede and control. The Bank expressly reserves all rights against all parties to the Credit Agreement and the other Related Documents.
12. **COUNTERPART EXECUTION.** This Amendment may be executed in multiple counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts, taken together, shall constitute one and the same agreement.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

13. **TIME IS OF THE ESSENCE.** Time is of the essence under this Amendment and in the performance of every term, covenant and obligation contained herein.

Borrower:

Charles & Colvard, Ltd.

By: /s/ Clint J. Pete
Clint J. Pete CFO
Printed Name Title

Date Signed: 6/21/2023

Bank:

JPMorgan Chase Bank, N.A.

By: /s/ Amy M. Miller
Amy M Miller Authorized Officer
Printed Name Title

Date Signed: 6/21/2023



Note Modification Agreement

This agreement is dated as of June 16, 2023 (the "**Agreement Date**"), by and between Charles & Colvard, Ltd. (the "**Borrower**") and JPMorgan Chase Bank, N.A. (together with its successors and assigns, the "**Bank**"). The provisions of this agreement are effective on the date that this agreement has been executed by all of the signers and delivered to the Bank (the "**Effective Date**").

WHEREAS, the Borrower executed a Line of Credit Note dated as of July 28, 2022 in the original principal amount of Five Million and 00/100 Dollars (\$5,000,000.00), (as same may have been amended or modified from time to time, the "**Note**") as evidence of an extension of credit from the Bank to the Borrower, which Note has at all times been, and is now, continuously and without interruption outstanding in favor of the Bank; and,

WHEREAS, the Borrower has requested and the Bank has agreed that the Note be modified to the limited extent as hereinafter set forth in this agreement;

NOW THEREFORE, in mutual consideration of the agreements contained herein and for other good and valuable consideration, the parties agree as follows:

1. **ACCURACY OF RECITALS.** The Borrower acknowledges the accuracy of the Recitals stated above.
2. **DEFINITIONS.** Capitalized terms used in this agreement shall have the same meanings as in the Note, unless otherwise defined in this agreement.
3. **MODIFICATION OF NOTE.**

3.1 From and after the Effective Date, the provision in the Note captioned "**Promise to Pay**" is hereby amended by extending the date on which the entire balance of unpaid principal plus accrued interest shall be due and payable immediately from July 31, 2023 to July 31, 2024.

3.2 Each of the Related Documents is modified to provide that it shall be a default or an event of default thereunder if the Borrower shall fail to comply with any of the covenants of the Borrower herein or if any representation or warranty by the Borrower herein or by any guarantor in any Related Documents is materially incomplete, incorrect, or misleading as of the date hereof. As used in this agreement, the "**Related Documents**" shall include the Note and all applications for letters of credit, loan agreements, credit agreements, reimbursement agreements, security agreements, mortgages, deeds of trust, pledge agreements, assignments, guaranties, or any other instrument or document executed in connection with the Note or in connection with any other obligations of the Borrower to the Bank.

3.3 Each reference in the Related Documents to any of the Related Documents shall be a reference to such document as modified by this agreement.

4. **RATIFICATION OF RELATED DOCUMENTS AND COLLATERAL.** The Related Documents are ratified and reaffirmed by the Borrower and shall remain in full force and effect as they may be modified by this agreement. All property described as security in the Related Documents shall remain as security for the Note, as modified by this agreement, and the Liabilities under the other Related Documents.

5. **BORROWER REPRESENTATIONS AND WARRANTIES.** The Borrower represents and warrants to the Bank that each of the representations and warranties made in the Note and the other Related Documents and each of the following representations and warranties are and will remain, true and correct until the later of maturity or the date on which all Liabilities evidenced by the Note are paid in full:

5.1 No default, event of default or event that would constitute a default or event of default but for the giving of notice, the lapse of time or both, has occurred and is continuing under any provision of the Note, as modified by this agreement, or any other Related Document.

5.2 No event has occurred which may in any one case or in the aggregate materially and adversely affect the financial condition, properties, business, affairs, prospects or operations of the Borrower or any guarantor or any subsidiary of the Borrower.

5.3 The Borrower has no defenses or counterclaims, offsets or adverse claims, demands or actions of any kind, personal or otherwise, that it could assert with respect to the Note or any other Liabilities.

5.4 The Note, as modified by this agreement, and the other Related Documents are the legal, valid, and binding obligations of the Borrower and the other parties, enforceable against the Borrower and other parties in accordance with their terms, except as may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally and by general principles of equity.

5.5 The Borrower, other than any Borrower who is a natural person, is validly existing under the laws of the State of its formation or organization. The Borrower has the requisite power and authority to execute and deliver this agreement and to perform the obligations described in the Related Documents as modified herein. The execution and delivery of this agreement and the performance of the obligations described in the Related Documents as modified herein have been duly authorized by all requisite action by or on behalf of the Borrower. This agreement has been duly executed and delivered by or on behalf of the Borrower.

6. **BORROWER COVENANTS.** The Borrower covenants with the Bank:

6.1 The Borrower shall execute, deliver, and provide to the Bank such additional agreements, documents, and instruments as reasonably required by the Bank to effectuate the intent of this agreement.

