FORM 8-K

Current report filing

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EVERBRIDGE, INC.
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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): July 2, 2024

Everbridge, Inc.
(Exact name of Registrant as Specified in Its Charter)

Delaware	001-37874	26-2919312
(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(IRS Employer Identification No.)

25 Corporate Drive Suite 400 Burlington, Massachusetts	01803
(Address of Principal Executive Offices)	(Zip Code)

Registrant's Telephone Number, Including Area Code: (818) 230-9700

Not Applicable
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instructions A.2. below):

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, $0.001 par value per share	EVBG	The Nasdaq Global Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Introductory Note

This Current Report on Form 8-K is being filed in connection with the completion of the previously announced Merger (as defined below) pursuant to the Amended and Restated Agreement and Plan of Merger, dated February 29, 2024 (the "Merger Agreement"), by and among Everbridge Holdings, LLC, a Delaware limited liability company (formerly known as Project Emerson Parent, LLC) ("Parent"), Project Emerson Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of Parent ("Merger Sub"), and Everbridge, Inc., a Delaware corporation (the "Company"), which amended and restated the previously announced Agreement and Plan of Merger, dated as of February 4, 2024, by and among Everbridge, Parent and Merger Sub.

On July 2, 2024 (the "Closing Date"), pursuant to the Merger Agreement, Merger Sub merged with and into the Company (the "Merger"), with the Company surviving the Merger as a wholly owned subsidiary of Parent. Parent and Merger Sub are affiliates of Thoma Bravo Discover Fund IV, L.P., an investment fund managed by Thoma Bravo, L.P.

Item 1.01 Entry into a Material Definitive Agreement.

The information set forth in the Introductory Note of this Current Report on Form 8-K is incorporated by reference into this Item 1.01.

On July 2, 2024, the Company and U.S. Bank Trust Company, National Association, as trustee (the "Trustee"), entered into:

(i) the First Supplemental Indenture, dated as of July 2, 2024 (the "2024 Convertible Notes First Supplemental Indenture") to the Indenture, dated as of December 13, 2019, by and between the Company and the Trustee (the "2024 Convertible Notes Original Indenture" and, together with the 2024 Convertible Notes First Supplemental Indenture, the "2024 Convertible Notes Indenture"), relating to the Company's 0.125% Convertible Senior Notes due 2024 (the "2024 Convertible Notes"); and

(ii) the First Supplemental Indenture, dated as of July 2, 2024 (the "2026 Convertible Notes First Supplemental Indenture") to the Indenture, dated as of March 11, 2021, by and between the Company and the Trustee (the "2026 Convertible Notes Original Indenture" and, together with the 2026 Convertible Notes First Supplemental Indenture, the "2026 Convertible Notes Indenture"), relating to the Company's 0% Convertible Senior Notes due 2026 (the "2026 Convertible Notes").

As of July 2, 2024, $63,459,000 of the 2024 Convertible Notes were outstanding and $300,276,000 of the 2026 Convertible Notes were outstanding.

As a result of the Merger, and pursuant to the 2024 Convertible Notes Indenture and the 2026 Convertible Notes Indenture (together, the "Convertible Notes Indentures"), from and after the effective time of the Merger (the "Effective Time"), the right to convert each $1,000 principal amount of the 2024 Convertible Notes and the 2026 Convertible Notes (each, a "series of Convertible Notes" and, together, the "Convertible Notes"), as applicable, was changed into a right to convert such principal amount of each series of Convertible Notes into an amount in cash equal to the conversion rate of the applicable series of Convertible Notes in effect on the applicable conversion date (subject to any adjustments pursuant to the relevant Convertible Notes Indenture) multiplied by $35.00 (i.e., the Per Share Price (as defined below)).

The consummation of the Merger constitutes a Merger Event, a Fundamental Change and a Make-Whole Fundamental Change (each as defined in the applicable Convertible Notes Indenture) under each of the Convertible Notes Indentures. The effective date of the Merger Event, Fundamental Change and Make-Whole Fundamental Change in respect of the Convertible Notes is July 2, 2024, which is the Closing Date.

As a result of the Fundamental Change, each holder of a series of Convertible Notes will have the right to require the Company to repurchase its Convertible Notes pursuant to the terms and procedures set forth in the applicable Convertible Notes Indenture for a cash repurchase price equal to the Fundamental Change Repurchase Price (as defined in the applicable Convertible Notes Indenture).

The foregoing descriptions of the Convertible Notes Indentures and the transactions contemplated thereby are subject to and qualified in their entirety by reference to the full text of the Convertible Notes Indentures. A copy of the 2024 Convertible Notes Original Indenture was filed as Exhibit 4.1 to the Current Report on Form 8-K filed by the Company with the Securities and Exchange Commission (the "SEC") on December 13, 2019 and a copy of the 2026 Convertible Notes Original Indenture was filed as Exhibit 4.1 to the Current Report on Form 8-K filed by the Company with the SEC on March 11, 2021. Copies of the 2024 Convertible Notes First Supplemental Indenture and the 2026 Convertible Notes First Supplemental Indenture are filed hereto as Exhibits 4.1 and 4.2 hereto, respectively. The 2024 Convertible Notes Original Indenture, the 2026 Convertible Notes Original Indenture, the 2024 Convertible Notes First Supplemental Indenture and the 2026 Convertible Notes First Supplemental Indenture are incorporated by reference into this Item 1.01. This Current Report on Form 8-K does not constitute an offer to tender for, or purchase, or a solicitation of an offer to tender for, or purchase, any of the Convertible Notes or any other security.

Item 1.02 Termination of a Material Definitive Agreement.

The information set forth in the Introductory Note of this Current Report on Form 8-K is incorporated by reference into this Item 1.02.

In connection with the issuance of the 2024 Convertible Notes, the Company entered into capped call transactions, each as amended by a call option amendment agreement, dated as of March 11, 2021 (collectively, the "2024 Capped Call Transactions"), with certain of the banks that were initial purchasers of the 2024 Convertible Notes or their affiliates (each a "2024 Capped Call Counterparty"), certain of which remained outstanding as of the Closing Date prior to giving effect to the Termination Agreements (as defined below). In connection with the issuance of the 2026 Convertible Notes, the Company entered into capped call transactions (collectively, the "2026 Capped Call Transactions" and, together with the 2024 Capped Call Transactions, the "Capped Call Transactions") with certain of the banks that were initial purchasers of the 2026 Convertible Notes or their affiliates and another financial institution (each a "2026 Capped Call Counterparty" and each 2024 Capped Call Counterparty and 2026 Capped Call Counterparty, a "Capped Call Counterparty"), which remained outstanding as of the Closing Date prior to giving effect to the Termination Agreements (as defined below).

In connection with the Merger, the Company entered into a termination agreement with each Capped Call Counterparty (collectively, the "Termination Agreements") pursuant to which the Capped Call Transactions with such Capped Call Counterparty terminated on the Closing Date. As of the Closing Date, the Capped Call Transactions had *de minimis* value to the Company. Payments made by Capped Call Counterparties in respect of the termination of Capped Call Transactions were received by the Company on or about the Closing Date.

Item 2.01 Completion of Acquisition or Disposition of Assets.

The information set forth in the Introductory Note and under Items 3.01, 5.01, 5.02, 5.03 and 8.01 of this Current Report on Form 8-K is incorporated by reference into this Item 2.01.

Pursuant to the Merger Agreement, at the Effective Time:

(i) each share of common stock of the Company, par value $0.001 per share ("Common Stock"), outstanding immediately prior to the Effective Time (other than as described in the Merger Agreement) was automatically converted into the right to receive $35.00 in cash without interest thereon (the "Per Share Price"), subject to applicable withholding taxes;

(ii) each outstanding option to purchase shares of Common Stock (an "Option") that was vested or vested at the Effective Time as a result of the Merger (each such Option, a "Vested Option") was automatically cancelled and converted into the right to receive an amount in cash equal to (x) the total number of shares of Common Stock subject to such Vested Option multiplied by (y) the excess, if any, of (A) the Per Share Price over (B) the exercise price per share of such Vested Option, without interest thereon and subject to applicable withholding taxes;

(iii) each outstanding Option that was not a Vested Option (an "Unvested Option") was automatically cancelled and converted solely into the contingent right to receive an amount in cash equal to (x) the total number of shares of Common Stock subject to such Unvested Option immediately prior to the Effective Time, multiplied by (y) the excess, if any, of (A) the Per Share Price over (B) the exercise price per share of such Unvested Option, without interest thereon and subject to applicable withholding taxes, with the resulting payment being subject to the same vesting terms and conditions (including acceleration provisions upon a qualifying termination of employment (if any)) as applied to such Unvested Option immediately prior to the Effective Time;

(iv) any Option that had an exercise price per share that was greater than or equal to the Per Share Price was automatically cancelled for no consideration or payment;

(v) each of Everbridge's outstanding restricted stock units subject to time-based vesting (a "Company RSU") that was vested or vested at the Effective Time as a result of the Merger (each such Company RSU, a "Vested Company RSU") was automatically cancelled and converted solely into the right to receive an amount in cash equal to (x) the total number of shares of Common Stock subject to such Vested Company RSU immediately prior to the Effective Time, multiplied by (y) the Per Share Price, without interest thereon and subject to applicable withholding taxes;

