

EMBARCADERO TECHNOLOGIES INC
Form DEFM14A
October 24, 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

Filed by a Party other than the Registrant

Check the appropriate box:

Preliminary Proxy Statement

Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material Pursuant to §240.14a-12

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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.

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1) Title of each class of securities to which transaction applies:

2) Aggregate number of securities to which transaction applies:

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1) Amount Previously Paid:

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EMBARCADERO TECHNOLOGIES, INC.

100 California Street, 12th Floor

San Francisco, California 94111

October 24, 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 Thursday, November 30, 2006, at 12:00 p.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. ALTERNATIVELY, YOU MAY SUBMIT A PROXY OVER THE INTERNET OR BY TELEPHONE, AS INDICATED ON THE PROXY CARD. 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 OCTOBER 24, 2006

AND IS FIRST BEING MAILED TO STOCKHOLDERS ON OR ABOUT OCTOBER 30, 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 November 30, 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 Thursday, November 30, 2006, at 12:00 p.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 October 18, 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. Alternatively, you may submit a proxy for your shares over the Internet or by telephone, as indicated on the proxy card. 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. ALTERNATIVELY, YOU MAY SUBMIT A PROXY OVER THE INTERNET OR BY TELEPHONE, AS INDICATED ON THE PROXY CARD. 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

October 24, 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 refer to 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 37. 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 29.

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 30.

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.

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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 37.

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 37.

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 37.

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 13 and The Merger Recommendation of the Board of Directors beginning on page 16.

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 18. 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

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of the merger, and in the case of any options having a per share exercise price less than \$8.38, 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;

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 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 26.

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 26.

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 [Other Agreements](#) [Limited Guarantee](#) beginning on page 51.

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

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Merger Agreement No Solicitation of Transactions beginning on page 43 and The Merger Agreement Termination beginning on page 47.

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 27.

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 47.

The Special Meeting and Related Matters

Date, Time and Place. The special meeting of our stockholders will be held on Thursday, November 30, 2006, at 12:00 p.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 October 18, 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 26,184,849 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 34.

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 34.

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 (including Robert Lamvik, our former Vice President, Worldwide Field Operations who resigned from the Company on October 18, 2006) held and are entitled to vote, in the aggregate, 4,736,667 shares of Embarcadero common stock, representing approximately 18.1% 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, former 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 4,726,667 shares of Embarcadero common stock, representing approximately 18.1% of the shares of Embarcadero common stock entitled to vote upon the adoption of the merger agreement. In

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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 8,365,758 shares of our common stock, or approximately 31.9% 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 35. A copy of the form 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 54. 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?

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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 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. We expect that Scott B. Schoonover, our new Vice President, Worldwide Sales, will also enter into an employment agreement with us prior to the completion of the merger similar to the agreements entered into by Messrs. Sabhlok and Williams, and continue as an officer of the surviving corporation after the merger; 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 26.

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.

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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. 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 26.

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 47 and *The Merger Agreement Effective Time* beginning on page 37.

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 47.

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 27.

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Q: When and where is the special meeting?

A: The special meeting will be held on Thursday, November 30, 2006, at 12:00 p.m., local time, at Embarcadero's principal executive offices located at 100 California Street, 12th Floor, San Francisco, California 94111.

Q: Who can vote on the merger agreement?

A: Holders of our common stock at the close of business on October 18, 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 4,726,667 shares of Embarcadero common stock, representing approximately 18.1% of the shares of our common stock entitled to 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 Internet, telephone or 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. To submit a proxy by Internet or telephone, 24 hours a day, seven days a week, follow the instructions on the proxy card. Internet and telephone proxy submission provide the same authority to vote your shares as if you returned your proxy card by mail.

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

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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.

Q: Can I change my vote?

A: After you submit a proxy for your shares, whether by Internet, telephone or mail, 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. Alternatively, you may submit a proxy again by Internet or telephone. 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.

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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.

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