EMBARCADERO TECHNOLOGIES INC
Form PRER14A
October 06, 2006
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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, as amended

Filed by the Registrant x

Filed by a Party other than the Registrant ¨

Check the appropriate box:

x Preliminary Proxy Statement
¨ Definitive Proxy Statement
¨ Definitive Additional Materials
¨ Soliciting Material Pursuant to §240.14a-12
¨ **Confidential, for Use of the Commission Only(as permitted by Rule 14a-6(e)(2))**

EMBARCADERO TECHNOLOGIES, INC.

(Name of Registrant as Specified in its Charter)

N/A

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

¨ No fee required.

¨ 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:

2) Aggregate number of securities to which transaction applies:

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):

4) Proposed maximum aggregate value of transaction:

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1) Amount Previously Paid:

2) Form, Schedule or Registration Statement No.:

3) Filing Party:

4) Date Filed:

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INTRODUCTORY NOTE

Embarcadero Technologies, Inc. (the **Company**) is filing this Revised Preliminary Proxy Statement solely for the purpose of including two exhibits to the Agreement and Plan of Merger, dated as as of September 6, 2006, by and among EMB Holding Corp., EMBT Merger Corp. and the Company, which is attached to the Preliminary Proxy Statement as Annex A. These exhibits were inadvertently omitted from the Preliminary Proxy Statement filed with the Securities and Exchange Commission on October 4, 2006.

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EMBARCADERO TECHNOLOGIES, INC.

100 California Street, 12th Floor

San Francisco, California 94111

, 2006

Dear Fellow Stockholder:

You are cordially invited to attend the Special Meeting of Stockholders (the ***special meeting***) of Embarcadero Technologies, Inc. (***Embarcadero***, ***Company***, ***we***, ***us***, or ***our***), which will be held on , , 2006, at a.m., local time, at the Company s principal executive offices located at 100 California Street, 12th Floor, San Francisco, California 94111. The Company s telephone number is (415) 834-3131.

At this meeting, you will be asked to consider and vote upon a proposal to adopt an agreement and plan of merger, dated as of September 6, 2006, by and among EMB Holding Corp., EMBT Merger Corp. and the Company (the ***merger agreement***), pursuant to which EMBT Merger Corp. will be merged with and into the Company, with the Company continuing as the surviving corporation. If the merger is completed, each share of Company common stock issued and outstanding at the effective time of the merger will be converted into the right to receive $8.38 in cash, without interest, other than shares held by the Company or any of its subsidiaries or EMB Holding Corp., which will be cancelled without payment, and shares held by stockholders who are entitled to, and who properly exercise and perfect, appraisal rights in compliance with all of the required procedures under Delaware law.

If the merger is completed, the Company will continue its operations as a privately-held company owned by an affiliate of Thoma Cressey Equity Partners, Inc., a private equity firm.

As a result of the merger, the Company s shares will no longer be quoted on The NASDAQ Global Select Market.

Our board of directors approved the merger agreement and the transactions contemplated by the merger agreement and determined that the merger is fair to, advisable and in the best interests of our stockholders. **The board of directors recommends that you vote FOR the adoption of the merger agreement.**

The proxy statement accompanying this letter provides you with information about the proposed merger and the special meeting. We encourage you to read the entire proxy statement carefully, including the merger agreement and the other documents annexed to the proxy statement. You may also obtain more information about Embarcadero from documents we have filed with the Securities and Exchange Commission.

Your vote is very important. The merger cannot be completed unless the merger agreement is adopted by the affirmative vote of the holders of a majority of the outstanding shares of Embarcadero common stock. **If you fail to vote on the merger agreement, the effect will be the same as a vote against the adoption of the merger agreement for purposes of the vote referred to above.**

ALL STOCKHOLDERS ARE CORDIALLY INVITED TO ATTEND THE MEETING IN PERSON. WHETHER OR NOT YOU PLAN TO ATTEND THE MEETING, PLEASE COMPLETE, DATE, SIGN AND RETURN THE ENCLOSED PROXY AS PROMPTLY AS POSSIBLE IN ORDER TO ENSURE YOUR REPRESENTATION AT THE MEETING. A RETURN ENVELOPE (WHICH IS POSTAGE PREPAID IF MAILED IN THE UNITED STATES) IS ENCLOSED FOR THAT PURPOSE. EVEN IF YOU HAVE GIVEN YOUR PROXY, YOU MAY STILL VOTE IN PERSON IF YOU ATTEND THE MEETING. PLEASE NOTE, HOWEVER, THAT IF YOUR SHARES ARE HELD OF RECORD BY A BROKER, BANK OR OTHER NOMINEE AND YOU WISH TO VOTE AT THE MEETING, YOU MUST OBTAIN FROM THE RECORD HOLDER A PROXY ISSUED IN YOUR NAME.

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Submitting a proxy will not prevent you from voting your shares in person if you subsequently choose to attend the special meeting.

We thank you for your support and look forward to seeing you at the meeting.

Sincerely,

Stephen R. Wong

Chairman, President and Chief Executive Officer

Neither the Securities and Exchange Commission nor any state securities regulatory agency has approved or disapproved the merger, passed upon the merits or fairness of the merger or the merger agreement or passed upon the adequacy or accuracy of the information contained in the accompanying proxy statement. Any representation to the contrary is a criminal offense.

THE ACCOMPANYING PROXY STATEMENT IS DATED , 2006

AND IS FIRST BEING MAILED TO STOCKHOLDERS ON OR ABOUT , 2006.

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EMBARCADERO TECHNOLOGIES, INC.

100 California Street, 12th Floor

San Francisco, California 94111

(415) 834-3131

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS

To be Held on , 2006

To Our Stockholders:

Notice is hereby given that a special meeting of stockholders of Embarcadero Technologies, Inc., a Delaware corporation (the ***Company***), will be held on , , 2006, at :00 **[a.]**m., local time, at the Company s principal executive offices located at 100 California Street, 12th Floor, San Francisco, California 94111, for the following purposes:

1. To consider and vote upon a proposal to adopt the Agreement and Plan of Merger, dated as of September 6, 2006, by and among EMB Holding Corp., EMBT Merger Corp. and the Company (the ***merger agreement***), pursuant to which, upon the merger becoming effective, each share of common stock, par value $0.001 per share, of the Company will be converted into the right to receive $8.38 in cash, without interest, other than shares held by the Company or any of its subsidiaries or EMB Holding Corp., which will be cancelled without payment, and shares held by stockholders who are entitled to, and who properly exercise and perfect, appraisal rights in compliance with all of the required procedures under Delaware law;

2. To approve the adjournment of the meeting, if necessary, to solicit additional proxies if there are insufficient votes at the time of the meeting to adopt the merger agreement; and

3. To act upon such other business as may properly come before the special meeting or any adjournment or postponement of the special meeting.

Only holders of the Company s common stock at the close of business on , 2006 are entitled to notice of and to vote at the special meeting and any adjournment or postponement of the special meeting.

You are cordially invited to attend the meeting in person.

Your vote is important, regardless of the number of shares of the Company s common stock that you own. The adoption of the merger agreement requires the affirmative vote of the holders of a majority of the outstanding shares of the Company s common stock entitled to vote on that proposal. The proposal to adjourn the meeting, if necessary, to solicit additional proxies requires the affirmative vote of a majority of the shares present and entitled to vote on the matter at the special meeting.

Even if you plan to attend the meeting in person, please complete, sign, date and return the enclosed proxy to ensure that your shares will be represented at the meeting if you are unable to attend. If you sign, date and mail your proxy card without indicating how you wish to vote, your vote will be counted as a vote in favor of the adoption of the merger agreement, in favor of the proposal to adjourn the meeting, if necessary, to solicit additional proxies, and in accordance with the recommendation of our board of directors on any other matters properly brought before the meeting for a vote. If you fail to return your proxy card, the effect will be that your shares will not be counted for purposes of determining whether a quorum is present at the meeting and will have the same effect as a vote against the adoption of the merger agreement, but will not affect the outcome of the vote regarding the adjournment of the meeting, if necessary, to solicit additional proxies. If you are a stockholder of record and do attend the meeting, you may vote in person.

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YOUR VOTE IS IMPORTANT!

ALL STOCKHOLDERS ARE CORDIALLY INVITED TO ATTEND THE MEETING IN PERSON. WHETHER OR NOT YOU PLAN TO ATTEND THE MEETING, PLEASE COMPLETE, DATE, SIGN AND RETURN THE ENCLOSED PROXY AS PROMPTLY AS POSSIBLE IN ORDER TO ENSURE YOUR REPRESENTATION AT THE MEETING. A RETURN ENVELOPE (WHICH IS POSTAGE PREPAID IF MAILED IN THE UNITED STATES) IS ENCLOSED FOR THAT PURPOSE. EVEN IF YOU HAVE GIVEN YOUR PROXY, YOU MAY STILL VOTE IN PERSON IF YOU ATTEND THE MEETING. PLEASE NOTE, HOWEVER, THAT IF YOUR SHARES ARE HELD OF RECORD BY A BROKER, BANK OR OTHER NOMINEE AND YOU WISH TO VOTE AT THE MEETING, YOU MUST OBTAIN FROM THE RECORD HOLDER A PROXY ISSUED IN YOUR NAME.

Stockholders of the Company who do not vote in favor of the adoption of the merger agreement will have the right to seek appraisal of the fair value of their shares if the merger is completed, but only if they submit a written demand for appraisal to the Company before the vote is taken on the merger agreement and they comply with all of the other requirements of Delaware law, which are summarized in the accompanying proxy statement.

By Order of the Board of Directors,

Stephen R. Wong

President, Chief Executive Officer

and Chairman of the Board

San Francisco, California

, 2006

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SUMMARY TERM SHEET

The following summary term sheet highlights selected information from this proxy statement and may not contain all of the information that may be important to you. Accordingly, we encourage you to read carefully this entire proxy statement, its annexes and the documents referred to or incorporated by reference in this proxy statement. In this proxy statement, the terms Embarcadero, Company, we, our, ours, and us refe Embarcadero Technologies, Inc. and its subsidiaries, taken together unless the context requires otherwise.

The Merger and Related Matters

The Merger. You are being asked to vote to adopt an agreement and plan of merger among EMB Holding Corp. (***Parent***), EMBT Merger Corp. and Embarcadero, which provides for the merger of EMBT Merger Corp. with and into Embarcadero. Upon the completion of the merger, Embarcadero will be the surviving corporation and a wholly-owned subsidiary of Parent, and the separate existence of EMBT Merger Corp. will cease. We refer to the agreement and plan of merger in this proxy statement as the merger agreement. See Proposal No. 1 The Merger Agreement beginning on page . A copy of the merger agreement is attached as *Annex A* to this proxy statement.

Parties to the Merger. See The Parties to the Merger beginning on page .

Embarcadero Technologies, Inc. Embarcadero was incorporated in California on July 23, 1993 and reincorporated in Delaware on February 15, 2000. Embarcadero is a leading provider of strategic data management solutions that help companies to improve the availability, integrity, accessibility and security of corporate data. Embarcadero develops, markets, sells and supports software that helps customers to manage corporate data more effectively.

EMBT Merger Corp. EMBT Merger Corp. is a Delaware corporation that was incorporated on August 24, 2006 solely for the purpose of completing the merger and related transactions. EMBT Merger Corp. has not participated in any activities to date other than activities incident to its formation and the transactions contemplated by the merger agreement.

EMB Holding Corp. EMB Holding Corp. is a Delaware corporation that was incorporated on August 24, 2006 solely for the purpose of completing the merger and related transactions. Parent is the sole stockholder of EMBT Merger Corp.

Other Participants. See Other Participants beginning on page .

Thoma Cressey Equity Partners, Inc. Thoma Cressey Equity Partners, Inc. (***TCEP***) is a Delaware corporation and its principal business is investing in strategic business opportunities, principally in the information technology, healthcare, business services and consumer products and services fields. TCEP was incorporated in the state of Delaware on December 19, 1997. In connection with the merger, TCEP formed EMBT Holdings, Inc. to hold all of the shares of Parent.

EMBT Holdings, Inc. EMBT Holdings, Inc. is an affiliate of TCEP and was incorporated in Delaware on August 24, 2006 solely for the purpose of holding the shares of Parent. EMBT Holdings, Inc. has not participated in any activities to date other than activities incident to its formation. EMBT Holdings, Inc. is the sole stockholder of Parent. In connection with the merger, TCEP, together with other potential investors including Thoma Cressey Fund VIII, L.P. (collectively, the ***Investors***), are expected to make equity investments in EMBT Holdings, Inc., which will be used to fund the equity capital of Parent. Thoma Cressey Fund VIII, L.P. is an affiliated fund of TCEP and invests largely in companies in the software and healthcare industries, as well as in areas such as business services and consumer products and services.

Payment for Common Stock. If the merger is completed, each share of Embarcadero common stock issued and outstanding at the effective time of the merger will be converted into the right to receive $8.38 in cash, without interest, other than shares held by us or any of our subsidiaries, or EMB Holding

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Corp., which shares will be cancelled without payment, and shares held by stockholders who are entitled to, and who properly exercise and perfect, appraisal rights in compliance with all of the required procedures under Delaware law. See The Merger Agreement Treatment of Stock and Options beginning on page .

Treatment of Options. Immediately prior to the effective time of the merger, all outstanding options to purchase Embarcadero common stock will accelerate and become fully vested. Upon completion of the merger, any options having an exercise price equal to or greater than $8.38 per share will be cancelled without payment and any options having an exercise price less than $8.38 per share will entitle the holder thereof to receive an amount in cash equal to the product of (i) the total number of shares of Embarcadero common stock subject to the option, multiplied by (ii) the excess of $8.38 over the exercise price per share of Embarcadero common stock underlying such option, less any applicable withholding taxes. Each of the Company equity incentive plans will be terminated upon completion of the merger. See The Merger Agreement Treatment of Stock and Options beginning on page .

Treatment of Restricted Stock. If any share of restricted Embarcadero common stock outstanding immediately prior to the effective time of the merger is unvested or subject to a repurchase option, then, effective immediately prior to the completion of the merger, any such share of restricted common stock will accelerate and become fully vested and any repurchase option will lapse. Thereafter, each such share will be converted into the right to receive $8.38 in cash, without interest. See The Merger Agreement Treatment of Restricted Stock beginning on page .

Effect of the Merger on Embarcadero. After the merger, Embarcadero s shares will no longer be quoted on The NASDAQ Global Select Market. In addition, Embarcadero will terminate the registration of Embarcadero common stock under the Securities Exchange Act of 1934.

Board of Directors Recommendation. In evaluating the merger, our board of directors considered a number of factors, including, among other things, the challenges facing the Company to increase stockholder value as an independent publicly-traded company, our current business and prospects, financial condition and results of operations, the consideration to be received by our stockholders pursuant to the merger, comparable transactions and a fairness opinion, dated September 6, 2006, from Morgan Stanley & Co. Incorporated (***Morgan Stanley***), the financial advisor to the board of directors, which is described below. **After careful consideration of these and other factors, our board of directors approved the merger agreement and related documents and determined to recommend that our stockholders vote FOR the adoption of the merger agreement.** See The Merger Background of the Merger beginning on page and The Merger Recommendation of the Board of Directors beginning on page .

Opinion of Financial Advisor. Our board of directors received a fairness opinion, dated September 6, 2006, from Morgan Stanley, the financial advisor to the board of directors, to the effect that, as of that date and based upon and subject to the assumptions, qualifications and limitations set forth in the opinion, the merger consideration of $8.38 per share to be received by holders of shares of Embarcadero common stock pursuant to the merger agreement is fair from a financial point of view to the holders of Embarcadero common stock, other than one or more officers of Embarcadero who are investing a portion of their proceeds from the merger in the capital stock of EMBT Holdings Inc. Embarcadero has agreed to pay Morgan Stanley a fee for its services of approximately $3.0 million, a substantial portion of which is contingent upon the completion of the merger. See The Merger Opinion of Morgan Stanley & Co. Incorporated beginning on page . A copy of Morgan Stanley s opinion is attached as *Annex B* to this proxy statement.

Interests of Certain Persons in the Merger. Some of our directors and officers have interests in the merger that may be different from, or in addition to, the interests that apply to our stockholders generally. These interests include the following:

All outstanding options to purchase Embarcadero common stock, including those held by our directors and officers, will accelerate and become fully vested immediately prior to the completion of the merger, and in the case of any options having a per share exercise price less than $8.38, will

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entitle the holder thereof to receive an amount in cash equal to the product of (i) the total number of shares of Embarcadero common stock subject to the option, multiplied by (ii) the excess of $8.38 over the exercise price per share, less applicable withholding taxes;

All outstanding shares of restricted Embarcadero common stock, including those held by our officers, will accelerate and become fully vested immediately prior to the completion of the merger, and any repurchase option will lapse, after which each such share will be converted into the right to receive $8.38 in cash, without interest, less applicable withholding taxes;

Pursuant to the terms of his existing employment agreement with us, Michael Shahbazian, our Chief Financial Officer, will be entitled to accelerated vesting of all unvested stock options and restricted common stock held by him, as well as certain other severance benefits, upon the completion of the merger and the termination of his employment as Chief Financial Officer after the merger;

As the surviving corporation, Embarcadero is required after completion of the merger to maintain certain indemnification and insurance policies applicable to the existing directors and executive officers of the Company;

Each of Raj Sabhlok, Robert Lamvik and Wayne Williams will continue to serve as officers of the surviving corporation after the merger pursuant to employment agreements that provide for, among other things, severance payments under certain circumstances and the right to receive management incentive equity awards in EMBT Holdings, Inc; and

Pursuant to his employment agreement, Mr. Sabhlok will be entitled upon completion of the merger to invest $300,000 in shares of capital stock of EMBT Holdings, Inc. on the same terms as the other investors in EMBT Holdings, Inc.

Our board of directors was aware of these interests and considered them, among other things, when approving the merger agreement. See The Merger Interests of Certain Persons in the Merger beginning on page .

Financing of the Merger. TCEP estimates that the total amount of funds required to pay the aggregate merger consideration in connection with the merger will be approximately $234,000,000. TCEP expects this amount, together with the related working capital requirements of Embarcadero following the completion of the merger, to be provided through a combination of the proceeds of the following:

an aggregate cash equity investment in EMBT Holdings, Inc. by TCEP and the other Investors of up to approximately $90,000,000;

new senior secured credit facilities in the aggregate amount of $87,500,000, consisting of two term loans in the amounts of $55,000,000 and $27,500,000, respectively, and a $5,000,000 revolving credit facility; and

cash and cash equivalents held by Embarcadero.

See The Merger Financing of the Merger beginning on page .

Sponsor Guarantee. Thoma Cressey Fund VIII, L.P. has agreed to be responsible for the performance by Parent and EMBT Merger Corp. of all of their obligations under the merger agreement, up to a maximum amount of $12,150,000. See The Merger Agreement Sponsor Guarantee beginning on page .

Other Offers. The merger agreement restricts our ability to, among other things, solicit or engage in discussions or negotiations with a third party regarding specified transactions involving Embarcadero. However, under specified circumstances, our board of directors may terminate the merger agreement if it receives and accepts a superior proposal, as defined in the merger agreement, subject to the payment of a termination fee of $8,100,000 to Parent and the fulfillment of certain other conditions. See The Merger Agreement No Solicitation of Transactions beginning on page and The Merger Agreement Termination beginning on page .

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Tax Consequences. Generally, the exchange of your shares for cash pursuant to the merger will be taxable for U.S. federal income tax purposes. You will recognize taxable gain or loss in the amount of the difference between $8.38 per share that you receive and your adjusted tax basis for each share of Embarcadero common stock that you own. See The Merger Material U.S. Federal Income Tax Consequences beginning on page .

Conditions. The completion of the merger pursuant to the merger agreement is subject, among other things, to (i) adoption of the merger agreement by the holders of a majority of the outstanding shares of Embarcadero common stock; (ii) the delivery by an appraisal firm to our board of directors of an opinion indicating that, among other things, after giving effect to the merger and related transactions, Embarcadero will not be insolvent and will have assets sufficient to pay its debts and other obligations and to conduct its business, (iii) expiration or termination of the applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the ***HSR Act***), which condition has been met, and (iv) no material adverse effect relating to Embarcadero. Although the merger is not contingent on any financing, neither Parent nor EMBT Merger Corp. has any material assets and Thoma Cressey Fund VIII, L.P. has only guaranteed their performance under the merger agreement up to a maximum amount of $12,150,000. See The Merger Agreement Conditions to the Merger beginning on page .

The Special Meeting and Related Matters

Date, Time and Place. The special meeting of our stockholders will be held on , , 2006, beginning at :00 **[a]**.m., local time, at our principal executive offices located at 100 California Street, 12th Floor, San Francisco, California 94111.

Record Date and Voting. You are entitled to vote at the special meeting if you owned shares of Embarcadero common stock at the close of business on , 2006, the record date for the special meeting. Each outstanding share of Embarcadero common stock on the record date entitles the holder to one vote on each matter submitted to stockholders for approval at the special meeting. As of the close of business on the record date, there were shares of common stock of Embarcadero entitled to be voted at the special meeting. See The Special Meeting Record Date, Quorum and Voting Power beginning on page .

Stockholder Vote Required to Adopt the Merger Agreement. For Embarcadero to complete the merger, stockholders holding at least a majority of the shares of Embarcadero common stock outstanding at the close of business on the record date must vote **FOR** the adoption of the merger agreement. See The Special Meeting Required Vote beginning on page .

Share Ownership of Directors and Executive Officers. As of the close of business on the record date for the special meeting, our directors and executive officers held and are entitled to vote, in the aggregate, shares of Embarcadero common stock, representing approximately % of the outstanding shares of our common stock. Each of Stephen Wong, Chairman, President and Chief Executive Officer of the Company, Raj Sabhlok, Senior Vice President of Operations of the Company, Michael Shahbazian, Chief Financial Officer of the Company, and Robert Lamvik, Vice President, Worldwide Field Operations of the Company, has agreed to vote, or cause to be voted or consented, all of his shares of our common stock and those acquired after the date of the voting agreements, if any, in favor of the adoption of the merger agreement. As of the record date, the voting agreements executed by Messrs. Wong, Sabhlok, Shahbazian and Lamvik cover an aggregate of shares of Embarcadero common stock, representing approximately % of the shares of Embarcadero common stock entitled to vote upon the adoption of the merger agreement. In addition to the shares that Messrs. Wong, Sabhlok, Shahbazian and Lamvik have agreed to vote in favor of adoption of the merger agreement pursuant to the voting agreements, the affirmative vote of holders of Embarcadero common stock representing at least shares of our common stock, or approximately % of the outstanding shares of our common stock, will be required to adopt the merger agreement. See The Special Meeting Voting by Directors and Executive Officers beginning on page . A copy of the form

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of voting agreement entered into by each of Messrs. Wong, Sabhlok, Shahbazian and Lamvik is included as Exhibit A to the merger agreement, which is attached as *Annex A* to this proxy statement.

Appraisal Rights of Stockholders. Under Delaware law, you are entitled to appraisal rights in connection with the merger. As a result, you will have the right under Delaware law to have the fair value of your shares of Embarcadero common stock determined by the Delaware Chancery Court. This right to appraisal is subject to a number of restrictions and procedural requirements. Generally, in order to exercise your appraisal rights, you must:

- send a written demand to Embarcadero for appraisal in compliance with the General Corporation Law of the State of Delaware before the vote on the adoption of the merger agreement;
- not vote in favor of the adoption of the merger agreement; and
- continuously hold your Embarcadero common stock from the date you make the demand for appraisal through the effective date of the merger.

Merely voting against the adoption of the merger agreement will not protect your rights to an appraisal, which requires you to take all the steps provided under Delaware law. Delaware law requirements for exercising appraisal rights are described in further detail in this proxy statement. See Appraisal Rights beginning on page . In addition, Section 262 of the General Corporation Law of the State of Delaware, which is the section of Delaware law regarding appraisal rights, is reproduced and attached as *Annex C* to this proxy statement.

If you vote for the adoption of the merger agreement, you will waive your rights to seek appraisal of your shares of Embarcadero common stock under Delaware law.

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QUESTIONS AND ANSWERS ABOUT THE MERGER AND THE SPECIAL MEETING

The following questions and answers briefly address some commonly asked questions about the merger and the special meeting. They may not include all of the information that may be important to you. We urge you to read carefully this entire proxy statement, including the annexed documents and the other documents we refer to and incorporate by reference in this proxy statement.

Q: What matters will I be asked to vote on at the special meeting?

A: You will be asked to vote upon the following proposals:

the adoption of the merger agreement, which provides for the merger of EMBT Merger Corp. with and into Embarcadero;

the approval of the adjournment of the special meeting, if necessary, to solicit additional proxies if there are insufficient votes at the time of the special meeting to adopt the merger agreement; and

such other business as may properly come before the special meeting.

Q: What will happen to Embarcadero as a result of the merger?

A: Embarcadero will continue its operations as a privately-held company directly held by Parent, which is a wholly-owned subsidiary of EMBT Holdings, Inc. After the merger, EMBT Holdings, Inc. will be controlled by TCEP and the other Investors. Our common stock will no longer be publicly traded, and we will no longer file periodic and other reports with the Securities and Exchange Commission with respect to our common stock or proxy or information statements with respect to stockholders meetings.

Q: What will I receive for my Embarcadero common stock if the merger is completed?

A: If the merger is completed, you will no longer own shares of Embarcadero common stock. If the merger is completed, each share of your Embarcadero common stock will be converted into the right to receive $8.38 in cash, without interest, unless you validly exercise and perfect appraisal rights in compliance with all of the required procedures under Delaware law, in which case your shares will be subject to appraisal in accordance with Delaware law.

Q: What will happen to my stock options in the merger?

A: Immediately prior to the effective time of the merger, all outstanding options to acquire Embarcadero common stock will accelerate and become fully vested. Upon the completion of the merger, any options having an exercise price equal to or greater than $8.38 per share will be cancelled without payment and any options having an exercise price less than $8.38 per share will entitle the holder thereof to receive an amount in cash, without interest, less applicable withholding taxes, equal to the product of (i) the total number of shares of Embarcadero common stock subject to the option, multiplied by (ii) the excess of $8.38 over the exercise price per share of Embarcadero common stock underlying such option, which cash amount we refer to as the option consideration. Each of the Company s equity incentive plans will be terminated upon the completion of the merger.

