

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): October 12, 2022

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

Delaware
(State or other jurisdiction of incorporation)

001-39616
(Commission File Number)

27-3879804
(IRS Employer Identification No.)

2665 North First Street, Suite 300
San Jose, California
(Address of principal executive offices)

95134
(Zip Code)

Registrant's telephone number, including area code: (650) 351-7700

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:
Common Stock, \$0.0001 par value per share	EAR	The Nasdaq Stock Market LLC

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

As described in Item 5.07 below, on October 12, 2022, at the annual meeting of stockholders (the “Annual Meeting”) of Eargo, Inc. (the “Company”), the stockholders of the company approved a proposal recommended by the Company’s board of directors to amend the Company’s Amended and Restated Certificate of Incorporation to increase the number of authorized shares of common stock of the Company from 300,000,000 to 450,000,000 (the “Share Increase Amendment”). On October 13, 2022, the Share Increase Amendment was filed with the Secretary of State of the State of Delaware.

A copy of the as-filed Share Increase Amendment is attached hereto at Exhibit 3.1 and is incorporated into this Item 5.03 by reference.

Item 5.07. **Submission of Matters to a Vote of Security Holders.**

The Company held its Annual Meeting on October 12, 2022. A total of 31,486,533 shares of the Company’s common stock were present in person or represented by proxy at the Annual Meeting, representing approximately 79.89% of the Company’s common stock entitled to vote as of the September 6, 2022 record date (the “Record Date”). The following is a brief description of each matter voted upon at the Annual Meeting and the number of votes cast for, withheld or cast against, the number of abstentions and the number of broker non-votes with respect to each matter, as applicable.

1. The election of the director nominee to serve as a Class II director for a three-year term to expire at the 2025 annual meeting of stockholders or until his successor is duly elected. **The following Class II director was elected by the votes indicated.**

	For	Withheld	Broker Non-Votes
A. Brooke Seawell	23,204,323	2,004,566	6,277,644

2. The ratification of the appointment of Deloitte & Touche LLP as the Company’s independent registered public accounting firm for the fiscal year ending December 31, 2022. **The selection was ratified by the votes indicated.**

	For	Against	Abstain
	30,759,064	514,798	212,671

3. The approval, on a non-binding, advisory basis, of the frequency of future advisory votes on the compensation of the Company’s named executive officers (“NEOs”). **“One year” was approved as the frequency of future advisory votes on NEO compensation by the votes indicated.**

	One Year	Two Years	Three Years	Abstain	Broker Non-Votes
	24,136,540	176,725	614,875	280,749	6,277,644

4. The adoption of an amendment to the Company’s Amended and Restated Certificate of Incorporation to effect a reverse stock split of the Company’s common stock, at a ratio in the range of 1-for-5 to 1-for-50, such ratio to be determined by the Board of Directors and included in a public announcement. **The amendment was adopted as the number of votes “FOR” represented a majority of the shares of our common stock outstanding as of the Record Date.**

	For	Against	Abstain
	29,680,740	1,690,552	115,241

5. The adoption of the Share Increase Amendment. **The Share Increase Amendment was adopted as the number of votes “FOR” represented a majority of the shares of our common stock outstanding as of the Record Date.**

	For	Against	Abstain	Broker Non-Votes
	23,723,677	1,444,064	41,148	6,277,644

6. The approval, for purposes of complying with Nasdaq Listing Rule 5635, of the issuance of shares of our common stock issuable upon conversion of the senior secured convertible notes issued, or issuable, pursuant to the Note Purchase Agreement, dated June 24, 2022, by and among the Company, PSC Echo, LP and Drivetrain Agency Services, LLC, as administrative agent and collateral agent. **The issuance was approved by the votes indicated.**

For	Against	Abstain	Broker Non-Votes
23,985,858	1,154,575	68,456	6,277,644

Item 7.01 Regulation FD Disclosure.

A copy of a press release announcing the record date of the Company's proposed rights offering and related matters is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

The information contained in this Item 7.01, including Exhibit 99.1, is furnished herewith and shall not be deemed "filed" for purposes of Section 18 of the Securities and Exchange Act of 1934, as amended (the "Exchange Act"), or otherwise subject to the liabilities of that section, and such information shall not be deemed to be incorporated by reference into any of the Company's filings under the Securities Act of 1933, as amended, or the Exchange Act, except as shall be expressly set forth by specific reference in such filing.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
3.1	Share Increase Amendment.
99.1	Press release dated October 13, 2022.
104	Cover Page Interactive Data File (embedded within the inline XBRL document).

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.

Date: October 13, 2022

EARGO, INC.

