

SECURITIES & EXCHANGE COMMISSION EDGAR FILING

EMERGENT CAPITAL, INC.

Form: 10-K/A

Date Filed: 2020-03-16

Corporate Issuer CIK: 1494448

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

**Form 10-K/A
(Amendment No.1)**

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the fiscal year ended November 30, 2019

or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the transition period from to

Commission file number: 001-35064

EMERGENT CAPITAL, INC.

(Exact name of registrant as specified in its charter)

Florida
(State or other jurisdiction of
incorporation or organization)

30-0663473
(I.R.S. Employer
Identification No.)

5355 Town Center Road—Suite 701
Boca Raton, Florida 33486
(Address of principal executive offices, including zip code)
(561) 995-4200
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

None

Securities registered pursuant to Section 12(g) of the Act:

<u>Title of Each Class</u>	<u>Name of Each Exchange on Which Registered</u>
Common Stock, par value \$0.01 per share	OTCQX

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Exchange Act. Yes No

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports) and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Non-accelerated filer

Accelerated filer

Smaller reporting company

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. Yes No

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

The aggregate market value of the voting and non-voting common stock held by non-affiliates of the registrant on May 31, 2019 was \$8,224,053.

The number of shares of the registrant's common stock outstanding as of March 12, 2020 was 159,270,553.

DOCUMENTS INCORPORATED BY REFERENCE:

None

EXPLANATORY NOTE

This Amendment No.1 ("Amendment No. 1") to the Annual Report on Form 10-K of Emergent Capital, Inc. (the "Company") for the fiscal year ended November 30, 2019, as filed with the U.S. Securities and Exchange Commission on March 13, 2020 (the "Original Form 10-K"), is being filed for the sole purpose of correcting the Consent of Independent Registered Public Accounting Firm (the "Consent"). The original Consent did not contain a conformed signature as a result of inadvertent error. A corrected Consent is filed as Exhibit 23.1 attached hereto.

Except as otherwise expressly noted herein, this Amendment No. 1 does not modify or update in any way the disclosures in, or exhibits to, the Original Form 10-K, nor does it reflect events occurring after the filing of the Original Form 10-K. Accordingly, this Amendment No. 1 should be read in conjunction with the Original Form 10-K.

In addition, as required by Rule 12b-15 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), new certifications by the Company's principal executive officer and principal financial officer are filed herewith as exhibits to this Amendment No.1 pursuant to Rule 13a-14(a) or 15d-14(a) of the Exchange Act. As no financial statements have been included in this Amendment and this Amendment does not contain or amend any disclosure with respect to Items 307 and 308 of Regulation S-K, paragraphs 3, 4, and 5 of the certifications have been omitted. The Company is not including certifications pursuant to Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. 1350) as no financial statements are being filed with this Amendment No.1.

PART IV EXHIBIT INDEX

In reviewing the agreements included as exhibits to this report, please remember they are included to provide you with information regarding their terms and are not intended to provide any other factual or disclosure information about the Company, its subsidiaries or other parties to the agreements. The Agreements contain representations and warranties by each of the parties to the applicable agreement. These representations and warranties have been made solely for the benefit of the other parties to the applicable agreement and:

- should not in all instances be treated as categorical statements of fact, but rather as a way of allocating the risk to one of the parties if those statements prove to be inaccurate;
- have been qualified by disclosures that were made to the other party in connection with the negotiation of the applicable agreement, which disclosures are not necessarily reflected in the agreement;
- may apply standards of materiality in a way that is different from what may be viewed as material to you or other investors; and
- were made only as of the date of the applicable agreement or such other date or dates as may be specified in the agreement and are subject to more recent developments.

Accordingly, these representations and warranties may not describe the actual state of affairs as of the date they were made or at any other time. The Company acknowledges that, notwithstanding the inclusion of the foregoing cautionary statements, it is responsible for considering whether additional specific disclosures of material information regarding material contractual provisions are required to make the statements in this report not misleading. Additional information about the Company may be found elsewhere in this report and the Company's other public files, which are available without charge through the SEC's website at <http://www.sec.gov>.

