

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): September 7, 2022

EMBARK TECHNOLOGY, INC.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-39881
(Commission
File Number)

86-3343695
(I.R.S. Employer
Identification No.)

321 Alabama Street
San Francisco, CA 94110
(Address of principal executive offices, including zip code)

(415) 671-9628
(Registrant's telephone number, including area code)

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:

- 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
Class A common stock, par value \$0.0001 per share	EMBK	The Nasdaq Global Market
Warrants to purchase one share of Class A common stock, each at an exercise price of \$11.50 per share	EMBKW	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.

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

On September 7, 2022, the board of directors (the "Board") of Embark Technology, Inc. (the "Company") appointed Penelope Herscher as a Class II director. Ms. Herscher will serve with a term that will expire at the 2023 annual meeting. Ms. Herscher will serve as the Chairperson of the Board and as the Chairperson of the compensation committee of the Board. Ms. Herscher was appointed to the Board as an "independent" director. In connection with her appointment, the Company and Ms. Herscher have entered into the Company's standard indemnification agreement for directors.

Additionally, on September 7, 2022, the Board approved an amended and restated Non-Employee Director Compensation Policy (the "Non-Employee Director Policy"). Pursuant to the Non-Employee Director Policy, each eligible non-employee director will be entitled to certain cash fees, including an annual retainer of \$75,000. In addition, non-employee directors serving on one or more committees of our board of directors will receive the following additional annual fees, each earned and paid on a quarterly basis: (a) the chair of the Board will receive an additional annual fee of \$75,000, (b) the chair of our audit committee will receive an additional annual fee of \$25,000 and other members of our audit committee will receive an additional fee of \$12,500, (c) the chair of our compensation committee will receive an additional annual fee of \$15,000, and other members of our compensation committee will each receive an additional annual fee of \$7,500, and (d) the chair of our nominating and governance committee will receive an additional annual fee of \$10,000, and other members of our nominating and governance committee will receive an additional annual fee of \$5,000.

In addition, each eligible non-employee director will also be entitled to certain equity-based compensation. Eligible non-employee directors who are engaged in their role as of the date of any annual shareholder meeting will receive an annual restricted stock unit award with a grant date value of \$175,000, which will vest in equal monthly installments over the one-year period following the annual shareholder meeting, subject to the non-employee director continuing in service through each such date. In addition, each non-employee director who is elected or appointed to the board other than at the annual shareholder meeting will receive, on the date of the initial election or appointment, (i) a one-time restricted stock unit award with a grant date value of \$175,000, which will vest in equal monthly installments over the four-year period following the non-employee director's election or appointment (the "Start Date") and (ii) a one-time restricted stock unit award with a grant date value equal to the product of (a) \$175,000 and (b) the number of days beginning from the Start Date until the first annual meeting date following the Start Date divided by the number of days beginning on the first annual meeting date preceding the Start Date to the first annual meeting date following the Start Date, which will vest in monthly installments commencing on the first month following the Start Date and ending in the month of the expected first annual meeting following the Start Date, each award subject to the non-employee director continuing in service through each such date. In the event of a Change in Control (as defined in the Company's 2022 Incentive Award Plan), the equity awards granted pursuant to this policy will accelerate and vest in full.

The foregoing description of the Non-Employee Director Policy does not purport to be complete and is qualified in its entirety by reference to the full text of the Non-Employee Director Policy, a copy of which is filed as Exhibit 10.1 to this Current Report on Form 8-K and incorporated herein by reference.

In connection with her appointment, Ms. Herscher is eligible to receive the compensation described above under the Non-Employee Director Policy.

(d) Exhibits

Exhibit No. Description

10.1 [Embark Technology, Inc. Non-Employee Director Compensation Policy](#)

104.1 Cover Page Interactive Data File (embedded within the Inline XBRL document)

SIGNATURE

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.

Embark Technology, Inc.

