

CALLWAVE INC  
Form PRER14A  
June 02, 2009  
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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
**Washington, D.C. 20549**

**SCHEDULE 14A INFORMATION**

**Proxy Statement Pursuant to Section 14(a) of the Securities**  
**Exchange Act of 1934**

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- |                                     |   |                          |  |
|-------------------------------------|---|--------------------------|--|
| <input checked="" type="checkbox"/> | Preliminary Proxy Statement                 | <input type="checkbox"/> | Confidential, for Use of the Commission Only<br>(as permitted by Rule 14a-6(e)(2)) |
| <input type="checkbox"/>            | Definitive Proxy Statement                  |                          |  |
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**CALLWAVE, INC.**

(Name of Registrant as Specified In Its Charter)

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(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

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No fee required.

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1) Title of each Class of securities to which transaction applies:

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2) Aggregate number of securities to which transaction applies:

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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):

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4) Proposed maximum aggregate value of transaction:

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5) Total fee paid:

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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:

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2) Form, Schedule or Registration Statement No.:

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3) Filing Party:

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4) Date Filed:

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**CALLWAVE, INC.**

**136 West Canon Perdido Street, Suite C**

**Santa Barbara, CA 93101**

June , 2009

Dear Stockholder,

We will hold a Special Meeting of Stockholders to be held at 8:00 a.m., Pacific Standard Time, on June 29, 2009, at 136 W. Canon Perdido Street, Suite C, Santa Barbara, California 93101.

At the special meeting, you will be asked to consider and vote upon proposals to amend our amended and restated certificate of incorporation (referred to as the Certificate of Incorporation ) to effect a reverse 1 for 5,000 stock split of our common stock, followed immediately by a forward 5,000 for 1 stock split of our common stock. If that proposal is approved, we will file with the State of Delaware certificates of amendment to our Amended and Restated Certificate of Incorporation to effectuate the reverse and forward stock splits, at which time each share of common stock held by a stockholder owning 5,000 shares or more of CallWave in any one account will be unaffected, while the shares held by persons owning less than 5,000 shares of CallWave in any one account will be converted into the right to receive a price per share held prior to the reverse stock split equal to the greater of (i) the average closing price per share for the period of ten (10) days trading ending with the last trading day immediately prior to the effective date of the reverse stock split, or (ii) \$1.15.

During the past year, our stock price fell dramatically, trading volumes diminished, and few analysts covered our Company. The burdens of remaining a public company now significantly outweigh the benefits.

The stock splits are the second part of a going private transaction that began with a tender offer by CallWave to purchase shares of its common stock for \$1.15 per share. The tender offer closed on June 4, 2009, and we purchased shares of common stock tendered during the offer period for an aggregate purchase price of \$ .

The purpose of the going private transaction is to take CallWave private, delisting its common stock from the NASDAQ Global Market and terminating its reporting obligations under the Securities Exchange Act of 1934, as amended.

Our board of directors, by unanimous vote, and upon the unanimous recommendation of a committee of independent directors, has determined that the reverse and forward stock splits are fair and in the best interests of CallWave and its stockholders, including its unaffiliated stockholders, and has approved and declared advisable the adoption of the amendments to the Certificate of Incorporation effecting the reverse stock split and forward stock split of common stock.

**The going private transaction has not been approved or disapproved by the Securities and Exchange Commission or any state securities commission, nor has the Securities and Exchange Commission or any state securities commission passed upon the accuracy or adequacy of the information contained in this document. Any representation to the contrary is a criminal offense.**

**Your vote is important.** When you have finished reading the proxy statement, please promptly vote your shares by marking, signing, dating and returning the proxy card in the enclosed prepaid envelope. If you hold your shares through a broker, then you also may be able to vote your shares on the Internet or by telephone. We encourage you to vote by proxy so that your shares will be represented and voted at the meeting, whether or not you can attend.

Thank you for your cooperation.

Sincerely,

JEFFREY M. CAVINS  
*President and Chief Executive Officer*

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**CALLWAVE, INC.**

**136 W. Canon Perdido Street, Suite C**

**Santa Barbara, CA 93101**

June , 2009

**NOTICE OF SPECIAL MEETING OF STOCKHOLDERS**

TIME: 8:00 a.m., Pacific Standard Time

DATE: June 29, 2009

PLACE: 136 W. Canon Perdido Street, Suite C, Santa Barbara, California 93101

**PURPOSES:**

At the special meeting, you will be asked to act on the following matters:

1. To consider and vote upon a proposal to amend our existing Amended and Restated Certificate of Incorporation (referred to as the Certificate of Incorporation ) to effect a 1 for - 5,000 reverse stock split of our common stock, such that stockholders owning less than 5,000 shares of common stock before the reverse stock split would have such shares cancelled and converted into a right to receive for each share held prior to the reverse stock split the greater of (i) the average closing price per share for the period of ten (10) trading days ending with the last trading day immediately prior to the effective date of the reverse stock split, or (ii) \$1.15.

2. To approve a proposal to amend our Certificate of Incorporation, if the reverse stock split is approved, to effect a 5,000 for - 1 forward stock split of our common stock immediately following the reverse stock split such that stockholders owning 5,000 or more shares of common stock before the reverse stock split would own the same number of shares after the forward stock split (the reverse stock split and the forward stock split are referred to together as the stock splits ).

3. To approve a proposal to postpone or adjourn the special meeting, if necessary, to solicit additional proxies for the adoption of proposals 1 and 2.

4. To transact such other business as may properly come before and is incidental to the conduct of the meeting.

WHO MAY VOTE:

You are entitled to notice of, and to vote at, the special meeting of stockholders or any adjournments thereof if you were the record owner of CallWave, Inc. common stock at the close of business on June 5, 2009. A list of stockholders of record will be available for inspection at the meeting and, during the 10 days prior to the meeting, at the above address.

By Order of the Board of Directors

MARK STUBBS

*Chief Financial Officer and Secretary*

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**CALLWAVE, INC.**

**136 W. Canon Perdido Street, Suite C**

**Santa Barbara, CA 93101**

**PROXY STATEMENT FOR THE CALLWAVE, INC.**

**SPECIAL MEETING OF STOCKHOLDERS**

**GENERAL INFORMATION ABOUT THE SPECIAL MEETING**

**Why Did You Send this Proxy Statement to Me?**

Our board of directors is soliciting your proxy to vote at the special meeting of stockholders and any adjournments of the meeting. This proxy statement summarizes the information you need to know in order to vote at the special meeting. You do not need to attend the special meeting to vote your shares. Instead, you may vote your shares by marking, signing, dating and returning the enclosed proxy card. If you hold your shares through a broker, then you also may be able to vote your shares either via the Internet or by telephone.

On or about June , 2009, we began sending this proxy statement, the attached notice of special meeting and the enclosed proxy card to all stockholders entitled to notice of, and to vote at, the special meeting. Only stockholders who owned our common stock at the close of business on June 5, 2009, are entitled to vote at the special meeting. On this record date, there were shares of our common stock outstanding. Our common stock is our only class of voting stock.

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**SUMMARY TERM SHEET**

The material terms from this proxy statement, including the stock splits and the going private transaction (as those terms are defined herein) and the proposed amendments to our Certificate of Incorporation are summarized below through our responses to the following specific questions. For a more complete discussion of these matters, you should carefully review the more detailed information appearing elsewhere in, or accompanying, this proxy statement.

**What matters will be considered at the special meeting?**

**What are the stock splits?**

**Who are the parties?**

**What is the going private transaction?**

**What is the purpose of the going private transaction?**

**What are the reasons for the going private transaction?**

**What does the CallWave board of directors and independent committee think about the going private transaction?**

**What factors did the independent committee and the board of directors consider in determining that the going private transaction was fair?**

**What are the advantages of the going private transaction?**

**What are the disadvantages of the going private transaction?**

**What are the potential conflicts of interests of our executive officers and directors?**

**What happens to stockholders in the stock splits?**

**What vote is required to approve the stock splits and the adjournment proposals?**

**How does our board of directors recommend that I vote on the stock splits?**

**What are the federal income tax consequences of the stock splits?**

**How many votes do I have?**

**How do I vote?**

**How do I vote by proxy?**

**May I revoke my proxy?**

**How do I vote in person?**

**People with disabilities**

**Is voting confidential?**

**What are the costs of the going private transaction and soliciting these proxies?**

**What constitutes a quorum for the meeting?**

**Will I have appraisal or dissenter's rights in connection with the transaction?**

**Should I send in my stock certificates now?**

**How do I ensure my vote is counted?**

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### **What matters will be considered at the special meeting?**

At the special meeting, you will be asked to consider and vote on one proposal, which we refer to as the stock splits.

The stock splits consist of a reverse 1 for 5,000 stock split followed immediately by a forward 5,000 for 1 stock split. The shares of stockholders who own less than one (1) whole share of common stock after the reverse stock split shall be converted into the right to receive cash in an amount per share held prior to the reverse stock split equal to the greater of (i) the average closing price per share for the period of ten (10) trading days ending with the last trading day immediately prior to the effective date of the reverse stock split, or (ii) \$1.15.

If the stock splits are approved, they will affect our stockholders as follows:

**If you are a stockholder with:**  
5,000 or more shares:

Fewer than 5,000 shares

**Effect:**

You will continue to hold the same number of shares.

You will be entitled to receive for each share you owned prior the reverse stock splits the greater of (i) the average closing price of the Company's common stock for the period of ten (10) trading days immediately preceding the effective date of the reverse stock split, or (ii) \$1.15 per share.

We are asking you to approve the above transaction.

See Proposals #1 and #2 The Stock Splits.

In addition, you will be asked to consider and vote on a proposal to postpone or adjourn the special meeting, if necessary, to solicit additional proxies for the adoption of Proposals #1 and #2.

See Proposal #3 Adjournment.

### **What are the stock splits?**

The stock splits are part of a plan to make CallWave a non-Securities and Exchange ( SEC ) reporting company. The stock splits were preceded by a voluntary tender offer in which we offered to purchase our shares for \$1.15 per share. In this document we refer to the tender offer and the stock splits collectively as the going private transaction.

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The term "stock splits" refers to a two-step transaction designed to reduce the number of beneficial stockholders of CallWave to fewer than 300, so we can: (i) terminate the registration of CallWave common stock under Section 12(g) of the Exchange Act, (ii) suspend our reporting obligations with the SEC without a subsequent risk of becoming subject to those requirements, and (iii) delist our common stock from the NASDAQ Global Market.

