

SECURITIES & EXCHANGE COMMISSION EDGAR FILING

EMERGENT CAPITAL, INC.

Form: 8-K

Date Filed: 2020-01-29

Corporate Issuer CIK: 1494448

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, DC 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) January 27, 2020

EMERGENT CAPITAL, INC.
(Exact name of registrant as specified in its charter)

Florida
(State or other jurisdiction
of incorporation)

001-35064
(Commission
File Number)

30-0663473
(IRS Employer
Identification No.)

5355 Town Center Road, Suite 701
Boca Raton, Florida
(Address of principal executive offices)

33486
(Zip Code)

Registrant's telephone number including area code: (561) 995-4200

(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))

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 transmission period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Securities registered pursuant to Section 12(b) of the Act: None

Title of each class

Trading Symbol(s)

Name of each exchange on which registered

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

On January 27, 2020, Emergent Capital, Inc. ("Emergent" or the "Company"), granted a bonus to Patrick J. Curry, the Company's Chief Executive Officer (the "Bonus"), in recognition of his past and ongoing work for the Company. The Bonus consists of: (i) \$400,000 in cash, payable promptly after the grant, and 1,000,000 shares of restricted common stock of Emergent, vesting in thirds upon the first three anniversaries of the grant date, (ii) up to \$300,000 in cash, as determined by the Compensation Committee (the "Compensation Committee") of Emergent's Board of Directors (the "Board"), payable upon the consummation of the Company's contemplated restructuring (the "Restructuring"), and (iii) up to \$300,000 in cash, as determined by the Compensation Committee, if the Company effects the Restructuring at least \$600,000 under the budget for such Restructuring that is approved by the Board within 45 days of the date hereof, measured as of 30 days after the date of the Restructuring.

On January 29, 2020, Jack Simony, the Company's Chief Investment Officer, notified the Company of his resignation, effective on February 7, 2020. Also on January 29, 2020, Imperial Finance and Trading, LLC, a wholly-owned subsidiary of Emergent, and Mr. Simony entered into an amendment (the "Amendment") to the Retention Agreement dated as of November 12, 2019 (the "Simony Retention Agreement"). The Simony Retention Agreement provided for, among other things, a retention payment to Simony by the Company in the amount of \$1,000,000, two-thirds of which has already been paid and the remaining one-third to be paid within three (3) business days of the closing of the current restructuring under consideration by the Company. Pursuant to the Amendment, the remaining one-third of the retention payment is accelerated and will be paid within seven (7) days of the date of the Amendment.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits EXHIBIT INDEX

Exhibit No.	Description
10.1	2010 Omnibus Incentive Plan Form Restricted Stock Award Agreement
10.2	Amendment dated January 29, 2020 to Retention Agreement between Imperial Finance and Trading, LLC and Jack Simony

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.

January 29, 2020

EMERGENT CAPITAL, INC.

(Registrant)

By: /s/ Miriam Martinez
Miriam Martinez
Chief Financial Officer



5355 Town Center Road
Suite 701
Boca Raton, FL 33486

**EMERGENT CAPITAL, INC.
2010 OMNIBUS INCENTIVE PLAN AS AMENDED AND RESTATED
RESTRICTED STOCK AWARD**

[NAME]
[ADDRESS]
[ADDRESS]

Dear _____:

You have been granted a Restricted Stock Award (the "Award") under the Emergent Capital, Inc. 2010 Omnibus Incentive Plan, as amended and restated (the "Plan"), with terms and conditions described below. This Award is granted under and governed by the terms and conditions of the Plan. Additional provisions regarding your Award and definitions of capitalized terms used and not defined in this Award can be found in the Plan.

Grant Date: [CURRENT DATE]

Number of Shares of Restricted Stock ("Restricted Shares"): [NUMBER OF SHARES]

Service Vesting Period: Grant Date through [DATE]

Vesting Schedule: One-third of the Restricted Shares will vest on each of the first three anniversaries of the Grant Date, provided you are continuously employed by or in the service of the Company through the applicable anniversary of the Grant Date.

Notwithstanding the foregoing, the Restricted Shares will vest in full upon the earlier to occur of:

- The date of a Change in Control, if you are continuously employed with, or in the service of, the Company through the date preceding the date of the Change in Control.
- The date on which your employment or service relationship with the Company is terminated (1) as a result of your death or Disability or (2) by the Company other than for Cause.