Date: September 12, 2022

By: /s/ Richard Hawwa
Name: Richard Hawwa
Title: Chief Financial Officer

EMBARK TECHNOLOGY, INC.
NON-EMPLOYEE DIRECTOR COMPENSATION POLICY

Non-employee members of the board of directors (the “**Board**”) of Embark Technology, Inc. (the “**Company**”) shall be eligible to receive cash and equity compensation as set forth in this Non-Employee Director Compensation Policy (this “**Policy**”). The cash and equity compensation described in this Policy shall be paid or be made, as applicable, automatically and without further action of the Board, to each member of the Board who is not an employee of the Company or any parent or subsidiary of the Company (each, a “**Non-Employee Director**”) who may be eligible to receive such cash or equity compensation, unless such Non-Employee Director declines the receipt of such cash or equity compensation by written notice to the Company. This Policy shall become effective on September 7, 2022 and shall remain in effect until it is revised or rescinded by further action of the Board. This Policy may be amended, modified or terminated by the Board at any time in its sole discretion. The terms and conditions of this Policy shall supersede any prior cash and/or equity compensation arrangements for service as a member of the Board between the Company (or any predecessor thereto) and any of its Non-Employee Directors and between any subsidiary of the Company (or any predecessor thereto) and any of its non-employee directors.

(1) **Cash Compensation.**

(a) **Annual Retainers.** Each Non-Employee Director shall receive an annual retainer of \$75,000 for service on the Board.

(b) **Additional Annual Retainers.** In addition, a Non-Employee Director shall receive the following annual retainers:

(i) **Audit Committee.** A Non-Employee Director serving as a Chairperson of the Audit Committee shall receive an additional annual retainer of \$25,000 for such service. A Non-Employee Director serving as a member of the Audit Committee (other than the Chairperson thereof) shall receive an additional annual retainer of \$12,500 for such service.

(ii) **Compensation Committee.** A Non-Employee Director serving as a Chairperson of the Compensation Committee shall receive an additional annual retainer of \$15,000 for such service. A Non-Employee Director serving as a member of the Compensation Committee (other than the Chairperson thereof) shall receive an additional annual retainer of \$7,500 for such service.

(iii) **Nominating and Corporate Governance Committee.** A Non-Employee Director serving as a Chairperson of the Nominating and Corporate Governance Committee shall receive an additional annual retainer of \$10,000 for such service. A Non-Employee Director serving as a member of the Nominating and Corporate Governance Committee (other than the Chairperson thereof) shall receive an additional annual retainer of \$5,000 for such service.

(iv) **Chairperson.** A Non-Employee Director serving as a Chairperson of the Board shall receive an additional annual retainer of \$75,000 for such service.

(c) Payment of Retainers. The annual retainers described in Sections 1(a) and 1(b) shall be earned on a quarterly basis based on a calendar quarter and shall be paid by the Company in arrears not later than the fifteenth day following the end of each calendar quarter. In the event a Non-Employee Director does not serve as a Non-Employee Director, or in the applicable positions described in Section 1(b), for an entire calendar quarter, such Non-Employee Director shall receive a prorated portion of the retainer(s) otherwise payable to such Non-Employee Director for such calendar quarter pursuant to Sections 1(a) and 1(b), with such prorated portion determined by multiplying such otherwise payable retainer(s) by a fraction, the numerator of which is the number of days during which the Non-Employee Director serves as a Non-Employee Director or in the applicable positions described in Section 1(b) during the applicable calendar quarter and the denominator of which is the number of days in the applicable calendar quarter.

2. Equity Compensation. Non-Employee Directors shall be granted the equity awards described below. The awards described below shall be granted under and shall be subject to the terms and provisions of the Company's 2021 Incentive Award Plan or any other applicable Company equity incentive plan then-maintained by the Company (such plan, as may be amended from time to time, the "**Equity Plan**") and shall be granted subject to the execution and delivery of award agreements, including attached exhibits, in substantially the forms approved by the Board. All applicable terms of the Equity Plan apply to this Policy as if fully set forth herein, and all equity grants hereunder are subject in all respects to the terms of the Equity Plan.