In the stock splits,

The Company would first effect a 1 for 5,000 reverse stock split, such that stockholders owning less than 5,000 shares of common stock before the reverse stock split (referred to as the "cashed-out stockholders") would have such shares cancelled and converted into the right to receive the cash consideration set forth herein (referred to as the "cashed-out shares").

The Company would then immediately effect a 5,000 for 1 forward stock split, such that stockholders owning 5,000 or more shares of common stock before the reverse stock split (referred to as

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the continuing stockholders ) would have the same number of shares of common stock after the forward stock split (referred to as the continuing shares ).

Please see the sections entitled Proposals #1 and #2 The Stock Splits Summary and Structure of the Stock Splits for a more detailed discussion of the stock splits.

The board retains the discretion to abandon the stock splits even if they are approved by the stockholders. The board's decision is subject to continuing favorable business conditions and other factors. Factors that the board will consider in making the final determination are discussed in the section entitled Proposals #1 and 2 The Stock Splits Summary and Structure of the Stock Splits.

### **Who are the parties?**

CallWave is a Delaware corporation that was incorporated in California in August 1998, reincorporated in Delaware in April 2004, and went public on September 30, 2004. Historically, CallWave has been an Internet telephony company bridging the gap between the mobile telephone, desktop computer and traditional fax line. The primary revenue sources were from dial-up subscribers who used our services to screen, transfer and store messages on their landline and mobile phones and virtual fax users who were looking for a cheaper alternative to premises-based fax machines. However, as these subscribers have migrated to broadband and VOIP services over the last few years, we have seen a consistent decline in our revenue. In addition, we sold our virtual fax subscriber base in February 2009 and no longer operate in that market. Over the last twenty months we have been using the capital from our legacy business to invest in the growing unified communications space. Our new web collaboration and messaging platform is called FUZE. FUZE is a browser-based solution that leverages our telephony foundation and enables enterprise-class, cross-platform collaboration, presence, real-time messaging and conferencing with unique features including high-resolution visuals, high-definition audio and synchronized video and imagery between browsers anywhere in the world. FUZE works with desktops, laptops and most smart phones. The target customers for FUZE are enterprises, small- and medium-enterprises (SMEs) as well as mobile professionals.

CallWave has not been convicted in any criminal proceeding during the last five years. CallWave has not been a party to any judicial or administrative proceeding during the last five years that resulted in a judgment, decree or final order enjoining it from future violations of, or prohibiting activities subject to, federal or state securities laws.

### **What is the going private transaction?**

The stock splits are part of a plan to make CallWave a non-SEC reporting company. The stock splits were preceded by a voluntary tender offer in which we offered to purchase our shares. That tender offer and the stock splits are sometimes collectively referred to in this document as the going private transaction.

See Special Factors Purpose of and Reasons for the Going Private Transaction and Special Factors Effects of the Going Private Transaction.

### **What is the purpose of the going private transaction?**

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The purpose of the going private transaction is to provide liquidity to stockholders at a price that is a premium to recent market prices for our stock prior to initiating the recently completed tender offer, and to reduce the number of CallWave beneficial stockholders to below 300, so that we will become eligible to deregister our shares under the Exchange Act of 1934, as amended (the Exchange Act ) and become a private company.

As used in this proxy statement, the term smaller stockholders refers to stockholders owning less than 5,000 shares of common stock, which shares would be cashed out pursuant to the stock splits. For more detailed discussion of the purposes of the stock splits, see Special Factors Purpose of and Reasons for the Going Private Transaction.

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### **What are the reasons for the going private transaction?**

Our compliance costs for being a publicly traded company were approximately \$765,000 in our last fiscal year, and we expect those costs to increase. In addition to these substantial costs, there is a substantial burden on management to comply with SEC rules and regulations.

Despite this high cost of remaining public, our stockholders have received very little benefit from CallWave's status as a reporting company. There is a very limited trading market for our stock, especially for sales of larger blocks. In addition, since our stock reached its highest trading value on December 29, 2004, when our stock closed at \$16.04 per share, our stock price has steadily declined, closing at \$0.80 on May 4, 2009, the day immediately prior to the time the tender offer commenced.

We believe the first part of the going private transaction, the recently completed tender offer, provided our larger stockholders the opportunity to liquidate their holdings in CallWave and receive a premium over recent market prices, without incurring any discounts due to the low trading volume of CallWave's common stock, and provided our smaller stockholders the opportunity to liquidate their holdings at a premium over market prices, without incurring brokerage commissions.

As a result of the tender offer, we now have approximately [redacted] beneficial holders of our common stock. As a result, we believe that the stock splits are now the most attractive and viable option for converting the Company from a public reporting company to a privately-held, non-reporting company, as compared to other alternatives.

For a detailed description of factors considered in determining whether to proceed with the going private transaction, see Special Factors Purpose of and Reasons for the Going Private Transaction, Special Factors Effects of the Going Private Transaction and Special Factors Fairness of the Going Private Transaction.

In addition, we currently face the prospect of being involuntarily delisted from the NASDAQ Global Market for failing to meet NASDAQ's minimum bid price per share requirement. If we cannot regain compliance with the minimum \$1.00 share bid price requirement by [redacted], 2009, NASDAQ will provide written notification that our common stock will be delisted from the NASDAQ Global Market. We expect that delisting from the NASDAQ Global Market would substantially reduce or eliminate the public market for our common stock and, as a result, stockholders may experience a significant decrease in the value of their shares of common stock. If we are involuntarily delisted by NASDAQ, rather than voluntarily in connection with the stock splits, we would continue to be subject to the SEC's reporting requirements under the Securities Exchange Act of 1934, as amended (the Exchange Act), and continue incurring significant reporting and compliance costs. For more detailed discussion of the consequences of not effecting the stock splits, see Additional Information About the Stock Splits Potential Involuntary Delisting by NASDAQ.

### **What does the CallWave board of directors and independent committee think about the going private transaction?**

Our board of directors and an independent committee of the board each has approved this going private transaction. The independent committee's financial advisor, Seven Hills Partners LLC (Seven Hills), has delivered to the independent committee a written opinion that as of the date of the opinion, the consideration proposed to be paid by CallWave to the holders of shares of our common stock who tender shares in the tender offer or who will hold only fractional share interests immediately after the reverse stock split (taken as a whole) is fair, from a financial point of view, to such holders (other than affiliates of CallWave). See Special Factors Fairness Opinion of Financial Advisor.

**Each of the independent committee and the board of directors has determined that the going private transaction is substantively and procedurally fair to unaffiliated stockholders of CallWave whether such stockholders are cashed-out after the going private transaction, or remain stockholders, and that the going private transaction is in the best interests of CallWave and its stockholders, including unaffiliated**

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**stockholders whether such stockholders are cashed-out after the going private transaction, or remain stockholders. The independent committee has also determined that the purchase price paid to CallWave stockholders tendering their shares and proposed to be paid to the CallWave stockholders who will hold only fractional interests immediately following the reverse split is a fair price.**

**What factors did the independent committee and the board of directors consider in determining that the going private transaction was fair?**

The independent committee and the board of directors considered a number of factors in reaching its determinations, including:

The opinion delivered to the independent committee by Seven Hills, the independent committee's financial advisor, that as of the date of the opinion, the consideration to be paid by CallWave to the holders of shares of our common stock who tender shares in the tender offer or who will hold only fractional share interests immediately after the reverse stock split (taken together as a whole) is fair, from a financial point of view, to such holders (other than affiliates of CallWave).

The fact that smaller stockholders cashed out after the reverse stock split will receive a premium over recent market prices at the time of the approval of the cash-out price, without incurring brokerage commissions.

The fact that stockholders who wish to remain stockholders after the reverse stock split may do so by accumulating at least 5,000 shares of common stock in a single account prior to the effective date of the reverse stock split.

See [Special Factors – Fairness of the Offer](#) and [Special Factors – Fairness Opinion of Financial Advisor](#).

**What are the advantages of the going private transaction?**

In addition to purchasing from smaller stockholders our stock at a premium to market prices prior to commencement of the going private transaction, there will be other advantages to the going private transaction, including:

By completing the tender offer, deregistering our shares and eliminating our obligations under the Sarbanes-Oxley Act and our periodic reporting obligations under the Exchange Act, we expect to save in excess of \$765,000 per year.

We will also save the significant amount of time and effort expended by our management on the preparation of SEC filings and in compliance with the Sarbanes-Oxley Act.

See [Special Factors – Purpose of and Reasons For the Offer](#) and [Special Factors – Fairness of the Offer](#).

**What are the disadvantages of the going private transaction?**

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There are certain disadvantages to stockholders in the going private transaction, including the following:

Cashed-out stockholders will no longer have any ownership interest in the Company and will no longer participate in our future earnings and growth.

The reduction in publicly available information about us that will result from going public.

We will no longer be listed on the NASDAQ Global Market and we will deregister our common stock under the Exchange Act. Therefore there will be no trading market for our common stock and continuing stockholders may potentially experience a significant decrease in the value of their common stock.

We will no longer be subject to the provisions of the Sarbanes-Oxley Act, the liability provisions of the Exchange Act will apply on a more limited basis, and we will not be subject to the oversight of the NASDAQ Global Market.

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Our executive officers, directors and 10% stockholders will no longer be required to file reports relating to their transactions in our common stock with the SEC. In addition, our executive officers, directors and 10% stockholders will no longer be subject to the recovery of profits provision of the Exchange Act, and persons acquiring 5% of our common stock will no longer be required to report their beneficial ownership under the Exchange Act.

A liquidation analysis prepared by our senior management determining the potential value of the Company's assets and liabilities in the event of an orderly liquidation and concluded that the liquidation value of the Company ranged from \$1.23 a share to \$1.45 per share, a price higher than the price paid to cashed-out stockholders.

We estimate that the cost of payment to stockholders tendering their shares in the tender offer will be \$ , the cost of payment to stockholders who are cashed out in the stock splits will be and the professional fees and other expenses incurred in the going private transaction will total approximately \$566,000. As a result, immediately after the going private transaction, our cash balances on hand will be reduced by these costs incurred.

Under Delaware law, our certificate of incorporation and our bylaws, no appraisal or dissenters' rights are available to our stockholders who do not tender their shares.

See [Special Factors - Fairness of the Offer](#) and [Special Factors - Our Plans After the Offer](#).

