

CAREGUIDE INC
Form PRER14C
December 08, 2008
UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14C

Information Statement Pursuant to Section 14(c)

of the Securities Exchange Act of 1934

Check the appropriate box:

- Preliminary Information Statement
 Confidential, for Use of the Commission Only (as permitted by Rule 14c-5(d)(2))
 Definitive Information Statement

CAREGUIDE, INC.

(Name of Registrant as Specified In Its Charter)

Payment of Filing Fee (Check the appropriate box):

- No fee required.
 Fee computed on table below per Exchange Act Rules 14c-5(g) and 0-11.
(1) Title of each class of securities to which transaction applies:
(2) Aggregate number of securities to which transaction applies:
(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):
(4) Proposed maximum aggregate value of transaction:
(5) Total fee paid:
 Fee paid previously with preliminary materials.
 Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.
(1) Amount Previously Paid:
(2) Form, Schedule or Registration Statement No.:
(3) Filing Party:
(4) Date Filed:

CAREGUIDE, INC.

4401 N.W. 124th AVENUE

CORAL SPRINGS, FLORIDA 33065

(954) 796-3714

INFORMATION STATEMENT

WE ARE NOT ASKING YOU FOR A PROXY AND

YOU ARE REQUESTED NOT TO SEND US A PROXY.

Dear Stockholder,

This Information Statement is being furnished to you, as a record holder of common stock, par value \$0.01 per share (the *Common Stock*) or Series A Preferred Stock, par value \$0.01 per share (the *Preferred Stock*), of CareGuide, Inc., a Delaware corporation (the *Company*, *we*, *our* or *us*) to inform you of (i) the approval on November 21, 2008 of resolutions by our Board of Directors (the *Board*) proposing amendments (the *Certificates of Amendment*) to our Certificate of Incorporation, as amended to date (the *Certificate of Incorporation*) to (A) effect a reverse split of the Common Stock (the *Reverse Split*) pursuant to which each 50,000 shares of Common Stock registered in the name of a stockholder holding at least 50,000 shares of Common Stock immediately prior to the effective time of the Reverse Split will be converted and combined into one share of Common Stock, followed immediately thereafter by a forward split of the Common Stock (the *Forward Split* and, together with the Reverse Split, the *Reverse/Forward Stock Split*) pursuant to which each share of Common Stock registered in the name of a stockholder holding at least one share of Common Stock immediately after the effective time of the Reverse Split, including fractions thereof for holders holding in excess of one whole share following the Reverse Split, will be converted and subdivided into 50,000 shares of Common Stock and (B) increase the number of authorized shares of Common Stock from 100,000,000 shares to 200,000,000 shares (the *Authorized Share Increase*) and (ii) our receipt of written consents effective as of December 5, 2008 (the *Approval Date*), approving such amendments by the requisite stockholders.

Under Section 228 of the Delaware General Corporation Law (the *DGCL*), any action that can be taken at an annual or special meeting of stockholders may be taken without a meeting, without prior notice and without a vote, if the holders of outstanding stock having not less than the minimum number of votes that are necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present have consented to such action in writing. Under Section 242 of the DGCL, the approval of the Reverse/Forward Stock Split and the Authorized Share Increase requires the affirmative vote or written consent of a majority of the votes entitled to be cast by holders of each of (a) the issued and outstanding shares of Common Stock, voting as a separate class and (b) the issued and outstanding shares of Common Stock and Preferred Stock, voting together as a single class on an as-converted basis. Each holder of Common Stock is entitled to one vote per share held of record on any matter which may properly come before the stockholders, and each holder of a share of Preferred Stock is entitled to that number of votes equal to the number of shares of Common Stock into which such share of Preferred Stock may then be converted. As of the Approval Date and the date hereof, each share of Preferred Stock was and is convertible into five shares of Common Stock. In order to eliminate the costs and management time involved in holding a special meeting and in order to effect and ratify the Reverse/Forward Stock Split and the Authorized Share Increase as early as possible in order to accomplish the purposes described in this Information Statement, we obtained written consents approving the Reverse/Forward Stock Split and the Authorized Share Increase from holders of the requisite voting power.