Exhibit Number	Exhibit Description	Form	Exhibit	Filing Date	Filed Herewith	SEC File #
3.1	Articles of Incorporation of Registrant, as amended.	10-K	3.1	03/14/18		001-35064
3.2	Amended and Restated Bylaws of Registrant, as amended.	10-Q	3.1	11/16/18		001-35064
4.1	Form of Common Stock Certificate.	S-1/A	4.1	11/10/10		333-168785

4.2	Indenture, dated as of February 21, 2014, by and among the Registrant and U.S. Bank, National Association, as indenture trustee.	8-K	4.1	02/21/14	001-35064
4.2.1	First Supplemental Indenture, dated as of March 13, 2017, by and among Emergent Capital, Inc. and U.S. Bank National Association.	8-K	4.2	03/17/17	001-35064
4.2.2	Second Supplemental Indenture, dated as of July 28, 2017, by and among Emergent Capital, Inc. and U.S. Bank National Association.	8-K	4.2	08/01/17	001-35064
4.3	Indenture, dated as of July 28, 2017, by and among Emergent Capital, Inc. and U.S. Bank National Association.	8-K	4.3	08/01/17	001-35064
4.4	Amended and Restated Indenture, dated as of July 28, 2017, by and among Emergent Capital, Inc. and Wilmington Trust, National Association.	8-K	4.4	08/01/17	001-35064
4.4.1	First Supplemental Indenture, dated January 10, 2018, by and among Emergent Capital, Inc. and Wilmington Trust, National Association.	10-Q	4.1	08/20/18	001-35064
4.4.2	Second Supplemental Indenture, dated as of December 10, 2018, by and among Emergent Capital, Inc. and Wilmington Trust, National Association.	8-K	10.1	12/14/18	001-35064
4.5	Form of Common Stock Purchase Warrant, dated as of July 28, 2017.	8-K	4.1	08/01/17	001-35064
4.6	Form of Warrant to purchase common stock.	S-1/A	4.2	01/12/11	333-168785
4.7	Warrant Agreement related to Class Action Settlement.	10-K	4.3	03/14/16	001-35064
4.8	Special Dividend Note, dated as of July 28, 2017, made by Lamington Road Designated Activity Company in favor of Markley Asset Portfolio, LLC.	8-K	4.5	08/01/17	001-35064
4.9	Description of Securities	10-K	4.9	03/13/20	001-35064
10.1†	Amended & Restated Imperial Holdings 2010 Omnibus Incentive Plan.	Def 14A	A	04/08/15	001-35064
10.1.1†	Amendment to Amended & Restated Imperial Holdings 2010 Omnibus Incentive Plan.	Def 14A	A	06/09/17	001-35064
10.1.2†	2010 Omnibus Incentive Plan Form of Stock Option Award Agreement.	10-Q	10.7	08/13/13	001-35064
10.1.3†	2010 Omnibus Incentive Plan Form Performance Share Award Agreement.	8-K	10.1	06/09/14	001-35064
10.1.4†	2010 Omnibus Incentive Plan Form Restricted Stock Unit Award Agreement.	10-K	10.2.4	03/14/18	001-035064

10.1.5†	2010 Omnibus Incentive Plan as Amended and Restated Stock Appreciation Rights Award Agreement.	10-Q	10.2	08/20/18	001-35064
	Second Amended and Restated Loan and Security Agreement, dated as of January 31, 2017, by and among White Eagle Asset Portfolio, LP, as borrower, Imperial Finance and Trading, LLC, Lamington Road Bermuda, LTD, as Portfolio Manager, CLMG Corp., as				
10.2††	Administrative Agent, and LNV Corporation, as Lender, First Amendment, dated as of October 4, 2017, to Second Amended and Restated Loan and Security Agreement dated January 31, 2017, by and among white Eagle Asset Portfolio, LP, as borrower, Imperial Finance and Trading, LLC, Lamington Road Bermuda, LTD, as Portfolio Manager, CLMG Corp., as Administrative Agent, and LNV Corporation, as Lender.	10-K	10.18	03/21/17	001-35064
10.2.1	Second Amended and Restated Securities Account Control and Custodian Agreement, dated January 31, 2017, among White Eagle Asset Portfolio, LP, as borrower, Wilmington Trust, National Association, as securities intermediary and custodian, and CLMG Corp, as the administrative agent.	10-K	10.3.4	03/14/18	001-35064
10.3	Employment Agreement between Imperial Finance and Trading, LLC and Miriam Martinez dated as of March 13, 2018.	10-K	10.19	03/21/17	001-35064
10.4.†	Master Trust Indenture dated as of September 24, 2010 by and among Imperial Settlements Financing 2010, LLC as the Issuer, Portfolio Financial Servicing Company as the Initial Master Servicer, and Wilmington Trust Company as the Trustee and Collateral Trustee.	10-K	10.5.1	03/14/18	001-35064
10.5	Series 2010-1 Supplement dated as of September 24, 2010 to the Master Trust Indenture dated as of September 24, 2010 by and among Imperial Settlements Financing 2010, LLC as the Issuer, Portfolio Financial Servicing Company as the Initial Servicer, and Wilmington Trust Company as the Trustee and Collateral Trustee.	S-1/A	10.15	11/10/10	333-168785
10.5.1	Registration Rights Agreement, dated as of July 28, 2017, by and among Emergent Capital, Inc., and the holders party thereto.	S-1/A	10.16	11/10/10	333-168785
10.6	Board Designation Agreement, dated as of July 28, 2017, by and between Emergent Capital, Inc. and Evermore Global Advisors, LLC.	8-K	10.3	08/01/17	001-35064
10.7	Board Designation Agreement, dated as of July 28, 2017, by and among Emergent Capital, Inc., PJC Investments, LLC and JSARCo, LLC.	8-K	10.4	08/01/17	001-35064
10.8	Board Designation Agreement, dated as of July 28, 2017, by and between Emergent Capital, Inc. and Opal Sheppard Opportunities Fund I LP.	8-K	10.5	08/01/17	001-35064
10.9		8-K	10.6	08/01/17	001-35064