### **What are the potential conflicts of interests of our executive officers and directors?**

Our directors and executive officers may have interests in the going private transaction that are different from your interests as a stockholder. As of March 31, 2009, our directors and officers as a group held 6,999,616 shares, or approximately 33% of the issued and outstanding shares of CallWave common stock and 847,784 options, exercisable within 60 days of March 31, 2009.

None of our executive officers or directors tendered their shares in the tender offer. Approximately shares, or % of the total outstanding shares, were cashed out in the tender offer. Therefore, the percentage of shares beneficially owned by executive officers and directors immediately after the offer, including shares exercisable upon exercise of options, increased from approximately 37.1% to %.

Upon the effectiveness of the reverse and forward stock splits while the aggregate number of shares of our common stock owned by our executive officers and directors will not change, their ownership percentage of outstanding shares will again increase. We believe approximately shares, or % of the total outstanding shares, will be cashed out as a result of the stock splits. Therefore, the percentage of shares beneficially owned by executive officers and directors immediately after the going private transaction, including shares exercisable upon exercise of options, would be increased from approximately % to 74.3%

Currently, only two directors own outstanding shares of common stock, either directly or through affiliates: Mr. Sperling who owns 3,845,631 issued and outstanding shares, and Mr. Murdock who owns 3,029,996 issued and outstanding shares. Our two executive officers, Mr. Jeffrey Cavins, our chief executive officer, and Mr. Mark Stubbs, our chief financial officer, each own 111,857 and 12,132 issued and outstanding shares of common stock, respectively.

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The following table represents the increase in their percentage of outstanding shares that will result from the going private transaction, assuming 50% of the total outstanding shares are cashed-out:

	<b>Before</b>	<b>After</b>
Mr. Sperling	18.16%	36.32%
Mr. Murdock	14.31%	28.62%
Mr. Cavins	0.53%	1.06%
Mr. Stubbs	0.06%	0.11%

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The above table does not reflect options held by such individuals. We anticipate that after the closing of the going private transaction, we will exchange all outstanding options for new options.

See Special Factors Interests of Directors and Executive Officers; Potential Conflicts of Interest; Transactions and Arrangements Concerning Shares, Special Factors Our Plans After the Offer, and Schedule I 2. Principal Stockholders.

### What happens to stockholders in the stock splits?

#### Hypothetical Scenario

You hold 3,000 shares of common stock in your account prior to the stock splits.

You have two separate record accounts. As of the effective date of the stock split, you hold 3,000 shares of common stock in one account and 2,000 shares of common stock in the other. All of your shares are registered in your name only.

You hold 5,000 shares of common stock as of the effective date.

#### Result of Stock Split

Instead of receiving a fractional share of common stock immediately after the reverse stock split, your shares will be converted into the right to receive cash in a per share price of \$1.15 per share, assuming that amount is greater than the average closing price per share for the period of ten (10) trading days ending with the last trading day immediately prior to the effective date of the reverse stock split. In this case, you would receive \$3,450 ( $\$1.15 \times 3,000$ ).

NOTE: If, as in this example, you owned 3,000 shares but wanted to continue your investment in CallWave, you can, prior to the effective date of the stock splits, buy at least 2,000 more shares, and hold them in your account. To do this, you need to act far enough in advance of the stock splits so that the purchase is completed and the additional shares are credited in his account by the close of business (Eastern Time) on the effective date.

As described above, you would receive cash payments equal to the cash-out price of you common stock in each record account instead of receiving fractional shares. In this case, you would receive two checks totaling \$5,750 ( $3,000 \times \$1.15 = \$3,450$ ;  $2,000 \times \$1.15 = \$2,300$ ;  $\$3,450 + \$2,300 = \$5,750$ ).

NOTE: If instead you wanted to continue your investment in CallWave, you should consolidate or transfer your two record accounts prior to the effective date into an account with at least 5,000 of shares of common stock. Alternatively, in the example above, you can buy at least 2,000 more shares for the first account and 3,000 more shares for the second account. To do this, you need to act far enough in advance of the stock splits so that the consolidation or the purchase is completed by the close of business (Eastern Time) on the last trading day prior to the effective date of the reverse stock split.

After the stock splits, you will continue to hold all 5,000 shares of common stock.

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**Hypothetical Scenario**

You hold 5,000 shares (or more) of common stock in a brokerage account as of the effective date.

**Result of Stock Split**

CallWave intends for the stock splits to treat stockholders holding common stock in street name through a nominee (such as a bank or broker) in the same manner as stockholders whose shares are registered in their names. Nominees will be instructed to effect the stock splits for their beneficial holders. However, nominees may have different procedures and stockholders holding common stock in the street name should contact their nominees.

See Special Factors Effects of the Going Private Transaction and Proposals #1 and #2 The Stock Splits Summary and Structure of the Stock Splits.

**What vote is required to approve the stock splits and the adjournment proposals?**

	<b>Vote Required:</b>	<b>Effect of abstention and broker non-vote</b>
<b>Proposals 1 and 2: Reverse 1 for 5,000 stock split immediately followed by a forward 5,000 for 1 stock split</b>	The approval of Proposals 1 and 2 requires the affirmative vote of at least a majority of the shares of common stock entitled to vote at the special meeting.	Abstentions and broker non-votes will be counted for the purpose of determining if a quorum is present, but will not be included as a voter cast with respect to Proposals 1 and 2. Therefore, abstentions and broker non-votes will have the effect of a vote AGAINST Proposals 1 and 2.
<b>Proposal 3: Adjournment or postponement of the special meeting to solicit more proxies</b>	The approval of Proposal 3 requires the affirmative vote of at least a majority of the shares of common stock present in person or represented by proxy at the special meeting.	Abstentions and broker non-votes will not affect the outcome of the vote regarding Proposal 3.

See Special Factors Vote Required for Approval of the Stock Splits at the Special Meeting, Proposals #1 and #2 The Stock Splits Summary and Structure of the Stock Splits and Proposal #3 Adjournment.

**How does our board of directors recommend that I vote on the stock splits?**

In summary, the board unanimously recommends a vote for the proposals to effect the stock splits. Unless you give other instructions on your proxy card, the persons named as proxyholders on the proxy card will vote in accordance with the recommendations of the board of directors.

If any other matter is presented for a vote of the stockholders at the special meeting, then your proxyholder will vote your shares, as recommended by the board of directors or, if none, in accordance with his or her best judgment. At the time this proxy statement was printed, we knew of no matters that are expected to be acted upon at the special meeting, other than those discussed in this proxy statement.

See Proposals #1 and #2 The Stock Splits Board Recommendation and Proposal #3 Adjournment Board Recommendation.



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### **What are the federal income tax consequences of the stock splits?**

Generally, a stockholder that receives cash in exchange for shares of common stock as a result of the stock split will recognize a capital gain or loss for United States federal income tax purposes. A stockholder who does not receive cash for a fractional share as a result of the going private transaction will not recognize any gain or loss for United States federal income tax purposes. However, exceptions apply. Please see the section entitled **Special Factors** **Material Federal Income Tax Consequences** for further information.

### **How many votes do I have?**

Each share of our common stock that you own entitles you to one vote.

### **How do I vote?**

You may vote in person at the meeting or by signing and mailing your proxy card. If you hold your shares through a broker, you also may be able to vote your shares on the Internet or by telephone. If applicable, detailed instructions for Internet and telephone voting are attached to your proxy.

### **How do I vote by proxy?**

Whether you plan to attend the special meeting or not, we urge you to complete, sign and date the enclosed proxy card and to return it promptly in the envelope provided. Returning the proxy card will not affect your right to attend the special meeting and vote at the special meeting.

If you properly fill in your proxy card and send it to us in time, then your proxyholder (one of the individuals named on your proxy card) will vote your shares as you have directed. If you sign the proxy card but do not make specific choices, your proxyholder will vote your shares as recommended by our board of directors.

### **May I revoke my Proxy?**

If you give us your proxy, you may revoke it at any time before it is exercised. You may revoke your proxy in any one of the following ways:

You may send in another proxy with a later date;

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If applicable, you may vote either via the Internet or by telephone at a later date;

You may notify our secretary in writing before the special meeting that you have revoked your proxy; or

You may vote in person at the special meeting.

### **How do I vote in person?**

The special meeting will be held at 8:00 a.m., Pacific Standard Time, on June 29, 2009, at our headquarters, located at 136 W. Canon Perdido, Suite C, Santa Barbara, California 93101. You need not attend the special meeting in order to vote.

If you plan to attend the special meeting and vote in person, then we will give you a ballot when you arrive. However, if your shares are held in the name of your broker, bank or other nominee, then you must bring an account statement or letter from the nominee indicating that you were the beneficial owner of the shares at the close of business on June 25, 2009, the record date for voting.

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### **People with disabilities**

If you have a disability, we can provide reasonable assistance to help you participate in the special meeting if you tell us about your disability and your plan to attend. Please notify the secretary of CallWave in writing at least three (3) days before the special meeting if you desire such assistance.

### **Is voting confidential?**

We will keep all the proxies, ballots and voting tabulations private. We allow only our inspector of elections to examine these documents. We will not disclose your vote to management unless it is necessary to meet legal requirements. We will, however, forward to management any written comments you make on the proxy card or elsewhere.

### **What are the costs of the going private transaction and soliciting these proxies?**

We will pay all of the costs of soliciting these proxies. Solicitation of proxies will be made principally through the mail, but our officers and employees may also solicit proxies in person or by telephone, fax or email. We will pay these employees and officers no additional compensation for these services.

In addition we have retained BNY Mellon Shareowner Services to act as our information agent in connection with the going private transaction and to assist us in soliciting proxies. BNY Mellon Shareowner Services, as information agent, may contact stockholders by mail, telephone, facsimile, telex, telegraph, other electronic means, and personal interviews, and may request brokers, dealers, commercial banks, trust companies and other nominee stockholders to forward materials relating to the offer to beneficial owners. BNY Mellon Shareowner Services will receive reasonable and customary compensation in connection with the offer.

BNY Mellon Shareowner Services, as the depositary for the offer, will be reimbursed for certain out-of-pocket costs in connection with the offer.