As of the Approval Date and the date hereof, there were and are 67,538,976 shares of Common Stock and 6,250,000 shares of Preferred Stock issued and outstanding. Stockholders holding 41,073,003 shares of our issued and outstanding Common Stock, or approximately 61% of the total Common Stock class vote, have approved the Reverse/Forward Stock Split and the Authorized Share Increase. In addition, stockholders

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holding 6,250,000 shares of our issued and outstanding Preferred Stock, or 100% of such class, have approved the Reverse/Forward Stock Split and the Authorized Share Increase. Therefore, on an as-converted to Common Stock basis, stockholders holding 72,323,003 shares of Common Stock, or approximately 73% of our total voting power on an as-converted basis, have approved the Reverse/Forward Stock Split and the Authorized Share Increase. The resolutions adopted by the Board and the written consents of the stockholders grant us the authority to file the Certificates of Amendment. The Certificates of Amendment cannot be filed with the Secretary of State of the State of Delaware until at least 20 calendar days after the date this Information Statement is first mailed to our stockholders. As a result, it is anticipated that the Certificates of Amendment will be filed with the Secretary of State of the

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State of Delaware, and the Reverse/Forward Stock Split and Authorized Share Increase will be consummated, on _____, 2009, or as soon thereafter as practicable.

You are urged to read this Information Statement in its entirety for a description of the Reverse/Forward Stock Split and the Authorized Share Increase.

As a result of the Reverse/Forward Stock Split, stockholders owning fewer than 50,000 shares of Common Stock will be paid, in lieu of fractional shares, cash in an amount equal to \$0.14 per share for each share of Common Stock owned immediately prior to the Reverse Split and will no longer be stockholders. The holdings of all other stockholders will remain unchanged. **Please note, if you hold your shares in street name (i.e., in a brokerage account), you are not considered to be the record holder of those shares. Accordingly, even though your broker is expected to provide Continental Stock Transfer and Trust Company, who will act as our exchange and payment agent (the Exchange Agent), with information regarding the beneficial ownership positions it holds, if you wish to ensure that your ownership position is accurately reported to the Exchange Agent, you should instruct your broker to transfer your shares into a record account in your name immediately. If your broker holds more than 50,000 shares of our Common Stock in the aggregate, we cannot ensure that you will be paid cash in lieu of fractional interests with respect to such shares.**

We intend to finance the purchase of fractional shares through the sale and issuance of additional shares of Preferred Stock for gross proceeds of up to \$4.0 million, as described in this Information Statement (the *Financing*). The intended effect of the Reverse/Forward Stock Split is to reduce the number of record holders of Common Stock to fewer than 300 so that we will be eligible to terminate the public registration of our Common Stock under the Securities Exchange Act of 1934, as amended (the *Exchange Act*). If the Reverse/Forward Stock Split has the intended effect, we intend to immediately file with the Securities and Exchange Commission (the *Commission*) a Certificate and Notice of Termination of Registration under Section 12(g) of the Exchange Act on Form 15 to terminate the registration of our Common Stock. Immediately upon filing the Form 15, our obligation to file periodic reports with the Securities and Exchange Commission (the *Commission*), such as quarterly, annual and current reports on Forms 10-Q, 10-K and 8-K, respectively, will be suspended, and we will no longer be subject to the Commission's proxy rules. However, we will continue to be subject to the general anti-fraud provisions of federal and applicable state securities laws. Deregistration of our Common Stock will be effective 90 days after the filing of the Form 15, although this period may be accelerated by the Commission.

The Reverse/Forward Stock Split was approved by the Board which, among other factors, considered the recommendation of a duly appointed special committee of the Board comprised entirely of independent directors (the *Special Committee*) formed to evaluate the feasibility and fairness from a financial point of view to our unaffiliated stockholders of a reverse split followed by a cash out of fractional interests and to recommend a price to effect the cash out that is fair to those stockholders. Although the Reverse/Forward Stock Split has been approved by the requisite stockholders, the Board may determine not to effect the Reverse/Forward Stock Split under certain circumstances. We have entered into an agreement with certain of our existing investors to issue additional shares of Preferred Stock in order to finance the payment of cash for fractional shares as part of the Reverse Split (the *Financing*). However, if the Board elects to abandon the Reverse Split prior to the closing of the Financing we may, under certain circumstances, be required to pay a termination fee of \$160,000 plus expenses to the investor group that has committed to finance the cash out of fractional interests in connection with the Reverse Split.

This Information Statement is being furnished to all of our stockholders pursuant to Section 14(c) of the Exchange Act, the rules promulgated thereunder and the provisions of the DGCL, solely for the purpose of informing stockholders of the Reverse/Forward Stock Split, the Authorized Share Increase, the Financing and the other transactions described herein before they take effect. This Information Statement also serves as notice of the action taken by stockholders without a meeting, pursuant to Section 228(e) of the DGCL.

NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED OF THIS INFORMATION STATEMENT OR THE TRANSACTIONS DESCRIBED IN THIS INFORMATION STATEMENT, PASSED UPON THE MERITS OR FAIRNESS OF THE TRANSACTIONS DESCRIBED IN THIS INFORMATION STATEMENT, OR PASSED UPON THE ADEQUACY OR ACCURACY OF THE DISCLOSURE IN THIS INFORMATION STATEMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

This Information Statement is dated _____, 2008 and is first being mailed to our stockholders on or about _____, 2008. We will pay the expenses of furnishing this information statement to stockholders, including the cost of preparing, assembling and mailing this Information Statement.