Q: What will happen to my restricted shares of Embarcadero common stock in the merger?

A: If any shares of your restricted common stock outstanding immediately prior to the effective time of the merger is unvested or subject to a repurchase option, then, effective immediately prior to the completion of the merger, any such share of restricted common stock will accelerate and become fully vested and any repurchase option will lapse. Thereafter, each such share will be converted into the right to receive $8.38 in cash, without interest.

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Q: How does Embarcadero s board of directors recommend that I vote on the merger?

A: Our board of directors approved the merger agreement and related documents and determined that the merger, on the terms and conditions set forth in the merger agreement, is fair to, advisable and in the best interests of our stockholders. **The board of directors recommends that you vote FOR the adoption of the merger agreement.**

Q: Do any members of the board of directors or management of Embarcadero have interests in the merger that may be different from my interests as a stockholder?

A: Yes, some of our directors and officers have interests in the merger that may be different from, or in addition to, the interests that apply to our stockholders generally, including the following:

- All outstanding options to purchase Embarcadero common stock, including those held by our directors and executive officers, will accelerate and become fully vested immediately prior to the completion of the merger, and in the case of any options having an exercise price less than $8.38 per share, will entitle the holder thereof to receive the option consideration;

- All outstanding shares of restricted Embarcadero common stock, including those held by our executive officers, will accelerate and become fully vested immediately prior to the completion of the merger, and any repurchase option will lapse, after which each such share will be converted into the right to receive $8.38 in cash, without interest;

- Pursuant to the terms of his existing employment agreement with us, Michael Shahbazian, our Chief Financial Officer, will be entitled to accelerated vesting of all unvested stock options and restricted common stock held by him, as well as certain other severance benefits, upon the completion of the merger and the termination of his employment as Chief Financial Officer after the merger;

- As the surviving corporation, Embarcadero is required after completion of the merger to maintain certain indemnification and insurance policies applicable to the existing directors and executive officers of the Company;

- Each of Raj Sabhlok, Robert Lamvik and Wayne Williams will continue to serve as officers of the surviving corporation after the merger pursuant to employment agreements that provide for, among other things, severance payments under certain circumstances and the right to receive management incentive equity awards in EMBT Holdings, Inc.; and

- Pursuant to his employment agreement, Mr. Sabhlok will be entitled to invest $300,000 of his proceeds from the merger in shares of capital stock of EMBT Holdings, Inc., representing approximately 0.33% of the equity capital of that company, on the same terms as the other Investors upon completion of the merger.

See The Merger Interests of Certain Persons in the Merger beginning on page .

Q: What are EMBT Merger Corp., EMB Holding Corp. and EMBT Holdings, Inc.?

A: EMBT Merger Corp. was incorporated in Delaware on August 24, 2006 solely for the purpose of completing the merger and related transactions. EMB Holding Corp., or Parent, is the sole stockholder of EMBT Merger Corp., and was incorporated in Delaware on August 24, 2006 solely for the purpose of completing the merger and related transactions. EMBT Holdings, Inc. was incorporated in Delaware on August 24, 2006 solely for the purpose of holding the shares of Parent. Upon the completion of the merger, the Investors are expected to make equity investments in EMBT Holdings, Inc., which will be used to fund the equity capital of Parent.

Q: How will EMBT Merger Corp. and Parent pay the merger consideration?

A: EMBT Merger Corp. and Parent will pay the merger consideration from the proceeds of equity investments in EMBT Holdings, Inc., the sole stockholder of Parent, to be made by the Investors, in connection with the merger.

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In addition, it is anticipated that debt financing arrangements to be entered into in connection with the merger, together with cash and cash equivalents held by Embarcadero and its subsidiaries, will be used to fund payment of a portion of the merger consideration and to fund the business and operations of Embarcadero after the merger. For more information about the financing of the merger, see The Merger Financing of the Merger beginning on page .

Q: When do you expect the merger to be completed?

A: We are working to complete the merger as quickly as possible, and we anticipate that it will be completed in the fourth quarter of 2006. In order to complete the merger, we must obtain stockholder approval, and the other closing conditions under the merger agreement must be satisfied or waived. See The Merger Agreement Conditions to the Merger beginning on page and The Merger Agreement Effective Time beginning on page .

Q: What are the conditions to the completion of the merger?

A: The completion of the merger is subject to a number of conditions, including, among others:

- adoption of the merger agreement by the holders of a majority of the outstanding shares of our common stock;
- the absence of any law or order that prevents or prohibits completion of the merger;
- the receipt from all governmental authorities and third parties of all material consents, approvals and authorizations required in order to complete the merger;
- the expiration or termination of the applicable waiting period under the HSR Act, which condition has been met;
- the accuracy of the representations and warranties made by us, Parent and EMBT Merger Corp. in the merger agreement, subject to specified materiality thresholds;
- the performance, in all material respects, by us, Parent and EMBT Merger Corp. of the covenants and agreements in the merger agreement;
- the absence of any occurrence that has had a material adverse effect on Embarcadero;
- the delivery of specified certifications; and
- the delivery of a solvency opinion to our board of directors.

If all of these conditions are not either satisfied or waived, the merger will not be completed even if our stockholders vote to adopt the merger agreement. See The Merger Agreement Conditions to the Merger beginning on page .

Q: Will I owe any U.S. federal income tax as a result of the merger?

A: Generally, the exchange of your shares for cash pursuant to the merger will be taxable for U.S. federal income tax purposes. You will recognize taxable gain or loss in the amount of the difference between $8.38 per share that you receive and your adjusted tax basis for each share of Embarcadero common stock that you own. For further information about the U.S. federal income tax consequences of the merger, see The Merger Material U.S. Federal Income Tax Consequences beginning on page .

Q: When and where is the special meeting?

A: The special meeting will be held on , , 2006, beginning at :00 **[a]**.m., local time, at Embarcadero s principal executive offices located at 100 California Street, 12th Floor, San Francisco, California 94111.

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Q: Who can vote on the merger agreement?

A: Holders of our common stock at the close of business on , 2006, the record date for the special meeting, may vote in person or by proxy on the merger agreement at the special meeting.

Q: What vote of stockholders is required to adopt the merger agreement?

A: In order to complete the merger, stockholders holding at least a majority of the shares of our common stock outstanding at the close of business on the record date must vote **FOR** the adoption of the merger agreement.

Q: What vote of stockholders is required for the proposal to adjourn the meeting?

A: The proposal to adjourn the meeting, if necessary, to solicit additional proxies requires the affirmative vote of a majority of the shares present and entitled to vote on the matter at the special meeting.

Q: Are any stockholders required to vote in favor of adopting the merger agreement?

A: Yes. Under the terms of voting agreements entered into in connection with the merger agreement, Messrs. Wong, Sabhlok, Shahbazian and Lamvik have agreed to vote all shares of Embarcadero common stock currently held or subsequently acquired by them in favor of adopting the merger agreement. As of the record date, the voting agreements executed by Messrs. Wong, Sabhlok, Shahbazian and Lamvik cover an aggregate of shares of Embarcadero common stock, representing approximately % of the shares of our common stock entitled vote upon the adoption of the merger agreement.

Q: What does it mean if I receive more than one proxy card?

A: If you have shares of our common stock that are registered differently and are in more than one account, you will receive more than one proxy card. Please follow the directions for voting on each of the proxy cards you receive to ensure that all of your shares are voted.

Q: How do I vote without attending the special meeting?

A: If you hold shares in your name as the stockholder of record, then you received this proxy statement and a proxy card from us. If you hold shares in street name through a broker, bank or other nominee, then you received this proxy statement from the nominee, along with the nominee s form of proxy card which includes voting instructions. In either case, you may submit a proxy for your shares by mail without attending the special meeting. To submit a proxy by mail, mark, sign and date the proxy card and return it in the postage-paid envelope provided.

Q: How do I vote in person at the special meeting?

A: If you hold shares in your name as the stockholder of record, you may vote those shares in person at the special meeting by giving us a signed proxy card or ballot before voting is closed. If you want to do that, please bring proof of identification with you. Even if you plan to attend the special meeting, we recommend that you submit a proxy for your shares in advance as described above, so your vote will be counted even if you later decide not to attend.

If you hold shares in street name through a broker, bank or other nominee, you may vote those shares in person at the special meeting only if you obtain and bring with you a signed proxy from the necessary nominee giving you the right to vote the shares. To do this, you should contact your nominee.

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Q: Can I change my vote?

A: After you submit a proxy for your shares, you may change your vote at any time before voting is closed at the special meeting. If you hold shares in your name as the stockholder of record, you should write to our Corporate Secretary at our principal offices, 100 California Street, 12th Floor, San Francisco, California 94111, stating that you want to revoke your proxy and that you need another proxy card. If you hold your shares in street name through a broker, bank or other nominee, you should contact the nominee and ask for a new proxy card. If you attend the special meeting, you may vote by proxy or ballot as described above, which will cancel your previous vote. Your last vote before voting is closed at the special meeting is the vote that will be counted.

Q: What happens if I do not respond?

A: For purposes of the proposal to adopt the merger agreement, the failure to respond by returning your proxy card will have the same effect as voting against the merger agreement unless you vote for the merger agreement in person at the special meeting. For purposes of any proposal to adjourn the meeting, if necessary, to solicit proxies, the failure to respond by returning your proxy card will not count as a vote entitled to be cast on the proposal but if the failure to respond causes your shares to be deemed to be a broker non-vote, your shares will count for determining whether a quorum is present.

Q: What is a quorum?

A: A quorum of the holders of the outstanding shares of our common stock must be present for the special meeting to be held. A quorum is present if the holders of a majority of the outstanding shares of our common stock entitled to vote are present at the special meeting, either in person or represented by proxy. Abstentions and broker non-votes are counted as present for the purpose of determining whether a quorum is present.

Q: If my shares are held in street name by my broker, will my broker vote my shares for me?

A: Yes, but only if you provide instructions to your broker on how to vote. You should follow the directions provided by your broker regarding how to instruct your broker to vote your shares. Without those instructions, your shares will not be voted.

Q: How are votes counted?

A: For the proposal relating to the adoption of the merger agreement, you may vote FOR, AGAINST or ABSTAIN. Abstentions will not count as votes cast on the proposal relating to adoption of the merger agreement, but will count for the purpose of determining whether a quorum is present. If you ABSTAIN, it has the same effect as if you vote AGAINST the adoption of the merger agreement.

For the proposal to adjourn the meeting, if necessary, to solicit additional proxies if there are insufficient votes at the time of the special meeting to adopt the merger agreement, you may vote FOR, AGAINST or ABSTAIN. Abstentions will not count as votes cast on the proposal to adjourn the meeting, if necessary, to solicit additional proxies, but will count for the purpose of determining whether a quorum is present.

If you sign your proxy card without indicating your vote, your shares will be voted FOR the adoption of the merger agreement, FOR adjournment of the meeting, if necessary, to solicit additional proxies, and in accordance with the recommendations of our board of directors on any other matters properly brought before the meeting for a vote.

A broker non-vote generally occurs when a broker, bank or other nominee holding shares on your behalf does not vote on a proposal because the nominee has not received your voting instructions and lacks discretionary power to vote the shares. Broker non-votes will not count as votes cast on a proposal, but will count for the purpose of determining whether a quorum is present. Broker non-votes will have the same effect as a vote against the adoption of the merger agreement.

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Q: Who will bear the cost of this solicitation?

A: We will pay the cost of this solicitation, which will be made primarily by mail. Proxies also may be solicited in person, or by telephone, facsimile, Internet or similar means, by our directors, officers or employees without additional compensation. We will, on request, reimburse stockholders who are brokers, banks or other nominees for their reasonable expenses in sending proxy materials to the beneficial owners of the shares they hold of record.

Q: Should I send in my stock certificates now?

A: No. If the merger is completed, you will receive a letter of transmittal with instructions informing you how to send your stock certificates to the paying agent in order to receive the merger consideration. You should use the letter of transmittal to exchange Embarcadero stock certificates for the merger consideration to which you are entitled as a result of the merger. If your shares are held in street name by your broker, you will receive instructions from your broker as to how to effect the surrender of your street name shares and receive cash for those shares. DO NOT SEND ANY STOCK CERTIFICATES WITH YOUR PROXY.

Q: What rights do I have to seek appraisal for my shares?

A: If you wish, you may seek an appraisal of the fair value of your shares, but only if you comply with all requirements of Delaware law as described in the section of this proxy statement entitled Appraisal Rights beginning on page and in *Annex C* of this proxy statement. Depending upon the determination of the Delaware Court of Chancery, the appraised fair value of your shares of Embarcadero common stock, which will be paid to you if you seek an appraisal and comply with all requirements of Delaware law, may be more than, less than or equal to the per share consideration to be paid pursuant to the merger.

Merely voting against the adoption of merger agreement will not preserve your appraisal rights under Delaware law. In order to validly exercise and perfect appraisal rights under Section 262 of the General Corporation Law of the State of Delaware, among other things, you must not vote for the adoption of the merger agreement and you must deliver to Embarcadero written demand for appraisal in compliance with Delaware law prior to the vote on the merger agreement at the special meeting. Failure to take all of the steps required under Delaware law may result in the loss of your appraisal rights.

Q: Who can help answer my other questions?

A: The information provided above in the summary term sheet and in the question and answer format is for your convenience only and is merely a summary of the information contained in this proxy statement. You should carefully read this entire proxy statement, including the documents annexed to this proxy statement and the documents we refer to or incorporate by reference in this proxy statement. If you have more questions about the special meeting or the merger, you should contact Investor Relations at *investor@embarcadero.com* or by telephone at (415) 834-3131.

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CAUTIONARY STATEMENT CONCERNING FORWARD-LOOKING INFORMATION

This proxy statement, the annexes attached to this proxy statement, the documents incorporated by reference in this proxy statement and the documents to which we refer you in this proxy statement may contain forward-looking statements. These forward-looking statements include, but are not limited to, statements about our plans, objectives, expectations and intentions and other statements that are not historical facts. The words expects, anticipates, intends, plans, believes, seeks, estimates and similar expressions are generally intended to identify forward statements. Because these forward-looking statements involve risks and uncertainties, there are important factors that could cause actual results to differ materially from those expressed or implied by these forward-looking statements, including our plans, objectives, expectations and intentions and other factors discussed under Risk Factors and Management s Discussion and Analysis of Financial Condition and Results of Operations in our Annual Report on Form 10-K and our Quarterly Reports on Form 10-Q filed with the SEC and incorporated by reference in this proxy statement. Factors that could cause or contribute to such differences include but are not limited to:

- our ability to generate revenues from sales of DBArtisan® and our other products;
- the performance of, the levels of customer demand for and satisfaction with, our products;
- our ability to generate new business from existing customers and to add new customers from our existing or new products; and
- the effect of economic conditions on spending in the information technology market.

Statements about the expected timing, completion and effects of the proposed merger and the possibility of satisfying the conditions required to complete the merger also constitute forward-looking statements. We may not be able to complete the proposed merger on the terms described in this proxy statement or other acceptable terms or at all because of a number of factors, including the failure to obtain stockholder approval or the failure to satisfy the other closing conditions. In addition to other factors and matters contained in this document, we believe the following factors could cause actual results to differ materially from those discussed in the forward-looking statements:

- the satisfaction of the conditions to complete the merger, including the receipt of the required stockholder and regulatory approvals;
- the actual terms of the financing arrangements obtained in connection with the merger;
- the occurrence of any event, change or other circumstances that could give rise to the termination of the merger agreement;
- the failure of the merger to close for any other reason;
- the amount of the costs, fees, expenses and charges related to the merger; and
- our substantial indebtedness following the completion of the merger.

All forward-looking statements contained or incorporated by reference in the proxy statement speak only as of the date of this proxy statement or as of such earlier date that those statements were made and are based on current expectations or expectations as of such earlier date and involve a number of assumptions, risks and uncertainties that could cause the actual results to differ materially from such forward-looking statements. We undertake no obligation to release any revisions to such forward-looking statements to reflect events or circumstances after the date of this proxy statement or to reflect the occurrence of unanticipated events. Notwithstanding the foregoing, in the event of any material change in any of

the information previously disclosed, we will update such information through a supplement to this proxy statement, to the extent required by applicable law.

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THE MERGER

Background of the Merger

In response to preliminary inquiries by three potential strategic buyers, the board of directors, on April 7, 2006, recommended that management engage an investment banking firm to undertake a review of the Company s strategic alternatives. After reviewing its relationships with different investment banking firms and soliciting input from the board of directors, management asked Morgan Stanley to make a presentation to the board of directors regarding such alternatives at a meeting on May 8, 2006. After that meeting and further discussion among the directors, the board of directors resolved to retain Morgan Stanley as its financial advisor at a subsequent board meeting on June 6, 2006 and asked Morgan Stanley to prepare a list of potentially interested strategic and financial parties for the Company. On June 12, 2006, the Company executed an engagement letter with Morgan Stanley. On June 16, 2006, Morgan Stanley presented a list of potentially interested parties to the Board, and the Board authorized Morgan Stanley to approach a select group of potentially interested parties to solicit indications of interest in a transaction with the Company.

In early June 2006, Silver Oaks Partners approached Stephen Wong, the Company s Chairman, President and Chief Executive Officer, on behalf of TCEP to discuss a potential acquisition of the Company and to arrange a meeting between representatives of the Company and TCEP. On June 19, 2006, Mr. Wong, Raj Sabhlok, the Company s Senior Vice President of Operations, and Michael Shahbazian, the Company s Chief Financial Officer, met with Orlando Bravo, Scott Crabill and Seth Boro, representatives of TCEP, and discussed various background and public financial information about the Company and the possibility of a potential acquisition of the Company. At this meeting, TCEP made a preliminary proposal to acquire the Company at a price of $7.50 per share in cash. Subsequent to this meeting, TCEP was informed of the engagement of Morgan Stanley and asked to coordinate any further contact with Morgan Stanley.

Between July 6 and July 13, 2006, Morgan Stanley and TCEP held a series of conversations to negotiate a confidentiality agreement between the Company and TCEP and to schedule a second meeting between TCEP and representatives of the Company.

In early July 2006, Morgan Stanley also contacted seven additional parties, including four strategic parties and three private equity firms, regarding a potential transaction with the Company and indicated that the board of directors was interested in entertaining offers for the Company. Two of these parties subsequently entered into confidentiality agreements with the Company and met with representatives of the Company during the month of July 2006.

On July 13, 2006, TCEP and the Company entered into a Confidentiality Agreement in connection with a potential transaction for the Company. Thereafter, TCEP commenced its due diligence review of the Company and its operations, prospects and affairs.

On July 20, 2006, Messrs. Wong and Bravo met to discuss a potential acquisition of the Company by TCEP and Mr. Wong s level of interest in continuing to lead the Company following such a transaction. On July 21, 2006, Messrs. Wong, Sabhlok and Shahbazian of the Company met with Messrs. Bravo, Crabill and Boro of TCEP and discussed, among other things, the Company s business, customer base, product portfolio, organizational structure and financial projections.

On July 25, 2006, Morgan Stanley contacted an additional party (which had not been previously contacted) regarding a potential transaction with the Company.

On July 30, 2006, TCEP delivered to Morgan Stanley a draft letter of intent and form of merger agreement with an offering price of $8.25 per share in cash and requested that the Company enter into the letter of intent, which included an exclusivity period.

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Representatives of the Company and TCEP met again on July 31, 2006 to discuss various due diligence matters and a draft the letter of intent, and met with potential lenders to familiarize these potential lenders with the transaction and the Company s financial ability. Later that day and again on August 1, 2006, the board of directors met with Messrs. Wong, Sabhlok and Shahbazian, Morgan Stanley and Heller Ehrman LLP, counsel to the Company, to discuss the proposal from TCEP. Mr. Wong reported to the board of directors on the status of discussions with TCEP, TCEP s due diligence efforts and the material economic terms and conditions of TCEP s proposal. Morgan Stanley then discussed certain issues with the board of directors, including, among other things, Morgan Stanley s preliminary valuation analysis of the Company and the status of discussions with other potential buyers. Heller Ehrman also advised the board of directors of its fiduciary duties in the context of an all cash offer for the Company and entertained questions from the directors concerning their fiduciary duties and the terms of the proposal from TCEP. After further deliberations, both in and out of executive session, the Board rejected TCEP s offer as inadequate and instructed Morgan Stanley to continue its negotiations with TCEP, while furthering discussions with other potential buyers.

Morgan Stanley informed TCEP of the board of directors decision on August 1, 2006. On August 2, 2006, TCEP made a revised proposal for the Company at $9.00 per share and requested that the Company enter into an exclusivity agreement to enable TCEP to complete its due diligence and negotiate a merger agreement with the Company and its legal counsel.

On August 2, 2006, Morgan Stanley contacted an additional party (which had not been previously contacted) regarding a potential transaction with the Company. On August 3, 2006, that party entered into a confidentiality agreement with the Company and held a telephonic meeting with representatives of the Company.

On August 3, 2006, the board of directors met with Messrs. Wong, Sabhlok and Shahbazian and its financial advisor and legal counsel and deliberated about the revised proposal submitted by TCEP. Morgan Stanley updated the board on the negotiations with TCEP and summarized the terms of its revised proposal and TCEP s desire to enter into an exclusivity agreement while it completed its due diligence review. After questions and further discussions, the board of directors authorized the Company to enter into an exclusivity agreement with TCEP.

On August 5, 2006, TCEP and the Company entered into an exclusivity agreement for a period of up to 15 business days.

From August 6 to August 21, 2006, representatives of TCEP conducted further meetings with Messrs. Wong, Sabhlok, Shahbazian, Williams, Lamvik and Keller of the Company to review its products, operating results, projections, prospects and obligations. Kirkland & Ellis LLP, legal counsel to TCEP, also commenced its legal due diligence review of the Company. On August 8, 2006, Messrs. Wong, Sabhlok and Shahbazian made presentations on the Company s business, products, operating results, projections and prospects to representatives of TCEP at the offices of TCEP in Chicago, Illinois. On August 10, 2006, Heller Ehrman delivered a revised draft of the merger agreement to Kirkland & Ellis.

On August 21, 2006, Messrs. Wong, Sabhlok and Shahbazian presented additional information regarding the Company and its business to potential lenders at the offices of TCEP in Chicago, Illinois.

On August 24, 2006, TCEP informed Morgan Stanley that, based on its due diligence review of the Company, TCEP was not willing to proceed with the transaction at a price of $9.00 per share, but would be interested in proceeding at a reduced offering price of $8.50 per share. The board of directors met on August 23, 2006, with Messrs. Wong, Sabhlok and Shahbazian, and its financial advisor and legal counsel to consider the revised proposal. Mr. Wong and certain representatives of Morgan Stanley described the reasons offered by TCEP for its reduction in price, recent inquiries from other potential buyers and the potential value of the Company s shares. Morgan Stanley then presented an updated preliminary financial analysis of the proposed transaction at $8.50 per share. Heller Ehrman also reviewed the status of the merger agreement and open issues

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yet to be resolved by the parties. The board of directors then reviewed its various alternatives and instructed Morgan Stanley to advise TCEP that its revised proposal was not acceptable and to pursue, upon expiration of the exclusivity period on August 25, 2006, other indications of interest that had surfaced during the exclusivity period.

Messrs. Wong and Bravo had several conversations during the next two days, and TCEP agreed to increase its offer price to $8.55 per share. During the week of August 25, 2006, Heller Ehrman and Kirkland & Ellis continued to negotiate the terms of the merger agreement. On August 25, 2006, the board of directors met and conferred with Messrs. Wong, Sabhlok and Shahbazian, and the Company s financial advisor and legal counsel. Heller Ehrman reviewed the open issues on the merger agreement and entertained questions concerning various terms of the merger agreement and the board of directors fiduciary duties. After further deliberations, the board of directors decided to continue discussions based on TCEP s revised offer of $8.55 per share, subject to TCEP s agreement to accept certain changes in the merger agreement and related documents.

On August 30, 2006, TCEP advised Morgan Stanley that TCEP had completed its due diligence review, including final review of the Company s capitalization and other aspects of the Company s operations. TCEP informed Morgan Stanley that TCEP had previously not accounted for 275,000 shares of restricted common stock that had been awarded but not issued by the Company and proposed to reduce the offer price for the Company s common stock by an amount TCEP had yet to determine. The board of directors of the Company was informed of this development at a meeting scheduled for later that day. At that meeting, the directors conferred with Messrs. Wong, Sabhlok and Shahbazian and its financial advisor and legal counsel regarding the status of the proposed transaction with TCEP. Heller Ehrman reviewed the open issues on the latest draft of the merger agreement and the progress made to resolve those issues. The board was then informed that TCEP had required that Messrs. Sabhlok, Lamvik and Williams enter new employment and non-competition agreements (to be effective upon completion of the merger) contemporaneously with the merger agreement, and that the terms of such agreements had been substantially agreed upon. The board was also informed that the new employment arrangements included equity incentive awards substantially similar to the employee s existing equity arrangements, except that Mr. Sabhlok would receive equity incentive awards in an aggregate amount equal to approximately 4.58% of the outstanding shares of EMBT Holdings, Inc. Further, the board was informed that Mr. Sabhlok would become President and Chief Executive Officer of the Company upon completion of the merger and that he intended to invest $300,000 of the proceeds he was to receive in the merger in capital stock of EMBT Holdings, Inc., representing approximately 0.33% of the equity capital of that company, on the same terms as the other Investors.

Between August 30, 2006 and September 1, 2006, Messrs. Wong, Sabhlok and Shahbazian of the Company, representatives of Morgan Stanley and Mr. Bravo of TCEP held various telephone conversations regarding the status of the transaction and various open issues on the merger agreement, including the price for the Company s shares. Also on September 1, 2006, Mr. Wong authorized Morgan Stanley to contact other parties that had expressed an interest in pursuing a transaction with the Company.

On September 1, 2006, Morgan Stanley contacted an additional party (which had not been previously contacted) regarding a potential transaction with the Company.