(vi) each Company RSU that was not a Vested Company RSU (an "Unvested Company RSU") was automatically cancelled and converted solely into the contingent right to receive an amount in cash equal to (x) the total number of shares of Common Stock subject to such Unvested Company RSU prior to the Effective Time, multiplied by (y) the Per Share Price, without interest thereon and subject to applicable withholding taxes, with the resulting payment being subject to the same vesting terms and conditions (including acceleration provisions upon a qualifying termination of employment (if any)) as applied to such Unvested Company RSU immediately prior to the Effective Time, provided that the terms rendered inoperable by the transactions contemplated by the Merger Agreement will no longer have any force or effect;

(vii) each of Everbridge's outstanding restricted stock units subject to vesting on the basis of time and the achievement of performance targets (a "Company PSU") that was vested or vested at the Effective Time as a result of the Merger (each such Company PSU, a "Vested Company PSU") was automatically cancelled and converted solely into the right to receive an amount in cash equal to (x) the total number of shares of Common Stock subject to such Vested Company PSU immediately prior to the Effective Time, multiplied by (y) the Per Share Price, without interest thereon and subject to applicable withholding taxes; and

(viii) each Company PSU that was not a Vested Company PSU (an "Unvested Company PSU") was automatically cancelled and converted solely into the contingent right to receive an amount in cash equal to (x) the total number of shares of Common Stock subject to such Unvested Company PSU prior to the Effective Time based on the number of shares that such Unvested Company PSU would settle for at target achievement of the applicable performance metrics, multiplied by (y) the Per Share Price, without interest thereon and subject to applicable withholding taxes (a "Converted PSU Cash Award"), with the resulting payment being subject to the same vesting terms and conditions (including acceleration provisions upon a qualifying termination of employment (if any)) as applied to such Unvested Company PSU immediately prior to the Effective Time, except that in lieu of vesting based on performance metrics, 50% of each Converted PSU Cash Award will instead vest at target achievement at the end of the fiscal quarter which ends immediately after the second anniversary of the date of grant, and 50% of each Converted PSU Cash Award will vest at target achievement at the end of the fiscal quarter which ends immediately after the third anniversary of the date of grant, subject in each case to continuous service through the applicable vesting date(s), and provided that terms rendered inoperable by the transactions contemplated by the Merger Agreement will no longer have any force or effect.

The foregoing description of the Merger and the Merger Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Merger Agreement, a copy of which was filed as Exhibit 2.1 to the Company's Current Report on Form 8-K filed with the SEC on March 1, 2024. Such exhibit is incorporated by reference into this Item 2.01.

Item 3.01 Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing.

The information set forth in the Introductory Note and under Item 2.01 of this Current Report on Form 8-K is incorporated by reference into this Item 3.01.

On the Closing Date, the Company (i) notified The Nasdaq Global Select Market ("NASDAQ") of the consummation of the Merger and (ii) requested that NASDAQ file a Form 25 Notification of Removal from Listing and/or Registration with the SEC to remove the Common Stock from listing on NASDAQ and deregister the Common Stock pursuant to Section 12(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act").

After effectiveness of the Form 25, the Company intends to file with the SEC a Certification and Notice of Termination on Form 15 to terminate the registration of the Common Stock under the Exchange Act and suspend the Company's reporting obligations under Section 13 and Section 15(d) of the Exchange Act. Trading of the Common Stock on NASDAQ was halted prior to the opening of trading on July 2, 2024.

Item 3.03 Material Modification to Rights of Security Holders.

The information set forth in the Introductory Note and under Items 2.01, 3.01, 5.01 and 5.03 of this Current Report on Form 8-K is incorporated by reference into this Item 3.03.

Pursuant to the Merger Agreement and in connection with the consummation of the Merger, each outstanding share of Common Stock that was issued and outstanding immediately prior to the Effective Time (except as described in Item 2.01) was automatically converted into the right to receive the Per Share Price. Accordingly, at the Effective Time, the holders of such shares of Common Stock ceased to have any rights as stockholders of the Company, other than the right to receive the Per Share Price.

Item 5.01 Changes in Control of Registrant.

The information set forth in the Introductory Note and under Items 2.01, 3.01, 3.03, 5.02 and 5.03 of this Current Report on Form 8-K is incorporated by reference into this Item 5.01.

As a result of the Merger, at the Effective Time, a change in control of the Company occurred, and the Company became a wholly owned subsidiary of Parent.

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

The information set forth in the Introductory Note and under Item 2.01 of this Current Report on Form 8-K is incorporated by reference into this Item 5.02.

At the Effective Time, pursuant to the Merger Agreement, David Henshall, Kent Mathy, Alison Dean, Sharon Rowlands, Simon Paris, David Benjamin, Richard D'Amore and Rohit Ghai, each of whom was a director of the Company as of immediately prior to the Effective Time, ceased to be a director of the Company and a member of any committee of the Company's Board of Directors. Following the Effective Time, David Wagner shall remain a director of the Company, and David Rockvam and Noah Webster were appointed directors of the Company.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

The information set forth in the Introductory Note and under Item 2.01 of this Current Report on Form 8-K is incorporated by reference into this Item 5.03.

Effective upon completion of the Merger, the certificate of incorporation of the Company, as in effect immediately prior to the Merger, was amended and restated to be in the form of the certificate of incorporation attached as Exhibit 3.1 hereto. Such exhibit is incorporated by reference into this Item 5.03.

Effective upon completion of the Merger, the bylaws of the Company, as in effect immediately prior to the Merger, were amended and restated to be in the form of the bylaws attached as Exhibit 3.2 hereto. Such exhibit is incorporated by reference into this Item 5.03.

Item 8.01 Other Events.

On the Closing Date, the Company issued a press release announcing the completion of the Merger. A copy of the press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
2.1*	Amended and Restated Agreement and Plan of Merger, dated February 29, 2024, by and among Everbridge Holdings, LLC (f/k/a Project Emerson Parent, LLC), Project Emerson Merger Sub, Inc. and Everbridge, Inc. (incorporated by reference to Exhibit 2.1 to the Company's Current Report on Form 8-K filed on March 1, 2024)
3.1	Amended and Restated Certificate of Incorporation of Everbridge, Inc.
3.2	Amended and Restated By-Laws of Everbridge, Inc.
4.1	First Supplemental Indenture, dated as of July 2, 2024, to the Indenture, dated December 13, 2019, by and between Everbridge, Inc. and U.S. Bank Trust Company, National Association (as successor in interest to U.S. Bank National Association)
4.2	First Supplemental Indenture, dated as of July 2, 2024, to the Indenture, dated March 11, 2021, by and between Everbridge, Inc. and U.S. Bank Trust Company, National Association
99.1	Press Release, dated as of July 2, 2024
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

* Certain exhibits and schedules to the Amended and Restated Agreement and Plan of Merger have been omitted from this pursuant to Item 601(a)(5) of Regulation S-K. The Company will furnish copies of such exhibits and schedules to the SEC upon its request.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Everbridge, Inc.

Dated: July 2, 2024

By: /s/ David Wagner
David Wagner
President & Chief Executive Officer

Exhibit 3.1

SEVENTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

EVERBRIDGE, INC.

ARTICLE ONE

The name of the corporation is Everbridge, Inc. (the "Corporation").

ARTICLE TWO

The address of the Corporation' s registered office in the State of Delaware is 1209 Orange Street, in the City of Wilmington, County of New Castle, 19801. The name of its registered agent at such address is The Corporation Trust Company.

ARTICLE THREE

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

ARTICLE FOUR

The total number of shares of capital stock that the Corporation has authority to issue is one thousand (1,000) shares of Common Stock, par value $0.01 per share.

ARTICLE FIVE

The Corporation is to have perpetual existence.

ARTICLE SIX

In furtherance and not in limitation of the powers conferred by statute, the board of directors of the Corporation is expressly authorized to make, alter or repeal the by-laws of the Corporation.

ARTICLE SEVEN

Meetings of stockholders may be held within or outside of the State of Delaware, as the by-laws of the Corporation may provide. The books of the Corporation may be kept outside the State of Delaware at such place or places as may be designated from time to time by the board of directors or in the by-laws of the Corporation. Election of directors need not be by written ballot unless the by-laws of the Corporation so provide.

ARTICLE EIGHT

To the fullest extent permitted by the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended, a director of this Corporation shall not be liable to the Corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director. Any repeal or modification of this ARTICLE EIGHT shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

ARTICLE NINE

The Corporation expressly elects not to be governed by §203 of the General Corporation Law of the State of Delaware.

ARTICLE TEN

The Corporation reserves the right to amend, alter, change or repeal any provision contained in this certificate of incorporation in the manner now or hereafter prescribed herein and by the laws of the State of Delaware, and all rights conferred upon stockholders herein are granted subject to this reservation.