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By Order of the Board of Directors,

/s/ Chris E. Paterson

Chris E. Paterson

Chief Executive Officer

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SUMMARY TERM SHEET

The following is a summary of the material information regarding the Reverse/Forward Stock Split and the Authorized Share Increase. For a more complete description of the terms and effects of the Reverse/Forward Stock Split and the Authorized Share Increase, you are urged to read carefully the entire Information Statement and each of the documents that we have attached as Annexes to this Information Statement.

After consideration of several factors, including the recommendation of the Special Committee of a reverse split followed by a cash out of fractional interests, the Board has unanimously approved a 1-for-50,000 Reverse Split of our Common Stock, followed immediately thereafter by a 50,000-for-1 Forward Split of our Common Stock. See the information under the caption *General Information About the Reverse/Forward Stock Split* in this Information Statement.

Our Board has also unanimously approved increasing the number of authorized shares of our Common Stock under our Certificate of Incorporation from 100,000,000 shares to 200,000,000 shares. We intend to effect the Authorized Share Increase in order to provide us with additional flexibility to use our capital stock for future business and financial purposes, including the issuance of shares pursuant to convertible securities outstanding as of the date of this Information Statement and shares of Preferred Stock that we intend to issue in connection with the Financing. See the information under the captions *General Information About the Authorized Share Increase* and *General Information About the Reverse/Forward Stock Split Financing of the Reverse/Forward Stock Split* in this Information Statement.

The approval of the Reverse/Forward Stock Split and the Authorized Share Increase requires the affirmative vote or written consent of a majority of the votes entitled to be cast by holders of each of (a) the issued and outstanding shares of Common Stock, voting as a separate class, and (b) the issued and outstanding shares of Common Stock and Preferred Stock, voting together as a single class on an as-converted basis. Each share of Preferred Stock outstanding has the same voting power as five shares of Common Stock. Stockholders holding 41,073,003 shares of our issued and outstanding Common Stock, or approximately 61% of the total Common Stock class vote, executed written consents approving the Authorized Share Increase and the Reverse/Forward Stock Split. In addition, stockholders holding 6,250,000 shares of our issued and outstanding Preferred Stock, or 100% of such class, executed written consents approving the Authorized Share Increase and the Reverse/Forward Stock Split. Therefore, on an as-converted to Common Stock basis, stockholders holding 72,323,003 shares of Common Stock, or approximately 73% of our total voting power on an as-converted basis, have approved the Reverse/Forward Stock Split and the Authorized Share Increase. See the information under the captions *General Information About the Reverse/Forward Stock Split Vote Required* and *General Information About the Authorized Share Increase Vote Required* in this Information Statement. The Reverse/Forward Stock Split and the Authorized Share Increase will be effected pursuant to the filing of the Certificates of Amendment attached to this Information Statement as *Annexes A-1 and A-2* with the Secretary of State of the State of Delaware. When the Reverse/Forward Stock Split becomes effective, if you hold at least 50,000 shares of Common Stock, the number of shares of Common Stock that you hold will not change, and you will not be entitled to receive any cash payment. You will not need to take any immediate action, including exchanging or returning any existing stock certificates, which will continue to evidence ownership of the same number of shares as set forth currently on the face of such certificates (although we may contact you after the completion of the Reverse/Forward Stock Split to reissue you a new certificate representing the same number of shares). See the information under the captions *Special Factors Effects of the Reverse/Forward Stock Split* and *General Information About the Reverse/Forward Stock Split Financing of the Reverse/Forward Stock Split Stockholders Agreement* in this Information Statement.

When the Reverse/Forward Stock Split becomes effective, if you hold fewer than a total of 50,000 shares of Common Stock, you will receive a cash payment of \$0.14 per pre-split share. As soon as practicable after the Reverse/Forward Stock Split, you will be notified and asked to surrender your stock certificates to our Exchange Agent. You should allow for approximately five business days after mailing for the Exchange Agent to receive your stock certificates surrendered. Upon receipt of a properly completed letter of transmittal and your stock certificates by the Exchange Agent, you will receive your cash payment within approximately

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seven to 10 business days. See the information under the captions Special Factors Effects of the Reverse/Forward Stock Split and General Information About the Reverse/Forward Stock Split Exchange of Certificates for Cash Payment in this Information Statement.