On September 5, 2006, Mr. Bravo informed Mr. Wong that TCEP was prepared to go forward with the proposed transaction at a price of $8.35 per share and proposed resolutions of the other open issues on the merger agreement. Based upon his discussion with the other Embarcadero directors, Mr. Wong informed Mr. Bravo that the Company s board of directors would not entertain any further offers from TCEP unless they were presented in a signed agreement from TCEP and its applicable affiliates. In addition, Mr. Wong asked Mr. Bravo to consider increasing TCEP s proposal to $8.40 per share. Later that day, Mr. Bravo called Mr. Wong with what Mr. Bravo said was TCEP s final proposal of $8.38 per share. Mr. Bravo also agreed to deliver a signed agreement to the Company containing TCEP s proposal for consideration by the Company s board of directors. On September 6, 2006, TCEP delivered a form of merger agreement and signature pages to the merger agreement and related documents to be held in escrow by the Company s counsel pending the board of directors approval of the transaction on the revised terms.

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The board of directors of the Company met with Messrs. Wong, Sabhlok and Shahbazian, and its financial advisors and legal counsel on September 6, 2006 and discussed the signed agreement submitted by TCEP. Mr. Wong reported on the discussions that ensued over the Labor Day weekend and the terms of the revised offer. Morgan Stanley then updated the board of directors as to its financial analysis of the proposed transaction. Morgan Stanley also provided a status report on discussions with other potential buyers, indicating that none had submitted an acquisition proposal for consideration by management or the board of directors. Morgan Stanley then informed the board of directors that it was prepared to issue its fairness opinion on the revised offer. Heller Ehrman reviewed the material terms of the merger agreement, including the provisions enabling the board of directors to accept a superior proposal, if one should be presented after signing the merger agreement, and terminate the agreement upon the payment of a termination fee. Heller Ehrman also reviewed the board of directors fiduciary duties in the context of considering the proposed offer. Morgan Stanley then delivered its fairness opinion orally to the board of directors, which was confirmed subsequently in writing, that, as of September 6, 2006 and based upon and subject to the assumptions, qualifications and limitations to its opinion, the merger consideration of $8.38 per share to be received by holders of shares of Embarcadero common stock pursuant to the merger agreement is fair from a financial point of view. The board of directors then approved the merger agreement and related documents, and determined to recommend that our stockholders adopt the merger agreement, by a vote of five-to-one, with Frank M. Polestra voting against the matter, and authorized the chairman of the board to execute such documents on behalf of the Company.

The merger agreement and related documents were executed and delivered by the chairman of the board of directors on the evening of September 6, 2006, and the parties issued a joint press release on September 7, 2006.

Recommendation of the Board of Directors

Our board of directors has approved the merger agreement and related documents, and determined that the merger, on the terms and conditions set forth in the merger agreement, is fair to, advisable and in the best interests of the Company and its stockholders. As described below under Other Agreements Voting Agreements, each of Messrs. Wong, Sabhlok, Shahbazian and Lamvik has agreed to vote all shares of Embarcadero common stock that he currently holds and subsequently acquires in favor of the adoption of the merger agreement. Our board of directors considered a number of factors, as more fully described above under The Merger Background of the Merger and below under The Merger Reasons for the Board s Recommendation, in determining to recommend that the stockholders adopt the merger agreement. **Our board of directors recommends that you vote FOR the adoption of the merger agreement.**

Reasons for the Board s Recommendation

In reaching its conclusion regarding the fairness of the merger to the stockholders and its decision to approve the merger agreement and recommend its adoption by our stockholders, our board of directors considered the following factors, each of which the board believes supported its conclusion but which are not listed in any relative order of importance:

- the board s belief that we face several challenges in our efforts to increase stockholder value as an independent publicly-traded company, including competition from companies with substantially greater scale, declining valuation multiples in our market sector and that our long-term efforts to address these and other concerns are made more difficult by the short-term focus of the public equity markets on quarterly financial results;

- projections of the Company s future financial performance prepared by management, together with management s analysis of the Company s financial condition, results of operations and business prospects;

- the board s knowledge of our business, financial condition, results of operations and prospects including our recent financial performance, and the board s belief that the merger is more favorable to our

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stockholders than any other alternative reasonably available to the Company and our stockholders, including remaining as a standalone public company;

the consideration to be received by our stockholders in the merger and a comparison of similar merger transactions;

the belief that the terms of the merger agreement, including the parties representations, warranties and covenants, and the conditions to their respective obligations, are reasonable and were the product of extensive negotiations between the board and its advisors and TCEP and its advisors;

financial analyses and pro forma and other information with respect to Embarcadero presented by Morgan Stanley to the board as discussed below under Opinion of Morgan Stanley & Co. Incorporated, including Morgan Stanley s fairness opinion that, as of September 6, 2006 and based upon and subject to the assumptions, qualifications and limitations set forth in its opinion, the merger consideration of $8.38 per share to be received by holders of shares of Embarcadero common stock pursuant to the merger agreement is fair from a financial point of view;

the commitments for debt financing contained in the debt commitment letter and for equity financing by TCEP and the Investors contained in the equity commitment letter described below under The Merger Financing of the Merger, which the board believes reduce the risk that the merger will not be completed;

the fact that the merger consideration is all cash, so that the transaction allows our stockholders to realize immediately a fair value, in cash, for their investment and provides such stockholders certainty of value for their shares of Embarcadero common stock;

the fact that the $8.38 per share price to be paid pursuant to the merger represented a 34% premium to the average closing price of our common stock over the 30 trading day period prior to and including the date of the board s approval of the merger;

the breadth of the Company s solicitation for indications of interest and the fact that no other proposals were received by the Company;

the fact that, subject to compliance with the terms and conditions of the merger agreement, we are permitted to terminate the merger agreement prior to the completion of the merger in order to approve any alternative transaction proposed by a third party that is a superior proposal, as defined in the merger agreement, upon the prior or concurrent payment to Parent of a $8,100,000 termination fee;

the fact that Thoma Cressey Fund VIII, L.P. has agreed to guarantee the performance by Parent and EMBT Merger Corp. of their obligations under the merger agreement, up to a maximum amount of $12,150,000;

the fact that, pursuant to the terms of their voting agreements, Messrs. Wong, Sabhlok, Shahbazian and Lamvik have agreed to vote all shares of Embarcadero common stock that they currently hold or subsequently acquire in favor of the adoption of the merger agreement and the related transactions and any matter required to effect those transactions;

the fact that, under the General Corporation Law of the State of Delaware, the affirmative vote of a majority of the outstanding shares of Embarcadero common stock as of the close of business on the record date of , 2006 is required to adopt the merger agreement; and

the availability of appraisal rights to holders of our common stock who comply with all of the required procedures under Delaware law.

The board also considered a variety of potentially negative factors concerning the merger agreement and the merger, including the following factors which are not listed in any relative order of importance:

the possibility that the merger might not be completed and the potential negative effect of public announcement of the merger on our sales and operating results and our ability to attract and retain key management, marketing and technical personnel if the merger is not completed;

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- the fact that an all cash transaction would be taxable to our stockholders for U.S. federal income tax purposes;

- the fact that our stockholders would not participate in any future earnings or growth of Embarcadero and will not benefit from any appreciation in value of Embarcadero;

- the fact that certain of our directors and officers may have interests in the merger that are different from, or in addition to, the interests of our stockholders in general;

- the restrictions under the merger agreement on the conduct of our business prior to the completion of the merger; and

- the fact that we are entering into a merger agreement with two newly formed corporations with essentially no assets and, accordingly, that any remedy in connection with a breach of the merger agreement by Parent or EMBT Merger Corp. may be limited to the amount guaranteed by Thoma Cressey Fund VIII, L.P.

The foregoing discussion of the information and factors considered by the board is not intended to be exhaustive, but includes a number of the factors considered by the board. In view of the wide variety of factors considered by the board, the board did not find it practicable to, and did not, quantify or otherwise assign relative weights to the foregoing factors in reaching its conclusion. In addition, individual members of the board gave different weight to different factors and viewed some factors more positively or negatively than others. By a vote of five-to-one, with Frank M. Polestra voting against the matter, the board approved the merger agreement and related documents and determined to recommend that our stockholders adopt the merger agreement based upon the totality of the information presented to and considered by it.

Opinion of Morgan Stanley & Co. Incorporated

Embarcadero retained Morgan Stanley to provide it with financial advisory services and a financial opinion in connection with a possible merger, sale or other business combination. Embarcadero s board of directors selected Morgan Stanley to act as its financial advisor based on Morgan Stanley s qualifications, expertise and reputation and its knowledge of the business and affairs of Embarcadero. At the meeting of the Embarcadero board of directors on September 6, 2006, Morgan Stanley rendered its oral opinion, subsequently confirmed in writing, that, as of September 6, 2006, and based upon and subject to the assumptions, qualifications and limitations set forth in the opinion, the consideration to be received by holders of shares of Embarcadero common stock pursuant to the merger agreement was fair from a financial point of view to such holders other than one or more officers of Embarcadero who are investing a portion of their proceeds from the merger in shares of capital stock of EMBT Holdings, Inc.

The full text of the written opinion of Morgan Stanley, dated as of September 6, 2006, is attached to this proxy statement as *Annex B*. The opinion sets forth, among other things, the assumptions made, procedures followed, matters considered and limitations on the scope of the review undertaken by Morgan Stanley in rendering its opinion. We encourage you to read the entire opinion carefully. Morgan Stanley s opinion is directed to Embarcadero s board of directors and addresses only the fairness from a financial point of view of the consideration to be received by holders of shares of Embarcadero common stock pursuant to the merger agreement as of the date of the opinion. It does not address any other aspects of the merger and does not constitute a recommendation to any holder of Embarcadero common stock as to how to vote on the merger agreement at the special meeting of stockholders. The summary of the opinion of Morgan Stanley set forth in this proxy statement is qualified in its entirety by reference to the full text of the opinion.

In connection with rendering its opinion, Morgan Stanley, among other things:

- reviewed certain publicly available financial statements and other business and financial information of Embarcadero;

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reviewed certain internal financial statements and other financial and operating data concerning Embarcadero prepared by the management of Embarcadero;

reviewed certain financial projections of Embarcadero prepared by the management of Embarcadero;

discussed the past and current operations and financial condition and the prospects of Embarcadero with senior executives of Embarcadero;

reviewed the reported prices and trading activity for Embarcadero common stock and other publicly available information regarding Embarcadero;

compared the financial performance of Embarcadero and the prices and trading activity of Embarcadero common stock with those of certain other comparable publicly-traded companies and their securities;

reviewed the financial terms, to the extent publicly available, of certain comparable acquisition transactions;

participated in discussions and negotiations among representatives of Embarcadero, the Parent and their respective financial and legal advisors;

reviewed the merger agreement and certain related documents; and

performed such other analyses and considered such other factors as it deemed appropriate.

In arriving at its opinion, Morgan Stanley assumed and relied upon, without independent verification, the accuracy and completeness of the information supplied or otherwise made available to Morgan Stanley by Embarcadero for the purposes of its opinion. With respect to the financial projections, Morgan Stanley assumed that they had been reasonably prepared on bases reflecting the best available estimates and judgments of the future financial performance of Embarcadero. Morgan Stanley also assumed that the merger will be completed in accordance with the terms set forth in the merger agreement without any waiver, amendment or delay of any terms or conditions and that the Parent will obtain financing for the merger. Morgan Stanley relied upon, without independent verification, the assessment by the management of Embarcadero of the validity of, and risks associated with, Embarcadero s existing and future technologies, intellectual property, products and services, and the strategic rationale for the merger. Morgan Stanley assumed that in connection with the receipt of all the necessary governmental, regulatory or other approvals and consents required for the merger, no delays, limitations, conditions or restrictions will be imposed that would have a material adverse effect on the contemplated benefits expected to be derived in the merger. Morgan Stanley is not a legal, tax or regulatory advisor and relied upon, without independent verification, the assessment of Embarcadero and its legal, tax or regulatory advisors with respect to such matters. Morgan Stanley did not make any independent valuation or appraisal of the assets or liabilities of Embarcadero nor was Morgan Stanley furnished with any such appraisals. Morgan Stanley s opinion was necessarily based on financial, economic, market and other conditions as in effect on, and the information made available to Morgan Stanley as of September 6, 2006. Events occurring after September 6, 2006 may affect its opinion and the assumptions used in preparing it, and Morgan Stanley did not assume any obligation to update, revise or reaffirm its opinion.

The following is a brief summary of the material analyses performed by Morgan Stanley in connection with its oral opinion and the preparation of its written opinion letter, dated September 6, 2006. The various analyses summarized below were based on the closing price for the common stock of Embarcadero on September 5, 2006, the day prior to the day of the meeting of Embarcadero s board of directors to consider and approve the merger agreement. This closing price was $6.39. Some of these summaries of financial analyses include information presented in tabular format. In order fully to understand the financial analyses used by Morgan Stanley, the tables must be read together with the text of each summary. The tables alone do not constitute a complete description of the financial analyses.

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Trading Range Analysis. Morgan Stanley performed a trading range analysis to provide background and perspective with respect to the historical share prices of Embarcadero common stock. Morgan Stanley reviewed the range of closing prices of Embarcadero common stock for various periods ending on September 5, 2006. Morgan Stanley observed the following:

Period Ending September 5, 2006	Range of Closing Prices	
Last 30 Trading Days	$5.77	$6.65
Last 60 Trading Days	$5.40	$6.65
Last 12 Months	$5.40	$8.17

Morgan Stanley noted that the consideration of $8.38 per share pursuant to the merger agreement reflected a 31% premium to Embarcadero s closing price on September 5, 2006, a 34% premium to the average closing price per share of Embarcadero common stock for the 30 trading days prior to and including September 5, 2006, and a 39% premium to the average closing price per share of Embarcadero common stock for the 60 trading days prior to and including September 5, 2006. In addition, Morgan Stanley noted that the aggregate value of Embarcadero, defined as market capitalization plus total debt less cash and cash equivalents, based on the consideration of $8.38 per share, represented a 55% premium to Embarcadero s aggregate value as of September 5, 2006.

Equity Research Analysts Price Targets. Morgan Stanley reviewed and analyzed future public market trading price targets for Embarcadero common stock prepared and published by equity research analysts. These targets reflect each analyst s estimate of the future public market trading price of Embarcadero common stock. The range of undiscounted equity research analyst price targets for Embarcadero was $8.00 to $11.00 per share.

The public market trading price targets published by the equity research analysts do not necessarily reflect current market trading prices for Embarcadero common stock and these estimates are subject to uncertainties, including the future financial performance of Embarcadero and future financial market conditions.

Historical Financial Performance. Morgan Stanley reviewed certain historical annual and quarterly financial results for Embarcadero, excluding certain non-cash expenses and nonrecurring items. Morgan Stanley observed the following:

Fiscal Year Financial Statistic (Fiscal Year Ended December 31)	Revenues ($ in millions)	Operating Income ($ in millions)	Earnings Per Share ($)
FY 2004	$ 56.3	$ 9.7	$ 0.23
FY 2005	$ 57.6	$ 8.7	$ 0.25

Morgan Stanley further noted that Embarcadero s EBITDA, defined as earnings before interest, taxes, depreciation and amortization (excluding certain non-cash expenses and nonrecurring items), was $11.7 million for the twelve month period ended June 30, 2006. Giving effect to the impact of certain current and planned cost savings initiatives and the exclusion of certain costs related to Embarcadero s status as a publicly-traded company on a pro forma basis, Embarcadero s Full Upside EBITDA would have been $18.5 million for the same twelve month period.

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Review of Projected Financial Performance. Morgan Stanley reviewed Embarcadero s projected financial performance based on publicly available equity research estimates through fiscal year 2007 and extrapolations to such equity research estimates for fiscal year 2008 (the Street Case). In addition, Morgan Stanley reviewed estimates of Embarcadero s possible future financial performance for fiscal years 2006 and 2007 provided by Embarcadero s management and extrapolations of management estimates for fiscal year 2008 (the Management Upside Case). A summary of the Street Case and Management Upside Case is set forth in the following table:

Fiscal Year Ending December 31 Financial Statistic (Excluding Certain Non-Cash Expenses and Nonrecurring Items)	Street Case ($ in millions)				Management Upside Case ($ in millions)			
	Revenue		Operating Income		Revenue		Operating Income	
	Amount	% Growth	Amount	% Margin	Amount	% Growth	Amount	% Margin
FY 2006E	$ 61.7	7.2%	$ 9.4	15.3%	$ 62.7	8.9%	$ 10.6	16.9%
FY 2007E	$ 66.8	8.3%	$ 10.6	15.8%	$ 70.9	13.2%	$ 15.1	21.2%
FY 2008E	$ 72.1	8.0%	$ 11.5	16.0%	$ 79.8	12.5%	$ 17.6	22.0%

Comparable Company Analysis. Morgan Stanley compared certain financial information of Embarcadero with publicly available consensus equity research estimates for two categories of other companies that shared similar business characteristics of Embarcadero. The first category consisted of companies that sell enterprise software products that are directly competitive with the products sold by Embarcadero or, more generally, sell software that address enterprise information technology infrastructure and database management. This category included the following software companies:

BMC Software, Inc.

CA, Inc. (formerly known as Computer Associates International, Inc.)

Informatica Corporation

Oracle Corporation

Quest Software, Inc.

Sybase, Inc.

Morgan Stanley also compared certain financial information of Embarcadero with publicly available consensus equity research estimates for a second category of software companies with estimated revenue scale, revenue growth, and operating margins that were more comparable to Embarcadero s estimated revenue, revenue growth and operating margins, respectively. This category included the following software companies:

Altiris, Inc.

Ariba, Inc.

FileNet Corporation

Interwoven, Inc.

QAD, Inc.

Vignette Corporation

For purposes of this analysis, Morgan Stanley analyzed the following statistics of each of these companies for comparison purposes:

the ratio of aggregate value, as defined above, to estimated calendar year 2006 revenue (based on publicly available equity research estimates);

the ratio of price to estimated cash earnings per share, defined as net income excluding certain non-cash and non-recurring expenses divided by fully-diluted shares outstanding, for calendar years 2006 and 2007 (based on publicly available equity research estimates); and

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the ratio of aggregate value, as defined above, to calendar year 2007 unlevered earnings, defined as earnings before interest and taxes (excluding certain non-cash expenses and nonrecurring items) less the tax that would be paid on such amount based on an estimated effective tax rate.

Based on the analysis of the relevant metrics for each of the comparable companies, Morgan Stanley selected representative ranges of financial multiples and other statistics of the comparable companies and applied this range of multiples and statistics to the relevant Embarcadero financial statistic. For purposes of estimating revenues for calendar year 2006, and unlevered earnings per share for calendar year 2007 and cash earnings per share for calendar years 2006 and 2007, Morgan Stanley utilized publicly available equity research estimates as of July 26, 2006. Based on Embarcadero s outstanding shares and options as of September 5, 2006, Morgan Stanley estimated the implied value per share of Embarcadero common stock as of September 5, 2006 as follows:

Calendar Year Financial Statistic	Embarcadero Financial Statistic ($ in millions except EPS)	Comparable Company Multiple Range		Implied Value Per Share for Embarcadero	
Aggregate Value to Estimated 2006E Revenue	$62	1.4x	2.0x	$5.71	$7.01
Price to Estimated 2006E Cash Earnings Per Share	$0.27	19.0x	25.0x	$5.20	$6.84
Price to Estimated 2007E Cash Earnings Per Share	$0.29	17.0x	23.0x	$4.90	$6.63
Aggregate Value to Estimated 2007E Unlevered Earnings	$7.3	13.0x	18.0x	$6.01	$7.28

No company utilized in the comparable company analysis is identical to Embarcadero. In evaluating comparable companies, Morgan Stanley made judgments and assumptions with regard to industry performance, general business, economic, market and financial conditions and other matters, many of which are beyond the control of Embarcadero, such as the impact of competition on the businesses of Embarcadero and the industry generally, industry growth and the absence of any adverse material change in the financial condition and prospects of Embarcadero or the industry or in the financial markets in general. Mathematical analysis (such as determining the average or median) is not in itself a meaningful method of using comparable company data.

Discounted Equity Value Analysis. Morgan Stanley calculated a range of equity values per share for Embarcadero based on an analysis of the company s estimated future earnings and the historical range of its multiple of price to next twelve months earnings. Morgan Stanley used calendar year 2008 earnings per share estimates from the Street Case and Management Upside Case, and applied a range of price to earnings multiples to derive ranges of future values per share. Morgan Stanley then discounted the ranges of future values per share by a discount rate of 12% to derive ranges of present values per share.

The following table summarizes Morgan Stanley s analysis:

Calendar Year 2008E Financial Statistic	Embarcadero Financial Statistic ($ in millions except EPS)	Comparable Company Multiple Range		Implied Value Per Share of Embarcadero	
Street Case Earnings Per Share	$0.30	18.0x	24.0x	$4.61	$6.15
Management Upside Case Earnings Per Share	$0.46	18.0x	24.0x	$6.94	$9.26

Discounted Cash Flow Analysis. Morgan Stanley calculated a range of equity values per share for Embarcadero based on a discounted cash flow analysis to value Embarcadero as a standalone company. Morgan Stanley relied on the Street Case and Management Upside Case for calendar years 2006 and 2007 and extrapolations to those projections for calendar years 2008 through 2011. In arriving at the estimated equity values per share of Embarcadero common stock, Morgan Stanley calculated a terminal value as of December 31, 2011 by applying a range of perpetual growth rates ranging from 3% to 5% and a range of discount rates from 10% to 14%. The unlevered free cash flows from years ending December 31, 2007 through 2011 and the terminal value were then discounted to present values using a range of discount rates of 10% to 14%.

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The following table summarizes Morgan Stanley s analysis:

Discounted Cash Flow Analysis	Implied Value Per Share of Embarcadero	
Street Case	$6.42	$8.70
Management Upside Case	$8.09	$11.41

Analysis of Precedent Transactions. Morgan Stanley compared publicly available statistics for 20 selected software sector transactions between January 1, 2003 and September 5, 2006 in which the target company was publicly traded and transaction values were between $100 million and $500 million. The following is a list of these transactions:

Selected Precedent Transactions (Target / Acquiror)

Bindview Development Corp. / Symantec Corp.

Brio Software, Inc. / Hyperion Solutions Corp.

Captiva Software Corp. / EMC Corp.

Concord Communications, Inc. / Computer Associates International Inc.

Corio, Inc. / International Business Machines

CyberGuard Corp. / Secure Computing Corp.

Epiphany, Inc. / SSA Global Technologies, Inc.

FreeMarkets, Inc. / Ariba, Inc.

Hummingbird Ltd. / Open Text Corp.

iManage, Inc. / Interwoven

IXOS Software AG / Open Text Corp.

Manugistics Group, Inc. / JDA Software Group, Inc.

MAPICS, Inc. / Infor Global Solutions, Inc.

Marimba, Inc. / BMC Software, Inc.

Merant Plc / Serena Software, Inc.

NetIQ Corp. / AttachmateWRQ, Inc.

Niku Corp. / Computer Associates International Inc.

Plumtree Software, Inc. / BEA Systems, Inc.

Portal Software, Inc / Oracle Corporation

SeeBeyond Technology Corp. / Sun Microsystems, Inc.

For each transaction noted above, Morgan Stanley noted that the following financial statistics where available for each of the foregoing transactions: (1) implied premium paid to closing share price one trading day prior to announcement of the transaction; (2) implied premium paid to 30 trading day average closing share price prior to announcement of the transaction; (3) implied premium to aggregate value one trading day prior to announcement; (4) aggregate value to last twelve months revenue; and (5) aggregate value to estimated next twelve months revenue. The following table summarizes Morgan Stanley s analysis:

Precedent Transaction Financial Statistic	Reference Range Premium/ Multiple		Implied Value Per Share		Embarcadero Merger Statistic Premium/ Multiple
Premium to 1-day prior closing share price	15%	35%	$7.35	$8.63	31%
Premium to 30-day average closing share price	20%	45%	$7.49	$9.06	34%
Premium to 1-day prior aggregate value	20%	50%	$7.12	$8.19	55%
Aggregate Value to Last Twelve Months Revenues	2.0x	3.5x	$6.89	$9.91	2.7x
Aggregate Value to Expected Next Twelve Months Revenues	2.0x	3.0x	$7.17	$9.33	2.6x

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Morgan Stanley also compared publicly available statistics for nine selected software transactions between January 1, 2002 and September 5, 2006 where transaction values were greater than $100 million and the acquirer was a financial buyer. The following is a list of these transactions:

Aspect Communications Corporation / Concerto Software

Concerto Software / Golden Gate Capital

DoubleClick, Inc. / Hellman & Friedman LLC

GEAC Computer Corp. / Infor Global Solutions, Inc.

MAPICS, Inc. / Infor Global Solutions, Inc

MSC Software Corp. / ValueAct Capital Partners LP

Serena Software, Inc. / Silver Lake Partners LLP

SS&C Technologies, Inc. / The Carlyle Group LLC

SunGard Data Systems Inc. / Investor Group

For each transaction noted above, Morgan Stanley reviewed the aggregate value to last twelve months EBITDA defined as earnings before interest, taxes, depreciation and amortization (excluding certain non-cash expenses and nonrecurring items) of the subject company. Morgan Stanley applied a range of these ratios to Embarcadero s last twelve months actual EBITDA, and to Embarcadero s last twelve months EBITDA adjusted to exclude public company expenses and to give benefit for certain completed and planned restructuring actions estimated by Embarcadero management (the Full Upside EBITDA). The following table summarizes Morgan Stanley s analysis:

Precedent Transaction Financial Statistic	Reference Range		Implied Value Per Share		Embarcadero Merger Statistic
Aggregate Value to Last Twelve Months Actual EBITDA	6.0x	14.0x	$5.13	$8.36	14.0x
Aggregate Value to Last Twelve Months Full Upside EBITDA	6.0x	12.0x	$6.58	$10.33	8.9x

No company or transaction utilized in the precedent transaction analysis is identical to Embarcadero or the merger. In evaluating the precedent transactions, Morgan Stanley made judgments and assumptions with regard to general business, market and financial conditions and other matters, which are beyond the control of Embarcadero, such as the impact of competition on the business of Embarcadero or the industry generally, industry growth and the absence of any adverse material change in the financial condition of Embarcadero or the industry or in the financial markets in general, which could affect the public trading value of the companies and the aggregate value of the transactions to which they are being compared.