No fees or commissions will be payable by us to brokers, dealers, commercial banks or trust companies (other than fees to the parties described above) for soliciting tenders of shares under the offer. Stockholders holding shares through brokers or banks are urged to consult the brokers or banks to determine whether transaction costs are applicable if stockholders tender shares through such brokers or banks and not directly to the depositary. We, however, upon request, will reimburse brokers, dealers, commercial banks and trust companies for customary mailing and handling expenses incurred by them in forwarding the offer and related materials to the beneficial owners of shares held by them as a nominee or in a fiduciary capacity. No broker, dealer, commercial bank or trust company has been authorized to act as our agent or as an agent of the information agent or the depositary for purposes of the offer. We will pay or cause to be paid all stock transfer taxes, if any, on our purchase of shares except as otherwise provided in this document and Instruction 7 in the letter of transmittal.

The estimated costs and fees to be paid by us in connection with the going private transaction are as follows:

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Financial advisor fees	\$ 300,000
Accounting fees	10,000
Legal fees	175,000
SEC filing fees	1,000
Printing and mailing expenses	40,000
Depository fees	15,000
Information Agent fees	10,000
Out-of-pocket and miscellaneous	15,000
<b>Total</b>	<b>\$ 566,000</b>

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### **What constitutes a quorum for the meeting?**

The presence, in person or by proxy, of the holders of a majority of the outstanding shares of our common stock is necessary to constitute a quorum at the meeting. On the record date, there were \_\_\_\_\_ shares outstanding and entitled to vote. Thus, \_\_\_\_\_ shares must be represented by stockholders present at the special meeting in person or by proxy in order for there to be a quorum for the meeting. Votes of stockholders of record who are present at the meeting in person or by proxy, abstentions, and broker non-votes are counted for purposes of determining whether a quorum exists.

### **Will I have appraisal or dissenter s rights in connection with the going private transaction?**

No. Under Delaware law, you do not have appraisal or any other dissenters rights whether or not you vote for the stock splits.

See Special Factors Unavailability of Appraisal or Dissenters Rights.

### **Should I send in my share certificates now?**

No. If the stock splits are approved, our transfer agent will send you written instructions for exchanging your share certificates.

### **How do I ensure my vote is counted?**

To ensure that your vote is recorded promptly, please vote as soon as possible, even if you plan to attend the special meeting in person. Most stockholders have three options for submitting their vote: (1) via the Internet (please see your proxy card for instructions), or (2) by phone (please see your proxy card for instructions), or (3) by mail, using the enclosed paper proxy card. When you vote via the Internet or by phone, your vote is recorded immediately. We encourage our stockholders to vote using these methods whenever possible. If you attend the special meeting, then you also may submit your vote in person, and any previous votes that you submitted, whether by Internet, phone or mail, will be superseded by the vote that you cast at the special meeting.

## **SPECIAL FACTORS**

### **Purpose of and Reasons for the Going Private Transaction**

We were organized in August 1998 under the laws of the State of California. We first marketed our free services in February 1999 and began marketing paid subscriptions in April 2001.

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We have been subject to the reporting requirements of the Exchange Act since our initial public offering on September 30, 2004. The costs to comply with regulatory requirements are a significant overhead expense. These costs include professional fees for our auditors and corporate counsel, printing and mailing costs, internal compliance costs and transfer agent costs. These and other costs related to SEC registration have increased significantly, and we believe they will continue to do so, particularly as a result of the additional reporting and disclosure obligations imposed on public corporations by the Sarbanes-Oxley Act of 2002. Our estimated Exchange Act compliance costs amounted to approximately \$765,000 in the fiscal year ended June 30, 2008.

In our initial public offering our shares were first offered to the public at a price of \$10.00 per share. Since then, our stock reached its highest trading value on December 28, 2004, when it closed at \$16.04 per share. Our stock price has since declined significantly, from our 52-week high of \$2.85 on June 11, 2008, closing at \$0.80 on May 4, 2009.

On June 11, 2008, our common stock traded at a price of \$2.85, and then began declining. In September, the trading price of our shares declined significantly, in parallel with the precipitous decline in the valuations of public companies generally. On October 1, 2008, our stock closed at \$1.75, a 39% drop, and then continued to

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rapidly decline. This created a risk that our shares would be delisted from trading on NASDAQ, which would create severe restrictions on the ability of our stockholders to dispose of their shares. For that reason, the Company began to evaluate the appropriateness of a going private transaction. During our initial investigation into this possibility, in late October 2008 our stock first traded below \$1.00 per share, and stayed below that price during a substantial part of November 2008.

By that time the Company had determined that only its WebMessenger product and the incipient FUZE product had sufficient potential commercial viability to support the long-term growth of the Company. The Company's traditional dial-up based Internet Voice Mail (IVM) service was a dissipating asset, serving a declining population of users who access the internet via dial-up telephone lines and operate from a legacy telephony infrastructure. The Company's fax service was marketed in an industry segment market that was dominated by one large player and showed no meaningful opportunity for growth. In contrast, the WebMessenger product provides a viable presence engine, and the FUZE service would be marketed into a growing collaboration marketplace. The preliminary reactions that the Company received to beta versions of its FUZE product were positive. The Company publicly disclosed this information to the market in press releases and earnings calls and the Company's stock continued to trade below \$1.00 per share.

By reason of the changing focus of the Company's product mix, and the multi-year time period likely required to enable FUZE to achieve commercial viability, the Company evaluated whether it was more appropriate to pursue the WebMessenger and FUZE products as a public or a private company. The risks associated with a new product such as FUZE were more appropriate for stockholders in a private start-up company than a public company. Moreover, since the FUZE product was and is projected to generate losses for several years, those projected losses required the Company to evaluate ways to minimize expenses in order to make cash available to support the development and growth of FUZE, and by going private the Company would be able to avoid the costs associated with being a public company. Moreover, management concluded that if the Company were to remain public, then the projected multi-year losses would only put further downward pressure on the trading price of the Company's stock and trading volume for the Company's shares, thereby making it more difficult for stockholders to dispose of their shares without having an immediately negative impact on the trading price of those shares.

A declining revenue base associated with our legacy Internet Answering Machine Dial-up and Virtual Fax products, stock market conditions, and business conditions resulted in fewer analysts covering our stock. The lack of investor support resulted in the price per share of our common stock falling below the amount of cash per share that we have on hand.

As discussed in greater detail below, our board of directors determined that the recurring expenses, along with the burden on management, required for compliance with SEC rules and regulations is not cost efficient for CallWave. In addition, most of the requirements of the Sarbanes-Oxley Act are now effective and applicable to the Company, and the Company has implemented controls and procedures which comply with those requirements. However, the ongoing costs associated with being a public company are expected to increase in our next fiscal year and are estimated to be \$1,000,000. The going private transaction is being made at this time both to avoid the costs to be incurred in complying with Section 404 of the Sarbanes-Oxley Act, and secondarily, to eliminate those costs that we incur as a result of having our securities registered under the Securities Exchange Act.

Additionally, there is a very limited trading market in our common stock, especially for sales of larger blocks. Over the course of the past year, our trading volume decreased by approximately two-thirds. Because of this, the board of directors determined that the holders of our securities derive little benefit from CallWave's status as a SEC reporting company.

Further, the board has determined that the Company's new unified communications and collaboration product line will take years to develop. Management and the board of directors currently believe that CallWave will not produce net profits from operations before 2013.



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Given these various factors, the board of directors concluded that being a private company would allow management the increased flexibility and time to consider and initiate actions that may produce long-term benefits and growth without the pressure and expectation to produce short-term quarterly earnings per share.

The stock splits are part of a plan to make the Company a non-SEC reporting company in what is commonly referred to as a going private transaction. The initial part of the plan was a voluntary tender offer where we offered to purchase shares of our common stock at a price of \$1.15 per share, a significant premium over the trading price on NASDAQ Global Market at the time the tender offer was initiated. We refer to the tender offer and the stock splits collectively as the going private transaction.

Since the initial public offering, our common stock has been registered under the Securities Act of 1933, as amended (the Securities Act), and we have been subject to the reporting and proxy requirements of the Exchange Act. The common stock must remain registered, and we must follow these requirements, so long as there are 300 or more holders of record of the common stock.

The purpose of the going private transaction is to reduce the number of CallWave beneficial stockholders to below 300. Although we have fewer than 300 stockholders of record, as calculated under the rules and regulations of the Exchange Act, we remain at risk of becoming subject to reporting company obligations if one or more of the record holders distributes its shares to its underlying beneficial holders. Our goal is therefore to reach a beneficial stockholder count of no more than approximately 150 stockholders. Upon completion of the going private transaction, the board of directors intends to deregister our common stock with the SEC, delist our shares from NASDAQ, and become a private company.

Although we have concluded the tender offer, we still have more than 300 beneficial stockholders. Therefore, we are seeking stockholder approval for a 1 for 5,000 reverse stock split followed by a 5,000 for 1 forward stock split.

If you want to remain a stockholder of CallWave after the going private transaction, you must ensure that you own more than 5,000 shares of our common stock in a single account on the effective date of the reverse stock split.

After we complete the going private transaction, our shares of common stock will no longer be quoted on the NASDAQ Global Market, and trades in such shares would be possible only through privately negotiated transactions. This will severely restrict your ability to trade these shares, and may have the effect of requiring you to hold your shares indefinitely, until the Company either liquidates or is acquired by another company.

Our reasons for proposing a going private transaction include:

The significant cost savings that we expect to realize as a result of the termination of the registration of our common stock under the Securities Exchange Act of 1934, as amended (the Exchange Act), and the elimination of costs associated with being listed on NASDAQ, and the cost savings that will result from not being required to comply with Section 404B of the Sarbanes-Oxley Act of 2002. For the fiscal year ended June 30, 2008, we spent an estimated \$765,000 on costs solely related to being a SEC reporting company.

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The fact that, due to the limited liquidity and low market price of our common stock, we have not realized many of the benefits associated with being a publicly-traded, NASDAQ-listed company, such as enhanced stockholder value, stock liquidity, business credibility and the ability to use company stock as currency for acquisitions.

The additional savings in terms of our management's and employees' time that will no longer be spent preparing the periodic reports required of publicly traded companies under the Exchange Act, managing stockholder relations and communications, and complying with NASDAQ listing requirements.

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The ability to liquidate the holdings of small holders of our common stock at a premium over recent market prices at the time of the approval of the cash-out price, without incurring brokerage commissions.

The decrease in expenses resulting from no longer being required to service a relatively large number of stockholders holding small positions in our common stock.

The reduced accounting and legal fees associated with having our financial statements reviewed on a quarterly basis and audited on an annual basis.

The reduced premiums for our directors and officers insurance policies as a result of CallWave no longer being a public reporting company.