Please note, if you hold your shares in street name (i.e., in a brokerage account), you are not considered to be the record holder of those shares. Accordingly, even though your broker is expected to provide our Exchange Agent with information regarding the beneficial ownership positions it holds, if you wish to ensure that your ownership position is accurately reported to the Exchange Agent, you should instruct your broker to transfer your shares into a record account in your name immediately. If your broker holds more than 50,000 shares of our Common Stock in the aggregate, we cannot ensure that you will be paid cash in lieu of fractional interests with respect to such shares.

The Reverse/Forward Stock Split will not affect holders of our outstanding Preferred Stock, options and warrants to purchase shares of our Common Stock, whether exercisable or unexercisable, or outstanding convertible promissory notes. Holders of those convertible and exercisable securities will, following the Reverse/Forward Stock Split, continue to hold such securities and their terms will not be affected. See the information under the caption Special Factors Effects of the Reverse/Forward Stock Split in this Information Statement.

When the Reverse/Forward Stock Split becomes effective, we intend to terminate the registration of our Common Stock with the Commission. Upon termination of our registration, we will no longer file periodic reports with the Commission, including Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K, and we will not be subject to the Commission's proxy rules. See the information under the captions Special Factors Purposes of and Reasons for the Reverse/Forward Stock Split and General Information About the Reverse/Forward Stock Split Termination of Exchange Act Registration in this Information Statement.

After consummation of the Reverse/Forward Stock Split, we expect our business and operations generally to continue as they are currently being conducted. We do not currently plan to initiate any new operational or strategic projects. However, we may seek to restructure our corporate organization in order to consolidate certain of our wholly-owned subsidiaries formed in jurisdictions where we no longer engage in business. We may also seek to upgrade and/or integrate certain of our information technology systems, in order to make such systems more scalable and efficient. Also, we expect to have certain changes in our Board and management. Our executive vice chairman and board member, Michael J. Condrón, will become our president and chief executive officer upon the deregistration of our Common Stock. Our current chief executive officer, Chris E. Paterson, will continue to serve in that role until Mr. Condrón takes office. We also do not currently have a chief financial officer. However, we expect that our current executive vice president of administration, Thomas J. Hannon, who joined us in November 2008, will, subject to the approval of the Board, become our executive vice president and chief financial officer upon the earlier of the consummation of the Reverse/Forward Stock Split or March 31, 2009. See the information under the caption General Information About the Reverse/Forward Stock Split Conduct of Our Business After the Reverse/Forward Stock Split in this Information Statement.

The Special Committee retained the services of a financial advisory firm, Navigant Consulting, Inc. (*Navigant*), to render an opinion as to the fairness from a financial point of view of the consideration to be paid to the unaffiliated holders of shares of our Common Stock who will receive cash payments for their pre-split shares and will not be continuing stockholders. See the information under the caption Special Factors Summary of Fairness Opinion in this Information Statement. The full text of the written opinion of Navigant, which sets forth assumptions made, procedures followed, matters considered and the qualifications and limitations on the scope of the review undertaken in connection with the opinion, is attached to this Information Statement as *Annex B*. You are urged to, and should, read the opinion of Navigant carefully and in its entirety.

For those stockholders who receive a cash payment as a result of the Reverse/Forward Stock Split, your receipt of cash will be a taxable transaction for United States federal income tax purposes and may be taxable for state, local, foreign and other tax purposes as well. For our continuing stockholders who retain their Common Stock immediately following the Reverse/Forward Stock Split without the receipt of a cash payment, you will not recognize any gain or loss for federal income tax purposes. See the information under the caption Special

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Factors Federal Income Tax Consequences of the Reverse/Forward Stock Split in this Information Statement. **You are urged to consult with your own tax advisor regarding the tax consequences of the Reverse/Forward Stock Split in light of your particular circumstances.**

Stockholders are not entitled to appraisal rights under either our governance documents or the DGCL. See the information under the caption General Information About the Reverse/Forward Stock Split Appraisal Rights in this Information Statement. Under the rules of the Commission, certain individuals and entities are required to provide certain disclosures to our stockholders in order for us to effect the Reverse/Forward Stock Split. These entities and individuals are: (1) the Company; (2) Psilos Group Partners, L.P., a Delaware limited partnership (*Psilos Fund I*), (3) Psilos Group Partners II, L.P., a Delaware limited partnership (*Psilos Fund II*), (4) Psilos/CareGuide Investment, L.P., a Delaware limited partnership (*Psilos/CareGuide*, and, together with Psilos Fund I and Psilos Fund II, the *Psilos Funds*), (5) Derace Schaffer, M.D., a member of our Board, (6) John Pappajohn, a member of our Board, (7) Essex Woodlands Health Ventures IV, L.P., a Delaware limited partnership (*Essex IV*), (8) Essex Woodlands Health Ventures V, L.P., a Delaware limited partnership (*Essex V* and, together with Essex IV, the *Essex Funds*), and (9) Hickory Venture Capital Corporation (*Hickory*, and, together with the Psilos Funds, the Essex Funds, Dr. Schaffer and Mr. Pappajohn, the *Investor Group*). In this Information Statement, we refer to the Company and the Investor Group collectively as the *Filing Persons*. See the information under the captions Information About the Company and Information About Other Filing Persons in this Information Statement.