Leveraged Buyout Analysis. Morgan Stanley also analyzed Embarcadero from the perspective of a potential purchaser that was primarily a financial buyer that would effect a leveraged buyout of Embarcadero using a ratio of debt to last twelve months EBITDA consistent with the ratio of debt to last twelve months EBITDA expected upon completion of the merger. Morgan Stanley observed the transaction prices per share that would be necessary for an acquiror to achieve certain 5-year internal rates of return. The analysis assumed (i) the Street Case and Management Upside Case through fiscal year 2008, and extrapolations to the Street Case and Management Upside Case for fiscal years 2009 to 2011, (ii) realization of the equity investment through the sale of 100% of Embarcadero at the end of fiscal 2011 at a valuation of 9.0x-11.0x 2011 EBITDA for the Street Case and 10.0x-12.0x for the Management Upside Case, and (iii) an investor s targeted 5-year internal rate of return of 18%-25% for the Street Case and 20%-30% for the Management Upside Case. These ranges are detailed below:

Leveraged Buyout Analysis Forecast Case	Internal Rate of Return Range	Implied Value Per

			Share of Embarcadero	
Street Case	18%	25%	$6.61	$7.53
Management Upside Case	20%	30%	$7.67	$9.50

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In connection with the review of the merger by Embarcadero s board of directors, Morgan Stanley performed a variety of financial and comparative analyses for purposes of rendering its opinion. The preparation of a fairness opinion is a complex process and is not necessarily susceptible to a partial analysis or summary description. In arriving at its opinion, Morgan Stanley considered the results of all of its analyses as a whole and did not attribute any particular weight to any analysis or factor it considered. Morgan Stanley believes that selecting any portion of its analyses, without considering all analyses as a whole, would create an incomplete view of the process underlying its analyses and opinion. In addition, Morgan Stanley may have given various analyses and factors more or less weight than other analyses and factors, and may have deemed various assumptions more or less probable than other assumptions. As a result, the ranges of valuations resulting from any particular analysis described above should not be taken to be Morgan Stanley s view of the actual value of Embarcadero. In performing its analyses, Morgan Stanley made numerous assumptions with respect to industry performance, general business and economic conditions and other matters. Many of these assumptions are beyond the control of Embarcadero. Any estimates contained in Morgan Stanley s analyses are not necessarily indicative of future results or actual values, which may be significantly more or less favorable than those suggested by such estimates.

Morgan Stanley conducted the analyses described above solely as part of its analysis of the fairness of the consideration pursuant to the merger agreement from a financial point of view to holders of shares of Embarcadero common stock and in connection with the delivery of its opinion, dated September 6, 2006, to Embarcadero s board of directors. These analyses do not purport to be appraisals or to reflect the prices at which shares of common stock of Embarcadero might actually trade.

The consideration was determined through arm s length negotiations between Embarcadero and the Parent and was approved by Embarcadero s board of directors. Morgan Stanley provided advice to Embarcadero s board of directors during these negotiations. Morgan Stanley did not, however, recommend any specific merger consideration to Embarcadero or its board of directors or that any specific merger consideration constituted the only appropriate consideration for the merger.

Morgan Stanley s opinion and its presentation to Embarcadero s board of directors was one of many factors taken into consideration by Embarcadero s board of directors in deciding to approve the merger agreement. Consequently, the analyses as described above should not be viewed as determinative of the opinion of Embarcadero s board of directors with respect to the merger consideration or of whether Embarcadero s board of directors would have been willing to agree to a different merger consideration. The foregoing summary describes the material analyses performed by Morgan Stanley but does not purport to be a complete description of the analyses performed by Morgan Stanley.

Embarcadero s board of directors retained Morgan Stanley based upon Morgan Stanley s qualifications, experience and expertise. Morgan Stanley is an internationally recognized investment banking and advisory firm. Morgan Stanley, as part of its investment banking and financial advisory business, is continuously engaged in the valuation of businesses and securities in connection with mergers and acquisitions, negotiated underwritings, competitive biddings, secondary distributions of listed and unlisted securities, private placements and valuations for corporate, estate and other purposes. In the ordinary course of Morgan Stanley s trading and brokerage activities, Morgan Stanley or its affiliates may at any time hold long or short positions, may trade or otherwise effect transactions, for its own account or for the account of customers in the equity and other securities of Embarcadero, TCEP or any other parties, commodities or currencies involved in the merger. In addition, Morgan Stanley, its affiliates, directors or officers, including individuals working with Embarcadero in connection with the merger, may have committed and may commit in the future to invest in private equity funds managed by affiliates of TCEP.

Under the terms of its engagement letter, Morgan Stanley provided Embarcadero financial advisory services and a financial opinion in connection with the merger, and Embarcadero has agreed to pay Morgan Stanley a fee of approximately $3.0 million for its services, a substantial portion of which is contingent upon the

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consummation of the merger. Embarcadero has also agreed to reimburse Morgan Stanley for other expenses, including attorneys fees, incurred in performing its services. In addition, Embarcadero has agreed to indemnify Morgan Stanley and any of its affiliates, their respective directors, officers, agents and employees and each person, if any, controlling Morgan Stanley or any of its affiliates against certain liabilities and expenses, including certain liabilities under the federal securities laws, relating to or arising out of Morgan Stanley s engagement and any related transactions.

Financing of the Merger

TCEP estimates that the total amount of funds required to pay the aggregate merger consideration in connection with the merger will be approximately $234,000,000. TCEP expects this amount, together with the related working capital requirements of Embarcadero following the completion of the merger, to be provided through a combination of the proceeds of the following:

- an aggregate cash equity investment in EMBT Holdings, Inc. by TCEP, Thoma Cressey Fund VIII, L.P. and other potential co-investors (which may include other affiliates of TCEP), which we refer to in this proxy statement as the Investors, of up to approximately $90,000,000;

- new senior secured credit facilities in the aggregate amount of $87,500,000, consisting of two term loans in the amounts of $55,000,000 and $27,500,000, respectively, and a $5,000,000 revolving credit facility; and

- cash and cash equivalents held by Embarcadero and its subsidiaries.

The shares of EMBT Merger Corp. will convert into shares of the surviving corporation as a result of the merger.

Interests of Certain Persons in the Merger

Stock Options

All outstanding options to purchase Embarcadero common stock, including those held by our directors and executive officers, will accelerate and become fully vested immediately prior to the completion of the merger, and in the case of any options having an exercise price less than $8.38 per share, will entitle the holder thereof to receive an amount in cash equal to the product of (i) the total number of shares of Embarcadero common stock subject to the option, multiplied by (ii) the excess of $8.38 over the exercise price per share, less applicable withholding taxes. See Beneficial Ownership of the Company s Stock on page .

Restricted Stock

All outstanding shares of restricted Embarcadero common stock, including 50,000 shares held by Mr. Sabhlok and 100,000 shares held by Mr. Shahbazian, will accelerate and become fully vested immediately prior to the completion of the merger, and any repurchase option will lapse, after which each such share will be converted into the right to receive $8.38 in cash, without interest.

Change in Control Benefits

In October 2005, we entered into an employment agreement with Michael Shahbazian, our Chief Financial Officer. Pursuant to his employment agreement, Mr. Shahbazian received inducement grants of an option to purchase, at $6.53 per share, 200,000 shares of our common stock and 100,000 shares of restricted common stock, subject to certain time-based vesting provisions. Under the terms of the employment agreement, all unvested stock options and restricted common stock held by Mr. Shahbazian will become fully vested upon the completion of the merger and the termination of his employment as Chief Financial Officer after the merger. In addition, the Company will continue to pay Mr. Shahbazian s base salary, which is currently set at $240,000 per year, for a period of 12 months following his termination, and COBRA health insurance care insurance during such 12 month period. Mr. Shahbazian will also be entitled to receive a pro rata portion of his annual target bonus up to the date of termination.

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Indemnification and Insurance

As the surviving corporation, Embarcadero is required after completion of the merger to maintain certain indemnification and insurance policies applicable to the existing directors and executive officers of the Company. See The Merger Agreement Indemnification beginning on page .

Positions with the Surviving Corporation

In connection with the merger agreement, each of Raj Sabhlok, our current Senior Vice President of Operations, Robert Lamvik, our current Vice President, Worldwide Field Operations and Wayne Williams, our current Chief Technology Officer, have entered into new employment agreements and non-competition agreements that will become effective upon completion of the merger. Pursuant to their employment agreements, Mr. Sabhlok will become the Chief Executive Officer, Mr. Lamvik will continue to serve as Vice President, Worldwide Field Operations and Mr. Williams will continue to serve as Chief Technology Officer, of the surviving corporation. The employment agreements provide, among other things, for severance payments to each of these individuals in the event of termination of their employment under certain circumstances. In addition, these individuals will be entitled, subject to various time-based and performance-based conditions, to receive equity incentive awards in EMBT Holdings, Inc. upon completion of the merger. See Other Agreements Employment Agreements on page and Other Agreements Non-Competition Agreements on page .

Equity Investment in EMBT Holdings, Inc.

Pursuant to his employment agreement, upon completion of the merger, Mr. Sabhlok is entitled to invest $300,000 of his proceeds from the merger in shares of capital stock of EMBT Holdings, Inc., representing approximately 0.33% of the equity capital of that company, on the same terms as TCEP and the other Investors. See Other Agreements Employment Agreements on page .

Material U.S. Federal Income Tax Consequences

The following discusses, subject to the limitations stated below, the material U.S. federal income tax consequences of the merger to U.S. holders of Embarcadero common stock whose shares of common stock are converted into the right to receive cash pursuant to the merger (whether upon the receipt of the merger consideration or pursuant to the proper exercise of appraisal rights). Non-U.S. holders of our common stock may have different tax consequences than those described below and are urged to consult their tax advisors regarding the tax treatment to them under U.S. and non-U.S. tax laws. We base this summary on the provisions of the Internal Revenue Code of 1986, or the Code, applicable current and proposed U.S. Treasury Regulations, judicial authority, and administrative rulings and practice. All of the above are subject to change, possibly on a retroactive basis, and we do not undertake to advise you of any changes in applicable law that occur after the date of the merger.

This summary does not address all aspects of U.S. federal income taxation that may be relevant to particular stockholders in light of their individual circumstances, nor to certain types of holders who are subject to special treatment under the federal income tax laws, such as tax-exempt organizations; insurance companies; financial institutions; persons subject to alternative minimum tax; broker-dealers; persons who do not hold their shares of Embarcadero common stock as a capital asset; persons who hold stock as part of a hedge, appreciated financial position, straddle or conversion transaction; persons whose functional currency is not the United States dollar; persons who acquired their Embarcadero common stock pursuant to the exercise of employee stock options or otherwise as compensation; and persons who are not U.S. holders. In addition, the following discussion does not address foreign, state or local tax considerations, the tax consequences of transactions effected before or subsequent to or concurrently with the merger (whether or not these transactions are in connection with the merger), including transactions in which shares of EMBT Holdings, Inc. are acquired by any stockholder or former stockholder. **Accordingly, holders of shares of Embarcadero common stock are urged to consult their own tax advisors regarding the tax consequences of the merger in light of their particular circumstances, including the applicable federal, state, local and foreign tax laws.**

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For purposes of this discussion, the term U.S. holder means a beneficial owner of Embarcadero common stock that is:

- a citizen or individual resident of the U.S. for U.S. federal income tax purposes;
- a corporation, or other entity taxable as a corporation for U.S. federal income tax purposes, created or organized in or under the laws of the U.S. or any State or the District of Columbia;
- a trust if it (1) is subject to the primary supervision of a court within the U.S. and one or more U.S. persons have the authority to control all substantial decisions of the trust or (2) has a valid election in effect under applicable U.S. Treasury Regulations to be treated as a U.S. person; or
- an estate the income of which is subject to U.S. federal income tax regardless of its source.

The U.S. federal income taxes of a partner in a partnership holding our common stock will depend on the status of the partner and the activities of the partnership. Partners in a partnership holding shares of our common stock should consult their own tax advisors.

The receipt of cash pursuant to the merger (whether as merger consideration or pursuant to the proper exercise of appraisal rights) by U.S. holders of our common stock will be a taxable transaction for U.S. federal income tax purposes. In general, for U.S. federal income tax purposes, a U.S. holder of our common stock will recognize gain or loss equal to the difference between:

- the amount of cash received in exchange for such common stock and
- the U.S. holder s adjusted tax basis in such common stock.

Such gain or loss will be capital gain or loss. If the holding period of the common stock surrendered in the merger is greater than one year as of the date of the merger, the gain or loss on that stock will be long-term capital gain or loss. The deductibility of a capital loss recognized on the exchange is subject to limitations under the Code. Certain U.S. holders, including individuals, are eligible for preferential rates of U.S. federal income tax in respect of long-term capital gains. If you acquired different blocks of our common stock at different times and different prices, you must calculate your gain or loss and determine your adjusted tax basis and holding period separately with respect to each block of our common stock.

Under the Code, as a U.S. holder of our common stock, you may be subject to information reporting on the cash received pursuant to the merger unless an exemption applies. Backup withholding may also apply (currently at a rate of 25%) with respect to the amount of cash received pursuant to the merger. In general, backup withholding is not required if you provide us with a valid taxpayer identification number, and otherwise comply with the applicable requirements of the backup withholding rules. Backup withholding is not an additional tax and any amounts withheld under the backup withholding rules may be refunded or credited against your U.S. federal income tax liability, if any, provided that you furnish the required information to the Internal Revenue Service in a timely manner.

Accounting Treatment

The merger is intended to be accounted for as a purchase under U.S. generally accepted accounting principles (***GAAP***). Accordingly, it is expected that the basis of Embarcadero in its assets and liabilities will be adjusted to fair market value on completion of the merger, including the establishment of goodwill.

Regulatory Approvals

The Hart-Scott-Rodino Antitrust Improvements Act of 1976 and related rules, or the ***HSR Act***, provide that transactions such as the merger may not be completed until certain information has been submitted to the Federal Trade Commission and the Antitrust Division of the U.S.

Department of Justice and specified waiting period requirements have been satisfied. Embarcadero and the parent of EMBT Merger Corp. made the required filings with the Antitrust Division and the Federal Trade Commission on September 22, 2006, and received notice of earlier termination of the applicable waiting period on October 2, 2006.

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At any time before or after completion of the merger, the Antitrust Division of the Department of Justice or the Federal Trade Commission may, however, challenge the merger on antitrust grounds. Private parties could take antitrust action under the antitrust laws and seek an injunction prohibiting or delaying the merger, divestiture or damages under certain circumstances. Additionally, at any time before or after completion of the merger, notwithstanding the expiration or termination of the applicable waiting period, any state could take action under its antitrust laws as it deems necessary or desirable in the public interest. There can be no assurance that a challenge to the merger will not be made or that, if a challenge is made, Embarcadero and EMBT Merger Corp. will prevail.

Except as noted above with respect to the required filings under the HSR Act and the filing of a certificate of merger in Delaware at or before the effective date of the merger, we are unaware of any material federal, state or foreign regulatory requirements or approvals required for the execution of the merger agreement or completion of the merger.

THE PARTIES TO THE MERGER

Embarcadero Technologies, Inc.

Embarcadero Technologies, Inc.

100 California Street, 12th Floor

San Francisco, California 94111

Telephone: (415) 834-3131

We are a Delaware corporation with our principal executive offices at 100 California Street, 12th Floor, San Francisco, California 94111. Our telephone number is (415) 834-3131. We were incorporated in California on July 23, 1993 and reincorporated in Delaware on February 15, 2000.

We are a leading provider of strategic data management solutions that help companies to improve the availability, integrity, accessibility, and security of corporate data. We develop, market, sell and support software that helps customers to manage corporate data more effectively. Since its founding in 1993, Embarcadero has built a broad customer base with over 11,000 customers, including 97 of the Fortune 100. The Company is headquartered in San Francisco, California and distributes its software in the U.S. and abroad through its sales force as well as through distributors and resellers.

EMBT Merger Corp.

EMBT Merger Corp.

c/o Thoma Cressey Equity Partners

600 Montgomery Street, 32nd Floor

San Francisco, CA 94111

Telephone: (415) 263-3660

EMBT Merger Corp. was incorporated in Delaware on August 24, 2006 by EMB Holding Corp. solely for the purpose of completing the merger and the related transactions. EMBT Merger Corp. has not participated in any activities to date other than activities incident to its formation and the transactions contemplated by the merger agreement. In connection with the merger, EMBT Merger Corp. will be merged with and into Embarcadero and its separate existence will cease. As of the date of this proxy statement, EMB Holding Corp. is the sole stockholder of EMBT Merger Corp.

EMB Holding Corp.

EMB Holding Corp.

c/o Thoma Cressey Equity Partners

600 Montgomery Street, 32nd Floor

San Francisco, CA 94111

Telephone: (415) 263-3660

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EMB Holding Corp., which we refer to in this proxy statement as Parent, is an affiliate of Thoma Cressey Equity Partners, Inc., and was incorporated in Delaware on August 24, 2006. EMB Holding Corp. has not participated in any activities to date other than activities incident to its formation and the transactions contemplated by the merger agreement. In connection with the merger, EMBT Merger Corp. will merge with and into the Company, and the Company will survive as a wholly-owned subsidiary of EMB Holding Corp.

OTHER PARTICIPANTS

Thoma Cressey Equity Partners, Inc.

Thoma Cressey Equity Partners, Inc.

600 Montgomery Street, 32nd Floor

San Francisco, CA 94111

Telephone: (415) 263-3660

Thoma Cressey Equity Partners, Inc., which we refer to in this proxy statement as TCEP, is a Delaware corporation and its principal business is investing in strategic business opportunities, principally in the information technology, heathcare, business services and consumer products and services fields. Thoma Cressey Equity Partners, Inc. was formed in the state of Delaware on December 19, 1997. In connection with the merger, TCEP formed EMBT Holdings, Inc. to hold all of the shares of Parent. The managing partners of Thoma Cressey Equity Partners, Inc. are Carl D. Thoma, Bryan C. Cressey, David J. Mayer, Lee M. Mitchell and Orlando Bravo.

EMBT Holdings, Inc.

EMBT Holdings, Inc.

c/o Thoma Cressey Equity Partners

600 Montgomery Street, 32nd Floor

San Francisco, CA 94111

Telephone: (415) 263-3660

EMBT Holdings, Inc. is an affiliate of Thoma Cressey Equity Partners, Inc., and was incorporated in Delaware on August 24, 2006, solely for the purpose of holding the shares of EMB Holding Corp. EMBT Holdings, Inc. has not participated in any activities to date other than activities incident to its formation and the transactions contemplated by the merger agreement. EMBT Holdings, Inc. is the sole stockholder of EMB Holding Corp. In connection with the merger, Thoma Cressey Equity Partners, together with other potential investors, including Thoma Cressey Fund VIII, L.P. and one of our executive officers, are expected to make equity investments in EMBT Holdings, Inc. Thoma Cressey Fund VIII, L.P. is an affiliated fund of TCEP and invests largely in companies in the software and healthcare industries, as well as in areas such as business services and consumer products and services.

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CURRENT EXECUTIVE OFFICERS AND DIRECTORS OF THE COMPANY

Each of the directors and executive officers of Embarcadero is a citizen of the United States and, except as provided below, has his or her principal business address and telephone at Embarcadero Technologies, Inc., 100 California Street, 12th Floor, San Francisco, California 94111, (415) 834-3131.

The directors and executive officers of Embarcadero, the date they became director or executive officer, their current occupation and their material employment during the last five years, as of September 25, 2006, are as follows:

Name	Position	Occupation or Employment
Stephen R. Wong	Chairman of the Board, President and Chief Executive Officer	Mr. Wong is one of our co-founders and has served as the Chairman of our Board of Directors since July 1993. From July 1993 until October 1999, Mr. Wong served as our Chief Executive Officer and, since June 2000, Mr. Wong has served as our President and Chief Executive Officer. From May 1985 to May 1990, Mr. Wong served as an associate, and subsequently as a partner, of Montgomery Medical Ventures, a venture capital firm, where he specialized in technology transfer and early stage investments.
Raj P. Sabhlok	Senior Vice President of Operations	Mr. Sabhlok has served as our Senior Vice President of Operations since October 2005. He served as our Chief Financial Officer and Senior Vice President of Corporate Development from January 2000 to October 2005. From March 1995 until January 2000, Mr. Sabhlok was employed by BMC Software, Inc., an enterprise software company, where he served as the Director of Business Development from April 1997. From February 1988 until February 1995, Mr. Sabhlok held a number of technical, marketing and sales management positions with The Santa Cruz Operation, Inc., a UNIX software development company.
Michael Shahbazian	Senior Vice President and Chief Financial Officer	Mr. Shahbazian has served as our Senior Vice President and Chief Financial Officer since October 2005. From January 2003 to August 2005, Mr. Shahbazian was Senior Vice President and Chief Financial Officer of Niku Corporation, an information technology management and governance software company. He also served as Chief Financial Officer of the following companies: ANDA Networks, a telecommunications equipment company, from November 2000 to November 2002; Inventa Technologies, a corporate systems integrator, from February 2000 to November 2000; and Walker Interactive, a provider of client-server/network computing software products, prior to February 2000. Prior to these roles, Mr. Shahbazian spent nearly 20 years with Amdahl Corporation in a variety of senior finance positions.

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Name	Position	Occupation or Employment
Robert Lamvik	Vice President of Worldwide Field Operations	Mr. Lamvik has served as our Vice President of Worldwide Field Operations since February 2004. Mr. Lamvik has over twenty-five years of experience in high technology sales leadership. From November 2003 to May 2004, he served as Director of Strategic Sales at Advanced Micro Devices, a global provider of innovative microprocessor solutions. From October 1995 to June 2003, he served as vice president of America field operations for Sun Microsystems Software Division, a software provider, including iPlanet, Java Enterprise System, and Solaris sales. He has also held management and executive roles at Advanced Micro Devices, the Santa Cruz Operation, and Okidata Corporation.
Timothy C.K. Chou	Director	Timothy C.K. Chou has served as a member of our Board of Directors since July 2000. From November 1999 to January 2005, he served as President of Oracle On Demand, a division of Oracle Corporation and a leading application service provider. In addition, Mr. Chou serves on the technical advisory board of Webex, Inc., an online conferencing company, and is a lecturer at Stanford University. From October 1996 through October 1999, Mr. Chou served as Chief Operating Officer of Reasoning, Inc., an information technology services firm. From September 1994 through September 1996, Mr. Chou served as Vice President, Server Products, of Oracle Corporation.
Gary E. Haroian	Director	Gary E. Haroian has served as a member of our Board of Directors since July 2004. Mr. Haroian is currently a consultant to emerging technology companies. From April 2000 to October 2002, Mr. Haroian served in various positions at Bowstreet, Inc., a provider of software application tools, including its Chief Financial Officer, Chief Operating Officer and Chief Executive Officer. From 1997 to 2000, Mr. Haroian served as Senior Vice President of Finance and Administration and Chief Financial Officer of Concord Communications, Inc., a network management software company. From 1983 to 1996, Mr. Haroian served in various positions at Stratus Computer, a provider of fault-tolerant computers, including as Chief Financial Officer, President and Chief Operating Officer and as Chief Executive Officer. Prior to his career as a corporate executive, Mr. Haroian was a CPA in a major public accounting firm. He is currently a member of the board of directors and chairman of the audit committee of four public companies: Network Engines, Inc., a developer and manufacturer of security and storage appliances; Aspen Technology, Inc., a provider of software and implementation services to process manufacturing companies; Lightbridge Inc., an analytics, decisioning and e-commerce company; and Phase Forward Inc., a provider of software for clinical trials and drug safety.
Frank M. Polestra	Director	Frank M. Polestra has served as a member of our Board of Directors since November 1999. He has been a partner of Ascent Venture Partners, a venture capital firm, since January 1, 2005. Prior to that, he was the Managing Director of Ascent Venture Partners beginning in March 1999. From 1980 to February 1999, Mr. Polestra served as President of Pioneer Capital Corp., a venture capital firm.

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Name	Position	Occupation or Employment
Michael J. Roberts	Director	Michael J. Roberts has served as a member of our Board of Directors since March 2000. He was elected Lead Independent Director by the Board in April 2005. He has been Senior Lecturer and Executive Director of Entrepreneurial Studies at the Harvard Business School since June 1997. From 1995 through May 1997, Mr. Roberts served as an independent consultant to new ventures primarily in the health care services, wireless communications, automobile services and restaurant industries. Mr. Roberts is also a member of the boards of directors of three privately held companies: Geode Capital Management, LLC, an investment advisor for institutional clients; Praendex Inc., a management consulting firm; and Kingsley Management, LLC, a full service car wash development and management company.
Samuel T. Spadafora	Director	Samuel T. Spadafora has served as a member of our Board of Directors since May 2003. He has been the Chairman of the board of directors of Chordiant Software, Inc., a provider of customer relationship management software, since November 1999 and Chief Strategy Officer since November 2003. Mr. Spadafora served as Chief Executive Officer and a director of Chordiant from June 1998 to January 2002. From June 1998 until October 2000, he was also Chordiant s President. From April 1994 to June 1998, Mr. Spadafora served as Vice President of Worldwide Field Operations for the microelectronic business of Sun Microsystems, Inc., a computer systems and networking company.

During the past five years, none of Embarcadero or our executive officers, directors or controlling persons has been convicted in a criminal proceeding (other than traffic violations or similar misdemeanors) or been a party to any judicial or administrative proceeding (except for matters that were dismissed without sanction or settlement) that resulted in a judgment, decree, or final order enjoining that person or entity from future violations of, or prohibiting activities subject to, federal or state securities laws, or a finding of any violation of federal or state securities laws.