The ability to control the dissemination of certain business information, which is currently disclosed in our periodic reports and, accordingly, made available to our competitors, vendors, customers and other interested parties, potentially to our detriment.

The ability to gain greater operational flexibility by being able to focus on long-term growth without an undue emphasis on short-term fluctuations in the market price of our common stock.

## **Background of the going private transaction**

In the first week of October 2008, we began to explore a number of possibilities, including going private, liquidating the Company, divesting certain legacy assets and additional expense reductions. In evaluating the various alternatives available to the Company, the board reviewed the current business opportunities that the Company will be pursuing in the unified communications and collaboration space, the competitive landscape in this space, the future projected growth potential in the collaboration space, product and feature comparisons, the time and capital required to exploit these commercial opportunities, and the potential rewards available to Company stockholders from the Company's pursuit of these opportunities. On balance, the board believes that if the Company goes private and pursues these commercial opportunities in the unified communications and collaboration market without the costs and administrative burdens of continuing to be an SEC reporting company, then the Company can produce for ongoing stockholders a better return than would be provided if the Company merely liquidated.

In November 2008, we were advised by our corporate counsel that if we had fewer than 300 stockholders of record, we could deregister our stock and thereby not be subject to the Exchange Act reporting requirements and could delist from the NASDAQ Global Market (sometimes referred to as "going dark"). The Company currently has approximately 89 stockholders of record and approximately 1,448 beneficial owners. Although the number of our record holders is low enough to deregister and delist, the number of record holders that hold the shares for the benefit of third parties (for example, an investment advisor holding for multiple beneficial owners) leaves open the possibility of substantial increases in the number of beneficial owners if one of those record holders elects to distribute the shares that it holds to the underlying beneficial owners. If the number of record holders were to increase above 300, we could again become subject to Exchange Act reporting requirements. In light of this information, in late 2008 we began to consider alternative means to reduce our stockholder base to below 300 beneficial stockholders. Consequently, the board of directors requested that management begin gathering information on the possibility of reducing the number of beneficial holders of our stock to fewer than 300.

On November 19, 2008, representatives from a third-party non-stockholder venture capital firm that has never been affiliated with the Company met with Mr. Cavins, our chief executive officer, and Mr. Jeff Henley, a director, to discuss the Company's status as a public company and a potential interest by the venture capital firm in investing in the Company. This meeting was held at the request of Mr. Cavins, and among the issues discussed were the possibility that the venture firm might make an investment in the Company, regardless whether it were to remain public or pursue a going private transaction. Although this venture capital firm did not have a prior relationship with the Company, Mr. Cavins,

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our chief executive officer, previously performed services as a consultant and independent contractor to one of that firm's portfolio companies. That service engagement ended

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in early 2007, more than six months prior to the date on which Mr. Cavins joined the Company as our chief executive officer. Mr. Cavins has never been engaged by or compensated by the venture capital firm, and does not hold and never has held any interest in any of its funds or investment vehicles.

On December 8, 2008, a team from the Company consisting of Mr. Cavins, Mr. Mark Stubbs, our chief financial officer, other senior employees of the Company, namely Mr. Scott Blackwell (who is no longer employed by the Company), Mr. Ritesh Bansal, our chief technology officer, and Ms. Kara Parsons, vice president of marketing, met with the partnership of the venture capital firm to discuss the Company's plans related to pursuing the collaboration marketplace. See *Special Factors - Our Plans After the Going Private Transaction*. After that presentation, the Company and the venture capital firm entered into preliminary negotiations over a draft term sheet for a preferred equity investment in the Company. The venture capital firm proposed terms that contemplated the purchase of up to 4 million shares of a newly-authorized class of preferred stock at a price equal to the average 30-day closing price of the Company common stock. The proposed investment included warrants to purchase additional shares of common stock, the right to appoint two board members, and other customary terms and conditions including voting rights, protective provisions and registration rights. These terms were never finalized. Those discussions with the venture capital firm were the only discussions in which we have engaged regarding raising capital to exploit the market opportunity for our FUZE product that does not involve a going private transaction.

In the entire month of January and the first two weeks of February 2009, the venture capital firm conducted extensive due diligence investigations of the Company's business, market analysis, product strategy and future projections. At the same time, the Company asked corporate counsel to clarify the listing requirements and methods for deregistering our common stock, and explore various possibilities, including the possibility of a tender offer, a reverse stock split, an issuer repurchase program, and a cash-out merger.

In the second week of January 2009, Mr. Cavins, our chief executive officer, began discussing with the venture capital firm a possible investment in the Company simultaneous with a tender offer and subsequent deregistration of its shares and delisting from the NASDAQ Global Market.

In January 2009, management advised the Company's counsel to outline various methods to accomplish the goal of deregistering our common stock and the various conditions under which such a transaction could occur under Delaware law and SEC rules and regulations.

On February 10, 2009, the venture capital firm presented to our board of directors an overview of its organization, investing disciplines, and the results of the venture capital firm's due diligence investigation of the Company. Included in this overview were suggestions related to CallWave's legacy products and services, and the firm's assessment of the Company's collaboration and conferencing market opportunity. The venture capital firm stated that CallWave had limited product and commercial team synergies, and a product time-table that the venture capital firm believed to be unachievable. The venture capital firm concluded that the Company's realization of the full value of its assets would require a long term effort and strategy similar to those of a private start-up company and unlike those customarily pursued by most public companies. The venture capital firm and the board discussed the possibility that the venture capital firm might make an investment in the Company and provide strategic assistance to its commercialization efforts.

On February 10, 2009, the Company's counsel made a presentation to the directors and management of the Company regarding, among other things, the board's fiduciary duties to stockholders, the burdens and benefits resulting from the Company's status as a public company and the alternatives to remaining listed on the NASDAQ Global Market. The board received information from the Company's counsel regarding the implications and requirements under the federal securities laws applicable to various corporate transactions with a going private component.

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The board considered a variety of structures for proceeding with a going private transaction, including a reverse stock split, a tender offer and a cash-out merger, as well as the board's fiduciary duties in connection

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with each transaction. The board discussed the likelihood of having fewer than 300 beneficial stockholders under each of the going private transaction structures. After considering all the alternatives that had been presented, the board requested management to explore accomplishing the transaction through a voluntary tender offer. The board determined that such a tender offer would be an appropriate element of any going private transaction because the tender offer would provide to holders of our common stock, who may not want to hold their shares after completion of the going private transaction, an opportunity to dispose of their shares without adversely affecting the trading price of our shares. Such a tender offer would provide a particular benefit to holders of larger blocks of our shares, as any attempt by them to dispose of their shares would be likely to have a downward effect on the trading price of our shares.

A discussion also took place regarding procedural safeguards which could be put in place to assure that any take-private transaction would be fair to the Company's unaffiliated stockholders being cashed out, as well as the remaining unaffiliated stockholders. Specifically, the board discussed the following procedural safeguards and their applicability to various transaction structures:

the applicability of appraisal rights under Delaware law;

the appointment of a committee comprised solely of the Company's independent directors;

the use of independent legal and financial advisors to represent and advise the independent committee; and

the use of a procedure which would require a majority vote of the unaffiliated stockholders.

As a result of this discussion, the board established a committee comprised solely of independent directors to investigate the feasibility of a transaction in which the number of beneficial stockholders of the Company would be reduced to permit the Company to terminate the registration of its securities under the Securities Exchange Act without the risk of becoming inadvertently subject to registration. The board appointed Jeffrey O. Henley, Raj Raithatha, Osmo A. Hautanen, and Manny Rivelo to serve on the independent committee. The board selected those individuals because they would satisfy any objective test of independence, since they are neither holders of our shares nor employees of CallWave. While each of them holds options to purchase certain shares of our common stock pursuant to annual grants that they received for service as members of our board of directors, none of the four members of the independent committee holds options to purchase more than 130,000 shares, and all of those options were granted with exercise prices in excess of \$2.29 per share, which is significantly in excess of the price per share being offered in the tender offer; as a result, none of the members of the independent committee would realize any financial benefit from the tender offer. As such, they were able to review and make recommendations upon the price, terms and structure of any going private transaction without any risk of any actual or perceived conflict or bias, because they would not be financially affected by such a transaction. Mr. Henley was elected chairman of the independent committee. The board appointed Mr. Henley to that position because of his financial expertise as the former chief financial officer of Oracle Corporation, his extensive experience in structuring and negotiating transactions, and his business judgment and acumen. The board granted the independent committee the authority to review alternative structures that would allow the Company to deregister its shares of common stock and thereafter do business as a private company, while initially providing stockholders the opportunity to either (i) tender their shares of common stock for a fair value, or (ii) remain a stockholder after going private, in each instance to the extent the Company thereby may achieve its objective of going private.

The independent committee was authorized and directed to investigate various methods of going private, to discuss the same with the Company, to negotiate the essential terms of any proposal, and to report to the full board of directors with its recommendation regarding the same.

The independent committee was authorized, at the Company's expense, to identify and engage the services of independent counsel, an appropriate financial advisor to assist the independent committee in determining an appropriate going private transaction structure and the price to be paid to stockholders who would receive cash in a proposed transaction. In addition, the independent committee was, at all times, free to

recommend the adoption

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of additional procedural protections if it deemed the adoption of such additional protections necessary or advisable to ensure the fairness of any proposed transaction.

On February 13, 2009, Mr. Cavins and Mr. Stubbs, who are sometimes referred to in this document both individually and together, as the Company's management, and our corporate counsel participated in a conference call with a venture capital firm regarding a possible equity investment in CallWave by the venture capital firm after completion of a going private transaction. Preliminary structures were discussed. This meeting occurred at the request of Messrs. Cavins and Stubbs.