ARTICLE ELEVEN

The liability of the directors for monetary damages shall be eliminated to the fullest extent under applicable law. To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Corporation (and any other persons to which applicable law permits the Corporation to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise in excess of the indemnification and advancement otherwise permitted by such applicable law. If applicable law is amended after approval by the stockholders of this ARTICLE ELEVEN to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director to the Corporation shall be eliminated or limited to the fullest extent permitted by applicable law as so amended. Any repeal or modification of this ARTICLE ELEVEN shall only be prospective and shall not affect the rights or protections or increase the liability of any director under this ARTICLE ELEVEN in effect at the time of the alleged occurrence of any act or omission to act giving rise to liability or indemnification.

* * * * *

Exhibit 3.2

FOURTH AMENDED AND RESTATED BYLAWS

OF

EVERBRIDGE, INC.

A Delaware corporation
(Adopted as of July 2, 2024)

ARTICLE I
OFFICES

Section 1 Registered Office. The registered office of the corporation in the State of Delaware shall be located at 1209 Orange Street, city of Wilmington, Delaware, 19801, County of New Castle. The name of the corporation' s registered agent at such address shall be The Corporation Trust Company. The registered office and/or registered agent of the corporation may be changed from time to time by action of the board of directors.

Section 2 Other Offices. The corporation may also have offices at such other places, both within and without the State of Delaware, as the board of directors may from time to time determine or the business of the corporation may require.

ARTICLE II
MEETINGS OF STOCKHOLDERS

Section 1 Annual Meetings. An annual meeting of the stockholders shall be held each year within one hundred twenty (120) days after the close of the immediately preceding fiscal year of the corporation for the purpose of electing directors and conducting such other proper business as may come before the meeting. The date, time and place, if any, and/or the means of remote communication, of the annual meeting shall be determined by the president of the corporation; provided, however, that if the president does not act, the board of directors shall determine the date, time and place, if any, and/or the means of remote communication, of such meeting. No annual meeting of stockholders need be held if not required by the certificate of incorporation or by the General Corporation Law of the State of Delaware.

Section 2 Special Meetings. Special meetings of stockholders may be called for any purpose (including, without limitation, the filling of board vacancies and newly created directorships) and may be held at such time and place, within or without the State of Delaware, and/or by means of remote communication, as shall be stated in a written notice of meeting. Such meetings may be called by the board of directors or the president only with five business days prior written notice (which notice period may not be waived) to the stockholders and shall be called by the president upon the written request of holders of shares entitled to cast not less than fifty percent (50%) of the votes at the meeting, which written request shall state the purpose or purposes of the meeting and shall be delivered to the president. The date, time and place, if any, and/or the means of remote communication, if any, of any special meeting of stockholders shall be determined by the president of the corporation; provided, however, that if the president does not act, the board of directors shall determine the date, time and place, if any, and/or the means of remote communication, of such meeting. On such written request, the president shall fix a date and time for such meeting within two days after receipt of a request for such meeting in such written request.

Section 3 Place of Meetings. The board of directors may designate any place, either within or without the State of Delaware, and/or by means of remote communication, as the place of meeting for any annual meeting or for any special meeting called by the board of directors. If no designation is made, or if a special meeting be otherwise called, the place of meeting shall be the principal executive office of the corporation.

Section 4 Notice. Whenever stockholders are required or permitted to take any action at a meeting, written or printed notice stating the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and, in the case of special meetings, the purpose or purposes, of such meeting, shall be given to each stockholder entitled to vote at such meeting and to each director not less than ten nor more than sixty (60) days before the date of the meeting. All such notices shall be delivered, either personally, by mail, or by a form of electronic transmission consented to by the stockholder to whom the notice is given, by or at the direction of the board of directors, the president or the secretary, and if mailed, such notice shall be deemed to be delivered when deposited in the United States mail, postage prepaid, addressed to the stockholder at his, her or its address as the same appears on the records of the corporation. If given by electronic transmission, such notice shall be deemed to be delivered (a) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice; (b) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice; (c) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (i) such posting and (ii) the giving of such separate notice; and (d) if by any other form of electronic transmission, when directed to the stockholder. Any such consent shall be revocable by the stockholder by written notice to the corporation. Any such consent shall be deemed revoked if (x) the corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with such consent and (y) such inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened.

Section 5 Stockholders List. The officer who has charge of the stock ledger of the corporation shall make, at least ten days before every meeting of the stockholders, a complete list of the stockholders entitled to vote at such meeting arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, for a period of at least ten days prior to the meeting: (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, and/or (b) during ordinary business hours, at the principal place of business of the corporation. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

Section 6 Quorum. The holders of a majority of the votes represented by the issued and outstanding shares of capital stock, entitled to vote thereon, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders, except as otherwise provided by statute or by the certificate of incorporation. If a quorum is not present, the holders of a majority of the shares present in person or represented by proxy at the meeting, and entitled to vote at the meeting, may adjourn the meeting to another time and/or place. When a quorum is once present to commence a meeting of stockholders, it is not broken by the subsequent withdrawal of any stockholders or their proxies.

Section 7 Adjourned Meetings. When a meeting is adjourned to another time and place, notice need not be given of the adjourned meeting if the time and place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 8 Vote Required. When a quorum is present, the affirmative vote of the majority of shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders, unless the question is one upon which by express provisions of an applicable law or of the certificate of incorporation a different vote is required, in which case such express provision shall govern and control the decision of such question.

Section 9 Voting Rights. Except as otherwise provided by the General Corporation Law of the State of Delaware or by the certificate of incorporation of the corporation or any amendments thereto and subject to Section 2 of Article VI, every stockholder shall at every meeting of the stockholders be entitled to one vote in person or by proxy for each share of common stock held by such stockholder.

Section 10 Proxies. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. At each meeting of the stockholders, and before any voting commences, all proxies filed at or before the meeting shall be submitted to and examined by the secretary or a person designated by the secretary, and no shares may be represented or voted under a proxy that has been found to be invalid or irregular.

Section 11 Action by Written Consent. Unless otherwise provided in the certificate of incorporation, any action required to be taken at any annual or special meeting of stockholders of the corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken and bearing the dates of signature of the stockholders who signed the consent or consents, shall be signed by the holders of issued and outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the corporation by delivery to its registered office in the state of Delaware, or the corporation' s principal place of business, or an officer or agent of the corporation having custody of the book or books in which proceedings of meetings of the stockholders are recorded. Delivery made to the corporation' s registered office shall be by hand or by certified or registered mail, return receipt requested or by reputable overnight courier service. All consents properly delivered in accordance with this Section 11 of this Article II shall be deemed to be recorded when so delivered. No written consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days after the earliest dated consent delivered to the corporation as required by this Section 11 of this Article II, written consents signed by the holders of a sufficient number of shares to take such corporate action are so recorded. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing. Any action taken pursuant to such written consent or consents of the stockholders shall have the same force and effect as if taken by the stockholders at a meeting thereof.

Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used; provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing.

Section 12 Action by Telegram, Cablegram or Other Electronic Transmission Consent. A telegram, cablegram or other electronic transmission consenting to an action to be taken and transmitted by a stockholder or proxyholder, or by a person or persons authorized to act for a stockholder or proxyholder, shall be deemed to be written, signed and dated for the purposes of this Section 12 of this Article II; provided that any such telegram, cablegram or other electronic transmission sets forth or is delivered with information from which the corporation can determine (a) that the telegram, cablegram or other electronic transmission was transmitted by the stockholder or proxyholder or by a person or persons authorized to act for the stockholder or proxyholder and (b) the date on which such stockholder or proxyholder or authorized person or persons transmitted such telegram, cablegram or electronic transmission. The date on which such telegram, cablegram or electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. No consent given by telegram, cablegram or other electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and until such paper form shall be delivered to the corporation by delivery to its registered office in the State of Delaware, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded if, to the extent and in the manner provided by resolution of the board of directors of the corporation.

ARTICLE III
DIRECTORS

Section 1 General Powers. The business and affairs of the corporation shall be managed by or under the direction of the board of directors.

Section 2 Number, Election and Term of Office. The number of directors on the board of directors as of the date hereof is three. Thereafter, the number of directors shall be established from time to time by resolution of the board of directors. The directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote in the election of directors. The directors shall be elected in this manner at the annual meeting of the stockholders, except as provided in Section 4 of this Article III. Each director elected shall hold office until a successor is duly elected and qualified or until his or her earlier death, resignation or removal as hereinafter provided.

Section 3 Removal and Resignation. Any director or the entire board of directors may be removed at any time, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors. Whenever the holders of any class or series are entitled to elect one or more directors by the provisions of the certificate of incorporation, the provisions of this Section 3 of this Article III shall apply, in respect to the removal without cause of a director or directors so elected, to the vote of the holders of the outstanding shares of that class or series and not to the vote of the outstanding shares as a whole. Any director may resign at any time upon notice given in writing or by electronic transmission to the corporation.

Section 4 Vacancies. Except as otherwise provided in the certificate of incorporation of the corporation, board vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, though less than a quorum, or by a sole remaining director. Each director so chosen shall hold office until a successor is duly elected and qualified or until his or her earlier death, resignation or removal as herein provided.