By: /s/ Adam Laponis
Adam Laponis
Chief Financial Officer

**CERTIFICATE OF AMENDMENT
TO
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
EARGO, INC.**

Eargo, Inc. (the "Corporation"), a corporation organized and existing under and by virtue of the Delaware General Corporation Law, hereby certifies as follows:

- (a) The name of the Corporation is Eargo, Inc. and the date on which the original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware was November 12, 2010 (as subsequently amended and restated, the "Amended and Restated Certificate of Incorporation").
- (b) This Certificate of Amendment to Amended and Restated Certificate of Incorporation has been duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.
- (c) This Certificate of Amendment to Amended and Restated Certificate of Incorporation amends the Amended and Restated Certificate of Incorporation of the Corporation, as follows:
 - (i) Section 1 of Article IV of the Amended and Restated Certificate of Incorporation is hereby replaced in its entirety with the following:

Section 1. This Company is authorized to issue two classes of capital stock which shall be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares that the Company is authorized to issue is 455,000,000, of which 450,000,000 shares shall be Common Stock and 5,000,000 shares shall be Preferred Stock. The Common Stock shall have a par value of \$0.0001 per share and the Preferred Stock shall have a par value of \$0.0001 per share. Subject to the rights of the holders of any series of Preferred Stock, the number of authorized shares of any of the Common Stock or Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority in voting power of the stock of the Company with the power to vote thereon irrespective of the provisions of Section 242(b)(2) of the Delaware General Corporation Law or any successor provision thereof, and no vote of the holders of any of the Common Stock or Preferred Stock voting separately as a class shall be required therefor."

IN WITNESS WHEREOF, Eargo, Inc. has caused this Certificate of Amendment to the Amended and Restated Certificate of Incorporation be signed by its duly authorized officer on this 13th day of October, 2022.

EARGO, INC.

By: /s/ Christy La Pierre

Name: Christy La Pierre

Title: Chief Legal Officer and Secretary

EARGO ANNOUNCES RECORD DATE FOR PROPOSED RIGHTS OFFERING

- **Record Date established as October 24, 2022**
- **To be a stockholder of record, investors are advised to own EAR stock by 4:00 p.m. Eastern Time on Thursday, October 20, 2022 to account for T (trade) +2 settlement timing**

SAN JOSE, Calif., Oct. 13, 2022 (GLOBE NEWSWIRE) – Eargo, Inc. (“Eargo” or the “Company”) (NASDAQ: EAR), a medical device company on a mission to improve the quality of life for people with hearing loss, today announced that the record date for its proposed rights offering is October 24, 2022 at 5:00 p.m. Eastern Time (the “Record Date”). Prospective stockholders who wish to participate in the rights offering are advised to ensure that they complete their open market purchases of EAR’s common stock by October 20, 2022 to be considered a stockholder of record on the Record Date.

As previously announced, the Company intends to raise up to \$187.5 million in aggregate gross proceeds by way of a rights offering where its existing stockholders as of the Record Date will be granted rights to purchase shares of the Company’s common stock (the “Rights Offering”).

The Company filed a registration statement (File No. 333-267071) (the “Registration Statement”) with respect to the proposed Rights Offering with the Securities and Exchange Commission (the “SEC”) on August 25, 2022.

As background, on June 24, 2022, the Company entered into the note purchase agreement (the “Note Purchase Agreement”) with an affiliate of Patient Square Capital that contemplated the Rights Offering. On June 28, 2022, pursuant to the Note Purchase Agreement, the Company closed an initial issuance of \$100 million of senior secured convertible notes. Under the Note Purchase Agreement, the Company was required to obtain certain approvals of its stockholders to enable the Rights Offering to be conducted, which approvals were obtained at the Company’s 2022 annual meeting of stockholders held on October 12, 2022, and must complete the proposed Rights Offering by December 24, 2022. The Company intends to complete the Rights Offering by November 25, 2022 as the completion of the offering by such date provides more favorable terms for the Company and its stockholders under the Note Purchase Agreement.

In the Rights Offering, the Company will distribute to holders of Eargo’s common stock non-transferable rights to purchase up to an aggregate of 375,000,000 shares of at a subscription price of \$0.50 per share. Each right consists of a basic subscription privilege and an oversubscription privilege. The rights under the basic subscription privilege will be distributed in proportion to stockholders’ holdings on the Record Date. If a stockholder exercises his or her basic subscription right in full, and other stockholders do not, such stockholder will be entitled to an oversubscription privilege to purchase a portion of the unsubscribed shares at the subscription price, subject to proration and certain limitations.