Upon consummation of the Reverse/Forward Stock Split, we estimate that we will pay approximately \$0.8 million to cash out fractional shares as part of the Reverse/Forward Stock Split, including certain of the shares previously held by Radius Venture Partners I, L.P. (*Radius*). However, this amount could increase or decrease depending on how many shares we are actually required to cash out upon consummation of the Reverse/Forward Stock Split, which will depend in part on whether stockholders who presently own less than 50,000 shares buy additional shares in order to remain stockholders following the Reverse/Forward Stock Split and whether stockholders who presently own 50,000 or more shares sell shares in order to participate in the cash out. In addition, we anticipate incurring approximately \$1.0 million in advisory, legal, financial, accounting, printing and other fees and costs in connection with the Reverse/Forward Stock Split and related transactions. See the information under the caption General Information About the Reverse/Forward Stock Split Fees and Expenses in this Information Statement.

To fund the Reverse/Forward Stock Split, including associated fees and costs, we will issue shares of our Preferred Stock in the Financing. We expect to receive gross proceeds of up to \$4.0 million from the Financing, under which the members of the Investor Group have agreed to purchase our Preferred Stock at a price of \$0.60 per share (or, since each share of Preferred Stock issued in the Financing will initially be convertible into five shares of Common Stock, \$0.12 on a common equivalent basis). As a result of issuing additional shares of Preferred Stock, continuing stockholders who are not members of the Investor Group will incur dilution of approximately 22% in terms of their percentage ownership of our Company, on an as-converted to Common Stock basis, assuming the consummation of the Reverse/Forward Stock Split, the repurchase of fractional interests and the completion of the Financing in the amount of \$4.0 million. Any proceeds of the Financing beyond those necessary to repurchase shares and the costs of the Reverse/Forward Stock Split, will be used for working capital and other general corporate purposes. See the information under the captions Special Factors Potential Disadvantages of the Reverse/Forward Stock Split and General Information About the Reverse/Forward Stock Split Financing of the Reverse/Forward Stock Split in this Information Statement. The terms and conditions of the Financing are set forth in a stock purchase agreement, as amended (the *Purchase Agreement*) by and among the Company and each member of the Investor Group. The Investor Group's obligations under the Purchase Agreement are expressly contingent on, among other things, the consummation of the Reverse/Forward Stock Split and deregistration of our Common Stock with the Commission. If we are unable to consummate the Reverse/Forward Stock Split or the deregistration of our Common Stock, or if we are unable to satisfy any of the other conditions set forth in the Purchase Agreement, we may not receive any proceeds under the Purchase Agreement and therefore may not be able to consummate the transactions described in this Information Statement. See the information under the caption General Information About the Reverse/Forward Stock Split Financing of the Reverse/Forward Stock Split

Purchase Agreement in this Information Statement.

Upon consummation of the Reverse/Forward Stock Split and the other transactions described in this Information Statement, we also intend to enter into a stockholders agreement (the *Stockholders Agreement*), substantially in the form attached to this Information Statement as *Annex C*, with certain of our continuing stockholders. Each member of the Investor Group has agreed to become a party to the Stockholders Agreement upon the closing of the Financing. Also, as a condition to the Investor Group's performance of its obligations under the Purchase Agreement, each of our directors and officers are required to become a party to the Stockholders Agreement upon the closing of the Financing. Following the consummation of the Reverse/Forward Stock Split, all other continuing stockholders will be contacted regarding becoming parties to the Stockholders Agreement, but are not required to do so. The Stockholders Agreement will provide to each stockholder party to it certain rights, including registration rights, the right, under certain circumstances, to purchase shares of stock proposed to be transferred by other stockholders who are party to the agreement or to sell stock along with such stockholder, and, for the Investor Group only, the right to specified financial information and preemptive rights to purchase its pro rata portion of equity securities that we may issue, subject, in all circumstances, to the terms of the Stockholders Agreement. Stockholders who are party to the agreement will also be subject to certain obligations, including restrictions on their ability to transfer their shares and an agreement to vote their shares in favor of the Board members designated by the Psilos Funds, the Essex Funds, Mr. Pappajohn and Dr. Schaffer and, in certain circumstances, to vote in favor of a sale of the Company (as such term is defined in the Stockholders Agreement), to the extent such a sale is approved by holders of at least two-thirds of the outstanding Preferred Stock. Upon the consummation of the Reverse/Forward Stock Split, we will not be obligated, except as may be provided by law, to provide continuing stockholders other than members of the Investor Group with any ongoing financial information about us. See the information under the caption General Information About the Reverse/Forward Stock Split Financing of the Reverse/Forward Stock Split Stockholders Agreement in this Information Statement.

