

EMERGE INTERACTIVE INC
Form 8-K
January 31, 2005

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 8-K

CURRENT REPORT

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

Date of report (Date of earliest event reported): January 27, 2005

eMerge Interactive, Inc.

(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or Other Jurisdiction

of Incorporation)

000-29037
(Commission File Number)

65-0534535
(IRS Employer

Identification No.)

10305 102nd Terrace

Sebastian, FL
(Address of Principal Executive Offices)

32958
(Zip Code)

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Registrant's telephone number, including area code: (772) 581-9700

Check the appropriate box below if the Form 8-K is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction 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))
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Item 3.02. Unregistered Sales of Equity Securities.

On January 27, 2005, eMerge Interactive, Inc. (the Company) closed the sale of securities to certain institutional investors (collectively, the Investors) in a private placement transaction previously announced on January 12, 2005. At the closing, the Company sold an aggregate of 2,900,000 shares of common stock to the Investors for an aggregate purchase price of \$4,060,000 (or \$1.40 per share) pursuant to the terms of the Securities Purchase Agreement, dated as of January 12, 2005 (the Purchase Agreement), among the Company and the Investors. As part of the transaction, the Company also issued to the Investors warrants to purchase an aggregate of 435,000 shares of common stock at an exercise price of \$1.75 per share (the Warrants). The placement agent for the transaction received a cash fee of \$203,000.

In connection with the offer and sale of securities to the Investors and the placement agent, the Company relied on the exemption from registration provided by Section 4(2) of the Securities Act of 1933, as amended (the Securities Act), and Rule 506 promulgated thereunder. The Company believes that the Investors and the placement agent are accredited investors, as such term is defined in Rule 501(a) promulgated under the Securities Act.

The Company also entered into a Registration Rights Agreement, dated as of January 27, 2005 (the Registration Rights Agreement), with the Investors pursuant to which the Company has agreed to file, within 30 days after the closing, a registration statement covering the resale of the shares of common stock sold to the Investors and the shares of common stock issuable upon exercise of the Warrants issued to the Investors.

Copies of the Purchase Agreement, the form of Warrant issued to the Investors and the Registration Rights Agreement are filed herewith as Exhibits 10.1 through 10.3 and are incorporated herein by reference.

The Company and the Investors also entered into amendments to certain warrants to purchase common stock and additional investment rights previously issued by the Company on December 2, 2004. Copies of the Amendment to Warrant and Amendment to Additional Investment Rights are filed herewith as Exhibits 10.4 and 10.5 and incorporated herein by reference.

Item 7.01. Regulation FD Disclosure.

On January 27, 2005, the Company issued a press release announcing that it closed the private placement of common stock and warrants to certain institutional investors. A copy of the press release containing such announcement is furnished herewith as Exhibit 99.1 and incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(c) Exhibits.

- 10.1 Securities Purchase Agreement, dated as of January 12, 2005, by and among eMerge Interactive, Inc. and the investor parties thereto (previously filed as Exhibit 10.1 to eMerge Interactive, Inc.'s Current Report on Form 8-K dated January 12, 2005 and incorporated herein by reference).

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- 10.2 Form of Warrant, dated as of January 27, 2005, issued by eMerge Interactive, Inc. to each of Steelhead Investments Ltd., Cranshire Capital, L.P. and Omicron Master Trust.

- 10.3 Registration Rights Agreement, dated as of January 27, 2005, by and among eMerge Interactive, Inc., Steelhead Investments Ltd., Cranshire Capital, L.P. and Omicron Master Trust.
- 10.4 Amendment to Warrants, dated as of January 27, 2005, by and among eMerge Interactive, Inc., Steelhead Investments Ltd., Cranshire Capital L.P. and Omicron Master Trust.
- 10.5 Amendment to Additional Investment Rights, dated January 27, 2005, by and among eMerge Interactive, Inc., Steelhead Investments Ltd., Cranshire Capital L.P. and Omicron Master Trust.
- 99.1 Press release, dated January 27, 2005, announcing that eMerge Interactive, Inc. has closed the private placement of common stock and warrants to certain institutional investors (furnished pursuant to Item 7.01).

SIGNATURES

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

EMERGE INTERACTIVE, INC.

Date: January 31, 2005

By: /s/ ROBERT E. DRURY

Robert E. Drury
Executive Vice President and
Chief Financial Officer

EXHIBIT INDEX

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