On February 16, 2009, the independent committee engaged the services of Potter Anderson & Corroon LLP as its independent legal counsel. At the direction of the committee, counsel to the independent committee immediately commenced a review of potential financial advisors. As a threshold matter, counsel searched for firms with relevant expertise, experience, resources, availability and capability to render a fairness opinion. As a result of that search, committee counsel identified four (4) possible financial advisors for consideration by the chairman of the independent committee, to whom the independent committee had delegated the responsibility to identify and hire a financial advisor. During the period encompassing approximately the following two weeks, counsel solicited materials and information from each identified firm addressing a number of criteria, including but not limited to: (i) the experience of the firm, both generally and with other technology companies; (ii) the experience of the individuals who would be working on the engagement on behalf of each firm, both generally and with other technology companies; (iii) the educational background of the potential financial advisors; and (iv) the proposed scope of each firm's engagement, in each case as set forth in a written proposal from the firm that identified the cost for providing advisory services and the fee for the independent committee's requesting and the firm's delivering a fairness opinion. Counsel to the independent committee conducted preliminary interviews with four firms: (a) Seven Hills Partners LLC (Seven Hills), a financial and strategic advisory firm with considerable experience in advising technology companies in the software, communications, digital media, and internet markets; (b) Wedbush Morgan Securities, a financial services and investment firm that provides private and institutional brokerage, investment banking, private capital, research, and asset management to individual, institutional and issuing clients; (c) Newforth Partners, LLC, a financial services firm providing traditional merger-and-acquisition advisory services and a range of strategic consulting services; and (d) JMP Securities, a full-service investment bank that provides equity research, institutional brokerage and investment banking services to public and private growth companies and their investors. Following subsequent discussions between the chairman of the independent committee and counsel to the committee, and the chairman's review of the written proposals and background materials supplied by each firm, the chairman determined to interview two firms. After interviewing each firm, the chairman of the independent committee also solicited input regarding each firm from the head of mergers and acquisitions at Oracle Corporation, who recommended Seven Hills.

On February 17, 2009, the independent committee met and invited its independent counsel to attend. The independent committee discussed its role in evaluating various proposed strategic transactions that would permit the Company to deregister its shares of common stock under the Exchange Act, delist such shares from quotation on the NASDAQ Global Market, and thereafter do business as a private corporation while providing existing stockholders the opportunity to either (i) tender their shares of common stock for a fair value, or (ii) remain stockholders after the Company goes private. The independent committee also discussed the possibility that the venture capital firm would agree to invest in the Company after the Company became a private corporation. The independent committee directed its legal counsel to contact and interview several potential financial advisors on behalf of the independent committee and delegated the task of selecting a financial advisor to Mr. Henley.

On February 18, 2009, the venture capital firm delivered to the Company a revised term sheet for a proposed equity investment.

During the two weeks following February 17, 2009, counsel to the Company had several conversations with the independent committee's independent counsel regarding possible structures of transactions that would achieve the Company's goals. During that same time period, the independent committee, through its independent



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counsel, contacted and interviewed several potential financial advisors and received pricing proposals from four potential financial advisors. After discussing these proposals, Mr. Henley and the independent committee's independent counsel interviewed two potential financial advisors.

On February 20, 2009, Mr. Cavins, and representatives from Reicker, Pfau, Pyle & McRoy LLP, the Company's corporate counsel, met at the offices of the venture capital firm to further discuss a possible equity investment in the Company concurrently with and immediately following the closing of a going private transaction. Representatives from the independent committee's independent counsel participated in the meeting by conference telephone call.

On February 23, 2009, CallWave announced the sale of its virtual fax subscriber base and related intellectual property to j2 Global Communications, Inc. The assets were sold for \$12 million in cash with 10% of the purchase price, \$1.2 million, held in escrow to secure the Company's indemnity obligations with respect to its representations and warranties. We currently anticipate that the entire escrow amount will be released to the Company upon expiration of the escrow period on February 23, 2010. We currently believe that the proceeds from the sale of the fax assets, together with our pre-existing cash assets and expected cash flow from our legacy Internet Answering Machine business, provide CallWave with enough cash assets to fund the going private transaction and operating losses through June 30, 2010, without the need to raise additional capital prior to that date. However, we believe that if the FUZE collaboration and conferencing product line is successful, we might need to raise additional capital at some point in the future and likely within the second to fourth year of operations as a private company.

On March 3, 2009, the independent committee met and invited its independent counsel to attend. Although the proposal from Seven Hills was the most expensive of the remaining proposals, the committee chairman recommended to the full committee that the committee engage Seven Hills. After discussing the pricing proposals received from the potential financial advisors and reviewing their qualifications, the independent committee entered into an engagement letter with Seven Hills as its financial advisor. Also at this meeting, the independent committee discussed various methods of accomplishing the Company's goals of delisting its shares and continuing its operations as a private corporation while providing its stockholders the choice of tendering their shares or remaining invested in the Company.

On March 6, 2009, the Company's counsel, the independent committee's independent counsel, and Mr. Stubbs, the Company's chief financial officer, participated in a conference call during which they discussed structures for the going private transaction, including an issuer tender offer, a reverse stock split immediately followed by a forward stock split, an issuer tender offer followed by reverse and forward stock splits, and a merger.

On March 9, 2009, Mr. Stubbs submitted to the independent committee's independent counsel the going private transaction structure recommended by the Company's management: an issuer tender offer followed by a reverse/forward stock split if necessary to reduce the number of beneficial holders of the common stock of the Company to below 300. The Company's proposal contemplated that the Company would receive a capital investment from the venture capital firm after the Company consummated the going private transaction.

Seven Hills, the independent committee's financial advisor, began its analysis during the first two weeks of March 2009 by reviewing historical financial information provided by CallWave, financial projections and current market valuations. On March 10, 2009, Seven Hills visited CallWave's offices to review a detailed list of due diligence questions and had several follow-up discussions with key management team members, including chief financial officer Mark Stubbs, and chief executive officer Jeff Cavins. This initial meeting and subsequent follow-up discussions focused on the business context and background of the transaction, the historical financial and operating results of CallWave, a review of CallWave's assets and liabilities, and management's estimates of CallWave's potential liquidation values and future business and financial prospects of CallWave. CallWave's management prepared a liquidation value analysis, base case financial forecast, upside financial forecast, and downside financial forecast for review by Seven Hills. See "Special Factors - Our Plans After the Going Private Transaction."



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On March 14, 2009, the independent committee met to discuss the Company's proposal. The independent committee's independent counsel and representatives of Seven Hills were invited to attend the meeting. The independent committee together with its legal and financial advisors, reviewed various alternatives to the Company's proposal, including reverse and forward stock splits without first conducting an issuer tender offer and a merger in which all stockholders who own below a threshold amount of stock are cashed out, as well as issues and logistics associated with each alternative. The independent committee discussed the terms of the proposed capital investment by the venture capital firm and procedural protections to ensure that any going private transaction would be fair. The independent committee determined that, if it were to agree to an issuer tender offer followed by reverse and forward stock splits, such procedural protections would include the following: (i) the Company would provide stockholders sufficient notice of the reverse and forward stock splits in order to give stockholders the option to purchase additional shares to avoid being cashed out in such stock split, and (ii) any fractional share interests held by cashed-out stockholders would be valued at the greater of the price offered in the issuer tender offer or the average market price of the Company's common stock calculated during a specified period of time preceding the reverse and forward stock splits. The independent committee acknowledged the advantage of completing the proposed going private transaction in two steps, first conducting an issuer tender offer and then effecting a reverse/forward stock split, because this structure would provide meaningful liquidity to large stockholders without creating downward pressure on the market price of the common stock of the Company.

During the week following March 14, 2009, the Company's counsel, the Company's management, and the independent committee's independent counsel and financial advisors discussed alternative structures for the going private transaction, and the Company's counsel circulated draft documents for the going private transaction.

The independent committee met on March 22, 2009, and invited its independent legal counsel and representatives of Seven Hills to attend. The independent committee together with its legal counsel and financial advisors reviewed various structures for the going private transaction, including reverse and forward stock splits, an issuer tender offer followed by reverse and forward stock splits, a merger, and reverse and forward stock splits followed by an issuer tender offer as well as issues and logistics associated with each alternative. The independent committee together with its legal counsel and financial advisors also reviewed alternatives to a going private transaction, including remaining a public corporation, selling the Company, and liquidating the Company, as well as issues and logistics associated with each alternative. Seven Hills discussed with the Company a preliminary financial analysis of potential per share transaction prices of the Company's common stock based upon three analyses: (i) a public company analysis in which Seven Hills compared the Company with similar public companies, (ii) a preliminary liquidation analysis based upon guidance from the Company in which Seven Hills determined the value of the Company if it were to liquidate, and (iii) a premiums paid analysis. Seven Hills also presented as supplemental information a discounted cash flow analysis based on the projections provided to it by management. This discounted cash flow analysis was based on management's assumption as described to Seven Hills that the Company received \$4.0 million in venture financing and that 50% of the Company's stockholders tendered in a tender offer at a price per share of \$1.30. Seven Hills indicated to the committee that the discounted cash flow analysis was not reliable when valuing the Company due to the early nature of the Company's products going forward, management's lack of visibility into revenue and cash flows in the later years, and the fact that such an analysis would rely largely on the terminal value of the Company's cash flows in later years, which management indicated was extremely hard to predict. The independent committee also discussed the estimated value of the Company after completion of the proposed going private transaction and after the proposed investment by the venture capital firm, as well as the relationship between the proposed purchase price and the percentage of the Company that would be acquired by the venture capital firm. After this discussion, the independent committee determined to discuss the Seven Hills liquidation analysis and the Company's various strategic alternatives with the Company's management.

On March 25, 2009, Mr. Henley and representatives of the Company's management, the Company's counsel, the independent committee's independent legal counsel, and the independent committee's financial advisor participated in a conference call to discuss the Company's proposed structure for the going private

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transaction, a valuation analysis of the Company prepared by the Company's management, and the Seven Hills liquidation analysis. During the following week, the Company's counsel and the independent committee's independent legal counsel continued to negotiate with respect to the price of the issuer tender offer and to discuss the appropriate structure of the going private transaction.

On March 26, 2009, the venture capital firm and Mr. Cavins, chief executive officer, Mr. Stubbs, chief financial officer, and the Company's corporate counsel discussed modifications to the proposed terms of the potential equity investment. The venture capital firm and the Company's management and corporate counsel negotiated terms to the modified proposal over the next several weeks.

On March 29, 2009, the independent committee met and invited its independent legal counsel and representatives of Seven Hills to attend. The independent committee reviewed the valuation analysis prepared by the Company's management. See "Special Factors - Our Plans After Going Private Transaction," for a discussion of this analysis, which includes a liquidation analysis and three financial projections, a base case forecast, an upside forecast, and a downside forecast. The independent committee discussed the Seven Hills liquidation analysis of the Company and the price per share the Company's management proposed to offer to stockholders in the issuer tender offer. The independent committee agreed that the price range proposed by the Company's management, between \$0.80 and \$0.90 per share, while a premium to the then-current market price of approximately \$0.80, the closing price on Friday, March 27, 2009, would not constitute a fair price. The independent committee also discussed the Company's strategic alternatives to determine if a better course of action would be to conserve the Company's cash and continue operations as a public corporation. The independent committee determined to seek from the Company's management more information about the Company's business plan, market strategy, and timeline for producing a viable product.