Our Board has unanimously determined that the Reverse/Forward Stock Split, including the other transactions contemplated in connection with the Reverse/Forward Stock Split, is fair to and in the best interests of all of our unaffiliated stockholders, including those stockholders who will receive only cash as a result of the Reverse/Forward Stock Split as well as those stockholders who will continue as stockholders after the consummation of the Reverse/Forward Stock Split. Nonetheless, the Board believes that it is prudent to recognize that, between the date of this Information Statement and the date that the Reverse/Forward Stock Split will become effective, factual circumstances could change such that it might not be appropriate or desirable to effect the Reverse/Forward Stock Split at that time or on the terms currently proposed. Such factual circumstances could include a superior offer to our stockholders, a material change in our business or financial condition or litigation affecting our ability to proceed with the Reverse/Forward Stock Split. If the Board decides to withdraw or modify the Reverse/Forward Stock Split, the Board will notify the stockholders of such decision promptly in accordance with applicable rules and regulations. We may terminate the Purchase Agreement in order to engage in a transaction that the Board concludes in good faith is (1) on terms and conditions materially more favorable from a financial point of view to our stockholders than those contemplated by the Reverse/Forward Stock Split, (2) the conditions to the consummation of which are all reasonably capable of being satisfied without undue delay and (3) for which financing, to the extent required, is committed (a *Superior Offer*), if the Board concludes in good faith that such action is required in order for the Board to comply with its fiduciary obligations to our stockholders under applicable law. If we terminate the Purchase Agreement as a result of a Superior Offer, we would be obligated to pay the Investor Group \$160,000 plus all of its out-of-pocket costs and expenses, including reasonable legal fees and expenses (the *Termination Fee*), incurred in connection with the Purchase Agreement and the transactions contemplated by it. See the disclosure under the caption General Information About the Reverse/Forward Stock Split Financing of the Reverse/Forward Stock Split in this Information Statement.

QUESTIONS AND ANSWERS ABOUT THE REVERSE/FORWARD STOCK SPLIT AND THE AUTHORIZED SHARE INCREASE

Following are some questions about the Reverse/Forward Stock Split, the Authorized Share Increase and the related transactions that may be raised by our stockholders, and answers to each of those questions. The answers to the questions below may not include all the information that is important to you. You are urged to read carefully the entire Information Statement and each of the documents that we have attached as Annexes to this Information Statement.

Q: What are some of the advantages of the Reverse/Forward Stock Split?

- A: Our Board believes that the Reverse/Forward Stock Split may have the following advantages, among others:
- we will terminate the registration of our Common Stock under the Exchange Act, which will eliminate the significant costs related to complying with our obligations as a public company. We estimate that following our deregistration we will save approximately \$750,000 before taxes annually and a portion of approximately \$250,000 in one-time expense, as a result of not having to incur certain external auditor, consulting and legal fees and other expenses, including the hiring of additional personnel, related to preparation for and ongoing compliance with the internal controls audit requirements imposed by Section 404 (*Section 404*) of the Sarbanes-Oxley Act of 2002 (the *Sarbanes-Oxley Act*), which we would become subject to beginning with our fiscal year ending December 31, 2009;
 - small stockholders will not be obligated to pay any commissions in connection with the Reverse/Forward Stock Split. However, if you hold your shares through a nominee your nominee may charge you a fee;
 - we believe we will be able to achieve overhead reductions associated with the Reverse/Forward Stock Split without negatively affecting our business operations. Since we will no longer have to comply with the public reporting and other requirements of the Exchange Act and the Sarbanes-Oxley Act, we will no longer need to incur certain expenses relating to printing and mailing stockholder documents, Commission filing fees and personnel time required to comply with our obligations under certain federal securities laws;
 - we will be able to provide complete liquidity for our stockholders holding fewer than 50,000 shares where there has, recently, been limited liquidity available through the public trading markets; and
 - we may benefit from not having to reveal detailed financial and operational information to the public and our competitors.

See the information under the captions Special Factors Purposes of and Reasons for the Reverse/Forward Stock Split and Special Factors Potential Advantages of the Reverse/Forward Stock Split in this Information Statement.