Notwithstanding the foregoing, any such vacancy shall automatically reduce the authorized number of directors *pro tanto*, until such time as the holders of outstanding shares of capital stock who are entitled to elect the director whose office is vacant shall have exercised their right to elect a director to fill such vacancy, whereupon the authorized number of directors shall be automatically increased *pro tanto*. Each director so chosen shall hold office until a successor is duly elected and qualified or until his or her earlier death, resignation or removal as herein provided.

Section 5 Annual Meetings. The annual meeting of each newly elected board of directors shall be held without notice (other than notice under these Bylaws) immediately after, and at the same place, if any, as the annual meeting of stockholders.

Section 6 Other Meetings and Notice. Regular meetings, other than the annual meeting, of the board of directors may be held without notice at such time and at such place, if any, as shall from time to time be determined by resolution of the board of directors and promptly communicated to all directors then in office. Special meetings of the board of directors may be called by or at the request of the president or at least one of the directors on at least 24 hours notice to each director, either personally, by telephone, by mail, telegraph, and/or by electronic transmission. In like manner and on like notice, the president must call a special meeting on the written request of at least 2 of the directors promptly after receipt of such request.

Section 7 Quorum, Required Vote and Adjournment. A majority of the total number of authorized directors shall constitute a quorum for the transaction of business. The vote of a majority of directors present at a meeting at which a quorum is present shall be the act of the board of directors. If a quorum shall not be present at any meeting of the board of directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. Except as otherwise required by the certificate of incorporation, each director shall be entitled to one vote.

Section 8 Committees. The board of directors may, by resolution passed by a majority of the whole board, designate one or more committees, each committee to consist of one or more of the directors of the corporation, which to the extent provided in such resolution or these Bylaws shall have and may exercise the powers of the board of directors in the management and affairs of the corporation, except as otherwise limited by law. The board of directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the board of directors. Each committee shall keep regular minutes of its meetings and report the same to the board of directors when required.

Section 9 Committee Rules. Each committee of the board of directors may fix its own rules of procedure and shall hold its meetings as provided by such rules, except as may otherwise be provided by a resolution of the board of directors designating such committee. Unless otherwise provided in such a resolution, the presence of a majority of the members of the committee then in office shall be necessary to constitute a quorum. In the event that a member and that member' s alternate, if alternates are designated by the board of directors as provided in Section 8 of this Article III, of such committee is or are absent or disqualified, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in place of any such absent or disqualified member.

Section 10 Executive Committee. The board of directors of the corporation may, by resolution adopted by a majority of the whole board**,** designate two directors to constitute an executive committee. The executive committee, to the extent provided in the resolution, shall have and may exercise all of the authority of the board of directors in the management of the corporation, except that the committee shall have no authority in reference to amending the certificate of incorporation; adopting an agreement of merger or consolidation; recommending to the stockholders the sale, lease, or exchange of all or substantially all of the corporation' s property and assets; recommending to the stockholders a dissolution of the corporation or a revocation of a dissolution; amending the Bylaws of the corporation; electing or removing directors or officers of the corporation or members of the executive committee; declaring dividends; or amending, altering, or repealing any resolution of the board of directors which, by its terms, provides that it shall not be amended, altered or repealed by the executive committee. The board of directors shall have power at any time to fill vacancies in, to change the size or membership of and to discharge the executive committee.

Section 11 Audit Committee. The audit committee shall consist of not fewer than two members of the board of directors as shall from time to time be appointed by resolution of the board of directors. No member of the board of directors who is an affiliate of the corporation or an officer or an employee of the corporation or any subsidiary of the corporation shall be eligible to serve on the audit committee. The audit committee shall review and, as it shall deem appropriate, recommend to the board internal accounting and financial controls for the corporation and accounting principles and auditing practices and procedures to be employed in the preparation and review of financial statements of the corporation. The audit committee shall make recommendations to the board of directors concerning the engagement of independent public accountants to audit the annual financial statements of the corporation and the scope of the audit to be undertaken by such accountants.

Section 12 Compensation Committee. The compensation committee shall consist of not fewer than two members of the board of directors as from time to time shall be appointed by resolution of the board of directors. No member of the board of directors who is an affiliate of the corporation or an officer or an employee of the corporation or any subsidiary of the corporation shall be eligible to serve on the compensation committee. The compensation committee shall review and, as it deems appropriate, recommend to the president and the board of directors policies, practices and procedures relating to the compensation of managerial and executive level employees and the establishment and administration of employee benefit plans. The compensation committee shall have and exercise all authority under any employee stock option plans of the corporation as the committee described therein (unless the board of directors by resolution appoints any other committee to exercise such authority), and shall otherwise advise and consult with the officers of the corporation as may be requested regarding managerial personnel policies.

Section 13 Communications Equipment. Members of the board of directors or any committee thereof may participate in and act at any meeting of such board or committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in the meeting pursuant to this Section 13 of this Article III shall constitute presence in person at the meeting.

Section 14 Waiver of Notice and Presumption of Assent. Any member of the board of directors or any committee thereof who is present at a meeting shall be conclusively presumed to have waived notice of such meeting, except when such member attends for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Such member shall be conclusively presumed to have assented to any action taken unless his or her dissent shall be entered in the minutes of the meeting or unless his or her written dissent to such action shall be filed with the person acting as the secretary of the meeting before the adjournment thereof or shall be forwarded by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to any member who voted in favor of such action.

Section 15 Action by Written Consent. Unless otherwise restricted by the certificate of incorporation, any action required or permitted to be taken at any meeting of the board of directors, or of any committee thereof, may be taken without a meeting if all members of the board or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the board, or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

ARTICLE IV
OFFICERS

Section 1 Number. The officers of the corporation shall be elected by the board of directors and may consist of a chairman of the board, a vice chairman of the board, a president and chief executive officer, one or more vice-presidents, a chief operating officer, a chief financial officer, an executive vice president, a secretary, a treasurer, and such other officers and assistant officers as may be deemed necessary or desirable by the board of directors. Any number of offices may be held by the same person. In its discretion, the board of directors may choose not to fill any office for any period as it may deem advisable.

Section 2 Election and Term of Office. The officers of the corporation shall be elected annually by the board of directors at its first meeting held after each annual meeting of stockholders or as soon thereafter as conveniently may be. Vacancies may be filled or new offices created and filled at any meeting of the board of directors. Each officer shall hold office until a successor is duly elected and qualified or until his or her earlier death, resignation or removal as hereinafter provided.

Section 3 Removal. Any officer or agent elected by the board of directors may be removed by the board of directors whenever in its judgment the best interests of the corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

Section 4 Vacancies. Any vacancy occurring in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the board of directors for the unexpired portion of the term by the board of directors then in office.

Section 5 Compensation. Compensation of all officers shall be fixed by the board of directors, and no officer shall be prevented from receiving such compensation by virtue of his or her also being a director of the corporation.

Section 6 Chairman of the Board. Subject to the powers of the board of directors, the chairman of the board shall be in the general and active charge of the entire business and affairs of the corporation and shall be its chief policy making officer. The chairman of the board shall preside at all meetings of the board of directors and at all meetings of the stockholders and shall have such other powers and perform such other duties as may be prescribed by the board of directors or provided in these Bylaws. Whenever the president is unable to serve, by reason of sickness, absence or otherwise, the chairman of the board shall perform all the duties and responsibilities and exercise all the powers of the president.

Section 7 Vice-Chairman. Whenever the chairman of the board is unable to serve, by reason of sickness, absence, or otherwise, the vice-chairman shall have the powers and perform the duties of the chairman of the board. The vice-chairman shall have such other powers and perform such other duties as may be prescribed by the chairman of the board, the board of directors or these Bylaws.

Section 8 The President and Chief Executive Officer. The president and chief executive officer shall be the chief executive officer of the corporation; in the absence of the chairman of the board, shall preside at all meetings of the stockholders and board of directors at which he or she is present; subject to the powers of the board of directors, and the chairman of the board, shall have general charge of the business, affairs and property of the corporation, and control over its officers, agents and employees; and shall see that all orders and resolutions of the board of directors are carried into effect. The president shall execute bonds, mortgages and other contracts requiring a seal, under the seal of the corporation, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the board of directors to some other officer or agent of the corporation. The president shall have such other powers and perform such other duties as may be prescribed by the chairman of the board or the board of directors or as may be provided in these Bylaws.

Section 9 Chief Operating Officer. The chief operating officer of the corporation, subject to the powers of the board of directors, shall engage in the general and active management of the business of the corporation; and shall see that all orders and resolutions of the board of directors are carried into effect. The chief operating officer shall have such other powers and perform such other duties as may be prescribed by the chairman of the board, the president or the board of directors or as may be provided in these Bylaws.

Section 10 Chief Financial Officer. The chief financial officer of the corporation shall, under the direction of the chief executive officer, be responsible for all financial and accounting matters and for the direction of the offices of treasurer and controller. The chief financial officer shall have such other powers and perform such other duties as may be prescribed by the chairman of the board, the president or the board of directors or as may be provided in these Bylaws.

Section 11 Vice-presidents. The vice-president, or if there shall be more than one, the vice-presidents in the order determined by the board of directors, shall, in the absence or disability of the president, act with all of the powers and be subject to all the restrictions of the president. The vice-presidents shall also perform such other duties and have such other powers as the board of directors, the president or these Bylaws may, from time to time, prescribe.