On March 30, 2009, the independent committee met and invited members of the Company's management, the Company's counsel, and the independent committee's independent counsel to attend. The independent committee informed the Company's management that the independent committee believed the price range submitted by the Company's management, between \$0.80 and \$0.90 per share, was not fair and sought more information regarding when the Company's management expects to produce a viable product. The independent committee discussed the business plan and the valuation analysis prepared by the Company's management. The independent committee also discussed whether the proposed going private transaction was the appropriate path for the Company and reviewed the Company's strategic options, which included liquidation, remaining a public corporation, and going private.

The Company's management noted that an increase to the proposed price would impact the Company's ability to engage in a transaction in which the venture capital firm would invest in the Company on the terms discussed.

On April 3, 2009, the Company withdrew its going private proposal, and the work of the independent committee ceased. Messrs. Cavins and Stubbs elected to withdraw the Company's proposal for going private because they were unable to reach agreement with the independent committee on a joint recommendation to the board regarding the purchase price per share that the Company would pay in connection with the contemplated tender offer and reverse stock split. Messrs. Cavins and Stubbs then were recommending that the repurchase price be between \$0.80 and \$0.90 per share, which was a premium to the trading price of our shares. Messrs. Cavins and Stubbs believed that if the Company were to pay a price in excess of that range, then there would be a risk that the Company might have insufficient cash to commercialize the FUZE product. Based upon management's concern with the sufficiency of our cash following completion of a going private at a price above that range, and the committee's belief that a fair price per share would have to be above that range, the committee ceased its work.

During the several days after April 3rd, management again reviewed the original reasons for the Board's having initiated consideration of a going private transaction. Those reasons included (i) the significant decline in



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the trading price of CallWave's stock, (ii) the reduced trading volume in those shares, (iii) the Company's focus on the FUZE product, the long development period for commercializing the FUZE product, and the likelihood that the Company would realize losses over several years as it commercialized the FUZE product, (iv) the fact that declines in the Company's stock price below \$1.00 created a significant risk that CallWave's shares would be delisted from trading on NASDAQ, and (v) the fact that such a delisting would adversely affect the ability of our stockholders to dispose of their shares. Management evaluated those original reasons and confirmed that they remained valid.

In addition, management again reviewed the projections that it had provided to the financial advisor to the independent committee, and concluded that following a going private transaction without a venture capital firm, the Company likely would have sufficient cash to enable it to reach a point, in the marketing and sale of FUZE, at which the Company would have a reasonable opportunity to raise additional capital as a private company. Because the sale of the virtual fax subscriber base and related intellectual property to j2 generated additional funds that were available to fund the costs of the going private transaction, management concluded that it was not necessary to raise additional capital at the time of going private.

Management determined that it was important to give stockholders the opportunity to obtain liquidity for their shares. Management had received a number of requests for a share repurchase in the amount of 1.2 million shares at a share price of \$0.70 - \$0.75 per share. Therefore, management concluded that it was in the best interests of stockholders, given the current market conditions, to provide those stockholders that were seeking liquidity an opportunity to obtain it at a significant premium to market, and provide those stockholders wanted to retain an investment in the Company's new products the opportunity to share in the Company's possible future success.

Management confirmed both the continuing validity of the original reasons for pursuing the going private transaction, and the likelihood that following the completion of that transaction, the Company would have sufficient cash to fund operations to a point at which the Company would have a reasonable chance to raise additional capital as a private company. For those reasons, management concluded that the Company could complete the going private transaction without obtaining, at or prior to the completion of that transaction, an additional investment from a venture capital firm.

On April 9, 2009, management shared its conclusions regarding the advisability of a going private transaction and asked the independent committee to resume consideration of a going private transaction after the Company's management concluded that, even without an investment from the venture capital firm, it was in the best interests of the Company and its stockholders to go private.

On April 16, 2009, the venture capital firm confirmed its willingness to invest in the Company, concurrently with the closing of a going private transaction, pursuant to a revised term sheet that the venture capital firm and the Company had negotiated during the last week of February 2009. That term sheet contemplated an investment of up to \$4.0 million for the purchase of a number of shares of a newly-authorized series preferred stock representing up to 19.9% of the Company's outstanding shares. The proposed purchase price was the average closing price for the Company's common stock for the trailing 20 days ending on the last day prior to the close of the financing (approximately \$0.81 at the time of the term sheet) plus five cents (\$0.05) per share. The term sheet contained other provisions that are customary to an investment in a private company. The term sheet further contemplated that at the same time when these shares were issued to the venture capital firm, the Company would propose to existing holders of common stock an exchange offer in which those stockholders would be provided the opportunity to exchange their shares of common stock for shares of the same newly-authorized series of preferred stock.

On April 17, 2009, the board convened a special meeting to discuss and consider the venture capital firm's term sheet and to discuss whether it was in the best interests of the Company and its stockholders to stay public or go private. The board determined that (i) the price proposed by the venture capital firm was not fair to the



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stockholders of the Company, and (ii) the terms and conditions set forth in the venture capital firm's term sheet were not appropriate for a publicly traded company. Therefore, the board did not accept the proposed term sheet and directed management to cease, for the present time, negotiations with the venture capital firm.

The board did conclude, however, that it was in the best interests of the Company and its stockholders to go private. The board further considered an issuer tender offer as a means for reducing the number of the Company's beneficial stockholders to below 300. However, the board was advised by counsel that an issuer tender offer is, by its nature, a voluntary transaction on the part of stockholders and, therefore, could not guarantee that a sufficient number of stockholders would tender shares to enable the Company to deregister and remain free from SEC reporting requirements after the tender offer. The board directed the independent committee to resume its consideration of the structure of a voluntary tender offer followed by reverse and forward stock splits. The board also authorized the Company's management to initiate discussions with other venture capital firms regarding a possible investment in the Company after completion of a going private transaction.

Following the board's meeting, on April 17, 2009, the independent committee met and invited Mr. Cavins and Mr. Stubbs, and representatives of the Company's counsel, the independent committee's independent counsel, and the independent committee's financial advisor to attend. The independent committee reported that the board of directors had agreed it was in the Company's best interest to go private and, therefore, the independent committee would continue to consider the proposal by the Company's management that the independent committee accomplish a going private transaction through an issuer tender offer followed by reverse and forward stock splits if such stock splits would be necessary to reduce the number of beneficial stockholders of common stock of the Company to below 300. After deliberation, the independent committee agreed that this structure was the best method of completing a going private transaction. Members of the Company's management informed the independent committee that they would discontinue their investigation of the venture capital firm's proposals for investing in the Company in connection with a going private transaction, but they said the Company may wish to consider future capital investments after a going private transaction had been completed. After negotiation, the independent committee, on the one hand, and Mr. Cavins and Mr. Stubbs, on the other, determined that they could make a joint recommendation to the entire board for approval of a price of \$1.15 per share in the tender offer as part of a going private transaction. The independent committee also requested that the Company negotiate with Mr. Sperling, chairman of the board of directors, to limit his voting power, following the going private transaction, in order to preserve an opportunity for minority stockholders to participate in a change of control transaction in the future.

On April 17, 2009, Mr. Cavins, our chief executive officer, notified the venture capital firm of the board's decision.

On April 26, 2009, the independent committee met and invited its independent counsel and representatives of Seven Hills to attend. The independent committee discussed the proposed going private transaction. The price offered in the issuer tender offer would be \$1.15 per share, and the consideration to be paid to stockholders cashed out pursuant to reverse and forward stock splits would be the greater of \$1.15 per share or the average closing price of the Company's common stock for the ten (10) trading days immediately preceding the effective date of the reverse stock split. Seven Hills presented its financial analysis of the consideration proposed to be paid in the contemplated going private transaction to the independent committee. The Seven Hills presentation to the independent committee is attached as Annex C to this document. On April 27, 2009, Seven Hills presented the independent committee with its written opinion that, based upon and subject to the various assumptions and limitations set forth in the written opinion as of the date of the opinion, the consideration proposed to be paid by CallWave to the holders of shares of our common stock who tender shares in the tender offer or who will hold only fractional share interests immediately after the reverse split (taken together as a whole) is fair, from a financial point of view, to such holders (other than affiliates of CallWave).

With the benefit of Seven Hills' April 26 presentation, the independent committee, having deliberated about the terms, structure, and price of the proposed going private transaction, determined that each of the issuer

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tender offer and the reverse and forward stock splits is fair to, advisable, and in the best interests of the Company and its stockholders and recommended that the board of directors approve each of the issuer tender offer and the reverse and forward stock splits. The independent committee determined that the ratio for the reverse stock split would be 1 for 5,000 and that the ratio for the forward stock split would be 5,000 for 1. The independent committee concluded that the combination of the issuer tender offer and the reverse and forward stock splits would provide liquidity at a significant premium for large stockholders who, due to the Company's current trading volume, otherwise would likely be unable to liquidate significant positions without creating significant downside pressure on the market price of the common stock of the Company and would permit holders of fewer than 5,000 shares of common stock of the Company in a single account sufficient time to either acquire enough shares or consolidate stock accounts to preserve a continuing equity position in the Company following the reverse and forward stock splits.

The independent committee also approved a form of standstill and voting agreement between Mr. Sperling and the Company, pursuant to which Mr. Sperling would represent that he is not currently a party to any agreement with another stockholder or other person regarding the voting, sale or other disposition of his shares. Mr. Sperling would also agree, pursuant to the standstill and voting agreement, that during the three-year term of the agreement, except with approval of a majority of disinterested directors (i) he and his affiliates will not sell any shares of common stock of the Company held by him or his affiliates, (ii) except in certain limited circumstances, he and his affiliates will not acquire any additional shares of common stock of the Company, and (iii) to the extent that he owns more than 37% of shares of common stock of the Company, he will cause such shares in excess of 37% to be voted pro rata with the vote of all other stockholders of the Company. The purpose of the standstill and voting agreement is to provide our continuing stockholders after completion of the going private transaction assurances that stock sales and purchases by Mr. Sperling will not prevent our continuing stockholders from having an opportunity to participate in any control premium associated with a future sale of the Company.