10.10	Board Designation Agreement, dated as of July 28, 2017, by and among Emergent Capital, Inc., Ironsides P Fund L.P. and Ironsides Partners Special Situations Master Fund II L.P.	8-K	10.7	8/1/2017	001-35064
10.11	Board Designation Agreement, dated as of July 28, 2017, by and between Emergent Capital, Inc. and Nantahala Capital Management, LLC.	8-K	10.8	8/1/2017	001-35064
10.12	Registration Rights Agreement, dated as of August 11, 2017, be and between Emergent Capital, Inc. and Brennan Opportunities Fund I LP.	10-Q	10.32	8/14/2017	001-35064
10.13†	Employment Agreement between Imperial Finance and Trading, LLC and Jack Simony dated as of March 13, 2018.	10-K	10.26	3/14/2018	001-35064
10.14†	Employment Agreement between Imperial Finance and Trading, LLC and Harvey Werblowsky dated as of March 13, 2018.	10-K	10.27	3/14/2018	001-35064
10.15	Commitment Letter from PJC Investments, LLC dated March 13, 2018.	10-K	10.28	3/14/2018	001-35064
10.15.1	Commitment Letter from PJC Investments, LLC dated May 9, 2018.	10-Q	10.1	5/10/2018	001-35064
10.15.2	Commitment Letter from PJC Investments, LLC dated August 20, 2018.	10-Q	10.3	8/20/2018	001-35064
10.16	Commitment Letter from Evermore Global Advisors, LLC dated May 9, 2018.	10-Q	10.2	5/10/2018	001-35064
10.16.1	Commitment Letter from Evermore Global Advisors, LLC dated August 20, 2018.	10-Q	10.5	8/20/2018	001-35064
10.17	Commitment Letter from River City Capital, LLC dated May 9, 2018.	10-Q	10.3	5/10/2018	001-35064
10.17.1	Commitment Letter River City Capital, LLC dated August 20, 2018.	10-Q	10.4	8/20/2018	001-35064
10.18	Commitment Letter Ironsides Partners LLC dated December 28, 2018.	8-K	10.2	1/3/2018	001-35064
10.19	Form of Subscription Agreement, dated as of December 28, 2018, by and between Emergent Capital, Inc. and each Investors party thereto.	8-K	10.2	1/3/2019	001-35064
10.20	Note Purchase Agreement dated as of January 30, 2019, by and between Emergent Capital, Inc. and Ironsides Partners Special Situations Master Fund III L.P.	8-K	10.1	2/4/2019	001-35064