The Company expects to use a substantial portion of the proceeds from the proposed Rights Offering to repay the outstanding notes issued to Patient Square Capital at a premium. Any notes not repaid will convert into the shares of common stock not subscribed for in the Rights Offering. The amount of common stock that Patient Square Capital will receive upon conversion of its notes will depend on the timing and level of participation of the Company’s stockholders in the Rights Offering.

Further details on the terms of the Rights Offering and the procedures pursuant to which eligible stockholders can exercise their rights, including any changes to the dates included in this press release, will be announced before the commencement of the Rights Offering.

No Rights Offering will be made until the Company announces the definitive terms of the Rights Offering and the Registration Statement incorporating those terms is declared effective by the SEC.

About Eargo

Eargo is a medical device company on a mission to improve hearing health. Our innovative products and go-to-market approach address the major challenges of traditional hearing aid adoption, including social stigma, accessibility and cost. We believe our Eargo hearing aids are the first virtually invisible, rechargeable, completely-in-canal, FDA-regulated, Class I or Class II exempt devices indicated to compensate for mild to moderate hearing loss. Our differentiated, consumer-first approach empowers consumers to take control of their hearing. Consumers can purchase online or over the phone and get personalized and convenient consultation and support from hearing professionals via phone, text, email or video chat. Eargo hearing aids are offered to consumers at approximately half the cost of competing hearing aids purchased through traditional channels in the United States.

Eargo's sixth generation device, Eargo 6, is an FDA Class II exempt hearing device featuring Sound Adjust technology that automatically optimizes the soundscape as the user moves between environments. Eargo 6 is available for purchase [here](#).

Related Links

<http://eargo.com>

Investor Contact

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Senior Vice President of Corporate Strategy and Investor Relations

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Cautionary Statement Regarding Forward-Looking Statements

This press release may contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. All statements other than statements of historical fact contained in this press release are forward-looking statements, including statements regarding the investment by Patient Square Capital, including the conversion of the notes, the terms of the anticipated Rights Offering, including the timing of the anticipated Rights Offering, or if it will occur at all, and stockholder participation in the Rights Offering. Forward-looking statements are not guarantees of future performance and are subject to risks, uncertainties and assumptions that could cause actual results and events to differ materially from those anticipated, including, but not limited to, risks and uncertainties related to the conversion of the notes issued pursuant to the Patient Square Capital investment; the timing of the anticipated Rights Offering, or if it will occur at all, and stockholder participation in the Rights Offering. These and other risks are described in greater detail under the section titled "Risk Factors" contained in the Company's Annual Report on Form 10-K, Quarterly Reports on Form 10-Q and other filings with the SEC. Any forward-looking statements in this press release are made pursuant to the Private Securities Litigation Reform Act of 1995, as amended, are based on current expectations, forecasts and assumptions, and speak only as of the date of this press release. Except as required by law, the Company undertakes no obligation to publicly update any forward-looking statements, whether as a result of new information, future events or otherwise.

Additional Information and Where to Find It

The Company has filed the Registration Statement (including a prospectus) with the SEC for the offering to which this press release relates. Before you invest, you should read the prospectus in that registration statement and other documents the Company has filed with the SEC for more complete information about the Company and this offering. You may get these documents for free by visiting EDGAR on the SEC website at www.sec.gov.

Alternatively, you may obtain copies of the prospectus, by contacting Morrow Sodali, the information agent for the offering, at:

Morrow Sodali LLC
333 Ludlow Street
5th Floor, South Tower
Stamford, Connecticut 06902
Individuals call toll-free: (800) 662-5200
Banks and Brokerage Firms, please call (203) 658-9400
E-mail: EAR.info@investor.morrowsodali.com

No Offer or Solicitation

This press release shall not constitute an offer, nor a solicitation of an offer, of the sale or purchase of securities, nor shall any securities of the Company be offered or sold in any jurisdiction in which such an offer, solicitation or sale would be unlawful. It is an outline of matters for discussion only. Neither the SEC nor any state securities commission has approved or disapproved of the transactions contemplated hereby or determined if this document is truthful or complete. Any representation to the contrary is a criminal offense. In connection with the Rights Offering transaction discussed herein, the Registration Statement was filed with the SEC on August 25, 2022. Stockholders of the Company are urged to read the Registration Statement and the documents incorporated by reference therein before making any investment decision with respect to the Rights Offering because they will contain important information regarding the proposed Rights Offering transaction. You should not construe the contents of this press release as legal, tax, accounting or investment advice or a recommendation. You should consult your own counsel and tax and financial advisors as to legal and related matters concerning the matters described herein.