Q: What are some of the disadvantages of the Reverse/Forward Stock Split?

- A: Our Board believes that the Reverse/Forward Stock Split may have the following disadvantages, among others:
- stockholders owning fewer than 50,000 shares of our Common Stock will not have an opportunity to liquidate their shares at a time and for a price of their choosing. Instead, such stockholders will be cashed out, will no longer be stockholders and will not have the opportunity to participate in or benefit from any future potential appreciation in our value;
 - stockholders holding our Common Stock following the Reverse/Forward Stock Split will no longer have readily available to them all of the legally mandated information regarding our operations and financial results that is currently available in our filings with the Commission;
 - it will be more difficult for us to access the public capital markets;
 - the termination of our Exchange Act registration will make many of the provisions of the Exchange Act that are intended to protect investors, such as certain short-swing profit provisions of Section 16, the proxy solicitation rules under Section 14 and the stock ownership reporting rules under Section 13, no longer applicable;
 - the Sarbanes-Oxley Act, which imposed many additional rules and regulations on public companies that were designed to protect investors, will no longer apply to us; and
 - stockholders will no longer have certain other rights and protections that the federal securities laws give to stockholders of public companies.

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See the information under the caption "Special Factors - Potential Disadvantages of the Reverse/Forward Stock Split" in this Information Statement.

Q: What are some of the factors that the Board considered in approving the Reverse/Forward Stock Split?

- A: The Board considered numerous factors in approving the Reverse/Forward Stock Split, including:
- the financial presentations and analyses of management, the Special Committee and Navigant, including Navigant's valuation of the Company and determination of a range of fair prices per pre-split share;
 - the Board's discussions and conclusions about the fairness of the price of \$0.14 per pre-split share to be paid following the Reverse/Forward Stock Split to our stockholders owning fewer than 50,000 shares of our Common Stock at the time of the Reverse/Forward Stock Split;
 - the recommendation of the Special Committee to the Board regarding the feasibility and fairness from a financial point of view to our unaffiliated stockholders of a reverse split followed by a cash out of fractional interests and its recommendation of a price to effect such a cash out that is fair to those stockholders;
 - the opinion of Navigant to the effect that, as of June 18, 2008 (the date of the opinion), consideration of \$0.14 per pre-split share is fair, from a financial point of view, to holders of shares of Common Stock who will receive cash payments for their pre-split shares and will not be continuing stockholders;
 - the projected tangible and intangible cost savings to us by terminating our status as a public company; and
 - the fact that there has been only a limited public trading market for our Common Stock.

For a more comprehensive review of the factors considered by the Board, see the information under the caption "Special Factors" in this Information Statement.

Q: What will the effect of the Reverse/Forward Stock Split be?

- A: The effect of the Reverse/Forward Stock Split will be as follows:
- when the Reverse/Forward Stock Split becomes effective, if you are a holder of at least 50,000 shares of Common Stock, the number of shares of Common Stock that you hold will not change, and you will not be entitled to receive any cash payment. You will not need to take any immediate action, including exchanging or returning any existing stock certificates, which will continue to evidence ownership of the same number of shares as set forth currently on the face of the certificates, although you may be contacted after the transaction to exchange your stock certificates for stock certificates appropriate for a private company;
 - when the Reverse/Forward Stock Split becomes effective, if you are a holder of fewer than 50,000 shares of Common Stock, you will receive a cash payment of \$0.14 per pre-split share. As soon as practicable after the Reverse/Forward Stock Split, you will be notified and asked to surrender your stock certificates to the Exchange Agent. You should allow for approximately five business days after mailing for the Exchange Agent to receive your stock certificates surrendered. Upon receipt of a properly completed letter of transmittal and your stock certificates by the Exchange Agent, you will receive your cash payment within approximately seven to 10 business days; and
 - the Reverse/Forward Stock Split will not affect holders of our outstanding Preferred Stock or options and warrants to purchase shares of our Common Stock, whether exercisable or unexercisable, or outstanding convertible promissory notes. Holders of these convertible and exercisable securities will, following the Reverse/Forward Stock Split, continue to hold such securities and their terms will not be affected.

Stockholders holding our Common Stock in "street name" (i.e., in a brokerage account) may be subject to special requirements. Please carefully review the information under the caption "Special Factors - Effects of the Reverse/Forward Stock Split" in this Information Statement.

Q: How will payment for shares be effected?