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THE SPECIAL MEETING

Time, Place and Purpose of the Special Meeting

This proxy statement is being furnished to our stockholders as part of the solicitation of proxies by our board of directors for use at the special meeting to be held on , , 2006 beginning at :00 **[a]**.m., local time, at Embarcadero s principal executive offices located at 100 California Street, 12th Floor, San Francisco, California 94111. The purpose of the special meeting is for our stockholders to consider and vote upon a proposal to adopt the merger agreement, to adjourn the meeting, if necessary, to solicit additional proxies if there are insufficient votes at the time of the meeting to adopt the merger agreement and to act upon other matters and transact other business, as may properly come before the meeting. A copy of the merger agreement is attached to this proxy statement as *Annex A*. This proxy statement, the notice of the special meeting and the enclosed form of proxy are first being mailed to our stockholders on or about , 2006.

Record Date, Quorum and Voting Power

You are entitled to vote at the special meeting if you owned shares of Embarcadero common stock at the close of business on , 2006, the record date for the special meeting. Each outstanding share of Embarcadero common stock on the record date entitles the holder to one vote on each matter submitted to stockholders for approval at the special meeting. As of the close of business on the record date, there were shares of Embarcadero common stock entitled to be voted at the special meeting.

The holders of a majority of the outstanding common stock on the record date, represented in person or by proxy, will constitute a quorum for purposes of the special meeting. A quorum is necessary to hold the special meeting. Once a share is represented at the special meeting, it will be counted for the purpose of determining a quorum at the special meeting and any adjournment of the special meeting. However, if a new record date is set for the adjourned special meeting, then a new quorum will have to be established.

Required Vote

For us to complete the merger, stockholders holding at least a majority of the shares of Embarcadero common stock outstanding at the close of business on the record date must vote FOR the adoption of the merger agreement. The proposal to adjourn the meeting, if necessary, to solicit additional proxies requires the affirmative vote of a majority of the shares present and entitled to vote on the matter at the special meeting.

In order for your shares of Embarcadero common stock to be included in the vote, if you are a stockholder of record, you must cause your shares to be voted by returning the enclosed proxy, by submitting a proxy over the Internet or by telephone, as indicated on the proxy card, or by voting in person at the special meeting.

If your shares are held in street name by your broker, you should instruct your broker how to vote your shares using the instructions provided by your broker. If you have not received such voting instructions or require further information regarding such voting instructions, contact your broker and it can give you directions on how to vote your shares. A broker non-vote generally occurs when a broker, bank or other nominee holding shares on your behalf does not vote on a proposal because the nominee has not received your voting instructions and lacks discretionary power to vote the shares. Broker non-votes and abstentions will not count as votes cast on a proposal, but will count for the purpose of determining whether a quorum is present.

Broker non-votes and abstentions will have the same effect as a vote against the adoption of the merger agreement. Abstentions will also have the same effect as a vote against the adjournment of the meeting. Broker non-votes will not have an effect on the vote with respect to the adjournment.

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Voting by Directors and Executive Officers

As of , 2006, the record date, the directors and executive officers of Embarcadero held and are entitled to vote, in the aggregate, shares of Embarcadero common stock, representing approximately % of the outstanding shares of Embarcadero common stock. Pursuant to the terms of the voting agreements described elsewhere in this proxy statement, each of Stephen Wong, Chairman, President and Chief Executive Officer of the Company, Raj Sabhlok, Senior Vice President of Operations of the Company, Michael Shahbazian, Chief Financial Officer of the Company and Robert Lamvik, Vice President, Worldwide Field Operations of the Company, has agreed to vote, or cause to be voted or consented, all of his shares of Embarcadero common stock currently held or subsequently acquired, if any, in favor of the adoption of the merger agreement. As of the record date, the voting agreements executed by Messrs. Wong, Sabhlok, Shahbazian and Lamvik cover an aggregate of shares of Embarcadero common stock, representing approximately % of the outstanding shares of Embarcadero common stock. In addition to the shares Messrs. Wong, Sabhlok, Shahbazian and Lamvik have agreed to vote in favor of adoption of the merger agreement pursuant to the voting agreements, the affirmative vote of holders of Embarcadero common stock representing at least shares of Embarcadero common stock, or approximately % of the outstanding shares of Embarcadero common stock, will be required to adopt the merger agreement.

Proxies; Revocation

If you submit a signed proxy, or submit a proxy over the Internet or by telephone as indicated on the proxy card, your shares will be voted at the special meeting in accordance with the instructions given. If no instructions are indicated on your signed proxy card, your shares will be voted FOR the adoption of the merger agreement and FOR adjournment of the meeting, if necessary, to solicit additional proxies if there are insufficient votes at the time of the meeting to adopt the merger agreement, and in accordance with the recommendations of the board of directors on any other matters properly brought before the meeting for a vote.

You may revoke your proxy at any time before the vote is taken at the special meeting. To revoke your proxy, you must either advise our Corporate Secretary in writing, deliver a new proxy or submit another proxy, in each case dated after the date of the proxy you wish to revoke, or attend the special meeting and vote your shares in person. Attendance at the special meeting will not by itself constitute revocation of a proxy.

If you have instructed your broker to vote your shares, the above-described options for revoking your proxy do not apply and instead you must follow the directions provided by your broker to change these instructions.

Embarcadero does not expect that any matter other than the proposal to adopt the merger agreement will be brought before the special meeting (other than adjournment of the meeting, if necessary, to solicit additional proxies if there are insufficient votes at the time of the meeting to adopt the merger agreement). If, however, another matter is properly presented at the special meeting or any adjournment or postponement of the special meeting, the persons appointed as proxies will vote the shares in accordance with the recommendation of our board of directors.

Proxy Solicitation; Expenses of Proxy Solicitation

Embarcadero will pay the cost of this proxy solicitation. In addition to soliciting proxies by mail, directors, officers and employees of Embarcadero may solicit proxies personally and by telephone, facsimile, Internet or other electronic means of communication. These persons will not receive additional or special compensation for such solicitation services. Embarcadero will, upon request, reimburse brokers, banks and other nominees for their expenses in sending proxy materials to their customers who are beneficial owners and obtaining their voting instructions.

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Adjournments

Any adjournment may be made without notice by an announcement made at the special meeting by the chairman of the meeting, subject to applicable law. If persons named as proxies by you are asked to vote for one or more adjournments of the meeting for matters incidental to the conduct of the meeting, such persons will have the authority to vote in accordance with the recommendation of our board of directors on such matters. However, if persons named as proxies by you are asked to vote for one or more adjournments of the meeting to solicit additional proxies if there are insufficient votes at the time of the meeting to adopt the merger agreement, such persons will only have the authority to vote on such matter as instructed by you or your proxy, or, if no instructions are provided on your signed proxy card, in favor of such adjournment. Any adjournment of the special meeting for the purpose of soliciting additional proxies will allow Embarcadero stockholders who have already sent in their proxies to revoke them at any time prior to their use.

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PROPOSAL NO. 1 THE MERGER AGREEMENT

Effective Time

The merger will become effective at the effective time. The term effective time means the date and time at which the certificate of merger is filed with the Delaware Secretary of State, or at a later date and time agreed upon by us, EMBT Merger Corp. and Parent and specified in the certificate of merger. Embarcadero intends that the filing of the certificate of merger will occur as soon as practicable after satisfaction or waiver of the conditions to the merger described in the merger agreement.

Structure

Subject to the terms and conditions of the merger agreement and in accordance with the General Corporation Law of the State of Delaware, at the effective time of the merger, EMBT Merger Corp., a wholly-owned subsidiary of Parent and a party to the merger agreement, will merge with and into Embarcadero, and each issued and outstanding share of common stock of EMBT Merger Corp. will be converted into one share of common stock of the surviving corporation. Embarcadero will survive the merger as a wholly-owned subsidiary of Parent. The merger will have the effects described in the merger agreement and in accordance with the General Corporation Law of the State of Delaware.

Treatment of Stock and Options

If the merger is completed, each share of Embarcadero common stock issued and outstanding immediately before the effective time of the merger will be cancelled and converted automatically into the right to receive $8.38 in cash, without interest, except for shares held by us or any of our subsidiaries, or shares held by Parent, which shares will be cancelled without payment, and shares held by stockholders who are entitled to and who properly exercise and perfect appraisal rights in compliance with all of the required procedures under Delaware law.

Immediately prior to the effective time, each outstanding option to purchase shares of Embarcadero common stock, including unvested options, will accelerate and become fully vested. At the effective time, any options having an exercise price equal to or greater than $8.38 per share will be cancelled without payment, and any options having an exercise price less than $8.38 per share will entitle the holder of such options to receive an amount in cash equal to the product of (i) the total number of shares of Embarcadero common stock subject to the option, multiplied by (ii) the excess of $8.38 over the exercise price per share of Embarcadero common stock underlying such option, less any applicable withholding taxes. Each of the Company s equity incentive plans will be terminated upon completion of the merger, and Embarcadero has agreed to ensure that no participant in any of the Company s equity incentive plans will have any right to acquire any equity securities of the Company, the surviving corporation or any of its respective subsidiaries after completion of the merger.

Treatment of Restricted Stock

If any share of restricted Embarcadero common stock outstanding immediately prior to the effective time of the merger is unvested or subject to a repurchase option, then, effective immediately prior to the completion of the merger, any such share of restricted common stock will accelerate and become fully vested and any repurchase option will lapse. Thereafter, each such share will be converted into the right to receive $8.38 in cash, without interest.

Exchange and Payment Procedures

At the effective time of the merger, Parent will deposit an amount of cash sufficient to pay the merger consideration to each holder of shares of Embarcadero common stock with Mellon Investor Services LLC, which we refer to as the paying agent. As soon as practicable after the effective time of the merger, the paying agent will mail a letter of transmittal and instructions to each holder of Embarcadero common stock. The letter of

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transmittal and instructions will tell the stockholders how to surrender their Embarcadero common stock certificates in exchange for the merger consideration.

Stockholders will not be entitled to receive the merger consideration until they surrender their Embarcadero common stock certificate or certificates to the paying agent, together with a duly completed and executed letter of transmittal and any other documents as the paying agent may reasonably require. The merger consideration may be paid to a person other than the person in whose name the corresponding certificate is registered if the certificate is presented to the paying agent, accompanied by documents evidencing such transfer of ownership and the payment of transfer taxes.

No interest will be paid or will accrue on the cash payable upon surrender of the certificates. Each of the paying agent and the surviving corporation will be entitled to deduct and withhold any applicable taxes from the merger consideration otherwise payable pursuant to the merger agreement to any holder of common stock of Embarcadero and holders of Embarcadero stock options and pay such withholding amount over to the appropriate taxing authority.

After the effective time of the merger, our share transfer books will be closed, and there will be no further registration of transfers of outstanding shares of Embarcadero common stock. If, after the effective time of the merger, certificates are presented to the surviving corporation for any reason, they will be cancelled and exchanged for the merger consideration, subject to the applicable Delaware law.

None of Parent, the surviving corporation or EMBT Merger Corp. will be liable to any holder of shares of Common Stock of Embarcadero for any part of the merger consideration delivered to a public official pursuant to any applicable abandoned property, escheat or similar law. Any portion of the merger consideration deposited with the paying agent that remains unclaimed by holders of any such shares for two years after the effective time of the merger or at such earlier date immediately before the time at which such amounts would otherwise escheat to, or become property of, any governmental entity, to the extent permitted by applicable law, will become property of the surviving corporation.

If any stockholder has lost a certificate, or if it has been stolen or destroyed, then the stockholder will be required to make an affidavit of that fact, and may be required to post a bond in a reasonable amount or execute an indemnity agreement, at the reasonable direction of Parent or the surviving corporation, before the stockholder will be entitled to receive the merger consideration.

Certificate of Incorporation and Bylaws

At the effective time of the merger, the certificate of incorporation of Embarcadero will be amended to read as set forth in Exhibit B to the merger agreement, which is attached to this proxy statement as *Annex A*, and as so amended will be the certificate of incorporation of the surviving corporation. In addition, at the effective time of the merger, the bylaws of the surviving corporation will read as set forth in Exhibit C to the merger agreement. The name of the surviving corporation will continue to be Embarcadero Technologies, Inc.

Directors and Officers

At the effective time of the merger, the directors of EMBT Merger Corp. will become the directors of the surviving corporation. Raj Sabhlok, our current Senior Vice President of Operations, will become President and Chief Executive Officer of the surviving corporation effective upon completion of the merger, and Messrs. Robert Lamvik and Wayne Williams, our current Vice President, Worldwide Field Operations and Chief Technology Officer, respectively, will continue to serve in these positions with the surviving corporation.

Representations and Warranties

The merger agreement contains representations and warranties that Embarcadero, Parent and EMBT Merger Corp. have made to each other as of specific dates. The assertions embodied in those representations and

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warranties were made for purposes of the merger agreement, a copy of which is attached hereto as *Annex A* and which is incorporated by reference into this proxy statement. The representations and warranties in the merger agreement are complicated and not easily summarized. You are urged to read carefully and in their entirety the sections of the merger agreement entitled Representations and Warranties of the Company and Representations and Warranties of Parent and Merger Sub in *Annex A* to this proxy statement.

The assertions embodied in the representations and warranties are qualified by information in a confidential disclosure schedule that Embarcadero provided to Parent and EMBT Merger Corp. in connection with the signing of the merger agreement. While Embarcadero does not believe that the confidential disclosure schedule contains information that is required to be disclosed under applicable securities laws, other than information that has already been so disclosed, the disclosure schedule contains information that modifies, qualifies and creates exceptions to the representations and warranties set forth in the merger agreement. Accordingly, you should not rely on the representations and warranties as current characterizations of factual information about us, because they were made as of specific dates, may be intended merely as a risk allocation mechanism between Embarcadero, Parent and EMBT Merger Sub, and are modified in important part by the underlying disclosure schedule.

Our representations and warranties in the merger agreement relate to, among other things:

- our and our subsidiaries proper organization, good standing and corporate power to operate our businesses;
- our capitalization, including in particular the number of shares of Embarcadero common stock and stock options outstanding and the number of shares of Embarcadero common stock subject to a repurchase option by us;
- our certificate of incorporation and bylaws and those of our significant subsidiaries;
- our corporate power and authority to enter into the merger agreement and to complete the transactions contemplated by the merger agreement;
- the absence of any violation of or conflict with our organizational documents, applicable law or certain agreements as a result of entering into the merger agreement and completing the merger;
- required consents and approvals of governmental entities in connection with the merger;
- the vote required by our stockholders in connection with the approval of the merger agreement and merger;
- our SEC filings, the financial statements contained those filings and our internal controls;
- the accuracy and completeness of information Embarcadero has supplied for inclusion in this proxy statement;
- the absence of liabilities, other than (i) as set forth on our December 31, 2005 balance sheet, (ii) ordinary course liabilities, (iii) liabilities incurred in connection with the merger and (iv) liabilities that would not have a material adverse effect;
- the absence of certain changes and events since December 31, 2005, including the absence of a material adverse effect;

employment and labor matters affecting us, including matters relating to our employee benefit plans;

real property owned and leased by Embarcadero and its subsidiaries and title to assets;

our intellectual property;

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taxes, environmental matters and certain specified types of contracts;

the absence of litigation or outstanding court orders against us;

our compliance with applicable statutes, laws, rules, orders and regulations;

our possession of all licenses and permits necessary to operate our properties and carry on our business;

our insurance policies;

receipt by the board of directors of an opinion from Morgan Stanley & Co. Incorporated;

inapplicability of state anti-takeover laws to the merger;

the absence of undisclosed broker s fees; and

export control laws.

For the purposes of the merger agreement, material adverse effect means any change, event, violation, inaccuracy, effect or circumstance that, individually or in the aggregate, is or could reasonably be expected to be materially adverse to our business, operations, properties, financial condition, assets or liabilities or prevent or materially delay the performance by us of any of our obligations under the merger agreement or the completion of the merger or the other transactions contemplated by the merger agreement, or Parent s ability to vote, receive dividends with respect to or otherwise exercise ownership rights with respect to the stock of the surviving corporation.

Under the merger agreement, the following events do not constitute, or are not to be taken into account in determining whether there has been or will be, a material adverse effect :

any change in our stock price or trading volume or change in law or GAAP after the date of the merger agreement;

any failure by us to meet internal projections or published revenue or earnings projections for any period ending (or for which revenues or earnings are released) on or after the date of the merger agreement;

any effect that results from changes affecting the enterprise software industry or data management software market generally or the U.S. economy generally (to the extent any such changes do not have a disproportionate effect on us);

any effect that results from changes affecting general worldwide economic or capital market conditions (to the extent any such changes do not have a disproportionate effect on us);

any effect resulting from compliance with the terms and conditions of the merger agreement;

any effect caused by an impact to our relationships with our employees, customers, suppliers or partners directly attributable to the announcement or pendency of the merger; or any stockholder class action litigation arising from allegations of a breach of fiduciary duty relating to the merger agreement;

any failure by us to obtain any consent or approval required to be obtained under the merger agreement;

any declaration of war, military crisis or conflict, civil unrest, act of terrorism, or act of God; or

any acts taken with the consent of Parent.

The merger agreement also contains representations and warranties made by Parent and EMBT Merger Corp. that are subject, in some cases, to specified exceptions and qualifications. The representations and warranties of each of Parent and EMBT Merger Corp. relate to, among other things:

its proper organization, good standing and corporate power to operate its businesses;

its corporate power and authority to enter into the merger agreement and to complete the transactions contemplated by the merger agreement;

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the absence of any violation of or conflict with its organizational documents, applicable law or certain agreements as a result of entering into the merger agreement and completing the merger;

required consents and approvals of governmental entities as a result of the merger;

the accuracy and completeness of information it has supplied for inclusion in this proxy statement;

the operations of EMBT Merger Corp.;

the absence of litigation or outstanding court orders against it;

the debt financing letter and the equity financing letters received by TCEP, Parent and EMBT Merger Corp., including that each of the debt financing letter and the equity financing letters is in full force and effect and is a legal, valid and binding obligation of Parent, EMBT Merger Corp. and, to the knowledge of Parent, the other parties to these agreements;

the absence of undisclosed broker s fees;

EMB Holding Corp. and EMBT Merger Corp. not being interested stockholders of us; and

delivery by EMB Holding Corp. to us of the limited guarantee of Thoma Cressey Fund VIII, L.P., an affiliated fund of TCEP.

The representations and warranties of each of the parties to the merger agreement will expire upon completion of the merger.

Conduct of Our Business Pending the Merger

Under the merger agreement, we have agreed that, subject to certain exceptions or unless Parent gives its prior written consent, between September 6, 2006 and the completion of the merger, we and our subsidiaries will:

maintain our existence in good standing under applicable law;

conduct our business and operations only in the ordinary and usual course of business and in a manner consistent with prior practice; and

use commercially reasonable efforts to (i) preserve intact our assets, properties, contracts or other legally binding understandings, licenses and business organizations, (ii) keep available the services of our current officers and key employees and (iii) preserve our current relationships with customers, suppliers, distributors, lessors, licensors, licensees, creditors, employees, contractors and other persons with which we or any of our subsidiaries have business relations.

We have also agreed that during the same time period, and again subject to certain exceptions or unless Parent gives its prior written consent, we and our subsidiaries will not:

declare, set aside, make or pay any dividends or other distributions in respect of any of our capital stock;

adjust, split, combine or reclassify any of our capital stock or issue or authorize any other securities in lieu of or in substitution for shares of our capital stock;

repurchase, redeem or otherwise acquire any shares of our capital stock or any of our stock rights (except pursuant to restricted stock award agreements outstanding on the date of the merger agreement);

issue, deliver or sell, pledge or encumber any shares of our capital stock or any of our stock rights (other than the issuance of shares of Embarcadero common stock upon the exercise of our stock options outstanding as of the date of the merger agreement or in the ordinary course of business to our employees and directors, so long as the amount issued or subject to options granted does not exceed 100,000 shares);

take any action that would reasonably be expected to impair our ability to complete or materially delay the merger in accordance with the terms of the merger agreement;

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amend our certificate of incorporation or our bylaws or equivalent organizational documents of our subsidiaries;

become liable for any indebtedness for borrowed money, other than short-term borrowings under existing lines of credit incurred in the ordinary course of business, or otherwise become liable for the obligations of any other person;

make any loans, advances or capital contributions to or investments in any other person (other than loans, advances, capital contributions or investments less than $250,000 made in the ordinary course of business);

merge or consolidate with any other entity or adopt a plan of complete or partial liquidation, dissolution, recapitalization or other reorganization;

change our tax accounting methods, principles or practices, except as required by GAAP or applicable laws;

alter, amend or create any obligations with respect to compensation, severance, benefits, change of control payments or any other payments to our present or former employees, directors or affiliates, other than alterations or amendments (i) made with respect to non-officers and non-directors in the ordinary course of business that, in the aggregate, do not result in a material increase in benefits or compensation expense to us, (ii) as expressly contemplated by the merger agreement with respect to our stock options and restricted stock or (iii) required under applicable laws;

hire any new employees other than non-officer employees in the ordinary course of business;

sell, license, mortgage, transfer, lease, pledge or otherwise subject to any encumbrance or otherwise dispose of any material properties or assets, other than in the ordinary course of business;

acquire any material business, assets or securities other than in the ordinary course of business;

make any tax election not consistent with prior practice or settle or compromise any income tax liability or fail to file any material tax return when due or fail to cause such tax returns when filed to be complete and accurate in all material respects;

incur (or commit to incur) any capital expenditures, or any obligations or liabilities in connection with such capital expenditures that, individually or in the aggregate, are in excess of $250,000, except in the ordinary course of business;

pay, discharge, settle or satisfy any liabilities, other than the payment, discharge or satisfaction of liabilities in the ordinary course of business as required by any applicable law, as accrued for in our financial statements or as required by the terms of any of our contracts in effect on the date of the merger agreement;

waive, release, grant or transfer any right of material value, other than in the ordinary course of business, or agree to modify in any material adverse respect any material confidentiality or similar agreement to which we are a party;

enter into, modify, amend or terminate (i) any contract which if so entered into, modified, amended or terminated could likely have a material adverse effect on us, materially impair our ability to perform our obligations under the merger agreement or prevent or materially delay the completion of the transactions contemplated by the merger agreement or (ii) any of our material contracts, except in the ordinary course of business;

terminate any officer or key employee of Embarcadero other than for good reason or for reasonable cause;

maintain insurance at less than current levels or otherwise in a manner inconsistent with past practice;

except as required by GAAP, revalue any of our material assets or make any changes in accounting methods, principles or practices;

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enter into any transaction that could give rise to a disclosure obligation as a reportable transaction under Section 6011 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder;

engage in any transaction with, or enter into any agreement with, any of our affiliates or any other person covered by Item 404 of Regulation S-K promulgated under the Securities Exchange Act of 1934, as amended, that would be required to be disclosed under such Item 404;

compromise or settle any suit, claim, action, investigation or proceeding directly relating to or affecting our intellectual property or having a value or in an amount in excess of $100,000;

effectuate a plant closing or mass layoff, as those terms are defined in the U.S. Worker Adjustment and Retraining Notification Act, affecting any site of employment, facility, operating unit or employee of Embarcadero;

grant any material refunds, credits, rebates or other allowances by us to any end user, customer, reseller or distributor, other than in the ordinary course of business;

abandon or allow to lapse or expire any registration or application for our material intellectual property; or

agree to take any of the actions described above.

Financing

Parent and EMBT Merger Corp. have agreed to use commercially reasonable efforts to fully satisfy on a timely basis all the terms, conditions, representations and warranties contained in the debt financing letter and the equity financing letters relating to the financing for the merger. Parent has also agreed to keep us informed regarding the status of the financing. Parent will notify us promptly, and in any event within two business days, if at any time before completion of the merger (i) any of the debt financing letter or the equity financing letters with respect to the financing of the merger should expire or be terminated for any reason or (ii) any financing source that is a party to the debt financing letter or equity financing letters notifies Parent or EMBT Merger Corp. that such source no longer intends to either provide or underwrite financing to EMBT Merger Corp. on the terms set forth in such financing letter. In the event any portion of the debt financing becomes unavailable on the terms and conditions contemplated in the debt financing letter, Parent and EMBT Merger Corp. will use commercially reasonable efforts to arrange to obtain alternative debt financing on terms Parent determines reasonably and in good faith are no less favorable to EMBT Merger Corp. We have agreed to use commercially reasonable efforts to cooperate, and to cause our subsidiaries and representatives to cooperate, with Parent and its representatives in connection with the financing.

No Solicitation of Transactions

We have agreed that so long as the merger agreement remains in effect, we (and our affiliates, officers, directors and agents) will not:

solicit, initiate or intentionally encourage the submission of an alternative proposal (as defined below); or

participate in any discussions or negotiations regarding, or furnish any non-public information or data about us to any third party (other than Parent and EMBT Merger Corp.) for the purpose of knowingly facilitating, inducing or encouraging any proposal that is, or may reasonably be expected to lead to, an alternative proposal.

The above restrictions on solicitation contained in the merger agreement do not prevent our board of directors from, prior to the special meeting of stockholders, complying with Rules 14-d(9) and 14-e(2) under the Securities Exchange Act of 1934, as amended; or engaging in discussions, participating in negotiations with or furnishing non-public information to, a third party making an unsolicited, *bona fide* alternative proposal if

our board of directors determines in good faith (after consulting with an outside financial advisor) that the acquisition

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proposal is, or presents a reasonable possibility of resulting in, a superior proposal. Furthermore, we may enter into discussions or negotiations with, or furnish non-public information to, a third party only if the following conditions are satisfied:

- we receive from the third party an executed confidentiality agreement having terms and conditions no less favorable to us than the Confidentiality Agreement, dated July 13, 2006, between TCEP and us;
- promptly upon furnishing any non-public information to the third party, we furnish this non-public information to Parent, to the extent not previously provided; and
- we do not provide any non-public information or other confidential information that would result in competitive harm or detriment to our ability to effectively compete in any of our businesses.

In addition to the restrictions on solicitation described above, we are required to promptly notify Parent of:

- receipt of any alternative proposal, any request for information (including non-public information) by any third party that has made an alternative proposal, receipt of an amendment to a previously disclosed alternative proposal, and any determination that an alternative proposal constitutes a superior proposal;
- the identity of the person or group making any alternative proposal; and
- the material terms and conditions of the alternative proposal.

