

SECURITIES & EXCHANGE COMMISSION EDGAR FILING

EMERGENT CAPITAL, INC.

Form: 8-K

Date Filed: 2019-01-03

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) December 28, 2018

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))
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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.

Item 1.01 Entry into a Material Definitive Agreement.

On December 28, 2018, Emergent Capital, Inc., (the "Company") entered into subscription agreements (the "Subscription Agreements") with several investors (the "Investors"), each of which is affiliated with either Matt Epstein or James Hua, members of the Company's Board of Directors (the "Board"). Pursuant to the Subscription Agreements, the Investors purchased from the Company an aggregate of \$5,667,000 principal amount of the Company's 8.5% Senior Secured Notes (the "Senior Notes") for an aggregate purchase price of \$4,250,250. The transactions were consummated on December 28, 2018.

On December 28, 2018, the Company received a commitment letter (the "Commitment Letter") from Ironsides Partners LLC, an entity affiliated with Robert Knapp, a member of the Board, for an aggregate investment, at the Company's election, of up to \$2,000,000 principal amount of Senior Notes for an aggregate purchase price of up to \$1,500,000 no later than January 31, 2019. The Commitment Letter contains certain conditions precedent to Ironsides' obligations to purchase such Senior Notes.

The above descriptions of the Subscription Agreements and the Commitment Letter do not purport to be complete and are qualified in their entirety by reference to the Subscription Agreement and the Commitment Letter, which are filed as Exhibit 10.1 and Exhibit 10.2 hereto.

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

The information set forth under Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference to this Item 2.03.

Item 3.02 Unregistered Sales of Equity Securities.

The information set forth under Item 1.01 of this Current Report on Form 8-K is incorporated herein by reference to this Item 3.02.

The Senior Notes were issued in reliance on the exemption from registration provided by Section 4(a)(2) of the Securities Act and Rule 506 of Regulation D promulgated thereunder.

Item 9.01 Financial Statements and Exhibits

EXHIBIT INDEX

| Exhibit No. | Description |
|--------------------|--|
| 10.1 | <u>Form of Subscription Agreement dated as of December 28, 2018, by and between Emergent Capital, Inc. and each Investors party thereto.</u> |
| 10.2 | <u>Commitment Letter from Ironsides Partners LLC dated December 28, 2018.</u> |

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 3, 2019

EMERGENT CAPITAL, INC.

(Registrant)

By: /s/ Miriam Martinez

Miriam Martinez

Chief Financial Officer

SUBSCRIPTION AGREEMENT

Emergent Capital, Inc.
5355 Town Center Road, Suite 701
Boca Raton, FL 33486

Ladies and Gentlemen:

The undersigned (the "**Investor**") hereby confirms its agreement with Emergent Capital, Inc., a Florida corporation (the "**Company**"), as follows:

1. This Subscription Agreement (this "**Agreement**"), is made as of the date set forth below between the Company and the Investor.

2. The Company has authorized the sale and issuance to certain investors of up to \$8,500,000 principal amount of its 8.5% Senior Secured Notes (the "**Notes**") to be issued pursuant to the Amended and Restated Indenture, dated as of July 28, 2017 and as amended by the First Supplemental Indenture dated as of January 10, 2018 and the Second Supplemental Indenture dated as of December 10, 2018 (the "**Indenture**"), between the Company and Wilmington Trust, National Association, as indenture trustee (the "**Trustee**"), for a purchase price of \$750 per each \$1,000 principal amount of Notes being sold (the "**Purchase Price**"). The offering and sale of the Notes (the "**Offering**") are being made pursuant to one or more exemptions from registration under the Securities Act of 1933, as amended (the "**Act**"), based in part on the representations and warranties made by the Investor in this Subscription Agreement. The Company and the Investor agree that the Investor will purchase from the Company, and the Company will issue and sell to the Investor, the Notes set forth below for the aggregate purchase price set forth below, on the date of this Agreement or such other date as the Company and the Investors agree (the "**Transaction**"). Consummation of the Transaction will be consummated by (i) payment of the purchase price, by wire transfer in US dollars, by the Investor and (ii) issuance of the notes by the Company

3. The Investor represents, warrants and covenants with and to the Company as follows:

(a) Authorization and Binding Obligation. The Investor has the requisite legal capacity, power and authority to enter into, and perform its obligations under, this Agreement. Each of the execution, delivery and performance of each this Agreement by the Investor, and the consummation by the Investor of the Transaction, have been duly authorized by all requisite corporate action on the part of the Investor, as applicable, and no further consent or authorization is required. This Agreement has been duly authorized, executed and delivered by the Investor, and constitutes the legal, valid and binding obligations of the Investor, enforceable against such Investor in accordance with its terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation or similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies and except as rights to indemnification and to contribution may be limited by federal or state securities laws.