6.2 The Borrower fully, finally, and forever releases and discharges the Bank, its successors, and assigns and their respective directors, officers, employees, agents, and representatives (each a "**Bank Party**") from any and all causes of action, claims, debts, demands, and liabilities, of whatever kind or nature, in law or equity of the Borrower whether now known or unknown to the Borrower, (i) in respect of the loan evidenced by the Note and the Related Documents, or of the actions or omissions of any Bank Party in any manner related to the loan evidenced by the Note or the Related Documents and (ii) arising from events occurring prior to the date of this agreement.

6.3 To the extent not prohibited by applicable law, the Borrower shall pay to the Bank:

6.3.1 All the internal and external costs and expenses incurred (or charged by internal allocation) by the Bank in connection with this agreement (including, without limitation, inside and outside attorneys, appraisal, appraisal review, processing, title, filing, and recording costs, expenses, and fees).

7. **EXECUTION AND DELIVERY OF AGREEMENT BY THE BANK.** The Bank shall not be bound by this agreement until (i) the Bank has executed this agreement and (ii) the Borrower has executed and delivered this agreement together with all other related documents requested by the Bank, and the Borrower has fully satisfied all other conditions precedent, as determined by the Bank in its sole discretion.

8. **STATEMENTS.** The Bank may from time to time provide the Borrower with account statements or invoices with respect to any of the Liabilities ("Statements"). The Bank is under no duty or obligation to provide Statements, which, if provided, will be solely for the Borrower's convenience. Statements may contain estimates of the amounts owed during the relevant billing period, whether of principal, interest, fees or other Liabilities. If the Borrower pays the full amount indicated on a Statement on or before the due date indicated on such Statement, the Borrower shall not be in default of payment with respect to the billing period indicated on such Statement; provided, that acceptance by the Bank of any payment that is less than the total amount actually due at that time (including but not limited to any past due amounts) shall not constitute a waiver of the Bank's right to receive payment in full at another time.

9. **INTEGRATION, ENTIRE AGREEMENT, CHANGE, DISCHARGE, TERMINATION, OR WAIVER.** The Note, as modified by this agreement, and the other Related Documents contain the complete understanding and agreement of the Borrower and the Bank in respect of any Liabilities evidenced by the Note and supersede all prior understandings, and negotiations. If any one or more of the obligations of the Borrower under this agreement or the Note, as modified by this Agreement, is invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining obligations of the Borrower shall not in any way be affected or impaired, and the invalidity, illegality or unenforceability in one jurisdiction shall not affect the validity, legality or enforceability of the obligations of the Borrower under this agreement, the Note as modified by this agreement and the other Related Documents in any other jurisdiction. No provision of the Note, as modified by this agreement, or any other Related Documents may be changed, discharged, supplemented, terminated, or waived except in a writing signed by the party against whom it is being enforced.

10. **GOVERNING LAW AND VENUE.** This agreement and (unless stated otherwise therein) all Related Documents shall be governed by and construed in accordance with the laws of the State of New York (without giving effect to its laws of conflicts). The Borrower agrees that any legal action or proceeding with respect to any of its obligations under the Note or this agreement may be brought by the Bank in any state or federal court located in the State of New York, as the Bank in its sole discretion may elect. By the execution and delivery of this agreement, the Borrower submits to and accepts, for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of those courts. The Borrower waives any claim that the State of New York is not a convenient forum or the proper venue for any such suit, action or proceeding. This agreement binds the Borrower and its successors, and benefits the Bank, its successors and assigns. The Borrower shall not, however, have the right to assign the Borrower's rights under this agreement or any interest therein, without the prior written consent of the Bank.

11. **COUNTERPART EXECUTION.** This agreement may be executed in multiple counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts, taken together, shall constitute one and the same agreement.

12. **NOT A NOVATION.** This agreement is a modification only and not a novation. In addition to all amounts hereafter due under the Note, as modified by this agreement, and the other Related Documents, all accrued interest evidenced by the Note being modified by this agreement and all accrued amounts due and payable under the Related Documents shall continue to be due and payable until paid. Except for the modification(s) set forth in this agreement, the Note, the other Related Documents and all the terms and conditions thereof, shall be and remain in full force and effect with the changes herein deemed to be incorporated therein. This agreement is to be considered attached to the Note and made a part thereof. This agreement shall not release or affect the liability of any guarantor, surety or endorser of the Note or release any owner of collateral securing the Note. The validity, priority and enforceability of the Note shall not be impaired hereby. References to the Related Documents and to other agreements shall not affect or impair the absolute and unconditional obligation of the Borrower to pay the principal and interest on the Note when due. The Bank reserves all rights against all parties to the Note and the other Related Documents.

13. **TIME IS OF THE ESSENCE.** Time is of the essence under this agreement and in the performance of every term, covenant and obligation contained herein.

Borrower:

Address: 170 Southport Dr
Morrisville, NC 27560

Charles & Colvard, Ltd.

By: /s/ Clint J. Pete

<u>Clint J. Pete</u>	<u>CFO</u>
Printed Name	Title

Date Signed: 6/21/2023

BANK'S ACCEPTANCE

The foregoing agreement is hereby agreed to and acknowledged.

Bank:

JPMorgan Chase Bank, N.A.

By: /s/ Amy M. Miller

<u>Amy M Miller</u>	<u>Authorized Officer</u>
Printed Name	Title

Date Signed: 6/21/2023