Section 12 Secretary and Assistant Secretaries. The secretary shall attend all meetings of the board of directors, all meetings of the committees thereof and all meetings of the stockholders and record all the proceedings of the meetings in a book or books to be kept for that purpose. Under the president' s supervision, the secretary shall give, or cause to be given, all notices required to be given by these Bylaws or by law, shall have such powers and perform such duties as the board of directors, the president or these Bylaws may, from time to time, prescribe, and shall have custody of the corporate seal of the corporation. The secretary, or an assistant secretary, shall have authority to affix the corporate seal to any instrument requiring it and when so affixed, it may be attested by his or her signature or by the signature of such assistant secretary. The board of directors may give general authority to any other officer to affix the seal of the corporation and to attest the affixing by his or her signature. The assistant secretary, or if there be more than one, the assistant secretaries in the order determined by the board of directors, shall, in the absence or disability of the secretary, perform the duties and exercise the powers of the secretary and shall perform such other duties and have such other powers as the board of directors, the president, or secretary may, from time to time, prescribe.

Section 13 Treasurer and Assistant Treasurer. The treasurer shall have the custody of the corporate funds and securities; shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation; shall deposit all monies and other valuable effects in the name and to the credit of the corporation as may be ordered by the board of directors; shall cause the funds of the corporation to be disbursed when such disbursements have been duly authorized, taking proper vouchers for such disbursements; shall render to the president and the board of directors, at its regular meeting or when the board of directors so requires, an account of the corporation; and shall have such powers and perform such duties as the board of directors, the president or these Bylaws may, from time to time, prescribe. If required by the board of directors, the treasurer shall give the corporation a bond (which shall be rendered every six years) in such sums and with such surety or sureties as shall be satisfactory to the board of directors for the faithful performance of the duties of the office of treasurer and for the restoration to the corporation, in case of death, resignation, retirement, or removal from office, of all books, papers, vouchers, money, and other property of whatever kind in the possession or under the control of the treasurer belonging to the corporation. The assistant treasurer, or if there shall be more than one, the assistant treasurers in the order determined by the board of directors, shall in the absence or disability of the treasurer, perform the duties and exercise the powers of the treasurer. The assistant treasurers shall perform such other duties and have such other powers as the board of directors, the president or treasurer may, from time to time, prescribe.

Section 14 Other Officers, Assistant Officers and Agents. Officers, assistant officers and agents, if any, other than those whose duties are provided for in these Bylaws, shall have such authority and perform such duties as may from time to time be prescribed by resolution of the board of directors.

Section 15 Absence or Disability of Officers. In the case of the absence or disability of any officer of the corporation and of any person hereby authorized to act in such officer' s place during such officer' s absence or disability, the board of directors may by resolution delegate the powers and duties of such officer to any other officer or to any director, or to any other person whom it may select.

ARTICLE V
INDEMNIFICATION

Section 1 Directors and Executive Officers. The corporation shall indemnify any person who was or is made a party or is threatened to be made a party to or is otherwise involved in any proceeding by reason of the fact that he or she is or was a director or executive officer (for the purposes of this Article V, "executive officers" shall have the meaning defined in Rule 3b-7 promulgated under the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder) of the corporation to the extent not prohibited by the DGCL, whether the basis of such proceeding is alleged action in an official capacity as a director or executive officer or in any other capacity while serving as a director or executive officer, provided, however, that the corporation shall not be required to indemnify such person in connection with any proceeding (or part thereof) initiated by such person unless (a) such indemnification is expressly required to be made by law, (b) the proceeding was authorized by the board of directors of the corporation, (c) such indemnification is provided by the corporation, in its sole discretion, pursuant to the powers vested in the corporation under the DGCL or (d) such indemnification is required to be made under Section 4 of this Article V.

Section 2 Other Officers, Employees and Other Agents. The corporation shall have the power to indemnify (including the power to advance expenses to, in a manner consistent with Section 3 of this Article V) its other officers, employees and other agents as set forth in the DGCL. The board of directors shall have the power to delegate the determination of whether indemnification shall be given to any such person except executive officers to such officers or other persons as the board of directors shall determine.

Section 3 Expenses. The corporation shall advance to any current or former director or executive officer of the corporation, prior to the final disposition of the proceeding, promptly following request therefor, all expenses incurred by such person in defending (or participating as a witness in) any proceeding referred to in Section 1 of this Article V, provided, however, that an advancement of expenses incurred by a current or former director or executive officer in his or her capacity as a director or executive officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the corporation of an undertaking, by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that such indemnitee is not entitled to be indemnified for such expenses under this Article V or otherwise.

Notwithstanding the foregoing, unless otherwise determined pursuant to Section 4 of this Article V, no advance shall be made by the corporation to a current or former executive officer of the corporation (except by reason of the fact that such executive officer is or was a director of the corporation in which event this Section 3 of this Article V shall not apply) in any proceeding, whether civil, criminal, administrative or investigative, if a determination is reasonably and promptly made (a) by a majority vote of directors who were not parties to the proceeding, even if not a quorum, or (b) by a committee of such directors designated by a majority vote of such directors, even though less than a quorum, or (c) if there are no such directors, or such directors so direct, by independent legal counsel in a written opinion, that the facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation, or with respect to a criminal action or proceeding, that such person had reasonable cause to believe that his or her conduct was unlawful.

Section 4 Enforcement. Without the necessity of entering into an express contract, all rights to indemnification and advances to directors and executive officers under this Article V shall be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the corporation and the director or executive officer. Any right to indemnification or advances granted by this Article V to a current or former director or executive officer shall be enforceable by or on behalf of the person holding such right in any court of competent jurisdiction if (a) the claim for indemnification or advances is denied, in whole or in part, or (b) no disposition of such claim is made within ninety (90) days of request therefor. To the extent permitted by law, the claimant in such enforcement action, if successful in whole or in part, shall be entitled to be paid also the expense of prosecuting the claim. In connection with any claim for indemnification, the corporation shall be entitled to raise as a defense to any such action that the claimant has not met the standards of conduct that make it permissible under the DGCL for the corporation to indemnify the claimant for the amount claimed. In connection with any claim by a current or former executive officer of the corporation (except in any proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such executive officer is or was a director of the corporation) for advances, the corporation shall be entitled to raise a defense as to any such action clear and convincing evidence that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation, or with respect to any criminal action or proceeding that such person had reasonable cause to believe that his or her conduct was unlawful. Neither the failure of the corporation (including its board of directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the corporation (including its board of directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct. In any suit brought by a current or former director or executive officer to enforce a right to indemnification or to an advancement of expenses hereunder, the burden of proving that the current or former director or executive officer is not entitled to be indemnified, or to such advancement of expenses, under this Article V or otherwise shall be on the corporation.

Section 5 Non-Exclusivity of Rights. The rights conferred on any person by this Article V shall not be exclusive of any other right which such person may have or hereafter acquire under any applicable statute, provision of the certificate of incorporation, bylaws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding office. The corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advances, to the fullest extent not prohibited by the DGCL.

Section 6 Survival of Rights. The rights conferred on any person by this Article V shall continue as to a person who has ceased to be a director or executive officer or officer, employee or other agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 7 Insurance. To the fullest extent permitted by the DGCL, the corporation may purchase insurance on behalf of any person required or permitted to be indemnified pursuant to this Article V.

Section 8 Amendments. Any repeal or modification of this Article V shall only be prospective and shall not affect the rights under this Article V in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any proceeding against any current or former director or executive officer of the corporation.

Section 9 Saving Clause. If this Article V or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the corporation shall nevertheless indemnify each director and executive officer to the full extent not prohibited by any applicable portion of this Article V that shall not have been invalidated. If this Article V shall be invalid due to the application of the indemnification provisions of another jurisdiction, then the corporation shall indemnify each director and executive officer to the full extent under any other applicable law.

Section 10 Certain Definitions. For the purposes of this Article V, the following definitions shall apply:

(a) The term the "corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article V with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

(b) The term "DGCL" shall mean the Delaware General Corporation Law.

(c) References to a "director," "executive officer," "officer," "employee," or "agent" of the corporation shall include, without limitation, situations where such person, while serving the corporation in such capacity, is also serving at the request of the corporation as, respectively, a director, executive officer, officer, employee, trustee or agent of another corporation, partnership, joint venture, trust or other enterprise.

(d) The term "expenses" shall be broadly construed and shall include, without limitation, court costs, attorneys' fees, witness fees, fines, amounts paid in settlement or judgment and any other costs and expenses of any nature or kind incurred in connection with any proceeding.

(e) References to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the corporation" shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the corporation" as referred to in this Article V.

(f) The term "proceeding" shall be broadly construed and shall include, without limitation, the investigation, preparation, prosecution, defense, settlement, arbitration and appeal of, and the giving of testimony in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

ARTICLE VI
CERTIFICATES OF STOCK

Section 1 Form. Notwithstanding anything else set forth herein, the stock of the corporation shall be and shall remain uncertificated.

Section 2 Fixing a Record Date for Stockholder Meetings. In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors, and which record date shall not be more than sixty (60) nor less than ten days before the date of such meeting. If no record date is fixed by the board of directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be the close of business on the next day preceding the day on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided that the board of directors may fix a new record date for the adjourned meeting.