In addition, if we receive a superior proposal, we are required, during the two business days following notice of such proposal to Parent, to negotiate in good faith with Parent to revise the merger agreement if and to the extent our board of directors determines that such negotiations would be consistent with its fiduciary duties.

Our board of directors may, in response to a superior proposal by a third party, withdraw or modify its approval or recommendation to our stockholders to vote in favor of the adoption of the merger agreement, if both of the following conditions are met:

- a superior proposal has been made and has not been withdrawn; and
- our board of directors has determined in good faith, after consulting its outside legal advisors, that there is a reasonable basis to conclude that the board s failure to effect a change of recommendation in light of the superior proposal would result in a reasonable possibility of a breach of its fiduciary duties to our stockholders under applicable law.

Our board of directors may accept and enter into an agreement for a superior proposal and terminate the merger agreement immediately prior to, or immediately after, its acceptance of the superior proposal if all of the following conditions are met:

- a superior proposal has been made and has not been withdrawn;
- we have not taken any action with respect to the superior proposal for three business days after delivery of a written notice to Parent setting forth our intention to take such action;

we shall have complied in all material respects with the provisions contained in the merger agreement relating to restrictions on solicitation; and

in the event we terminate the merger agreement and enter into an alternative acquisition agreement for a superior proposal, we pay a termination fee of $8,100,000 to Parent or its designee concurrently with the termination of the merger agreement.

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Under the merger agreement:

The term alternative proposal means any written inquiry, proposal or offer from any third party relating to any merger, consolidation or other business combination involving the Company or any acquisition or similar transaction (including a tender offer or exchange offer) involving the purchase of:

50% of our assets, or

50% or more of our outstanding common stock.

The term superior proposal means any *bona fide* written alternative proposal that our board of directors determines in good faith, after consultation with its outside financial advisors and outside counsel, contains terms that are more favorable to our stockholders than the transactions contemplated by the merger agreement.

Indemnification

Under the merger agreement, the surviving corporation will, for a period of six years after completion of the merger, indemnify, advance expenses to, and hold harmless all of our past and present officers and directors against acts or omissions occurring at or prior to the completion of merger, except that, in the case of advancement of expenses, any person to whom expenses are advanced will undertake to repay such expenses to the extent required by Delaware law if it is ultimately determined that such person is not entitled to indemnification. The surviving corporation will indemnify these individuals to the same extent and in the same manner as such persons were indemnified as of the date of the merger agreement by us pursuant to (i) the existing indemnification agreements between us and our directors and officers, (ii) the General Corporation Law of the State of Delaware and (iii) our certificate of incorporation and our bylaws for acts or omissions occurring at or prior to the completion of the merger.

The certificate of incorporation and bylaws of the surviving corporation will contain provisions with respect to indemnification, advancement of expenses and exculpation of our present and former directors and officers that are at least as favorable to such indemnified persons as those contained in our current certificate of incorporation and bylaws. The indemnification provisions in the surviving corporation s certificate of incorporation and bylaws will not be amended, repealed or otherwise modified in any manner adverse to our present and former directors and officers for a period of not less than six years following the completion of the merger, unless required by law.

The merger agreement requires that Parent cause the surviving corporation to maintain in effect, for a period of six years after the completion of the merger and for so long thereafter as any claim for insurance coverage asserted on or prior to the end of such six-year period has not been adjudicated, directors and officers insurance policies in an amount and scope at least as favorable as our policies existing on the date of the merger agreement for claims arising from acts or omissions that occurred prior to the completion of the merger; provided, however, that the surviving corporation shall not be required to pay an annual premium for such insurance in excess of $640,000, but in such case shall purchase as much coverage as possible for such amount.

The obligations described above regarding directors and officers indemnification and insurance must be assumed by any successor of the surviving corporation or Parent as a result of any consolidation, merger or transfer of all or substantially all properties and assets of the surviving corporation or Parent.

Employee Benefits

Under the merger agreement, Parent has acknowledged that it expects that it will cause our employee benefit plans (other than option plans) in effect on the date of the merger agreement to remain in effect for one year after completion of the merger or, to the extent that such benefit plans are not continued, cause us to provide benefit plans that are substantially comparable, in the aggregate, to the benefit plans (other than option plans) in effect on the date of the merger agreement.

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With respect to any benefit plans maintained by the surviving corporation after the merger in which any of our employees will participate, Parent has acknowledged that it expects to use commercially reasonable efforts to:

- recognize all service performed for us by our employees prior to the completion of the merger for eligibility and vesting purposes;
- waive any pre-existing condition exclusions (other than pre-existing conditions that, as of the completion of the merger, have not been satisfied under any of our benefit plans); and
- provide that any deductible, coinsurance or out-of-pocket expenses incurred on or before the completion of the merger during the plan year in which the merger occurs under any of our applicable benefit plans will be taken into account for purposes of satisfying applicable deductible, coinsurance and maximum out-of-pocket provisions after the completion of the merger under the applicable health plan that provides benefits to our employees.

Upon the completion of the merger, our stock option plans will terminate and the provisions in any other plan, program or arrangement providing for the issuance or grant of any other interest in respect of our capital stock will be canceled. Upon the completion of the merger, no participant in our option plans or other plans, programs or arrangements will have the right under these plans to acquire any equity securities of Embarcadero, the surviving corporation or any subsidiary thereof.

Agreement to Take Further Action and to Use Commercially Reasonable Efforts

Each party to the merger agreement has agreed to use commercially reasonable efforts to fulfill all conditions applicable to such party pursuant to the merger agreement and to expeditiously complete the merger and the other transactions contemplated by the merger agreement. Among other things, each party has committed to use such efforts to cooperate with each of the other parties to:

- take all commercially reasonable acts necessary to cause the conditions to completion of the merger (as described in the merger agreement) to be satisfied;
- obtain all necessary, proper or advisable actions or non-actions, waivers, consents, qualifications and approvals from governmental entities and make all necessary, proper or advisable registrations, filings and notices and take all reasonable steps as may be necessary to obtain an approval, waiver or exemption from any governmental entity (including under the HSR Act);
- obtain all consents and approvals from non-governmental third parties listed on a schedule to the merger agreement;
- as promptly as practicable, (i) make any required submissions under the HSR Act and any other antitrust laws which we or Parent determine should be made in connection with the merger and related transactions and (ii) determine whether any filings are required to be or should be made, or consents, approvals, permits, authorizations or waivers are required to be or should be obtained from other federal, state or foreign governmental authorities or from other third parties in connection with the completion of the transactions contemplated by the merger agreement and (iii) furnish to each other information required in connection with any such filings, and seek to obtain any such consents, approvals, permits, authorizations or waivers;
- promptly inform each other of the commencement or threatened commencement of any suit, claim, action, investigation or proceeding by any governmental entity with respect to the merger or any related transaction, and keep each other informed as to the status of any such suit, claim, action, investigation, proceeding or threat; and

promptly inform each other of any material communication concerning the HSR Act or other antitrust laws to or from any governmental entity regarding the merger, and assist each other in connection with any filing or other act taken to comply with the HSR Act and any other antitrust laws.

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Conditions to the Merger

The obligations of all parties to complete the merger are subject to the following conditions:

- the adoption of the merger agreement by the holders of a majority of the outstanding shares of Embarcadero common stock;
- the absence of any law or order that prevents or prohibits completion of the merger;
- the receipt from all governmental authorities of all consents, approvals and authorizations legally required to be obtained to complete the merger; and
- the expiration or termination of applicable waiting periods under applicable U.S. and non-U.S. antitrust laws, and the receipt of any approvals required thereunder.

The obligations of Parent and EMBT Merger Corp. to complete the merger are subject to the following additional conditions:

- the truth and correctness of our representations and warranties without reference to any materiality qualification, such that the aggregate effect of any inaccuracies in such representations and warranties will not have a material adverse effect on us as of the date of the closing (or as of the date made in the case of representations and warranties made as of a specific date);
- the performance or compliance, in all material respects, by us with all agreements and covenants required by the merger agreement to be performed or complied with on or prior to the completion of the merger;
- our delivery to Parent of a certificate with respect to the satisfaction of the foregoing conditions relating to representations, warranties, agreements and covenants;
- our delivery to Parent of a certificate to the effect that we are not a U.S. real property holding company; and
- the absence of any occurrence that has had a material adverse effect on us.

The obligations of the Company to complete the merger are subject to the following additional conditions:

- the truth and correctness of Parent s representations and warranties without reference to any materiality qualification, such that the aggregate effect of any inaccuracies in such representations and warranties will not have a material adverse effect on Parent as of the date of the closing (or as of the date made in the case of representations and warranties made as of a specific date);
- the performance or compliance, in all material respects, by Parent with all agreements and covenants required by the merger agreement to be performed or complied with on or prior to the completion of the merger;

the delivery by Parent of a certificate with respect to the satisfaction of the foregoing conditions relating to representations, warranties, agreements and covenants; and

the receipt by Parent of a signed solvency opinion addressed to our board of directors.

Termination

The merger agreement may be terminated and the merger may be abandoned at any time before the completion of the merger, whether or not stockholder approval has been obtained:

by the mutual written consent of the parties;

by Parent or Embarcadero (i) if a governmental entity issues an order or takes any other action to permanently enjoin the merger, (ii) if Embarcadero s stockholders fail to adopt the merger agreement (giving effect to any adjournment or postponement of the special meeting), (iii) if the merger shall not

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have been consummated by December 31, 2006 (the Outside Date), or (iv) if the other party breaches any of its representations or warranties in the merger agreement such that the aggregate effect of such breaches has a material adverse effect, or the other party breaches, in a material respect, its covenants or agreements in the merger agreement, and, in each case, such breach is not, or is not reasonably capable of being, cured by the Outside Date; or

by Parent (i) if the board of directors of Embarcadero withdraws or adversely modifies its approvals or recommendations of the merger, (ii) the board of directors of Embarcadero fails to reaffirm its approvals or recommendations of the merger or the merger agreement within ten business days after Parent requests that it do so following the public announcement of an alternative proposal, (iii) the board of directors of Embarcadero (A) recommends that our stockholders approve or accept an alternative proposal or (B) determines to accept a superior proposal, (iv) Embarcadero breaches its covenant to convene the special meeting of its stockholders or breaches its covenant not to solicit an alternative proposal, or (v) a third party commences a tender or exchange offer or other alternative proposal and Embarcadero does not send a statement to its stockholders recommending rejection of such offer within ten business days after such offer is first published, sent or given.

Embarcadero may also terminate the merger agreement in the event it approves or accepts a superior proposal and pays the termination fee to Parent described below.

Fees and Expenses

Embarcadero has agreed to pay Parent or such other persons designated in writing by Parent a termination fee in the amount of $8,100,000 if:

Embarcadero terminates the merger agreement in connection with an acquisition agreement for a superior proposal; or

Parent terminates the merger agreement for any of the reasons set forth in the third bullet point above under Termination.

In addition, if Embarcadero or Parent terminate the merger agreement because:

the stockholders fail to adopt the merger agreement at the special meeting; or

the merger has not been completed before December 31, 2006;

then Embarcadero will be obligated to pay Parent or its designee the termination fee of $8,100,000 if Embarcadero enters into an acquisition agreement with a third party within six months after termination of the merger agreement.

If all of the conditions to Parent s obligation to complete the merger have been satisfied and Parent fails to close the transactions contemplated by the merger agreement, including the merger, Embarcadero may terminate the merger agreement and Parent will be obligated to pay Embarcadero a termination fee in the amount of $12,150,000 within five business days of notice of termination.

Amendment and Waiver

The merger agreement may be amended by the parties in writing by action of their respective boards of directors at any time before or after the merger agreement has been adopted by our stockholders and prior to the filing of the certificate of merger with the Secretary of State of the State of Delaware. However, after the merger agreement has been adopted by our stockholders, no amendment, modification or supplement will be made to the merger agreement which by law requires the further approval of our stockholders without such further approval. The merger agreement also provides that, at any time prior to the completion of the merger, each of Embarcadero, Parent and EMBT Merger Corp. may extend the time for the performance of any of the obligations

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or other acts of the other parties, waive any inaccuracies in the representations and warranties of the other parties contained in the merger agreement or in any document delivered pursuant to the merger agreement or waive compliance with any of the agreements or conditions of the other parties contained in the merger agreement.

OTHER AGREEMENTS

Voting Agreements

On September 6, 2006, each of Stephen Wong, Raj Sabhlok, Michael Shahbazian and Robert Lamvik entered into voting agreements with us and Parent. The summary of the voting agreements below and elsewhere in this proxy statement may not contain all of the material terms of the voting agreements and is qualified by the full text of the voting agreements. We encourage you to read carefully the form of voting agreement in its entirety, a copy of which is attached as Exhibit A to the merger agreement, which is attached to this proxy statement as *Annex A* and incorporated by reference into this document.

Voting and Exclusivity

Each of Messrs. Wong, Sabhlok, Shahbazian and Lamvik has agreed to vote or consent all of his shares of Embarcadero common stock and those acquired after the date of the agreements, if any, (i) in favor of adoption of the merger agreement and (ii) against any proposal for any recapitalization, merger, sale of assets or other business combination (other than the merger) between us and any person or entity other than Parent.

In addition, each of Messrs. Wong, Sabhlok, Shahbazian and Lamvik has agreed that prior to the completion of the merger he will not directly or indirectly (i) sell, transfer, exchange or otherwise dispose of his shares of Embarcadero common stock and those acquired after the date of the agreements, if any, (ii) grant any proxies or powers of attorney, deposit any of his shares of Embarcadero common stock into a voting trust or enter into a voting agreement with respect to any of such shares or (iii) take any action that could reasonably be expected to have the effect of preventing or disabling him from performing his obligations under his voting agreement at any time prior to the closing of the merger. Each of Messrs. Wong, Sabhlok, Shahbazian and Lamvik is permitted, however, to transfer his shares of Company common stock and those acquired after the date of his agreement, if any, to any family member or trust for the benefit of any family member so long as the transferee agrees to be bound by the terms of the voting agreement, or to any charity so long as such transfers do not exceed 125,000 shares in the aggregate.

Termination

The voting agreements will automatically terminate upon the earlier to occur of the completion of the merger, the termination of the merger agreement, or the date on which the board of directors withdraws or modifies, in a manner adverse to Parent or EMBT Merger Corp., its approval or recommendation of the merger.

Employment Agreements

On September 6, 2006, in connection with execution of the merger agreement, each of Raj Sabhlok, Robert Lamvik and Wayne Williams entered into new employment agreements with us that will become effective upon completion of the merger.

Employment Terms

The material terms of the employment agreements are as follows:

Mr. Sabhlok will become the Chief Executive Officer of the surviving corporation, Mr. Lamvik will continue to serve as Vice President, Worldwide Field Operations of the surviving corporation and Mr. Williams will continue to serve as Chief Technology Officer of the surviving corporation.

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The new employment agreements will take effect upon the completion of the merger. The term of the new employment agreements for each of Messrs. Sabhlok, Lamvik and Williams will continue until terminated upon the executive s resignation, or upon the surviving corporation s termination of the agreement with or without cause.

Mr. Sabhlok will be paid an annual base salary of $240,000, Mr. Lamvik will be paid an annual base salary of $200,000 and Mr. Williams will be paid an annual base salary of $180,000. The base salaries payable to Messrs. Sabhlok, Lamvik and Williams are equal to the base salary payable to each of them by us prior to the merger, and will be subject to periodic reviews and possible increases. Any adjustments to the base salaries payable to Messrs. Sabhlok, Lamvik and Williams will be made by the board of directors of the surviving corporation or a committee of that board.

Each of Messrs. Sabhlok, Lamvik and Williams will be entitled to discretionary cash bonuses based upon the achievement of cumulative quarterly or annual performance targets established by the board of directors of the surviving corporation. The bonus opportunity provided to Messrs. Sabhlok, Lamvik and Williams is comparable to the bonus opportunity provided by us prior to the merger.

Each of Messrs. Sabhlok, Lamvik and Williams will be entitled to participate in customary employee benefits programs for our senior executives.

Subject to his execution of an effective release of claims in favor of the surviving corporation and certain other parties, and his continued compliance with the restrictive covenants described below under Non-Competition Agreements, each of Messrs. Sabhlok, Lamvik and Williams will have the right to receive the following severance payments and benefits in the event that he is involuntarily terminated by the surviving corporation without cause, as defined in the agreement, or if he resigns for good reason, as defined in his employment agreement:

- base salary through the date of termination, any earned but unpaid portion of the annual performance bonus award and any employee benefits to which the executive may be entitled under any employee benefit plans, less any amounts owed to the surviving corporation by the executive;

- Mr. Sabhlok will have the right to receive a continuation of base salary for a period of 12 months following termination of employment;

- each of Messrs. Lamvik and Williams will have the right to receive a continuation of base salary for a period of six months following termination of employment.

Equity Terms

Under their employment agreements, Messrs. Lamvik and Williams will receive equity incentive awards in the aggregate of up to less than 2% of the common stock of EMBT Holdings, Inc. and Mr. Sabhlok will receive equity incentive awards in an amount equal to approximately 4.58% of the common stock of EMBT Holdings, Inc., subject to various time-based and performance-based vesting provisions.

In addition, upon the closing of the merger, Mr. Sabhlok will be entitled to invest $300,000 of the proceeds he receives from the merger in shares of capital stock of EMBT Holdings, Inc., representing approximately 0.33% of the equity capital of that company, on the same terms as the investment by TCEP and the other Investors, bringing his aggregate equity interest in EMBT Holdings, Inc. up to approximately 4.9%.

Non-Competition Agreements

On September 6, 2006, each of Stephen Wong, Raj Sabhlok, Robert Lamvik and Wayne Williams entered into non-competition agreements with us that will become effective upon completion of the merger. Pursuant to the non-competition agreements, each of Messrs. Wong, Sabhlok,

Lamvik and Williams agreed, among other things, that, for a specified term from the date of the agreement, he would not participate in any business within

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San Francisco county or any other geographical locale in California or in the rest of the world in which we conduct or actively propose to conduct business at any time. For Messrs. Sabhlok, Lamvik and Williams, the term of the non-competition agreement is two years; for Mr. Wong, it is five years.

Debt Financing Letter

On September 6, 2006, in connection with the negotiation of the transactions contemplated by the merger agreement, Thoma Cressey Equity Partners, Inc., Wells Fargo Foothill, Inc. (***Wells Fargo***) and Silver Point Finance, LLC (***Silver Point***) entered into a commitment letter, pursuant to which Wells Fargo and Silver Point have committed, subject to certain conditions, to provide or cause to be provided debt financing through new senior secured credit facilities in the aggregate amount of $87,500,000, consisting of two term loans in the amounts of $55,000,000 and $27,500,000, respectively, and a $5,000,000 revolving credit facility upon the completion of the merger. See the copy of the debt commitment letter attached as Exhibit D to the merger agreement, which is attached as *Annex A* to this proxy statement.

Equity Financing Letters

On September 6, 2006, in connection with the negotiation of the transactions contemplated by the merger agreement, EMBT Holdings, Inc. and Thoma Cressey Fund VIII, L.P., entered into an equity commitment letter pursuant to which Thoma Cressey Fund VIII, L.P. has committed, subject to certain conditions, to provide or cause to be provided equity financing in an amount up to $66,250,000 in connection with the merger. See the copy of the equity commitment letter attached as Exhibit E to the merger agreement, which is attached as *Annex A* to this proxy statement.

Additionally, a commitment letter was entered into as of August 31, 2006, by and among EMBT Holdings, Inc. and J.P. Morgan Investment Management Inc., as investment advisor to, and on behalf of, J.P. Morgan U.S. Direct Corporate Finance Institutional Investors III LLC, pursuant to which J.P. Morgan U.S. Direct Corporate Finance Institutional Investors III LLC has committed, subject to the terms and conditions set forth therein, to provide or cause to be provided equity financing in an amount up to $30,000,000 in connection with the merger.

Limited Guarantee

On September 6, 2006, in connection with the execution of the merger agreement, Parent delivered to us the limited guarantee of Thoma Cressey Fund VIII, L.P., pursuant to which Thoma Cressey Fund VIII, L.P. has agreed to be responsible for the performance by Parent and EMBT Merger Corp. of, and to cause Parent and EMBT Merger Corp. to perform, all of their obligations under the merger agreement that are to be performed by Parent or EMBT Merger Corp. on or prior to the closing of the merger; provided, however, that the maximum aggregate liability of Thoma Cressey Fund VIII, L.P., as guarantor, shall not in any event exceed the amount of $12,150,000.

Confidentiality Agreement

In connection with the negotiation of the transactions contemplated by the merger agreement, we entered into a confidentiality agreement, dated July 13, 2006, with TCEP. Pursuant to the confidentiality agreement, TCEP agreed to keep non-public information provided by us confidential, and, for a period of two years, not to acquire any of our securities or the securities of our subsidiaries or influence or control our management or policies without our prior written consent.

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MARKET PRICE AND DIVIDEND DATA

Embarcadero common stock is traded on the NASDAQ Global Select Market, or NASDAQ, under the symbol EMBT. Embarcadero common stock began trading on NASDAQ on April 20, 2000, the date of our initial public offering. The following table presents, for the periods indicated, the high and low intra-day sale prices per share of Embarcadero common stock during the fiscal quarters indicated, as reported on NASDAQ.

Fiscal 2004	**High**	**Low**
First Quarter	$ 16.11	$ 12.01
Second Quarter	14.49	10.63
Third Quarter	12.45	5.79
Fourth Quarter	9.91	7.16
Fiscal 2005	**High**	**Low**
First Quarter	$ 9.41	$ 6.59
Second Quarter	6.72	4.85
Third Quarter	6.74	5.50
Fourth Quarter	8.17	6.45
Fiscal 2006	**High**	**Low**
First Quarter	$ 7.60	$ 6.42
Second Quarter	7.64	5.30
Third Quarter	8.20	5.48

If the merger is completed, Embarcadero common stock will be delisted from NASDAQ, there will be no further public market for shares of Embarcadero common stock, and each share of Embarcadero common stock will be cancelled and converted into the right to receive $8.38 in cash, without interest.

On September 6, 2006, the last trading day prior to the announcement of the merger, the closing price of Embarcadero common stock was $6.50 per share. On October 3, 2006, the latest practicable date before the date of this proxy statement, the closing price of Embarcadero common stock was $8.27 per share.

We have never declared or paid any cash dividends on our capital stock. We currently intend to retain future earnings, if any, for development of our business and do not anticipate that we will declare or pay cash dividends on our capital stock in the foreseeable future.

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BENEFICIAL OWNERSHIP OF THE COMPANY S STOCK

The following table sets forth certain information regarding the beneficial ownership of Embarcadero common stock as of August 31, 2006 by each of the following:

- each person or entity who is known by us to own beneficially 5% or more of our outstanding common stock;
- each of our directors;
- each of our executive officers; and
- all of our directors and executive officers as a group.

Beneficial ownership is determined in accordance with the rules of the Securities and Exchange Commission which generally attribute beneficial ownership of securities to persons who possess sole or shared voting power or investment power with respect to those securities. In computing the number of shares beneficially owned by a person and the percent of ownership of that person, shares of common stock subject to options or warrants held by that person which are currently exercisable or will become exercisable within 60 days after August 31, 2006, are deemed outstanding, while the shares are not deemed outstanding for purposes of computing percent ownership of any other person.

Name of Beneficial Holder	Number of Shares Beneficially Owned	Options Included in Beneficial Ownership	Percentage of Shares Owned
5% Beneficial Holders:			
AIM Trimark Investments (1)	2,676,300		10.2%
Wells Capital Management, Inc. (2)	2,498,376		9.6%
FAF Advisors (3)	2,152,365		8.2%
S Squared Technology Corp. (4)	2,150,400		8.2%
Luther King Capital Management Corporation (5)	1,941,220		7.4%
AIM Management Group, Inc. (6)	1,567,600		6.0%
Executive Officers and Directors:			
Stephen R. Wong	5,485,000	1,100,000	20.1%
Raj P. Sabhlok	704,167	487,500	2.6%
Michael Shahbazian	150,000	50,000	*
Robert Lamvik	169,375	144,375	*
Timothy C.K. Chou	89,579	89,579	*
Gary E. Haroian	33,330	33,330	*
Frank M. Polestra	87,079	77,079	*
Michael J. Roberts	82,288	82,288	*
Samuel T. Spadafora	57,079	57,079	*
All directors and executive officers as a group (9 persons)	4,736,667	2,121,230	24.3%

* Represents beneficial ownership of less than 1%.

(1) Represents shares known by us to be held by AIM Trimark Investments as of July 31, 2006. The address for AIM Trimark Investments is 5140 Yonge Street, Suite 900, Toronto, Ontario, M2N 6X7 Canada.

(2) Represents shares known by us to be held by Wells Capital Management, Inc. as of July 31, 2006. The address for Wells Capital Management, Inc. is 420 Montgomery Street, San Francisco, CA 94104.

(3) Represents shares known by us to be held by FAF Advisors as of June 30, 2006. The address for FAF Advisors is 800 Nicollet Mall, Minneapolis, MN 55402.

(4) Represents shares known by us to be held by S Squared Technology Corp. as of June 30, 2006. The address for S Squared Technology Corp. is 515 Madison Avenue, New York, NY 10022.

(5) Represents shares known by us to be held by Luther King Capital Management Corporation as of June 30, 2006. The address for Luther King Capital Management Corporation is 301 Commerce Street, Suite 1600, Fort Worth, Texas 76102.

(6) Represents shares known by us to be held by AIM Management Group, Inc. as of June 30, 2006. The address for AIM Management Group, Inc. is 11 Greenway Plaza, Suite 100, Houston, TX 77046.

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APPRAISAL RIGHTS

Under the General Corporation Law of the State of Delaware, or DGCL, you have the right to demand an appraisal of your shares in connection with the merger and to receive payment in cash for the fair value of your common stock of Embarcadero as determined by the Delaware Court of Chancery, together with a fair rate of interest, if any, as determined by the court, in lieu of the consideration you would otherwise be entitled to pursuant to the merger agreement. These rights are known as appraisal rights. Our stockholders electing to exercise appraisal rights must comply with the provisions of Section 262 of the DGCL in order to perfect their rights. Embarcadero will require strict compliance with the statutory procedures in connection with the merger.