(a) Annual Awards. Each Non-Employee Director who (i) serves on the Board as of the date of any annual meeting of the Company's stockholders (an "**Annual Meeting**") after the Effective Date and (ii) will continue to serve as a Non-Employee Director immediately following such Annual Meeting, shall be automatically granted, on the date of such Annual Meeting, an award of restricted stock units (unless otherwise determined by the Board), that has an aggregate fair value on the date of grant of \$175,000 (as determined in accordance with ASC 718 and subject to adjustment as provided in the Equity Plan). The awards described in this Section 2(b) shall be referred to as the "**Annual Awards.**" For the avoidance of doubt, a Non-Employee Director elected for the first time to the Board at an Annual Meeting shall receive only an Annual Award in connection with such election, and shall not receive any Start Date Award on the date of such Annual Meeting as well.

(b) Start Date Awards. Except as otherwise determined by the Board, each Non-Employee Director who is initially elected or appointed to the Board on any date other than the date of an Annual Meeting shall be automatically granted, on the date of such Non-Employee Director's initial election or appointment (such Non-Employee Director's "**Start Date**"), an award of restricted stock units that has an aggregate fair value on such Non-Employee Director's Start Date equal to \$175,000 (as determined in accordance with ASC 718) (with the number of shares of common stock underlying each such award subject to adjustment as provided in the Equity Plan). The awards described in this Section 2(c) shall be referred to as "**Start Date Awards.**" For the avoidance of doubt, no Non-Employee Director shall be granted more than one Start Date Award.

(c) Prorated Annual Awards. Except as otherwise determined by the Board, each Non-Employee Director who is initially elected or appointed to the Board on any date other

than the date of an Annual Meeting shall be automatically granted on such Non-Employee Director's Start Date, a prorated Annual Award of restricted stock units that has an aggregate fair value based on the following formula:

\$175,000 (as determined in accordance with ASC 718 as of the date of the Annual Meeting) (with the number of shares of common stock underlying each such award subject to adjustment as provided in the Equity Plan) MULTIPLIED BY the number of days beginning from the Start Date until the first Annual Meeting date following the Start Date DIVIDED BY the number of days beginning on the first Annual Meeting date preceding the Start Date to the first Annual Meeting date following the Start Date.

For the avoidance of doubt, no Non-Employee Director shall be granted more than one prorated Annual Award, though the Non-Employee Director shall be eligible to receive a new Annual Award in accordance with Section 2(a) beginning with the first Annual Meeting after the Non-Employee Director's Start Date.

(d) Termination of Employment of Employee Directors. Members of the Board (i) who are employees of the Company or any parent or subsidiary of the Company and (ii) who subsequently terminate their employment with the Company and any parent or subsidiary of the Company and remain on the Board will not receive a Start Date Award pursuant to Section 2(c) above, but to the extent that they are otherwise eligible, will be eligible to receive, after termination from employment with the Company and any parent or subsidiary of the Company, Annual Awards as described in Section 2(b) above.

(e) Vesting of Awards Granted to Non-Employee Directors. Each Start Date Award shall vest at a rate of 1/48th of the total number of shares subject to the Award on monthly intervals commencing on the first month following the Start Date. Each Annual Award shall vest at a rate of 1/12th of the total number of shares subject to the Annual Award on monthly intervals commencing on the first month following the Annual Meeting in which the Annual Award was granted with the exception of prorated Annual Awards, which will vest on a monthly schedule commencing on the first month following the Start Date and ending in the month of the first Annual Meeting following the Start Date. All Award vesting hereunder is subject to the Non-Employee Director continuing in service on the Board through the applicable vesting dates. No portion of an Annual Award or Start Date Award that is unvested at the time of a Non-Employee Director's termination of service on the Board shall become vested thereafter. All of a Non-Employee Director's Annual Awards and Start Date Awards shall vest in full immediately prior to the occurrence of a Change in Control (as defined in the Equity Plan), to the extent outstanding at such time.

* * * * *

Last Updated: September 7, 2022