Except as otherwise provided above, upon your termination of employment, or cessation of services to, the Company prior to the date the Restricted Shares are vested, you will forfeit the unvested Restricted Shares. In addition, if your employment or service relationship is terminated by the Company other than for Cause but the Company later learns facts that could have permitted it to terminate your employment for Cause if such facts had been known at the time of your termination, then any Restricted Shares that have not yet been settled (whether vested or unvested) shall be forfeited immediately on the date of such determination and any Shares you received in settlement of this Award shall be forfeited and shall be returned to the Company without payment therefor.

Release of Restricted Shares:

The Restricted Shares will be held in an account at the Company's transfer agent pending vesting. As soon as practicable after any Restricted Shares vest, the applicable restrictions on the Restricted Shares will be removed and such Shares will be issued according to your instructions.

Voting and Dividends:

While the Restricted Shares are subject to forfeiture, you may exercise full voting rights and will be credited with all dividends and other distributions paid with respect to the Restricted Shares, in each case so long as the applicable record date occurs before you forfeit the Restricted Shares; provided that any such dividends and other distributions will be held in the custody of the Company and will be subject to the same risk of forfeiture, restrictions on transferability and other terms of this Award that apply to the Restricted Shares with respect to which such distributions were made. All such dividends and other distributions shall be paid to you within 45 days following the full vesting of the Restricted Shares with respect to which such distributions were made, with no accumulated interest or other earnings.

Transferability of Award:

You may not transfer or assign this Award for any reason, other than as set forth in the Plan. Any attempted transfer or assignment of this Award, other than as set forth in the Plan, will be null and void.

Transferability of Restricted Shares:

You may not sell, transfer or otherwise alienate or hypothecate any of your Restricted Shares until they are vested. In addition, by accepting this Award, you agree not to sell any Shares acquired under this Award other than as set forth in the Plan and at a time when applicable laws, Company policies or an agreement between the Company and its underwriters do not prohibit a sale. The Company also may require you to enter into a shareholder's agreement that will include additional restrictions on the transfer of Shares acquired under this Award.

Market Stand-Off: In connection with any underwritten public offering by the Company of its equity securities pursuant to an effective registration statement filed under the Securities Act of 1933, as amended, you agree that you shall not directly or indirectly sell, make any short sale of, loan, hypothecate, pledge, offer, grant or sell any option or other contract for the purchase of, purchase any option or other contract for the sale of, or otherwise dispose of or transfer or agree to engage in any of the foregoing transactions with respect to, any Shares acquired under this Award without the prior written consent of the Company and the Company's underwriters. Such restriction shall be in effect for such period of time following the date of the final prospectus for the offering as may be determined by the Company. In no event, however, shall such period exceed one hundred eighty (180) days.

Tax Withholding: To the extent that the vesting or receipt of the Restricted Shares, or the payment of dividends and other distributions thereon, or any other event with respect to this Award, results in income to you for Federal, state or local income tax purposes, you shall deliver to the Company at the time the Company is obligated to withhold taxes in connection with such receipt, such amount as the Company requires to meet its withholding obligation under applicable tax laws or regulations, and if you fail to do so, the Company has the right and authority to deduct or withhold from any compensation payable to you, including compensation due under this Award, an amount sufficient to satisfy its withholding obligations. You may satisfy the withholding requirement, in whole or in part, by electing to have the Company withhold for its own account that number of Shares otherwise deliverable to you under the Award having an aggregate Fair Market Value on the date the tax is to be determined equal to the tax that the Company must withhold; provided that the amount to be withheld may not exceed the total maximum statutory tax rates associated with the transaction. Your election must be irrevocable, in writing, and submitted to the Secretary of the Company before the date of the applicable event triggering the withholding obligation. The Fair Market Value of any fractional Share not used to satisfy the withholding obligation (as determined on the date the tax is determined) will be paid to you in cash.

Section 83(b) Election: You understand that you may alter the tax treatment of the Shares subject to this Award by filing an election under Section 83(b) of the Internal Revenue Code of 1986, as amended (the "Code"). Such election must be filed within thirty (30) days after the date of this Award to be effective. **You should consult with your tax advisor to determine the tax consequences of acquiring the Shares and the advantages and disadvantages of filing the Code Section 83(b) election. You acknowledge that it is your sole responsibility, and not the Company's, to file a timely election under Code Section 83(b), even if you request the Company or its representatives to make this filing on your behalf.**

Clawback:

As a condition to the grant of this Award, you agree (with such agreement being binding upon your legal representatives, guardians, legatees and beneficiaries) that (i) the Shares acquired under this Award shall be subject to the clawback policy adopted by the Board and in effect as of the date of the Award or as may be modified in good faith by the Board from time to time, and (ii) any determination made by the Committee that this Award is subject to clawback shall be final, binding and conclusive.