(b) Experience of Investor. The Investor, either alone or together with its representatives, has such knowledge, sophistication and experience in business and financial matters so

as to be capable of evaluating the merits and risks of the Transaction, and has evaluated the merits and risks thereof. Such Investor is able to bear the economic risk of an investment in the Notes and, at the present time, is able to afford a complete loss of such investment. The Investor qualifies as either a qualified institutional buyer as defined in Rule 144A of the Securities Act or an accredited institutional investor for purposes of Rule 501 of Regulation D. The Investor is acquiring the Notes for the Investor's own account (and not for the account of others) for investment purposes and not with a view to, or for offer or sale in connection with, any distribution in violation of the Securities Act.

(c) Disclosure of Information. The Investor has access to and has reviewed the Company's periodic filings made with the Securities and Exchange Commission, including the "Risk Factors" contained therein. The Investor has had the opportunity to ask questions of and receive answers from the Company regarding the Company, its business and the terms and conditions of the offering of the Notes.

(d) Reliance on Exemptions. The Investor understands that the Notes are being offered and sold in reliance on specific exemptions from the registration requirements of United States federal and state securities laws, and that the Company is relying in part upon the truth and accuracy of, and the Investor's representations, and compliance with, the representations, warranties, agreements, acknowledgments and understandings of the Investor set forth herein in order to determine the availability of such exemptions and the eligibility of the Investor to acquire the Notes.

4. Miscellaneous.

(a) Changes. This Agreement may not be modified or amended except pursuant to an instrument in writing signed by the Company and Investor.

(b) Headings. The headings of the various sections of this Agreement have been inserted for convenience of reference only and will not be deemed to be part of this Agreement.

(c) Severability. In case any provision contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein will not in any way be affected or impaired thereby.

(d) Governing Law. This Agreement will be governed by, and construed in accordance with, the internal laws of the State of New York, without giving effect to the principles of conflicts of law that would require the application of the laws of any other jurisdiction.

(e) Counterparts. This Agreement may be executed in two or more counterparts, each of which will constitute an original, but all of which, when taken together, will constitute but one instrument, and will become effective when one or more counterparts have been signed by each party hereto and delivered to the other parties.

[Signature Page Follows]

Please confirm that the foregoing correctly sets forth the agreement between us by signing in the space provided below for that purpose.

Dated as of: December 28, 2018

INVESTOR

By:___

Print Name:___

Title:___

(If second signature is required)

By:___

Print Name:___

Title:___

Address: ___

Face Value of Notes Subscribed For:

\$ _____

Purchase Price for Notes Subscribed For:

\$ _____

Agreed and Accepted
this 28th day of December, 2018:

EMERGENT CAPITAL, INC.

By:___
Name:
Title:

Schedule of Subscription Agreements dated December 28, 2018

| Purchaser | Principal Amount of Notes Purchased | Purchase Price |
|--|--|-----------------------|
| THE REGENTS OF THE UNIVERSITY OF MICHIGAN | \$930,000 | \$697,500 |
| EVERMORE GLOBAL VALUE FUND | \$2,228,000 | \$1,671,000 |
| SIRIUS INTERNATIONAL INSURANCE CORPORATION (PUBL) (a/c xxx140) | \$975,000 | \$731,250 |
| SIRIUS INTERNATIONAL INSURANCE CORPORATION (PUBL) (a/c xxx138) | \$867,000 | \$650,250 |
| OPAL SHEPPARD OPPORTUNITIES FUND I LP | \$667,000 | \$500,250 |

December 28, 2018

Emergent Capital, Inc.
5355 Town Center Road, Suite 701
Boca Raton, FL 33486

Ladies and Gentlemen:

Reference is made to following securities of Emergent Capital, Inc. (the "Company"): (i) the 8.5% Senior Secured Notes (the "Senior Notes"), (ii) the 8.5% Senior Unsecured Convertible Notes due 2019 (the "2019 Convertible Notes"), and (iii) 5.0% Senior Unsecured Convertible Notes due 2023 (the "2023 Convertible Notes").