The following is intended as a brief summary of the material provisions of the Delaware statutory procedures required to be followed by a stockholder in order to perfect appraisal rights. This summary, however, is not a complete statement of all applicable requirements and should be read in conjunction with Section 262 of the DGCL, the full text of which appears in *Annex C* to this proxy statement. Failure to precisely follow any of the statutory procedures set forth in Section 262 of the DGCL may result in a termination or waiver of your appraisal rights.

Section 262 requires that stockholders be notified that appraisal rights will be available not less than 20 days before the stockholders meeting to vote on the merger. A copy of Section 262 must be included with such notice. This proxy statement constitutes our notice to you of the availability of appraisal rights in connection with the merger in compliance with the requirements of Section 262. If you wish to consider exercising your appraisal rights, you should carefully review the text of Section 262 contained in *Annex C* since failure to timely and properly comply with the requirements of Section 262 will result in the loss of your appraisal rights under Delaware law.

If you elect to demand appraisal of your shares, you must satisfy each of the following conditions:

- You must deliver to Embarcadero a written demand for appraisal of your shares before the vote with respect to the merger is taken. This written demand for appraisal must be in addition to and separate from any proxy or vote abstaining from or voting against the adoption of the merger agreement. Voting against or failing to vote for the adoption of the merger agreement by itself does not constitute a demand for appraisal within the meaning of Section 262.

- You must not vote in favor of the adoption of the merger agreement. A vote in favor of the adoption of the merger agreement, by proxy, over the Internet, by telephone or in person, will constitute a waiver of your appraisal rights in respect of the shares so voted and will nullify any previously filed written demands for appraisal.

If you fail to comply with either of these conditions and the merger is completed, you will be entitled to receive the cash payment for your shares of Embarcadero common stock as provided for in the merger agreement, but you will have no appraisal rights with respect to your shares of Embarcadero common stock.

All demands for appraisal should be addressed to Embarcadero Technologies, Inc., 100 California Street, 12th Floor, San Francisco, California 94111, Attention: Chief Financial Officer, and must be delivered before the vote on the merger agreement is taken at the special meeting, and should be executed by, or on behalf of, the record holder of the shares of Embarcadero common stock. The demand must reasonably inform Embarcadero of the identity of the stockholder and the intention of the stockholder to demand appraisal of his, her or its shares.

To be effective, a demand for appraisal by a holder of Embarcadero common stock must be made by, or in the name of, such registered stockholder, fully and correctly, as the stockholder s name appears on his or her stock certificate(s). **Beneficial owners who do not also hold the shares of record may not directly make appraisal demands to Embarcadero. The beneficial holder must, in such cases, have the registered owner, such as a broker or other nominee, submit the required demand in respect of those shares**. If shares are

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owned of record in a fiduciary capacity, such as by a trustee, guardian or custodian, execution of a demand for appraisal should be made by or for the fiduciary; and if the shares are owned of record by more than one person, as in a joint tenancy or tenancy in common, the demand should be executed by or for all joint owners. An authorized agent, including an authorized agent for two or more joint owners, may execute the demand for appraisal for a stockholder of record; however, the agent must identify the record owner or owners and expressly disclose the fact that, in executing the demand, he or she is acting as agent for the record owner. A record owner, such as a broker, who holds shares as a nominee for others, may exercise his or her right of appraisal with respect to the shares held for one or more beneficial owners, while not exercising this right for other beneficial owners. In that case, the written demand should state the number of shares as to which appraisal is sought. Where no number of shares is expressly mentioned, the demand will be presumed to cover all shares held in the name of the record owner.

If you hold your shares of Embarcadero common stock in a brokerage account or in other nominee form and you wish to exercise appraisal rights, you should consult with your broker or the other nominee to determine the appropriate procedures for the making of a demand for appraisal by the nominee.

Within 10 days after the effective time of the merger, the surviving corporation must give written notice that the merger has become effective to each Embarcadero stockholder who has properly filed a written demand for appraisal and who did not vote in favor of the merger agreement. At any time within 60 days after the effective time, any stockholder who has demanded an appraisal has the right to withdraw the demand and to accept the cash payment specified by the merger agreement for his or her shares of Embarcadero common stock. Within 120 days after the effective date of the merger, the surviving corporation or any stockholder who has complied with Section 262 shall, upon written request to the surviving corporation, be entitled to receive a written statement setting forth the aggregate number of shares not voted in favor of the merger agreement and with respect to which demands for appraisal rights have been received and the aggregate number of holders of such shares. Within 120 days after the effective time, any stockholder who has complied with the requirements of Section 262 may file a petition in the Delaware Court of Chancery demanding a determination of the fair value of the shares held by all stockholders entitled to appraisal. Upon the filing of the petition by a stockholder, service of a copy of such petition shall be made upon the surviving corporation. The surviving corporation has no obligation to file, and has no intention to file, such a petition in the event there are dissenting stockholders. Accordingly, the failure of a stockholder to file such a petition within the period specified could nullify the stockholder s previously written demand for appraisal.

If a petition for appraisal is duly filed by a stockholder and a copy of the petition is delivered to the surviving corporation, the surviving corporation will then be obligated, within 20 days after receiving service of a copy of the petition, to provide the Chancery Court with a duly verified list containing the names and addresses of all stockholders who have demanded an appraisal of their shares and with whom agreements as to the value of their shares have not been reached by the surviving corporation. After notice to dissenting stockholders who demanded appraisal of their shares, the Chancery Court is empowered to conduct a hearing upon the petition, and to determine those stockholders who have complied with Section 262 and who have become entitled to the appraisal rights provided thereby. The Chancery Court may require the stockholders who have demanded payment for their shares to submit their stock certificates to the Register in Chancery for notation thereon of the pendency of the appraisal proceedings; and if any stockholder fails to comply with that direction, the Chancery Court may dismiss the proceedings as to that stockholder.

After determination of the stockholders entitled to appraisal of their shares of the Company s common stock, the Chancery Court will appraise the shares, determining their fair value exclusive of any element of value arising from the accomplishment or expectation of the merger, together with a fair rate of interest, if any. When the value is determined, the Chancery Court will direct the payment of such value, with interest thereon accrued during the pendency of the proceeding, if the Chancery Court so determines, to the stockholders entitled to receive the same, upon surrender by such holders of the certificates representing those shares.

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In determining fair value, the Chancery Court is required to take into account all relevant factors. **You should be aware that the fair value of your shares as determined under Section 262 could be more than, the same as, or less than the value that you are entitled to receive under the terms of the merger agreement**.

Costs of the appraisal proceeding (which do not include attorneys fees or the fees and expenses of experts) may be imposed upon the surviving corporation and the stockholders participating in the appraisal proceeding by the Chancery Court as the Chancery Court deems equitable in the circumstances. Upon the application of a stockholder, the Chancery Court may order all or a portion of the expenses incurred by any stockholder in connection with the appraisal proceeding, including, without limitation, reasonable attorneys fees and the fees and expenses of experts, to be charged pro rata against the value of all shares entitled to appraisal. Any stockholder who had demanded appraisal rights will not, after the effective time of the merger, be entitled to vote shares subject to that demand for any purpose or to receive payments of dividends or any other distribution with respect to those shares, other than with respect to payment as of a record date prior to the effective time; however, if no petition for appraisal is filed within 120 days after the effective time of the merger, or if the stockholder delivers a written withdrawal of his or her demand for appraisal and an acceptance of the terms of the merger within 60 days after the effective time of the merger, then the right of that stockholder to appraisal will cease and that stockholder will be entitled to receive the cash payment for shares of his, her or its Embarcadero common stock pursuant to the merger agreement. Any withdrawal of a demand for appraisal made more than 60 days after the effective time of the merger may only be made with the written approval of the surviving corporation. In addition, no appraisal proceeding may be dismissed as to any stockholder without the approval of the Chancery Court, and such approval may be conditioned upon such terms as the Chancery Court deems just.

In view of the complexity of Section 262, if you wish to pursue appraisal rights with respect to the

merger, then you should consult your legal advisor.

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PROPOSAL NO. 2 ADJOURNMENT OF THE SPECIAL MEETING

If at the special meeting of the stockholders, the number of shares of Embarcadero common stock present or represented and voting in favor of adoption of the merger agreement is insufficient to adopt that proposal, we intend to move to adjourn the special meeting in order to enable our board of directors to solicit additional proxies in respect of such proposal. In that event, we will ask our stockholders to vote only upon the adjournment proposal, and not the proposal regarding the adoption of the merger agreement.

In this proposal, we are asking you to authorize the holder of any proxy solicited by our board of directors to vote in favor of granting discretionary authority to the proxy or attorney-in-fact to adjourn the special meeting to another time and place for the purpose of soliciting additional proxies. If the stockholders approve the adjournment proposal, we could adjourn the special meeting and any adjourned session of the special meeting and use the additional time to solicit additional proxies, including the solicitation of proxies from stockholders that have previously voted. Among other things, approval of the adjournment proposal could mean that, even if we had received proxies representing a sufficient number of votes against the adoption of the merger agreement to defeat that proposal, we could adjourn the special meeting without a vote on the merger agreement and seek to convince the holders of those shares to change their votes to votes in favor of adoption of the merger agreement.

Under the DGCL and our Amended and Restated Bylaws, we may also adjourn the special meeting of stockholders for reasons other than to solicit additional proxies if there are insufficient votes at the time of the special meeting to adopt the merger agreement. Any such adjournment may be made without notice (if the adjournment is not for more than thirty days), provided an announcement is made at the special meeting of the time, date and place of the adjourned meeting.

THE BOARD OF DIRECTORS RECOMMENDS THAT YOU VOTE FOR THE ADJOURNMENT PROPOSAL.

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STOCKHOLDER PROPOSALS

The deadline for submitting a stockholder proposal for inclusion in our proxy statement and form of proxy for our 2007 annual meeting of stockholders pursuant to Rule 14a-8 of the Securities and Exchange Commission is February 1, 2007. Stockholders wishing to submit proposals or director nominations that are not to be included in such proxy statement and proxy must do so on or before April 2, 2007, in accordance with our bylaws. Stockholders are also advised to review our bylaws, which contain additional requirements with respect to advance notice of stockholder proposals and director nominations.

OTHER MATTERS

As of the date of this Proxy Statement, the only business that our board of directors intends to present or knows that others will present at the special meeting is as set forth above. If any other matter or matters are properly brought before the special meeting, or any postponements or adjournments thereof, the proxy holders intend to vote each proxy on these new matters in accordance with the recommendation of our board of directors.

WHERE YOU CAN FIND ADDITIONAL INFORMATION

We file annual, quarterly and current reports, proxy statements and other information with the Securities and Exchange Commission. You may read and copy any reports, statements or other information that we file with the Securities and Exchange Commission at the Securities and Exchange Commission s Public Reference Room, 100 F Street, N.W., Washington, D.C. 20549. Please call the Securities and Exchange Commission at 1-800-SEC-0330 for further information on the operation of the Public Reference Room. These Securities and Exchange Commission filings are also available to the public at the Internet website maintained by the Securities and Exchange Commission at *www.sec.gov*. Our Internet website address is *www.embarcadero.com*. However, any information that is included on or linked to our Internet website is not a part of this Proxy Statement.

INCORPORATION BY REFERENCE

This Proxy Statement incorporates important business and financial information about us that is not included in or delivered with this Proxy Statement. The SEC allows us to incorporate by reference certain information that we file with them, which means that we can disclose certain information to you by referring you to those documents. The information incorporated by reference, although no included in or delivered with this Proxy Statement, is considered to be part of this Proxy Statement, except as described below. We are incorporating by reference each document we file with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended, after the date of this Proxy Statement and prior to the Special Meeting. All of those documents will be incorporated by reference into this Proxy Statement and deemed to be part of this Proxy Statement from the date of the filing of those documents.

We have also incorporated by reference into this Proxy Statement certain business and financial information contained in the documents listed below which have been filed with the SEC under the Securities Exchange Act:

- our Annual Report on Form 10-K for the fiscal year ended December 31, 2005;
- our Quarterly Reports on Form 10-Q for the quarterly periods ended March 31, 2006 and June 30, 2006; and
- our Current Reports on Form 8-K filed with the SEC on February 24, 2006, June 22, 2006 and September 8, 2006.

Any statement contained in this Proxy Statement or in any document incorporated or deemed to be incorporated by reference in this Proxy Statement will be deemed to be modified or superseded for the purpose of

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this Proxy Statement to the extent that a subsequent statement contained in this Proxy Statement or in any subsequently filed document that also is or is deemed to be incorporated by reference in this Proxy Statement modifies or supersedes the earlier statement. Any statement so modified or superseded will not be deemed to be part of this Proxy Statement.

Documents incorporated by reference are available from us without charge, excluding all exhibits. You can view these documents at our Internet website. The address of our website is *www.embarcadero.com*. You may also obtain documents incorporated by reference by requesting them in writing as follows:

EMBARCADERO TECHNOLOGIES, INC.

100 California Street, 12th Floor

San Francisco, California 94111

Attn: Corporate Secretary

If you would like to request documents from us, please do so immediately in order to ensure timely receipt before the Special Meeting.

HOUSEHOLDING OF PROXY MATERIALS

The SEC has approved a rule governing the delivery of disclosure documents. This rule allows the Company to send a single copy of this proxy statement to any household at which two or more stockholders of the Company reside, if it believes that the stockholders are members of the same family. Some banks, brokers and other intermediaries may be participating in this practice of householding proxy statements and annual reports. This rule benefits both the Company and its stockholders as it reduces the volume of duplicate information received at a stockholder s house and helps reduce the Company s expenses. Each stockholder, however, will continue to receive individual proxy cards or voting instructions forms.

Stockholders that have previously received a single set of disclosure documents may request their own copy by contacting their bank, broker or other nominee record holder. The Company will also deliver a separate copy of this proxy statement to any stockholder upon written request to Embarcadero Technologies, Inc., 100 California Street, 12th Floor, San Francisco, California 94111, Attention: Investor Relations, or upon oral request by calling (415) 834-3131.

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EXECUTION COPY

Annex A

AGREEMENT AND PLAN OF MERGER

BY AND AMONG

EMB HOLDING CORP.,

EMBT MERGER CORP.

AND

EMBARCADERO TECHNOLOGIES, INC.

DATED AS OF SEPTEMBER 6, 2006

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EXHIBITS

A. Form of Voting Agreement

B. Certificate of Incorporation of the Surviving Corporation

C. Bylaws of the Surviving Corporation

D. Debt Financing Letter

E. Equity Financing Letters

F. Limited Guarantee

G. FIRPTA Certificate

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AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (together with all annexes, letters, schedules and exhibits hereto, this *Agreement*), dated as of September 6, 2006, is by and among EMB Holding Corp., a Delaware corporation (*Parent*), EMBT Merger Corp., a Delaware corporation and wholly-owned direct subsidiary of Parent (*Merger Sub*), and Embarcadero Technologies, Inc., a Delaware corporation (the *Company*).

RECITALS

A. The Company and Merger Sub each have determined that it is advisable, fair to and in the best interests of its stockholders to effect a merger (the *Merger*) of Merger Sub with and into the Company pursuant to the Delaware General Corporation Law (the *DGCL*) upon the terms and subject to the conditions set forth in this Agreement, pursuant to which each outstanding share of common stock, par value $0.001 per share of the Company (*Company Common Stock*), shall be converted into the right to receive cash, as set forth herein, all upon the terms and subject to the conditions of this Agreement.

B. The Board of Directors of the Company (the *Company Board of Directors*) has (i) approved this Agreement, the Merger and the other transactions contemplated hereby, (ii) determined that the Merger and the other transactions contemplated hereby, taken together, are at a price and on terms that are fair to, advisable and in the best interests of the Company and its stockholders (the *Company Stockholders*) and (iii) approved this Agreement and recommended the adoption of this Agreement by the Company Stockholders.

C. The Board of Directors of Parent and Merger Sub have unanimously (i) approved this Agreement, the Merger and the other transactions contemplated hereby, (ii) determined that the Merger and the other transactions contemplated hereby, taken together, are at a price and on terms that are fair to, advisable and in the best interests of Merger Sub and its sole stockholder and (iii) approved this Agreement and recommended the adoption of this Agreement by its sole stockholder.

D. Simultaneously with the execution and delivery of this Agreement, certain Company Stockholders have entered into voting agreements in the form attached hereto as Exhibit A, (the *Voting Agreements*) dated as of the date hereof, with Parent, pursuant to which, among other things, such Company Stockholders have agreed to vote their shares in favor of the adoption of this Agreement and against any competing proposals.

E. Certain capitalized terms used in this Agreement are defined in *Article IX*, and *Annex I* includes an index of all capitalized terms used in this Agreement.

AGREEMENT

In consideration of the representations, warranties, covenants and agreements contained in this Agreement, the parties agree as follows:

ARTICLE I

THE MERGER

Section 1.1 The Merger. Subject to the terms and conditions of this Agreement, at the Effective Time, the Company and the Parent shall consummate the Merger pursuant to which (a) the Merger Sub shall be merged with and into the Company and the separate corporate existence of the Merger Sub shall thereupon cease, (b) the Company shall be the successor or surviving corporation in the Merger and shall continue to be governed by the

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laws of the State of Delaware, and (c) the separate corporate existence of the Company with all its rights, privileges, immunities, powers and franchises shall continue unaffected by the Merger. The Merger shall have the effects set forth in the DGCL.

Section 1.2 Closing. Subject to the terms and conditions of this Agreement, the Closing will take place at 10:00 a.m., local time, as promptly as practicable but in no event later than the second Business Day after the satisfaction or waiver of the conditions (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the fulfillment or waiver of those conditions) set forth in *Article VI* (the Closing Date), at the offices of Kirkland & Ellis LLP, 555 California Street, San Francisco, California 94104, unless another time, date or place is agreed to in writing by the parties.

Section 1.3 Effective Time. On the Closing Date and subject to the terms and conditions hereof, the Certificate of Merger shall be delivered for filing with the Delaware Secretary. The Merger shall become effective at the Effective Time. If the Delaware Secretary requires any changes in the Certificate of Merger as a condition to filing or issuing a certificate to the effect that the Merger is effective, Merger Sub and the Company shall execute any necessary revisions incorporating such changes, provided such changes are not inconsistent with and do not result in any material change in the terms of this Agreement.

Section 1.4 Conversion of the Shares. At the Effective Time, by virtue of the Merger and without any action on the part of Parent, Merger Sub, the Company or the holders of any of the following securities:

(a) Except as provided in *Section 1.4(b)*, each share of Company Common Stock issued and outstanding immediately prior to the Effective Time (excluding Dissenter Shares) (the *Shares*) shall be canceled and shall by virtue of the Merger and without any action on the part of the holder thereof be converted automatically into the right to receive $8.38 in cash, without interest (the *Merger Consideration*), upon surrender of the certificate representing such Shares as provided in *Article II*. All such Shares, when so converted, shall no longer be outstanding and shall automatically be canceled and shall cease to exist, and each holder of a certificate theretofore representing such Shares shall cease to have any rights with respect thereto, except the right to receive the Merger Consideration into which such Shares have been converted, as provided herein.

(b) Each Share that is owned by the Company (or any Subsidiary of the Company) as treasury stock or otherwise and each Share owned by Parent shall be canceled and cease to exist and no payment or distribution shall be made with respect thereto.

(c) Each share of common stock of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into and become one validly issued, fully paid and nonassessable share of common stock, par value $0.01 per share, of the Surviving Corporation and shall constitute the only outstanding shares of capital stock of the Surviving Corporation.

Section 1.5 Organizational Documents.

(a) At the Effective Time, the Certificate of Incorporation of the Company shall be amended to read in its entirety as set forth on Exhibit B hereto, and as so amended shall be the Certificate of Incorporation of the Surviving Corporation, until thereafter amended in accordance with its terms and applicable Law.

(b) At the Effective Time, the Bylaws of Merger Sub as in effect as of the time hereof (and attached hereto as Exhibit C) shall be the Bylaws of the Surviving Corporation (except that all references to Merger Sub in the Bylaws of the Surviving Corporation shall be amended to refer to Embarcadero Technologies, Inc.). Thereafter, as so amended, the Bylaws of the Surviving Corporation may be amended or repealed in accordance with their terms and the Certificate of Incorporation of the Surviving Corporation and as provided by Law.

Section 1.6 Directors of the Surviving Corporation. The Company shall cause to be delivered to Parent, at Closing, resignations of all the directors of the Company to be effective upon the consummation of the Merger.

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At the Effective Time, the directors of Merger Sub shall continue in office as the directors of the Surviving Corporation, and such directors and officers shall hold office in accordance with and subject to the Certificate of Incorporation and Bylaws of the Surviving Corporation.

Section 1.7 Company Stock Options.

(a) At the Effective Time, each then-outstanding Company Stock Option, including unvested Company Stock Options, shall be cancelled, (i) in the case of a Company Stock Option having a per share exercise price less than the Merger Consideration, for the right to receive from the Surviving Corporation for each share of Company Common Stock subject to such Company Stock Option immediately prior to the Effective Time an amount (subject to any applicable withholding tax) in cash equal to the product of (A) the number of shares of Company Common Stock subject to such Company Stock Option immediately prior to the Effective Time and (B) the amount by which the Merger Consideration exceeds the per share exercise price of such Company Stock Option, or (ii) in the case of a Company Stock Option having a per share exercise price equal to or greater than the Merger Consideration, without the payment of cash or issuance of other securities in respect thereof. The cancellation of a Company Stock Option as provided in the immediately preceding sentence shall be deemed a release of any and all rights the holder thereof had or may have had in respect of such Company Stock Option.

(b) Prior to the Effective Time, the Company shall take such actions as may be necessary to give effect to the transactions contemplated by this *Section 1.7*, including, but not limited to, satisfaction of the requirements of Rule 16b-3(e) under the Exchange Act.

(c) Except as otherwise agreed to by the parties, (i) the Company Option Plans shall terminate as of the Effective Time and the provisions in any other plan, program or arrangement providing for the issuance or grant of any other interest in respect of the capital stock of the Company or any Subsidiary thereof shall be canceled as of the Effective Time and (ii) the Company shall ensure that following the Effective Time no participant in the Company Option Plans or other plans, programs or arrangements shall have any right thereunder to acquire any equity securities of the Company, the Surviving Corporation or any Subsidiary thereof.

(d) Prior to the Effective Time, the Company shall deliver to the holders of Company Stock Options notices, in form and substance reasonably acceptable to Parent, setting forth such holders rights pursuant to this Agreement.

Section 1.8 Reserved.

Section 1.9 Restricted Stock. If any share of Company Common Stock outstanding immediately prior to the Effective Time is unvested or subject to a repurchase option, then, effective immediately prior to the Effective Time, any such share of Company Common Stock shall be fully vested and any repurchase option shall lapse.

Section 1.10 Dissenter Shares.

(a) Notwithstanding anything in this Agreement to the contrary, any Dissenter Shares shall not be converted into a right to receive the Merger Consideration, unless such holder fails to perfect or withdraws or otherwise loses his or her right to appraisal. A holder of Dissenter Shares shall be entitled to receive payment of the appraised value of such Shares held by him or her in accordance with the provisions of Section 262 of the DGCL, unless, after the Effective Time, such holder fails to perfect or withdraws or loses his or her right to appraisal, in which case such Shares shall be converted into and represent only the right to receive the Merger Consideration, without interest thereon, upon surrender of the Certificate or Certificates representing such Shares pursuant to *Article II*.

(b) The Company shall give the Parent prompt notice of any written demands for appraisal of any Shares, attempted withdrawals of such demands and any other instruments served pursuant to the DGCL

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and received by the Company relating to rights of appraisal, and to the extent permitted by applicable law, the opportunity to participate in, and on and after the Closing, direct, all negotiations and proceedings with respect to demands for appraisal under the DGCL. Except with the prior written consent of the Parent, the Company shall not voluntarily make any payment with respect to any demands for appraisal, or settle or offer to settle any such demands for appraisal.

Section 1.11 Adjustments to Prevent Dilution. Notwithstanding the restrictions contained in *Section 5.1*, in the event that the Company changes the number of Shares, or securities convertible or exchangeable into or exercisable for Shares, issued and outstanding prior to the Effective Time as a result of a reclassification, stock split (including a reverse stock split), stock dividend or distribution, recapitalization, merger, subdivision, issuer tender or exchange offer, or other similar transaction, the Merger Consideration shall be proportionately adjusted to reflect such change.

ARTICLE II

EXCHANGE OF CERTIFICATES

Section 2.1 Paying Agent. Prior to the Effective Time, Parent shall appoint the Paying Agent to act as paying agent for the payment of the Merger Consideration upon surrender of the Certificates pursuant to this *Article II*. At the Effective Time, Parent shall deposit or cause to be deposited with the Paying Agent on a timely basis, if and when needed for the benefit of the Company Stockholders and for payment in accordance with this *Article II* through the Paying Agent, cash in an amount sufficient to pay the aggregate Merger Consideration (such cash being hereinafter referred to as the *Exchange Fund*), payable pursuant to *Section 1.4* in exchange for outstanding Shares. The Exchange Fund may only be invested temporarily pending its use as set forth herein in U.S. Government securities or in funds investing solely in such securities. Any income from investment of the Exchange Fund, which shall be in accordance with the instructions of Parent, will be payable solely to Parent. The Exchange Fund shall not be used for any purpose except as expressly provided in this Agreement.

Section 2.2 Exchange Procedures.

(a) As soon as practicable after the Effective Time, the Paying Agent shall mail to each holder of record of a Certificate or Certificates that, immediately prior to the Effective Time, represented outstanding Shares subsequently converted into the right to receive the Merger Consideration, as set forth in *Section 1.4*: (i) a letter of transmittal (a *Letter of Transmittal*) that (A) shall specify that delivery shall be effected and risk of loss and title to the Certificates shall pass only upon proper delivery of the Certificates to the Paying Agent (or an affidavit of loss in lieu thereof, together with any bond or indemnity agreement, as contemplated by *Section 2.6*) and (B) shall be in such form and have such other provisions as the Surviving Corporation may reasonably specify; and (ii) instructions for use in effecting the surrender of the Certificates in exchange for the applicable Merger Consideration.