At a special meeting of our board of directors held on May 4, 2009, the board approved the tender offer, reverse stock split, and forward stock split described in this document. In connection with that approval, the board considered, among other factors, the following:

The conclusions of the independent committee that the going private transaction will (i) provide through the tender offer liquidity at a significant premium for large stockholders who, due to the Company's current trading volume, otherwise would likely be unable to liquidate significant share positions without creating substantial pricing downside pressure on the market price of the Company's common stock, (ii) provide small stockholders the opportunity to liquidate their holdings and receive a premium over recent market prices without incurring brokerage commissions, and (iii) by disclosing the Company's intention to effect the reverse and forward stock splits, allow holders of fewer than 5,000 shares in a single account sufficient time to either acquire enough shares of common stock or consolidate accounts to preserve a continuing equity position in the Company following the reverse and forward stock splits.

A liquidation analysis prepared by management, even though management has informed the Company that it is their opinion that sufficient stockholder support for a liquidation does not exist; projections prepared by management and presented to the financial advisor to the independent committee, reflecting various scenarios following the going private transaction as the Company seeks, among other things, to develop and market FUZE; and the business risks associated with the effort to develop and market FUZE.

The conclusions of the independent committee and its financial advisor that the consideration to be paid by CallWave to the holders of shares of our common stock who tender shares in the tender offer or who will hold only fractional interests immediately after the reverse stock split (taken together as a whole) is fair, from a financial point of view, to such holders (other than affiliates of CallWave).

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The significant cost savings, estimated to be at least \$765,000 and up to \$1,000,000 per year, that the Company is expected to realize as a result of (i) the termination of the registration of its common stock under the Exchange Act, (ii) the elimination of costs associated with being listed on NASDAQ, and (iii) not being required to comply with Section 404B of the Sarbanes-Oxley Act of 2002.

The fact that, due to the limited liquidity and low market price of the Company's common stock, neither the Company nor its stockholders have realized many of the benefits associated with being a publicly traded, NASDAQ-listed company, such as enhanced stockholder value, stock liquidity, analyst coverage, business credibility and the ability to use company stock as currency for acquisitions.

The additional savings in the amount of the Company's management and employee time that no longer will be devoted to preparing the periodic reports required of publicly traded companies under the Exchange Act, managing stockholder relations and communications, and complying with NASDAQ listing requirements.

The additional monetary savings that the Company should realize from (i) no longer being required to service a relatively large number of stockholders holding small share positions in the Company's common stock, (ii) the reduced accounting and legal fees associated with having the Company's financial statements reviewed on a quarterly basis and audited on an annual basis, and (iii) the reduced premiums for the Company's directors' and officers' insurance policies as a result of the Company no longer being a public reporting company.

The Company's ability, as a private company, to control the dissemination of certain business information, which currently is required to be disclosed in the Company's periodic reports and, accordingly, made available to the Company's competitors, vendors, customers and other interested parties, potentially to the Company's detriment.

The Company's ability, as a private company, to have greater operational flexibility by being able to focus on long-term growth without an undue concern for short-term fluctuations in the market price of the Company's common stock.

On May 5, 2009, the Company commenced the tender offer portion of the going private transaction.

On June 4, 2009, the tender offer expired. During the tender offer, stockholders tendered for purchase by the Company an aggregate of shares of common stock.

On June 5, 2009, the Company purchased the tendered shares for \$ . At the close of business on June 5, 2009, the record date for the special meeting, the Company had shares of common stock outstanding held by stockholders of record representing beneficial stockholders. The Company determined that the stock splits were therefore necessary to complete the going private transaction, and determined to hold a special meeting of the stockholders to vote on proposals to effect the stock splits, and to solicit proxies from the Company stockholders for such a vote.

## **Fairness of the Going Private Transaction**

### *Independent Committee Analysis*

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The independent committee considered a number of factors, including the following, when determining whether the preceding tender offer and the reverse stock split and forward stock split were fair and in the best interest of CallWave and all its stockholders, including its unaffiliated stockholders:

The considerable costs associated with remaining a publicly traded company.

The independent committee's belief that the Company expects FUZE to become profitable more quickly if the Company goes private.

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The independent committee's belief that stockholders holding sufficient shares to approve a liquidation of the Company would not vote in favor of liquidation.

The independent committee's belief that the offer price of \$1.15 per share in the tender offer represents a fair discount from the liquidation value of the Company.

The opinion delivered to the independent committee by Seven Hills, the independent committee's financial advisor, that as of the date of the opinion, the consideration to be paid by CallWave to the holders of shares of our common stock who tender shares in the tender offer or who will hold only fractional share interests immediately after the reverse stock split (taken together as a whole) is fair, from a financial point of view, to such holders (other than affiliates of CallWave). The full text of this written opinion delivered to the independent committee, which describes, among other things, the assumptions made, procedures followed, factors considered and limitations on the review undertaken, is attached to this document as Exhibit and is incorporated in to this document by reference in its entirety. Holders of CallWave common stock are encouraged to read the opinion carefully in its entirety. Seven Hills' opinion was provided to the independent committee in connection with its evaluation of the consideration proposed to be paid to its common stockholders (other than affiliates of CallWave) in the offer and the reverse stock split. It does not constitute a recommendation as to whether any stockholder of CallWave should tender in the offer or act in any way in connection with the going private transaction or otherwise. See Special Factors Fairness Opinion of Financial Advisor.

Our financial condition and results of operations, including our earnings per share and capital levels for the year ended June 30, 2008, and the first nine months ended March 31, 2009.

The percentage by which the per share price to be paid to the cashed-out stockholders exceeds recent trading prices and estimated trading values. See Special Factors Fairness Opinion of Financial Advisor.

The fact that the first step in the going private transaction, the tender offer, is a voluntary transaction in which our stockholders may choose whether to participate.

The ability of large stockholders to liquidate their holdings in CallWave during the tender offer or reverse stock split and receive a premium over recent market prices at the time of approval of the cash-out price, without incurring any discounts due to the low trading volume of CallWave's common stock.

The ability of small stockholders to liquidate their holdings in CallWave during the tender offer and receive a premium over recent market prices at the time of the approval of the cash-out price, without incurring brokerage commissions and the fact that such stockholders would not have this ability if the Company were to effect a reverse stock split without first engaging in the offer.

The fact that our stockholders would be able to participate in the offer by selling their shares or (assuming enough stockholders participated in the offer) have the opportunity to participate in any future growth following consummation of the offer.

The fact that stockholders who wish to remain stockholders after the reverse stock split may do so by accumulating at least 5,000 shares of common stock in a single account prior to the effective date of the reverse stock split.

The fact that stockholders who are cashed out in the reverse stock split will receive at least \$1.15 per pre-split share and will receive a greater value if the average closing price of our common stock for the ten (10) trading day period immediately preceding the effective date of the reverse stock split is greater than \$1.15.

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The likely reduction in the liquidity for our common stock following our delisting from NASDAQ Global Market and the termination of our Exchange Act registration and periodic reporting and the possible significant decrease in the value of the shares of common stock.

The limited trading market for our common stock, including limited liquidity, relatively low prices and trading volume.

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The independent committee believed completing a going private transaction in two steps, first conducting an issuer tender offer and then effecting reverse and forward stock splits, was advantageous because this structure would provide meaningful liquidity to large stockholders without creating downward pressure on the market price of the common stock of the Company and would provide liquidity to small stockholders without incurring brokerage commissions. The issuer tender offer followed by reverse and forward stock splits provides stockholders with a meaningful choice of whether to liquidate their holdings or remain invested in the Company. The committee also considered factors such as the cost to the Company, length of time required, likelihood of success, and the value stockholders could receive, with respect to the various alternatives considered by the committee.

In view of the wide variety of factors considered in connection with its evaluation of the going private transaction, the committee found it impracticable to, and therefore did not, quantify or otherwise attempt to assign relative weights to the specific factors considered in reaching a decision to approve the going private transaction.

### *Conclusions of Independent Committee*

The committee believes that the going private transaction is fair and in the best interests of our stockholders, including unaffiliated stockholders. The independent committee has based its fairness determination in part on the analysis of factors undertaken by Seven Hills, and expressly adopts Seven Hills' analysis and discussion as its own. As set forth above, the first step of the going private transaction, the tender offer, was a voluntary transaction open to all stockholders on the same terms and conditions. The independent committee believes that the going private transaction is fair and in the best interests of the stockholders, both cashed-out stockholders and continuing stockholders who will remain invested after the going private transaction, because the going private transaction structure, a voluntary tender-offer followed by the stock splits, maximizes the voluntary nature of the transaction allowing every stockholder to choose to cash out their shares or subject to maintaining ownership of at least 5,000 shares in a single account at the effective time of the reverse stock split.

The independent committee believes the going private transaction is fair to cashed-out stockholders because the structure of the transaction, a tender offer followed by reverse and forward stock splits, provides large stockholders and small stockholders with the opportunity to liquidate their holdings in the Company and receive a premium over recent market prices at the time of the approval of the cash-out price. The large stockholders receive such an opportunity without incurring any discounts due to the low trading volume of the Company's stock, and the small stockholders receive such an opportunity without incurring brokerage commissions.

The independent committee believes the offer is fair to stockholders who remain stockholders after the going private transaction because (i) large stockholders who wish to remain invested may do so; (ii) small stockholders who wish to remain invested after the reverse stock split may do so by accumulating at least 5,000 shares of common stock in a single account prior to the effective date of the stock split, and (iii) all stockholders who choose to remain invested in the Company will have a proportionately increased stake in the Company. The committee believes discounting the cash-out price from the Company's liquidation value is fair to cashed-out stockholders and to continuing stockholders because, after completion of the offer, the Company will delist and deregister our shares with the SEC and become a private Company and stockholders who choose not to tender their shares will accept the risks associated with the development of FUZE.

Based upon the aforementioned factors, the committee believes that the offer is both substantively and procedurally fair to affiliated and unaffiliated stockholders alike.

### *Board Analysis*

**Advantages of the Going Private Transaction**

The board of directors considered a number of factors, when determining whether the going private transaction was substantively fair and in the best interest of CallWave and all of its stockholders, including its unaffiliated stockholders, including the following:

The considerable costs associated with remaining a publicly traded company.

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The board's belief that the Company expects FUZE to become profitable more quickly if the Company goes private.

The board's belief that stockholders holding sufficient shares to approve a liquidation of the Company would not vote in favor of liquidation.