Ironsides Partners LLC ("Ironsides"), on behalf of funds and/or clients that it manages, hereby confirms it, or its affiliate(s) and/or designee(s), will:

1. Invest, pursuant a subscription agreement in form and substance acceptable to Ironsides and the Company (the "Subscription Agreement"), up to \$2.0 million principal amount of Additional Notes (as defined in that certain Amended and Restated Indenture dated as of July 28, 2017 (as amended, restated, supplemented or otherwise modified from time to time, the "Senior Notes Indenture") and such investment, the "Investment") for a purchase price of \$750 per each \$1,000 principal amount of Additional Notes being sold (the "Purchase Price") no later than January 31, 2019 (the "Outside Date"), upon written demand by the Company, which demand shall (x) be made no later than five (5) business days before January 31, 2019 and (y) specify the principal amount of the Investment and the Purchase Price.

2. Subject to compliance with all applicable laws, including securities laws, and internal investment guidelines applicable to Ironsides and the funds and/or clients managed by it, attempt to purchase from current holder(s), on the open market or in privately negotiated transactions on terms acceptable to Ironsides in its sole and absolute discretion, the outstanding 2019 Convertible Notes; provided that if any such purchase(s) occur, Ironsides and/or its designee(s) holding such 2019 Convertible Notes will consent to amend the 2019 Convertible Notes (x) to extend the maturity date of the 2019 Convertible Notes to match the maturity date of the 2023 Convertible Notes and (y) to allow for payment in kind ("PIK") of interest on the 2019 Convertible Notes pursuant to substantially the same PIK mechanism as applies to the Additional Notes and to elect to accept PIK interest payments.

The commitments set forth herein are subject to the following conditions precedent:

1. No Default or Event of Default (as defined in the Senior Notes Indenture) shall have occurred and be continuing under the Senior Notes Indenture (excluding any Default or Event of Default that may arise as a result of the filing of a petition in bankruptcy by Lamington Road Designated Activity Company f/k/a Lamington Road Limited, White Eagle General Partner, LLC, and/or White Eagle Asset Portfolio LP).

2. No Material Adverse Effect (as defined in the Senior Notes Indenture) shall have occurred on or after the date hereof and shall be continuing as of the earlier of (a) the Outside Date and (b) immediately prior to the issuance of the Additional Notes pursuant to the Subscription Agreement.

3. No action, suit, investigation, litigation or proceeding shall be pending or, to the knowledge of the Company, threatened in writing that could reasonably be expected to (i) have a Material Adverse Effect or (ii) prevent or impose materially adverse conditions on the transactions contemplated herein and/or the transactions contemplated by the Subscription Agreement (excluding any suit filed by the Company against Beal Bank and/or its affiliates).

4. All fees and other amounts due and payable to Ironsides in connection with this letter agreement and the Subscription Agreement and the transactions contemplated hereby and thereby and including reimbursement or payment of all out-of-pocket expenses shall be paid, by the Company.

5. The Company shall not have (a) commenced a voluntary case filed under title 11 of the United States Code, 11 U.S.C. §§ 101, et seq., (b) consented to the entry of an order for relief against it in an involuntary case or otherwise had an order for relief entered against it in an involuntary case, (c) consented to the appointment of a custodian of it or for any substantial part of its property; or (d) made a general assignment for the benefit of its creditors or taken any comparable action under any foreign laws relating to insolvency.

Ironsides shall not be required to purchase the Additional Notes, if at any time following the date hereof (i) the foregoing conditions have not been satisfied prior to the Outside Date or (ii) the Company has notified Ironsides in writing that it no longer intends to proceed with the issuance of the Additional Notes contemplated by this letter agreement prior to the Outside Date. In addition, this letter agreement, and the commitment contained herein, shall terminate automatically upon the issuance of the Additional Notes.

This letter is for the sole benefit of the Company. A copy of this letter is being provided to Evermore Global Advisors, LLC.

[signature page follows]

Very truly yours,

/s/ Robert Knapp
Name: Robert Knapp
Title: President & CIO

ACCEPTED AND AGREED TO AS OF THE DATE FIRST
WRITTEN ABOVE:

EMERGENT CAPITAL, INC.

By: /s/ Pat Curry
Name: Pat Curry
Title: CEO