(b) Upon surrender of a Certificate for cancellation to the Paying Agent, together with a Letter of Transmittal, duly completed and executed, and any other documents reasonably required by the Paying Agent or the Surviving Corporation, (i) the holder of such Certificate shall be entitled to receive in exchange therefor a check representing the applicable amount of cash that such holder has the right to receive pursuant to *Section 1.4* and (ii) the Certificate so surrendered shall forthwith be canceled. No interest will be paid or accrued on the cash payable upon surrender of the Certificates. Until surrendered as contemplated by this *Section 2.2*, each such Certificate shall be deemed at any time after the Effective Time to represent only the right to receive upon such surrender the applicable Merger Consideration.

(c) In the event of a transfer of ownership of Shares that is not registered in the transfer records of the Company, the appropriate amount of the Merger Consideration may be paid to a transferee if the Certificate representing such Shares is presented to the Paying Agent properly endorsed or accompanied by appropriate

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stock powers and otherwise in proper form for transfer and accompanied by all documents reasonably required by the Paying Agent to evidence and effect such transfer and to evidence that any applicable Taxes have been paid.

Section 2.3 No Further Ownership Rights. All Merger Consideration paid upon the surrender for exchange of the Certificates representing Shares in accordance with the terms hereof shall be deemed to have been paid in full satisfaction of all rights pertaining to such Shares and, after the Effective Time, there shall be no further registration of transfers on the transfer books of the Surviving Corporation of the Shares that were outstanding immediately prior to the Effective Time. If, after the Effective Time, Certificates are presented to the Surviving Corporation for any reason, they shall be canceled and exchanged as provided in this Article II, subject to applicable Law in the case of Dissenter Shares.

Section 2.4 Termination of Exchange Fund. Any portion of the Exchange Fund (including any interest and other income received with respect thereto) that remains undistributed to the former Company Stockholders on the date 365 days after the Effective Time shall be delivered to the Surviving Corporation upon demand, and any former holder of Shares who has not theretofore received any applicable Merger Consideration to which such Company Shareholder is entitled under this *Article II* shall thereafter look only to the Surviving Corporation (subject to abandoned property, escheat or other similar Laws) for payment of claims with respect thereto and only as a general creditor thereof.

Section 2.5 No Liability. None of Parent, the Surviving Corporation or Merger Sub shall be liable to any holder of Shares for any part of the Merger Consideration delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law. Any amounts remaining unclaimed by holders of any such Shares two (2) years after the Effective Time or at such earlier date as is immediately prior to the time at which such amounts would otherwise escheat to, or become property of, any Governmental Entity shall, to the extent permitted by applicable Law or Order, become the property of the Surviving Corporation free and clear of any claims or interest of any such holders or their successors, assigns or personal representatives previously entitled thereto.

Section 2.6 Lost, Stolen or Destroyed Certificates. If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and, if required by and at the discretion of Parent or the Surviving Corporation, the posting by such Person of a bond in such reasonable amount as Parent or the Surviving Corporation may reasonably direct, or the execution and delivery by such Person of an indemnity agreement in such form as Parent or the Surviving Corporation may reasonably direct, in each case as indemnity against any claim that may be made against it with respect to such Certificate, the Paying Agent shall issue in exchange for such lost, stolen or destroyed Certificate the appropriate amount of the Merger Consideration.

Section 2.7 Withholding of Tax. Parent, the Surviving Corporation, any Affiliate thereof or the Paying Agent shall be entitled to deduct and withhold from the Merger Consideration otherwise payable pursuant to this Agreement to any holder of Shares and or Company Stock Options such amount as Parent, the Surviving Corporation, any Affiliate thereof or the Paying Agent is required to deduct and withhold with respect to the making of such payment under the Code or any provision of state, local or foreign Tax Law. To the extent that amounts are so withheld by the Surviving Corporation or the Paying Agent, such withheld amounts shall be (a) paid over to the applicable Governmental Entity in accordance with applicable Law or Order and (b) treated for all purposes of this Agreement as having been paid to the former holder of a Certificate or Company Stock Option in respect of which such deduction and withholding was made.

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ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as disclosed in the Company Disclosure Letter delivered by the Company to Parent prior to the execution of this Agreement, and except as set forth in the Company Reports (to the extent it is reasonably apparent that any such disclosure set forth in the Company Reports would qualify the representations and warranties contained herein), the Company represents and warrants to each of the other parties hereto as follows:

Section 3.1 Organization and Good Standing; Charter Documents.

(a) The Company and each of its Subsidiaries (i) is a corporation duly organized, validly existing and in good standing (with respect to jurisdictions that recognize such concept) under the Laws of its jurisdiction of incorporation, (ii) has full corporate (or, in the case of any Subsidiary that is not a corporation, other) power and authority and all necessary governmental approvals to own, lease and operate its properties and assets and to conduct its business as presently conducted, and (iii) is duly qualified or licensed to do business as a foreign corporation and is in good standing (with respect to jurisdictions that recognize such concept) in each jurisdiction where the character of the properties owned, leased or operated by it or the nature of its business makes such qualification or licensing necessary, except where the failure to be so qualified or licensed would not reasonably be expected to have a Company Material Adverse Effect.

(b) The copies of the Company Certificate of Incorporation and Company Bylaws that are filed as exhibits to the Company 10-K are complete and correct copies thereof as in effect on the date hereof. The Company is not in violation of any of the provisions of the Company Certificate of Incorporation or the Company Bylaws and will not be in violation of any of the provisions of the Company Certificate of Incorporation or Company Bylaws, as such Company Certificate of Incorporation and Company Bylaws may be amended (subject to *Section 5.1*) between the date hereof and the Closing Date. The Company has made available to Parent true and complete copies of the minute books of the Company from January 1, 2004 and through the date of this Agreement (except for minutes and consents of the Company Board of Directors or any committee thereof relating to the evaluation of the transactions contemplated hereby and the consideration of strategic alternatives relating to the Company).

Section 3.2 Authority for Agreement. The Company has all necessary corporate power and authority to execute and deliver this Agreement and, subject to the adoption of this Agreement by the Company Stockholders, to perform its obligations hereunder and to consummate the Merger and the other transactions contemplated by this Agreement. This Agreement has been duly executed and delivered by the Company and, assuming the due authorization, execution and delivery by Parent and Merger Sub, constitutes a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as enforcement thereof may be limited against the Company by (i) bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting the enforcement of creditors rights or remedies in general as from time to time in effect or (ii) the exercise by courts of equity powers.

Section 3.3 Capitalization.

(a) The authorized capital stock of the Company consists of 65,000,000 shares of Company Common Stock and 5,000,000 shares of preferred stock. As of the date hereof, 25,873,477 shares of Company Common Stock are issued and outstanding, no shares of preferred stock are issued and outstanding and no shares of Company Common Stock or preferred stock are held in the Company s treasury. All outstanding Shares are, and any additional Shares issued after the date hereof and prior to the Effective Time will be, duly authorized and validly issued, fully paid and nonassessable, free of any Encumbrances other than Encumbrances imposed upon the holder thereof by reason of the acts or omissions of such holder, not subject to any preemptive rights or rights of first refusal created by statute, and issued in compliance in all material respects with all applicable federal and state securities Laws.

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(b) As of the date hereof, 4,602,760 Company Stock Options are outstanding pursuant to the Company Option Plans, each such Company Stock Option entitling the holder thereof to purchase one share of Company Common Stock, and 3,449,911 shares of Company Common Stock are authorized and reserved for future issuance pursuant to the Company Option Plans. All shares of Company Common Stock subject to issuance as aforesaid, upon issuance on the terms and conditions specified in the instruments pursuant to which they are issuable, will be duly authorized, validly issued, fully paid and nonassessable and issued in compliance in all material respects with all applicable federal and state securities Laws. Except as set forth above, as of the date of this Agreement, there are no Company Stock Rights. The copies of the Company Option Plans that are filed as exhibits to the Company 10-K are complete and correct copies thereof as in effect on the date hereof.

(c) As of the date hereof, 300,750 shares of Company Common Stock are subject to a repurchase option in favor of the Company that lapses over a vesting period related to the holder s period of employment. Except as set forth above, there are no outstanding contractual obligations of the Company to repurchase, redeem or otherwise acquire any Shares or to pay any dividend or make any other distribution in respect thereof. As of the date hereof, except for the Voting Agreements, there are no voting trusts or other agreements or understandings to which the Company is a party with respect to the voting of stock of the Company.

(d) There are no accrued and unpaid dividends with respect to any outstanding shares of capital stock of the Company or any of its Subsidiaries.

(e) There are no preemptive rights of first refusal, co-sale rights, drag-along rights or registration rights granted by the Company with respect to the Company s capital stock and in effect as of the date hereof.

(f) Except for the Company s repurchase rights with respect to unvested shares issued under the Company Option Plans, there are no rights or obligations, contingent or otherwise (including rights of first refusal in favor of the Company), of the Company or any of its Subsidiaries, to repurchase, redeem or otherwise acquire any shares of capital stock of the Company or any of its Subsidiaries or to provide funds to or make any investment (in the form of a loan, capital contribution or otherwise) in any such Subsidiary or any other Person.

Section 3.4 Company Subsidiaries. A true and complete list of all the Subsidiaries of the Company is set forth in Exhibit 21.1 to the Company 10-K. The Company or one of its Subsidiaries is the record and beneficial owner of all outstanding shares of capital stock of each Subsidiary of the Company and all such shares are duly authorized, validly issued, fully paid and nonassessable. All of the outstanding shares of capital stock of each Subsidiary of the Company are owned by the Company free and clear of all Encumbrances. Except for the capital stock of, or other equity or voting interests in, the Subsidiaries set forth on Exhibit 21.1 to the Company 10-K, the Company does not own, directly or indirectly, any capital stock of, or other equity or voting interests in, any Person. The Certificate of Incorporation and Bylaws (or other organizational documents) of each Subsidiary of the Company have been delivered or otherwise made available to Parent.

Section 3.5 No Conflict; Required Filings and Consents.

(a) The execution and delivery of this Agreement by the Company do not, and the performance of this Agreement by the Company and the consummation of the Merger (subject to the adoption of this Agreement by the Company Required Vote) and the other transactions contemplated by this Agreement will not, (i) conflict with or violate any provision of the Company Certificate of Incorporation or Company Bylaws, or the equivalent charter documents of any Subsidiary of the Company, (ii) conflict with or violate any Law applicable to the Company or its Subsidiaries or by which any property or asset of the Company or any of its Subsidiaries is bound or affected, or (iii) result in a breach of or constitute a default (or an event that with notice or lapse of time or both would become a default) under, give to others (immediately or with notice or lapse of time or both) any right of termination, amendment, acceleration or cancellation of, result

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(immediately or with notice or lapse of time or both) in triggering any payment or other obligations, or result (immediately or with notice or lapse of time or both) in the creation of an Encumbrance on any property or asset of the Company or its Subsidiaries pursuant to, any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries, or any property or asset of the Company or any of its Subsidiaries, is bound or affected, except in the case of clauses (ii) and (iii) above for any such conflicts, violations, breaches, defaults or other occurrences that would not reasonably be expected to have a Company Material Adverse Effect.

(b) The affirmative vote of the holders of a majority of the outstanding shares of Company Common Stock as of the record date to be established for the Company Stockholders Meeting, voting as a single class, at the Company Stockholders Meeting, in favor of adopting this Agreement is the only vote of the holders of any class or series of the Company s capital stock necessary to adopt this Agreement, the Merger and the other transactions contemplated hereby.

(c) The Company Board of Directors has (i) approved this Agreement, the Merger and the other transactions contemplated hereby, (ii) determined that the Merger and the other transactions contemplated hereby, taken together, are at a price and on terms that are fair to, advisable and in the best interests of the Company and the Company Stockholders and (iii) recommended the adoption of this Agreement by the Company Stockholders.

(d) No consent, approval, Order or authorization of, or registration, declaration or filing with, or notice to, any Governmental Entity, is required to be made or obtained by the Company or any of its Subsidiaries in connection with the execution and delivery of this Agreement by the Company or the consummation by the Company of the transactions contemplated hereby or compliance with the provisions hereof, except for (i) the filing of a premerger notification and report form by the Company under the HSR Act, and any applicable filings and approvals under any other Antitrust Law, (ii) the filing with the SEC of the Proxy Statement, as may be required in connection with this Agreement, the Merger and the other transactions contemplated hereby, (iii) any filings or notifications required under the rules and regulations of Nasdaq of the transactions contemplated hereby, and (iv) the filing of the Certificate of Merger with the Delaware Secretary and appropriate documents with the relevant authorities of other states in which the Company or any of its Subsidiaries is qualified to do business.

Section 3.6 Compliance. The Company and its Subsidiaries hold all Company Permits, except where the failure to hold such Company Permits would not reasonably be expected to have a Company Material Adverse Effect. All such Company Permits are in full force and effect and the Company and its Subsidiaries are in compliance with the terms of the Company Permits and all Laws applicable to the business and operations of the Company and its Subsidiaries, except where the failure to so maintain such Company Permits or to so comply would not be reasonably expected to have a Company Material Adverse Effect. The Company and its Subsidiaries are in compliance in all respects with all applicable Laws or Orders, except where the failure to so comply would not reasonably be expected to have a Company Material Adverse Effect. The Company has not received any material notice to the effect that the Company or any of its Subsidiaries is not in compliance with the terms of such Company Permits or any such Laws. No investigation or review by any Governmental Entity with respect to the Company or any of its Subsidiaries or their respective businesses is pending or, to the Knowledge of the Company, threatened.

Section 3.7 Litigation.

(a) There are no claims, actions, suits, proceedings, governmental investigations, inquiries or subpoenas pending against the Company or any of its Subsidiaries, or any current or former supervisory employee of the Company or any of its Subsidiaries with respect to any acts or omissions in connection with their employment with the Company or any of its Subsidiaries, or any properties or assets of the Company or of any of its Subsidiaries, and, to the Knowledge of the Company, there are no threatened claims, actions, suits, proceedings or investigations against the Company or any of its Subsidiaries, or any current or former

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supervisory employee of the Company or any of its Subsidiaries with respect to any acts or omissions in connection with their employment with the Company or any of its Subsidiaries, or any properties or assets of the Company or of any of its Subsidiaries. Neither the Company nor any Subsidiary of the Company is subject to any outstanding Order that could reasonably be expected to have a Material Adverse Effect on the Company or is reasonably expected to prevent or delay the consummation of the transactions contemplated by this Agreement. There is not currently any internal investigation or inquiry being conducted by the Company, the Company Board of Directors or any third party or Governmental Entity at the request of any of the foregoing concerning any financial, accounting, Tax, conflict of interest, self-dealing, fraudulent or deceptive conduct or other misfeasance or malfeasance issues.

Section 3.8 Company Reports; Financial Statements.

(a) The Company has timely filed all Company Reports required to be filed with the SEC on or prior to the date hereof and will timely file all Company Reports required to be filed with the SEC after the date hereof and prior to the Effective Time. No Subsidiary of the Company is subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act. Each Company Report has complied, or will comply as the case may be, in all material respects with the applicable requirements of the Securities Act, and the rules and regulations promulgated thereunder, or the Exchange Act, and the rules and regulations promulgated thereunder, as applicable, each as in effect on the date so filed. None of the Company Reports (including any financial statements or schedules included or incorporated by reference therein) contained or will contain, as the case may be, when filed (and, in the case of registration statements and proxy statements, on the dates of effectiveness and the dates of mailing, respectively) any untrue statement of a material fact or omitted or omits or will omit, as the case may be, to state a material fact required to be stated or incorporated by reference therein or necessary to make the statements therein, in the light of the circumstances under which they were or are made, not misleading.

(b) Each of the Chief Executive Officer and Chief Financial Officer has made all certifications required by Rules 13a-14 and 15d-14 under the Exchange Act and Sections 302 and 906 of the Sarbanes-Oxley Act with respect to the applicable Company Reports filed prior to the date hereof (collectively, the *Certifications*) and the statements contained in such Certifications are accurate in all material respects as of the filing thereof.

(c) The Company has made available (including via the SEC s EDGAR system, as applicable) to Parent all of the Company Financial Statements. All of the Company Financial Statements comply in all material respects with applicable requirements of the Exchange Act and have been prepared in accordance with GAAP applied on a consistent basis throughout the periods involved (except as may be indicated in the auditors report thereon or in the notes thereto) and fairly present in all material respects the consolidated financial position of the Company at the respective dates thereof and the consolidated results of its operations and changes in cash flows for the periods indicated (subject, in the case of unaudited statements, to normal year-end audit adjustments consistent with GAAP).

(d) The Company and its Subsidiaries have implemented and maintain a system of internal accounting controls sufficient to provide reasonable assurances regarding the reliability of financial reporting and the preparation of financial statements in accordance with GAAP. The Company has implemented and maintains disclosure controls and procedures (as defined in Rule 13a-15(e) of the Exchange Act) designed to ensure that information relating to the Company, including its consolidated Subsidiaries, required to be disclosed in the reports the Company files or submits under the Exchange Act is made known to the Chief Executive Officer and the Chief Financial Officer of the Company by others within those entities.

(e) The Company has adopted a code of ethics, as defined by Item 406(b) of Regulation S-K promulgated under the Exchange Act, for senior financial officers, applicable to its principal financial officer, comptroller or principal accounting officer, or persons performing similar functions. The Company has promptly disclosed, by filing a Form 8-K, any change in or waiver of the Company s code of ethics, as required by Section 406(b) of Sarbanes-Oxley Act. To the Knowledge of the Company, there have been no material violations of provisions of the Company s code of ethics.

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(f) There are no Liabilities of the Company or any of its Subsidiaries of any kind whatsoever, whether or not accrued and whether or not contingent or absolute, that are material to the Company, are required by GAAP to be set forth on the Company Financial Statements and are not set forth on the Company Financial Statements, other than (i) Liabilities incurred in connection with the transactions contemplated in this Agreement, (ii) Liabilities incurred in the ordinary course of business consistent with past practice since December 31, 2005, and (iii) Liabilities that would not reasonably be expected to have a Company Material Adverse Effect.

Section 3.9 Absence of Certain Changes or Events. Since December 31, 2005, except as disclosed in the Company 10-K or in Company Reports since December 31, 2005 through to the date of this Agreement, and except as specifically contemplated by, or as disclosed in, this Agreement, the Company and its Subsidiaries have conducted their businesses in the ordinary course consistent with past practice and, since such date, there has not been, with respect to either the Company or any of its Subsidiaries, any Company Material Adverse Effect.

Section 3.10 Taxes.

(a) The Company and each of its Subsidiaries has timely filed and will timely file with the appropriate Governmental Entities all Tax Returns that are required to be filed by it prior to the Effective Time. All such Tax Returns were correct and complete in all material respects and, in the case of Tax Returns to be filed, will be correct and complete in all material respects. All Taxes due and owing by the Company and each of its Subsidiaries (whether or not shown on such Tax Returns) have been timely paid and, in the case of Tax Returns to be filed, will be timely paid. Neither the Company nor any of its Subsidiaries currently is the beneficiary of any extension of time within which to file any Tax Return. No claim has ever been made in writing by an authority in a jurisdiction where the Company does not file Tax Returns that the Company or any of its Subsidiaries is or may be subject to taxation in that jurisdiction. There are no security interests or other liens on any of the assets of the Company or its Subsidiaries that arose in connection with any failure (or alleged failure) to pay any Tax, other than liens for Taxes not yet due and payable.

(b) The Company and its Subsidiaries have timely withheld and paid to the appropriate Governmental Entity all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, shareholder or other Third Party.

(c) There is no dispute concerning any Tax Liability of the Company or any of its Subsidiaries raised by any Governmental Entity in writing to the Company or any of its Subsidiaries that remains unpaid, and the Company has not received written notice of any threatened audits or investigations relating to any Taxes nor otherwise has any Knowledge of any material threatened audits or investigations relating to any Taxes, in each case for which the Company or any of its Subsidiaries may become directly or indirectly liable.

(d) Neither the Company nor any of its Subsidiaries has waived any statute of limitations in respect of Taxes or agreed to, or requested, any extension of time with respect to a Tax assessment or deficiency.

(e) The unpaid Taxes of the Company and its Subsidiaries did not, as of December 31, 2005, exceed the reserve for Tax Liability (rather than any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the face of the balance sheet set forth in the Company Financial Statements as of such date (disregarding any notes thereto). Neither the Company nor any of its Subsidiaries has incurred any Tax Liability since December 31, 2005 other than a Tax Liability in the ordinary course of business.

(f) The Company has made available to Parent complete and accurate copies of all Tax Returns filed by the Company and any of its Subsidiaries on or prior to the date hereof for all tax periods beginning on or after December 31, 2005.

(g) There are no agreements relating to the allocating or sharing of Taxes to which the Company or any of its Subsidiaries is a party.

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(h) Neither the Company nor any of its Subsidiaries has been a member of an affiliated group of corporations within the meaning of Section 1504 of the Code or within the meaning of any similar provision of law to which the Company or any of its Subsidiaries may be subject, other than the affiliated group of which the Company is the common parent.

(i) Neither the Company nor any of its Subsidiaries has constituted either a distributing corporation or a controlled corporation within the meaning of Section 355(a)(1)(A) of the Code. Neither the Company nor any of its Subsidiaries has been a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code at any time during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code, and Parent is not required to withhold tax on the purchase of the Company by reason of Section 1445 of the Code. Neither the Company nor any of its Subsidiaries has constituted either an expatriated entity within the meaning of Section 7874(a)(2)(A) of the Code or a surrogate foreign corporation within the meaning of Section 7874(a)(2)(B) of the Code.

(j) Neither the Company nor any of its Subsidiaries has agreed, or is it required, to make any adjustments pursuant to Section 481(a) of the Code or any similar provision of state, local or foreign law by reason of a change in accounting method initiated by it or any other relevant party, and the IRS has not proposed any such adjustment or change in accounting method in writing nor, to the Knowledge of the Company, otherwise proposed any material adjustment or change in accounting method, nor does the Company or any of its Subsidiaries have any application pending with any Governmental Entity requesting permission for any changes in accounting methods that relate to the business or assets of the Company or any of its Subsidiaries.

(k) No closing agreement pursuant to Section 7121 of the Code (or any predecessor provision) or any similar provision of any state, local or foreign law has been entered into by or with respect to the Company or any of its Subsidiaries.

(l) Neither the Company nor any of its Subsidiaries has participated in a reportable transaction within the meaning of Treasury Regulation Section 1.6011-4(b)(1).

(m) Neither the Company nor any of its Subsidiaries is a party to any agreement, contract, arrangement or plan that has resulted or would result, separately or in the aggregate, in the payment of any excess parachute payment within the meaning of Section 280G of the Code (or any corresponding provision of state, local or foreign Tax law) arising out of the transactions contemplated by this Agreement.

Section 3.11 Title to Personal Properties; No Real Property. Each of the Company and its Subsidiaries has good and marketable title to, or a valid leasehold interest in, all of its tangible personal properties and assets reflected in the Company 10-K or acquired after December 31, 2005 (other than assets disposed of since December 31, 2005 in the ordinary course of business consistent with past practice), in each case free and clear of all Encumbrances, except for Encumbrances that secure indebtedness and that are properly reflected in the Company 10-K and Encumbrances that can be removed for a cost of less than $100,000. The tangible personal property and assets of the Company and its Subsidiaries are in good operating condition and in a state of good maintenance and repair, ordinary wear and tear excepted, are operated in accordance with all applicable licenses, permits, consents and governmental authorizations, and are usable in the regular and ordinary course of business, except as would not reasonably be expected to have a Company Material Adverse Effect. Each of the Company and each of its Subsidiaries either owns, or has valid leasehold interests in, all tangible personal properties and assets used by it in the conduct of its business, except where the absence of such ownership or leasehold interest would not reasonably be expected to have a Company Material Adverse Effect. Neither the Company nor any of its Subsidiaries has any legal obligation, absolute or contingent, to any other Person to sell or otherwise dispose of any of its tangible personal properties or assets (other than the sale of the Company s products in the ordinary course of business) with an individual value in excess of $100,000 or an aggregate value in excess of $250,000. Neither the Company nor any of its Subsidiaries owns any real property. Each of the Company and its Subsidiaries has complied with the terms of all material leases to which it is a party and under which it is in occupancy, and all such leases are in full force and effect, except for such non-compliances or failures to be in

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full force and effect that, individually or in the aggregate, could not reasonably be expected to have a Company Material Adverse Effect. The leased real property identified in *Schedule 3.11* comprises all of the real property used in the Company s business, and is occupied by the Company pursuant to the leases listed on *Schedule 3.11*. The Company has made available to Parent and Merger Sub a true and complete copy of each such lease document.

Section 3.12 Officers, Directors, Employees and Affiliates.

(a) Neither the Company nor any of its Subsidiaries is a party to or bound by any Employment Agreement and, except as otherwise contemplated by *Section 1.7*, *Section 1.8* and *Section 1.9*, no severance or other payment will become due or benefits or compensation increase or accelerate as a result of the transactions contemplated by this Agreement, solely or together with any other event, including a subsequent termination of employment.

(b) Except for compensation and benefits received in the ordinary course of business as an employee or director of the Company or its Subsidiaries, no director, officer or other Affiliate or Associate of the Company or any entity in which, to the Knowledge of the Company, any such director, officer or other Affiliate or Associate owns any beneficial interest (other than a beneficial interest in a publicly held corporation whose stock is traded on a national securities exchange or in the over-the-counter market and less than 5% of the stock of which is beneficially owned by any such Persons) is currently a party to or has any interest in (i) any partnership, joint venture, contract, arrangement or understanding with, or relating to, the business or operations of the Company or its Subsidiaries in which the amount involved exceeds $100,000 per annum, (ii) any loan, arrangement, understanding, agreement or contract for or relating to indebtedness of the Company or its Subsidiaries, or (iii)&nbs