Section 3 Fixing a Record Date for Action by Written Consent. In order that the corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the board of directors, and which date shall not be more than ten days after the date upon which the resolution fixing the record date is adopted by the board of directors. If no record date has been fixed by the board of directors, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the board of directors is required by statute, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the corporation' s registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the board of directors and prior action by the board of directors is required by statute, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the board of directors adopts the resolution taking such prior action.

Section 4 Fixing a Record Date for Other Purposes. In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment or any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purposes of any other lawful action, the board of directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the board of directors adopts the resolution relating thereto.

Section 5 Registered Stockholders. Prior to the surrender to the corporation of the certificate or certificates for a share or shares of stock with a request to record the transfer of such share or shares, the corporation may treat the registered owner as the person entitled to receive dividends, to vote, to receive notifications, and otherwise to exercise all the rights and powers of an owner. The corporation shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof.

Section 6 Subscriptions for Stock. Unless otherwise provided for in the subscription agreement, subscriptions for shares shall be paid in full at such time, or in such installments and at such times, as shall be determined by the board of directors. Any call made by the board of directors for payment on subscriptions shall be uniform as to all shares of the same class or as to all shares of the same series. In case of default in the payment of any installment or call when such payment is due, the corporation may proceed to collect the amount due in the same manner as any debt due the corporation.

ARTICLE VII
GENERAL PROVISIONS

Section 1 Dividends. Dividends upon the capital stock of the corporation, subject to the provisions of the certificate of incorporation, if any, may be declared by the board of directors at any regular or special meeting, pursuant to law. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the certificate of incorporation. Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or any other purpose and the directors may modify or abolish any such reserve in the manner in which it was created.

Section 2 Checks, Drafts or Orders. All checks, drafts, or other orders for the payment of money by or to the corporation and all notes and other evidences of indebtedness issued in the name of the corporation shall be signed by such officer or officers, agent or agents of the corporation, and in such manner, as shall be determined by resolution of the board of directors or a duly authorized committee thereof.

Section 3 Contracts. The board of directors may authorize any officer or officers, or any agent or agents, of the corporation to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances.

Section 4 Loans. The corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiary, including any officer or employee who is a director of the corporation or its subsidiary, whenever, in the judgment of the directors, such loan, guaranty or assistance may reasonably be expected to benefit the corporation. The loan, guaranty or other assistance may be with or without interest, and may be unsecured, or secured in such manner as the board of directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing contained in this Section 4 of Article VII shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute.

Section 5 Fiscal Year. The fiscal year of the corporation shall be fixed by resolution of the board of directors.

Section 6 Corporate Seal. The board of directors shall provide a corporate seal which shall be in the form of a circle and shall have inscribed thereon the name of the corporation and the words "Corporate Seal, Delaware". The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

Section 7 Voting Securities Owned By Corporation. Voting securities in any other corporation held by the corporation shall be voted by the president, unless the board of directors specifically confers authority to vote with respect thereto, which authority may be general or confined to specific instances, upon some other person or officer. Any person authorized to vote securities shall have the power to appoint proxies, with general power of substitution.

Section 8 Inspection of Books and Records. Any stockholder of record, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose the corporation' s stock ledger, a list of its stockholders, and its other books and records, and to make copies or extracts therefrom. A proper purpose shall mean any purpose reasonably related to such person' s interest as a stockholder. In every instance where an attorney or other agent shall be the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing which authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the corporation at its registered office in the State of Delaware or at its principal place of business.

Section 9 Section Headings. Section headings in these Bylaws are for convenience of reference only and shall not be given any substantive effect in limiting or otherwise construing any provision herein.

Section 10 Inconsistent Provisions. In the event that any provision of these Bylaws is or becomes inconsistent with any provision of the certificate of incorporation, the General Corporation Law of the State of Delaware or any other applicable law, the provision of these Bylaws shall not be given any effect to the extent of such inconsistency but shall otherwise be given full force and effect.

ARTICLE VIII
AMENDMENTS

These Bylaws may be amended, altered, or repealed and new Bylaws adopted at any meeting of the board of directors by a majority vote. The fact that the power to adopt, amend, alter, or repeal the Bylaws has been conferred upon the board of directors shall not divest the stockholders of the same powers.

Exhibit 4.1

EVERBRIDGE, INC.

AND

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION
(as successor in interest to U.S. BANK NATIONAL ASSOCIATION),

as Trustee

FIRST SUPPLEMENTAL INDENTURE

Dated as of July 2, 2024

0.125% Convertible Senior Notes due 2024

FIRST SUPPLEMENTAL INDENTURE, dated as of July 2, 2024 (this "**Supplemental Indenture**"), among Everbridge, Inc., a Delaware corporation (the "**Company**"), as issuer, and U.S. Bank Trust Company, National Association (as successor in interest to U.S. Bank National Association), a national banking association organized under the laws of the United States of America, as trustee (the "**Trustee**"), to the Indenture, dated as of December 13, 2019 (as supplemented or otherwise modified prior to the date hereof, the "**Indenture**"), between the Company and the Trustee.

WHEREAS, the Company has heretofore executed and delivered the Indenture, pursuant to which the Company issued its 0.125% Convertible Senior Notes due 2024 (the "**Notes**") in the original aggregate principal amount of $450,000,000;

WHEREAS, the Company has entered into an Amended and Restated Agreement and Plan of Merger, dated as of February 29, 2024 (as amended, supplemented, restated or otherwise modified prior to the date hereof, the "**Merger Agreement**"), by and among the Company, Project Emerson Parent, LLC, a Delaware limited liability company (the "**Parent**"), and Project Emerson Merger Sub, Inc., a Delaware corporation and wholly-owned subsidiary of Parent ("**Merger Sub**");

WHEREAS, pursuant to the terms of the Merger Agreement, Merger Sub will merge with and into the Company (the "**Merger**") on the date hereof with the Company, as the surviving entity in the Merger, becoming a wholly-owned subsidiary of Parent as of the date hereof;

WHEREAS, the Merger constitutes a Merger Event under the Indenture;

WHEREAS, Section 14.07(a) of the Indenture provides that in the case of any Merger Event, at and after the effective time of such Merger Event, the right to convert each $1,000 principal amount of Notes shall be changed into a right to convert such principal amount of Notes into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of a number of shares of Common Stock equal to the Conversion Rate immediately prior to such Merger Event would have owned or been entitled to receive (the "**Reference Property**," with each "**unit of Reference Property**" meaning the kind and amount of Reference Property that a holder of one share of Common Stock is entitled to receive) upon such Merger Event and, prior to or at the effective time of such Merger Event, the Company or the successor or purchasing Person, as the case may be, shall execute with the Trustee a supplemental indenture permitted under Section 10.01(g) of the Indenture providing for such change in the right to convert each $1,000 principal amount of Notes; provided, however, that at and after the effective time of the Merger Event (A) the Company or the successor or acquiring company, as the case may be, shall continue to have the right to determine the form of consideration to be paid or delivered, as the case may be, upon conversion of Notes in accordance with Section 14.02 of the Indenture and (B) (I) any amount payable in cash upon conversion of the Notes in accordance with Section 14.02 of the Indenture shall continue to be payable in cash, (II) any shares of Common Stock that the Company would have been required to deliver upon conversion of the Notes in accordance with Section 14.02 of the Indenture shall instead be deliverable in the amount and type of Reference Property that a holder of that number of shares of Common Stock would have received in such Merger Event and (III) the Daily VWAP shall be calculated based on the value of a unit of Reference Property;

WHEREAS, in connection with the Merger, each share of Common Stock that is issued and outstanding as of immediately prior to the Effective Time (other than certain shares of Common Stock as set forth in the Merger Agreement) will be automatically converted into the right to receive cash in an amount equal to $35.00, without interest thereon, in accordance with the terms of the Merger Agreement;

WHEREAS, Section 10.01 of the Indenture provides that the Company and the Trustee may enter into any supplemental indenture without the consent of any Holder, among other things, (i) in connection with any Merger Event, to provide that the notes are convertible into Reference Property, subject to the provisions of Section 14.02 of the Indenture, and make such related changes to the terms of the Notes to the extent expressly required by Section 14.07 of the Indenture; or (ii) to make any change that does not adversely affect the rights of any Holder in any material respect;

WHEREAS, in connection with the execution and delivery of this Supplemental Indenture, the Trustee has received an Officer' s Certificate and an Opinion of Counsel as contemplated by Sections 10.05, 14.07(b) and 17.05 of the Indenture; and

WHEREAS, the Company has requested that the Trustee execute and deliver this Supplemental Indenture and have satisfied all requirements necessary to make this Supplemental Indenture a valid instrument in accordance with its terms.

WITNESSETH:

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Company covenants and agrees with the Trustee as follows for the equal and ratable benefit of the Holders:

ARTICLE 1

DEFINITIONS

Section 1.01. *Definitions in the Supplemental Indenture*. Unless otherwise specified herein or the context otherwise requires:

(a) a term defined in the Indenture has the same meaning when used in this Supplemental Indenture unless the definition of such term is amended or supplemented pursuant to this Supplemental Indenture;

(b) the terms defined in this Article and in this Supplemental Indenture include the plural as well as the singular; and

(c) unless otherwise stated, a reference to a Section or Article is to a Section or Article of this Supplemental Indenture.