10.21†	Retention agreement between Emergent Capital, Inc and Miriam Martinez dated December 10, 2019.	8-K	10.1	12/16/2019	001-35064
10.22†	Retention agreement between Emergent Capital, Inc and Jack Simony dated November 8, 2019.	8-K	10.1	11/18/2019	001-35064
10.23†	Retention agreement between Emergent Capital, Inc and Harvey Werblowsky dated November 8, 2019.	8-K	10.2	11/18/2019	001-35064
10.24	Settlement Agreement dated as of May 24, 2019 by and among LNV Corporation, CLMG Corp., White Eagle Assets Portfolio, LP, Lamington Road Designated Activity Company, White Eagle General Partner, LLC, Emergent Capital, Inc., Imperial Finance and Trading, LLC, Lamington Road Bermuda, LTD, OLIPP IV, LLC and Markley Asset Portfolio LLC.	8-K	10.1	6/14/2019	001-35064
10.25	Debtor-in-Possession Credit Agreement dated as of May 24, 2019 among White Eagle Asset portfolio, LP, LNV Corporation, as DIP Lender, CLMG Corp., as DIP Agent, and the Guarantors named therein.	8-K	10.2	6/14/2019	001-35064
10.26	Second Amended Joint Plan of Reorganization of White Eagle Asset Portfolio, LP, et al., dated as of June 19, 2019.	8-K	10.1	6/24/2019	001-35064
10.27	Commitment Letter dated as of July 18, 2019 among Emergent Capital, Inc., Lamington Road Designated Activity Company, White Eagle Asset Portfolio, LP and Jade Mountain Partners.	8-K	10.1	7/24/2019	001-35064
10.28	Subscription Agreement dated as of August 16, 2019 among Emergent Capital, Inc., Lamington Road Designated Activity Company, White Eagle Asset Portfolio, LP and Jade Mountain Partners.	8-K	10.1	8/21/2019	001-35064
10.29	Amended and Restated Limited Partnership Agreement of White Eagle Asset Portfolio, LP dated as of August 16, 2019.***	8-K	10.2	8/21/2019	001-35064
10.30	Master Termination Agreement dated as of August 16, 2019 among White Eagle General Partner, LLC, Lamington Road Designated Activity Company, White Eagle Asset Portfolio, LP, Markley Asset Portfolio, LLC, CLMG Corp., as administrative agent, LNV Corporation, as initial lender, Wilmington Trust, National Association, in its capacities as securities intermediary, custodian and agent, and Palomino JV, L.P.	8-K	10.3	8/21/2019	001-35064
10.31	Pledge Agreement dated as of August 16, 2019 between Lamington Road Designated Activity Company and Palomino JV, L.P.	8-K	10.4	8/21/2019	001-35064
10.32	Assumption Agreement dated as of August 16, 2019 among White Eagle Asset Portfolio, LP, Lamington Road Designated Activity Company, Emergent Capital Inc. and White Eagle General Partner, LLC.	8-K	10.5	8/21/2019	001-35064

10.33	Indemnification Agreement dated as of August 16, 2019 between Emergent Holdings, Inc. and Wilmington Trust, National Association.	8-K	10.6	8/21/2019	001-35064
10.34	Subscription Agreement dated as of February 11, 2019, by and between Emergent Capital.	8-K	10.1	2/15/2019	001-35064
21.1	Subsidiaries of the Registrant.	10-K	21.1	3/13/2020	001-35064
23.1	Consent of Grant Thornton LLP			*	
31.1	Chief Executive Officer Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.			*	
31.2	Chief Financial Officer Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.			*	
32.1	Chief Executive Officer Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.	10-K	32.1	3/13/2020	001-35064
32.2	Chief Financial Officer Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.	10-K	32.2	3/13/2020	001-35064
101	Interactive Data Files.	10-K	101	3/13/2020	001-35064
101.INS	XBRL Instance Document	10-K	101.INS	3/13/2020	001-35064
101.SCH	XBRL Taxonomy Extension Schema Document	10-K	101.SCH	3/13/2020	001-35064
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document	10-K	101.CAL	3/13/2020	001-35064
101.TAX	XBRL Taxonomy Definition Linkbase Document 10.1 & 10.2	10-K	101.TAX	3/13/2020	001-35064
101.LAB	XBRL Taxonomy Extension Label Linkbase Document	10-K	101.LAB	3/13/2020	001-35064
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document	10-K	101.PRE	3/13/2020	001-35064

†† Certain portions of the exhibit have been omitted pursuant to a confidential treatment order. An unredacted copy of the exhibit has been filed separately with the United States Securities and Exchange Commission pursuant to the request for confidential treatment.

* Filed herewith.

† Management compensatory arrangement.

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We have issued our report dated March 13, 2020, with respect to the consolidated financial statements included in the Annual Report of Emergent Capital, Inc. on Form 10-K for the year ended November 30, 2019. We consent to the incorporation by reference of said report in the Registration Statements of Emergent Capital, Inc. on Form S-1 (File No. 333-220187) and on Forms S-8 (File No. 333-172113 and File No. 333-223944).

/s/ GRANT THORNTON LLP

Fort Lauderdale, Florida
March 13, 2020

CERTIFICATIONS

I, Patrick J. Curry, certify that:

1. I have reviewed this Amendment No. 1 to the Annual Report on Form 10-K of Emergent Capital, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report.

/s/ Patrick Curry

Patrick J. Curry

Chief Executive Officer

(Principal Executive Officer)

March 16, 2020

CERTIFICATIONS

I, Miriam Martinez, certify that:

1. I have reviewed this Amendment No. 1 to the Annual Report on Form 10-K of Emergent Capital, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report.

/s/ Miriam Martinez

Miriam Martinez

Chief Financial Officer

(Principal Financial Officer)

March 16, 2020