Miscellaneous:

- This Award may be amended only by written consent signed by both you and the Company, unless the amendment is not to your detriment. Notwithstanding the foregoing, this Award may be amended or terminated by the Board or the Committee without your consent in accordance with the provisions of the Plan.
- The failure of the Company to enforce any provision of this Award at any time shall in no way constitute a waiver of such provision or of any other provision hereof.
- In the event any provision of this Award is held illegal or invalid for any reason, such illegality or invalidity shall not affect the legality or validity of the remaining provisions of this Award, and this Award shall be construed and enforced as if the illegal or invalid provision had not been included in this Award.
- As a condition to the grant of this Award, you agree (with such agreement being binding upon your legal representatives, guardians, legatees or beneficiaries) that this Award shall be interpreted by the Committee and that any interpretation by the Committee of the terms of this Award or the Plan, and any determination made by the Committee pursuant to this Award or the Plan, shall be final, binding and conclusive.
- This Award may be executed in counterparts.

BY SIGNING BELOW AND ACCEPTING THIS RESTRICTED STOCK AWARD, YOU AGREE TO ALL OF THE TERMS AND CONDITIONS DESCRIBED HEREIN AND IN THE PLAN. YOU ALSO ACKNOWLEDGE HAVING READ THE PLAN.

EMERGENT CAPITAL, INC.

By: _____

[NAME]

Name: _____

Title: _____

Date: _____

AMENDMENT TO RETENTION AGREEMENT

This Amendment (the "Amendment") to the Retention Agreement between Jack Simony ("Simony") and Imperial Finance and Trading, LLC (the "Company") dated November 12, 2019 (the "Retention Agreement") is entered into between Simony and the Company this 29th day of January 2020.

WHEREAS Simony and the Company entered into the Retention Agreement, which provided for a retention payment to Simony by the Company in the amount of \$1,000,000 to Simony, two-thirds of such payment to be paid upon Simony's execution of the Retention Agreement, and the remaining one-third to be paid within three (3) business days of the closing of a certain Transaction (as that term is defined in the Retention Agreement); and

WHEREAS Simony has been paid the first two-thirds of the Retention Payment in accordance with the provisions of the Retention Agreement and acknowledges such payment and satisfaction of the Company's obligations of that portion of the Retention Agreement; and

WHEREAS the Company and Simony have agreed to accelerate payment of the final one-third of the Retention Payment, notwithstanding any provision of the Retention Agreement to the contrary;

NOW, THEREFORE, Simony and the Company agree as follows:

1. **Retention Agreement in Full Force and Effect**. All provisions of the Retention Agreement shall remain in full force and effect except as expressly modified by this Amendment.

2. **Retention Payment**. Simony hereby acknowledges his receipt of the first two-thirds of the Retention Payment from the Company. The final one-third of the Retention Payment payable to Simony by the Company under Section 2(a) of the Retention Agreement (the "Final Retention Payment") shall be paid within seven (7) days of the parties' mutual execution of this Amendment, less applicable statutory deductions and authorized withholdings, and any provision of the Retention Agreement to the contrary shall be of no force and effect. The amount of the Final Retention Payment shall be reported on an IRS Form W-2.

3. **General**.

(a) *Modification*. This Amendment may not be modified except by a mutually-executed agreement in writing between you and an authorized representative of the Company.

(b) *Governing Law and Venue*. This Amendment is governed by the laws of the state of New York, irrespective of the principles of conflicts of law. Simony and the Company hereby agree that any action to enforce or interpret this Retention Agreement may be brought in any court of competent jurisdiction in New York, and Simony hereby irrevocably consent to the jurisdiction of such court.

(c) *Complete Agreement.* This Amendment, together with the Retention Agreement it amends, represents the complete understanding between Simony and the Company concerning the subject matter herein, and no other promises or agreements concerning the subject matter of this Amendment or the Retention Agreement it amends shall be binding unless reduced to writing and signed by Simony and the Company; provided, however, that except as expressly modified herein, all of the terms and conditions of the Retention Agreement shall remain in full force and effect.

(d) *Successors and Assigns.* This Amendment, together with the Retention Agreement it amends, is binding upon, and shall inure to the benefit of, the Company and its successors and assigns. The Company may assign this Retention Agreement and any of its rights and obligations hereunder at any time without your consent.

IMPERIAL FINANCE AND TRADING, LLC

By: /s/ Patrick J. Curry

Its CEO/Manager

JACK SIMONY

/s/ Jack Simony