ARTICLE 2

EFFECT OF MERGER ON CONVERSION

Section 2.01. *Conversion Right*. In accordance with and subject to Section 14.07 of the Indenture, at and after the effective time of the Merger,

(a) the right to convert each $1,000 principal amount of Notes shall be changed to a right to convert such principal amount of Notes into the Reference Property, which Reference Property shall be solely cash in an amount equal to the Conversion Rate in effect on the Conversion Date (as may be increased by an Additional Shares pursuant to Section 14.03 of the Indenture), multiplied by $35.00; and a unit of Reference Property under the Indenture will be comprised of an amount in cash equal to $35.00;

(b) the Company shall satisfy its Conversion Obligation by paying cash to converting Holders on the second Business Day immediately following the relevant Conversion Date;

(c) the Conversion Rate will be adjusted in the same manner as, and at the same time and for the same events for which, the Conversion Rate is adjusted pursuant to Section 14.04 of the Indenture in a manner consistent with Section 14.07 of the Indenture; and

(d) the Daily VWAP of a unit of Reference Property shall be $35.00.

ARTICLE 3

MISCELLANEOUS

Section 3.01. *Ratification of Indenture*. The Indenture, as supplemented by this Supplemental Indenture, is in all respects ratified and confirmed, and this Supplemental Indenture shall be deemed part of the Indenture in the manner and to the extent herein and therein provided. Every holder of Notes heretofore or hereafter authenticated and delivered under the Indenture shall be bound thereby.

Section 3.02. *Trustee Not Responsible for Recitals*. The recitals herein contained are made by the Company and not by the Trustee, and the Trustee assumes no responsibility for the correctness thereof. The Trustee makes no representation as to the validity or sufficiency of this Supplemental Indenture. All of the provisions contained in the Indenture in respect of the rights, privileges, immunities, powers, and duties of the Trustee shall be applicable in respect of the Supplemental Indenture as fully and with like force and effect as though set forth in full herein.

Section 3.03. *Successors*. All agreements of the Company and the Trustee in this Supplemental Indenture will bind their respective successors.

Section 3.04. *Governing Law*. THIS SUPPLEMENTAL INDENTURE AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS SUPPLEMENTAL INDENTURE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

Section 3.05. *Headings, Etc.* The titles and headings of the articles and sections of this Supplemental Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

Section 3.06. *Execution in Counterparts*. This Supplemental Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument. The exchange of copies of this Supplemental Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Supplemental Indenture as to the parties hereto and may be used in lieu of the original Supplemental Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

Section 3.07. *Severability*. In the event any provision of this Supplemental Indenture shall be invalid, illegal or unenforceable, then (to the extent permitted by law) the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired.

Section 3.08. *Waiver of Jury Trial*. EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS SUPPLEMENTAL INDENTURE OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 3.09. *Effectiveness*. This Supplemental Indenture shall become effective upon, without further action by the parties hereto, the effective time of the Merger.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed as of the day and year first above written.

EVERBRIDGE, INC.

By: /s/ David Rockvam
Name: David Rockvam
Title: Executive Vice President and Chief Financial Officer

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION (as successor in interest to U.S. BANK NATIONAL ASSOCIATION), as Trustee

By: /s/ Benjamin J. Krueger
Name: Benjamin J. Krueger
Title: Vice President

Exhibit 4.2

EVERBRIDGE, INC.

AND

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION
(as successor in interest to U.S. BANK NATIONAL ASSOCIATION),

as Trustee

FIRST SUPPLEMENTAL INDENTURE

Dated as of July 2, 2024

0% Convertible Senior Notes due 2026

FIRST SUPPLEMENTAL INDENTURE, dated as of July 2, 2024 (this "**Supplemental Indenture**"), among Everbridge, Inc., a Delaware corporation (the "**Company**"), as issuer, and U.S. Bank Trust Company, National Association (as successor in interest to U.S. Bank National Association), a national banking association organized under the laws of the United States of America, as trustee (the "**Trustee**"), to the Indenture, dated as of March 11, 2021 (as supplemented or otherwise modified prior to the date hereof, the "**Indenture**"), between the Company and the Trustee.

WHEREAS, the Company has heretofore executed and delivered the Indenture, pursuant to which the Company issued its 0% Convertible Senior Notes due 2026 (the "**Notes**") in the original aggregate principal amount of $375,000,000;

WHEREAS, the Company has entered into an Amended and Restated Agreement and Plan of Merger, dated as of February 29, 2024 (as amended, supplemented, restated or otherwise modified prior to the date hereof, the "**Merger Agreement**"), by and among the Company, Project Emerson Parent, LLC, a Delaware limited liability company (the "**Parent**"), and Project Emerson Merger Sub, Inc., a Delaware corporation and wholly-owned subsidiary of Parent ("**Merger Sub**");

WHEREAS, pursuant to the terms of the Merger Agreement, Merger Sub will merge with and into the Company (the "**Merger**") on the date hereof with the Company, as the surviving entity in the Merger, becoming a wholly-owned subsidiary of Parent as of the date hereof;

WHEREAS, the Merger constitutes a Merger Event under the Indenture;

WHEREAS, Section 14.07(a) of the Indenture provides that in the case of any Merger Event, at and after the effective time of such Merger Event, the right to convert each $1,000 principal amount of Notes shall be changed into a right to convert such principal amount of Notes into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of a number of shares of Common Stock equal to the Conversion Rate immediately prior to such Merger Event would have owned or been entitled to receive (the "**Reference Property**," with each "**unit of Reference Property**" meaning the kind and amount of Reference Property that a holder of one share of Common Stock is entitled to receive) upon such Merger Event and, prior to or at the effective time of such Merger Event, the Company or the successor or purchasing Person, as the case may be, shall execute with the Trustee a supplemental indenture permitted under Section 10.01(g) of the Indenture providing for such change in the right to convert each $1,000 principal amount of Notes; provided, however, that at and after the effective time of the Merger Event (A) the Company or the successor or acquiring company, as the case may be, shall continue to have the right to determine the form of consideration to be paid or delivered, as the case may be, upon conversion of Notes in accordance with Section 14.02 of the Indenture and (B) (I) any amount payable in cash upon conversion of the Notes in accordance with Section 14.02 of the Indenture shall continue to be payable in cash, (II) any shares of Common Stock that the Company would have been required to deliver upon conversion of the Notes in accordance with Section 14.02 of the Indenture shall instead be deliverable in the amount and type of Reference Property that a holder of that number of shares of Common Stock would have received in such Merger Event and (III) the Daily VWAP shall be calculated based on the value of a unit of Reference Property;

WHEREAS, in connection with the Merger, each share of Common Stock that is issued and outstanding as of immediately prior to the Effective Time (other than certain shares of Common Stock as set forth in the Merger Agreement) will be automatically converted into the right to receive cash in an amount equal to $35.00, without interest thereon, in accordance with the terms of the Merger Agreement;

WHEREAS, Section 10.01 of the Indenture provides that the Company and the Trustee may enter into any supplemental indenture without the consent of any Holder, among other things, (i) in connection with any Merger Event, to provide that the notes are convertible into Reference Property, subject to the provisions of Section 14.02 of the Indenture, and make such related changes to the terms of the Notes to the extent expressly required by Section 14.07 of the Indenture; or (ii) to make any change that does not adversely affect the rights of any Holder in any material respect;

WHEREAS, in connection with the execution and delivery of this Supplemental Indenture, the Trustee has received an Officer' s Certificate and an Opinion of Counsel as contemplated by Sections 10.05, 14.07(b) and 17.05 of the Indenture; and

WHEREAS, the Company has requested that the Trustee execute and deliver this Supplemental Indenture and have satisfied all requirements necessary to make this Supplemental Indenture a valid instrument in accordance with its terms.

WITNESSETH:

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Company covenants and agrees with the Trustee as follows for the equal and ratable benefit of the Holders:

ARTICLE 1

DEFINITIONS

Section 1.01. *Definitions in the Supplemental Indenture*. Unless otherwise specified herein or the context otherwise requires:

(a) a term defined in the Indenture has the same meaning when used in this Supplemental Indenture unless the definition of such term is amended or supplemented pursuant to this Supplemental Indenture;

(b) the terms defined in this Article and in this Supplemental Indenture include the plural as well as the singular; and

(c) unless otherwise stated, a reference to a Section or Article is to a Section or Article of this Supplemental Indenture.