A: As soon as practicable after the Reverse/Forward Stock Split, the Exchange Agent will send all stockholders with stock certificates representing the right to receive cash payments a letter of transmittal to be used to transmit Common Stock certificates. Upon proper completion and execution of the letter of transmittal, and the return of the letter of transmittal and accompanying stock certificate(s) to the Exchange Agent, each stockholder entitled to receive payment will receive a check for such stockholder's stock. Stockholders should allow for approximately five business days after mailing for the Exchange Agent to receive the letter of transmittal and accompanying stock certificate. The Exchange Agent will send a check for such stockholder's stock within approximately seven to 10 business days after receiving such letter of transmittal and accompanying stock certificate. In the event we are unable to locate a stockholder, or if a stockholder fails properly to complete, execute and return the letter of transmittal and accompanying stock certificate to the Exchange Agent, any funds payable to such holder pursuant to the Reverse/Forward Stock Split will be held in escrow until a proper claim is made, subject to applicable abandoned property laws. Please do not send your stock certificates to us or the Exchange Agent until after you have received the instructions. See the information under the caption "General Information About the Reverse/Forward Stock Split Exchange of Certificates for Cash Payment" in this Information Statement.

Q: What are the interests of our directors and executive officers in the Reverse/Forward Stock Split and the Financing?

A: As a result of the Reverse/Forward Stock Split and the Financing (assuming the sale of an aggregate of \$4.0 million of our Preferred Stock), we estimate that our directors and executive officers and their affiliated entities, collectively, will increase their beneficial ownership of our Common Stock from approximately 71% to 83%. The number of shares held by our directors and officers immediately prior to the Reverse/Forward Stock Split will remain substantially unchanged as a result of the Reverse/Forward Stock Split. Those of our directors who are participating or who are representatives of investors who are participating in the Financing will increase their beneficial ownership as a result of the Financing. Their aggregate interest will also increase as a percentage of outstanding shares due to the retirement of fractional shares purchased by us as part of the Reverse/Forward Stock Split. Each share of Preferred Stock is, and each share of Preferred Stock to be issued in the Financing initially will be, convertible into five shares of Common Stock. In addition, in December 2008, Radius distributed all of its shares of our Common Stock to its partners. Albert Waxman, the chairman of our Board, is a limited partner of Radius and, by virtue of the distribution, Dr. Waxman received approximately 34,000 shares of Common Stock. Because these are the only shares that Dr. Waxman owns directly in his name, and because they are fewer than 50,000 shares, we expect these shares to be cashed out, at a price of \$0.14 per pre-split share, upon consummation of the Reverse/Forward Stock Split on the same terms as all other stockholders holding less than 50,000 shares. See the information under the caption "Information About the Company Interests of our Executive Officers and Directors in the Reverse/Forward Stock Split and the Financing" in this Information Statement.

Q: What is the interest of the Investor Group in the Reverse/Forward Stock Split and the Financing?

A: As a result of the Reverse/Forward Stock Split and the Financing (assuming the sale of an aggregate of \$4.0 million of our Preferred Stock), we estimate that the Investor Group will increase its aggregate beneficial ownership of our Common Stock from approximately 75% to 84%. The number of shares of Common Stock and Preferred Stock held by the Investor Group immediately prior to the Reverse/Forward Stock Split will remain substantially unchanged as a result of the Reverse/Forward Stock Split. However, its aggregate percentage ownership of our Common Stock on an as-converted basis will increase due to the retirement of fractional shares purchased by us as part of the Reverse Split, as well as its acquisition of additional shares of Preferred Stock in the Financing. In addition, the Investor Group will have certain rights not shared by our other stockholders under the Stockholders Agreement, including the right to designate members of our Board, the right to receive periodic financial information about us and preemptive rights to purchase our equity securities that may be issued from time to time. See the information under the caption "Information About Other Filing Persons Interests of the Investor Group in the Reverse/Forward Stock Split and the Financing" in this Information Statement.

Q: What if I hold shares of Common Stock in street name ?

A: If you hold shares of our Common Stock in street name, then your broker, bank or other nominee is considered the stockholder of record with respect to those shares and not you. We intend to treat stockholders holding shares of our Common Stock in street name through a nominee (such as a bank or broker) in the same manner as stockholders whose

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shares are registered in their own name. Accordingly, if you hold 50,000 or more shares of Common Stock in street name you will remain a stockholder after consummation of the Reverse/Forward Stock Split. On the other hand, if you hold fewer than 50,000 shares of Common Stock in street name it is intended that you receive cash for your shares. However, it is also possible that the bank, broker or other nominee also holds shares for other beneficial owners of our Common Stock and that it may hold 50,000 or more shares *in the aggregate*. Therefore, depending upon your nominee's procedures, your nominee may not be obligated to treat the Reverse/Forward Stock Split as affecting its beneficial holders shares and you may not receive cash for your fractional interests. **If you hold fewer than 50,000 shares of our Common Stock in street name, we encourage you**