ARTICLE 2

EFFECT OF MERGER ON CONVERSION

Section 2.01. *Conversion Right*. In accordance with and subject to Section 14.07 of the Indenture, at and after the effective time of the Merger,

(a) the right to convert each $1,000 principal amount of Notes shall be changed to a right to convert such principal amount of Notes into the Reference Property, which Reference Property shall be solely cash in an amount equal to the Conversion Rate in effect on the Conversion Date (as may be increased by an Additional Shares pursuant to Section 14.03 of the Indenture), multiplied by $35.00; and a unit of Reference Property under the Indenture will be comprised of an amount in cash equal to $35.00;

(b) the Company shall satisfy its Conversion Obligation by paying cash to converting Holders on the second Business Day immediately following the relevant Conversion Date;

(c) the Conversion Rate will be adjusted in the same manner as, and at the same time and for the same events for which, the Conversion Rate is adjusted pursuant to Section 14.04 of the Indenture in a manner consistent with Section 14.07 of the Indenture; and

(d) the Daily VWAP of a unit of Reference Property shall be $35.00.

ARTICLE 3

MISCELLANEOUS

Section 3.01. *Ratification of Indenture*. The Indenture, as supplemented by this Supplemental Indenture, is in all respects ratified and confirmed, and this Supplemental Indenture shall be deemed part of the Indenture in the manner and to the extent herein and therein provided. Every holder of Notes heretofore or hereafter authenticated and delivered under the Indenture shall be bound thereby.

Section 3.02. *Trustee Not Responsible for Recitals*. The recitals herein contained are made by the Company and not by the Trustee, and the Trustee assumes no responsibility for the correctness thereof. The Trustee makes no representation as to the validity or sufficiency of this Supplemental Indenture. All of the provisions contained in the Indenture in respect of the rights, privileges, immunities, powers, and duties of the Trustee shall be applicable in respect of the Supplemental Indenture as fully and with like force and effect as though set forth in full herein.

Section 3.03. *Successors*. All agreements of the Company and the Trustee in this Supplemental Indenture will bind their respective successors.

Section 3.04. *Governing Law*. THIS SUPPLEMENTAL INDENTURE AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS SUPPLEMENTAL INDENTURE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

Section 3.05. *Headings, Etc.* The titles and headings of the articles and sections of this Supplemental Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

Section 3.06. *Execution in Counterparts*. This Supplemental Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument. The exchange of copies of this Supplemental Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Supplemental Indenture as to the parties hereto and may be used in lieu of the original Supplemental Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

Section 3.07. *Severability*. In the event any provision of this Supplemental Indenture shall be invalid, illegal or unenforceable, then (to the extent permitted by law) the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired.

Section 3.08. *Waiver of Jury Trial*. EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS SUPPLEMENTAL INDENTURE OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 3.09. *Effectiveness*. This Supplemental Indenture shall become effective upon, without further action by the parties hereto, the effective time of the Merger.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed as of the day and year first above written.

EVERBRIDGE, INC.

By: /s/ David Rockvam
Name: David Rockvam
Title: Executive Vice President and Chief Financial Officer

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION (as successor in interest to U.S. BANK NATIONAL ASSOCIATION), as Trustee

By: /s/ Benjamin J. Krueger
Name: Benjamin J. Krueger
Title: Vice President

Exhibit 99.1

Thoma Bravo Completes Acquisition of Everbridge

BURLINGTON, Mass. & MIAMI – July 2, 2024 – Thoma Bravo, a leading software investment firm, today announced the completion of its acquisition of Everbridge, Inc. ("Everbridge" or the "Company"), a global leader in critical event management and national public warning solutions, in an all-cash transaction valued at approximately $1.8 billion. The agreement to acquire Everbridge was approved by Everbridge stockholders at the Special Meeting of Stockholders held on April 25, 2024.

With the completion of the transaction, Everbridge stockholders are entitled to receive $35.00 per share in cash for each share of Everbridge common stock they owned. The Company' s common stock has ceased trading and will be delisted from Nasdaq.

"This is an exciting step forward for Everbridge and we are thrilled to begin our next chapter alongside Thoma Bravo," said David Wagner, President and CEO of Everbridge. "We share a common vision for the future of Everbridge that we expect will see us strengthen and grow our platform, further enable product innovation and invest in our talented team. As part of Thoma Bravo, we believe we will be better able to advance our mission of helping our customers navigate an increasingly complex threat landscape and drive accretive, long-term growth for our company."

"We are looking forward to working with David and his team on their value-creating growth plans," said Hudson Smith, Partner at Thoma Bravo. "Everbridge has an incredibly strong foundation, with an expansive and innovative product portfolio that plays a critical role in the day-to-day operations of thousands of the world' s most well-respected organizations. We are confident that they can successfully build on that foundation and see tremendous growth potential ahead for the Company."

"In a fast-changing and increasingly complex world, Everbridge' s products and services are more relevant than ever for business leaders globally," said Matt LoSardo, Principal at Thoma Bravo. "Thoma Bravo has deep expertise within the risk, compliance and safety space, and we are excited to leverage that to help Everbridge advance its mission, better serve its customers and accelerate its growth."

Advisors

Qatalyst Partners served as financial advisor to Everbridge and Cooley LLP served as legal counsel to Everbridge. Raymond James served as financial advisor to Thoma Bravo and Kirkland & Ellis LLP served as legal counsel to Thoma Bravo.

About Everbridge

Everbridge empowers enterprises and government organizations to anticipate, mitigate, respond to, and recover stronger from critical events. In today' s unpredictable world, resilient organizations minimize impact to people and operations, absorb stress, and return to productivity faster when deploying critical event management (CEM) technology. Everbridge digitizes organizational resilience by combining intelligent automation with the industry' s most comprehensive risk data to Keep People Safe and Organizations Running™. For more information, visit https://www.everbridge.com/, read the company blog, and follow on LinkedIn.

About Thoma Bravo

Thoma Bravo is one of the largest software-focused investors in the world, with approximately US$142 billion in assets under management as of March 31, 2024. Through its private equity, growth equity and credit strategies, the firm invests in growth-oriented, innovative companies operating in the software and technology sectors. Leveraging Thoma Bravo' s deep sector knowledge and strategic and operational expertise, the firm collaborates with its portfolio companies to implement operating best practices and drive growth initiatives. Over the past 20+ years, the firm has acquired or invested in more than 480 companies representing approximately US$265 billion in enterprise value (including control and non-control investments). The firm has offices in Chicago, London, Miami, New York and San Francisco. For more information, visit Thoma Bravo' s website at thomabravo.com.

Forward Looking Statements

This press release includes "forward-looking statements" within the meaning of the "safe harbor" provisions of the United States Private Securities Litigation Reform Act of 1995. Forward-looking statements may be identified by the use of words such as "continue," "guidance," "expect," "outlook," "project," "believe" or other similar expressions that predict or indicate future events or trends or that are not statements of historical matters. These forward-looking statements include, but are not limited to, statements regarding the benefits of the transaction. These forward-looking statements are based on Everbridge' s current expectations, estimates and projections about the potential benefits of the transaction, Everbridge' s business and industry, management' s beliefs and certain assumptions made by Everbridge and Thoma Bravo, all of which are subject to change. These forward-looking statements are provided for illustrative purposes only and are not intended to serve as, and must not be relied on as, a guarantee, an assurance, a prediction or a definitive statement of fact or probability. Actual events and circumstances are difficult or impossible to predict and may differ from assumptions. Many actual events and circumstances are beyond the control of Everbridge. These forward-looking statements are subject to a number of risks and uncertainties, including: (i) the effects of geopolitical, economic and market conditions, including heightened inflation, slower growth or recession, changes to fiscal and monetary policy, higher interest rates, currency fluctuations and challenges in the supply chain; (ii) the risk of any unexpected costs or expenses resulting from the transaction; (iii) the risk of any litigation relating to the transaction; (iv) and the risk that the transaction and the announcement of its completion could have an adverse effect on the ability of Everbridge to retain and hire key personnel and to maintain relationships with customers, vendors, partners, employees and other business relationships and on its operating results and business generally. These risks, as well as other risks associated with the transaction, are more fully discussed in the definitive proxy statement filed with the Securities and Exchange Commission in connection with the transaction. If any of these risks materialize or any of these assumptions prove incorrect, actual results could differ materially from the results implied by these forward-looking statements. There may be additional risks that Everbridge presently does not know of or that Everbridge currently believes are immaterial that could also cause actual results to differ from those contained in the forward-looking statements. The forward-looking statements included in this press release are made only as of the date hereof. Everbridge assumes no obligation and does not intend to update these forward-looking statements, except as required by law.

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Document and Entity Information	Jul. 02, 2024
Cover [Abstract]	
Amendment Flag	false
Entity Central Index Key	0001437352
Current Fiscal Year End Date	--12-31
Document Type	8-K
Document Period End Date	Jul. 02, 2024
Entity Registrant Name	Everbridge, Inc.
Entity Incorporation State Country Code	DE
Entity File Number	001-37874
Entity Tax Identification Number	26-2919312
Entity Address, Address Line One	25 Corporate Drive
Entity Address, Address Line Two	Suite 400
Entity Address, City or Town	Burlington
Entity Address, State or Province	MA
Entity Address, Postal Zip Code	01803
City Area Code	(818)
Local Phone Number	230-9700
Written Communications	false
Soliciting Material	false
Pre Commencement Tender Offer	false
Pre Commencement Issuer Tender Offer	false
Security 12b Title	Common Stock, $0.001 par value per share
Trading Symbol	EVBG
Security Exchange Name	NASDAQ
Entity Emerging Growth Company	false

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