



## EMCORE Corporation Adopts Tax Benefits Preservation Plan to Protect Tax Assets

September 28, 2023

ALHAMBRA, CA, Sept. 28, 2023 (GLOBE NEWSWIRE) -- (Nasdaq: EMKR) EMCORE Corporation ("EMCORE") announced today that its Board of Directors has approved the adoption of a tax benefits preservation plan ("the plan") in the form of a Section 382 rights agreement designed to protect and preserve the long-term value of certain tax attributes primarily associated with net operating loss carryforwards.

EMCORE intends to submit the plan, which is similar to tax benefits preservation plans adopted by many other public companies with significant tax attributes, for shareholder ratification at its 2024 annual meeting of shareholders.

As of September 30, 2022, EMCORE had approximately \$424.9 million of federal net operating loss carryforwards ("NOLs"), that could potentially be utilized in certain circumstances and subject to certain restrictions to offset EMCORE's future taxable income and reduce its federal income tax liability. Additional information with respect to these NOLs is contained in EMCORE's Annual Report on Form 10-K for the fiscal year ended September 30, 2022, which EMCORE filed with the Securities and Exchange Commission ("SEC") on December 28, 2022.

Section 382 of the Internal Revenue Code ("Section 382") imposes limitations on the future use of a company's NOLs if the company undergoes an "ownership change." EMCORE's ability to benefit from its tax attributes could be substantially limited, or lost altogether, by Section 382 if an "ownership change" occurred. A company generally experiences an "ownership change" if the percentage of its shares of stock owned by one or a group of its 5% shareholders (as defined in Section 382) increases by more than 50 percentage points over a rolling three-year period. While EMCORE periodically monitors its NOLs and currently believes that an ownership change that would impair the value of its NOLs has not occurred, the complexity of Section 382's provisions and the limited knowledge any public company has about the ownership of its publicly traded stock make it difficult to determine whether an ownership change has in fact occurred.

To protect EMCORE's NOLs from being limited or permanently lost under Section 382, the plan is intended to reduce the likelihood of an unintended "ownership change" occurring through the buying and selling of EMCORE's common stock, no par value. There is no assurance, however, that the plan will prevent EMCORE from experiencing an "ownership change."

Under the terms of the plan, EMCORE will distribute to its shareholders one preferred stock purchase right for each share of EMCORE's common stock held as of the close of business on October 12, 2023. The plan is intended to act as a deterrent to any person acquiring beneficial ownership of 4.99% or more of EMCORE's outstanding common stock without the approval of the Board. A person who acquires, without the approval of the Board, beneficial ownership of 4.99% or more of EMCORE's outstanding common stock (including any ownership interest held by that person's "affiliates" and "associates" as defined under the plan) could be subject to significant dilution. Shareholders who beneficially owned 4.99% or more of EMCORE's outstanding common stock prior to the first public announcement by EMCORE of the plan will not trigger any penalties under the plan so long as they do not acquire any additional shares of common stock (other than pursuant to a stock split, reverse stock split, stock dividend, reclassification or similar transaction effected by EMCORE) at a time when they still beneficially own 4.99% or more of such common stock. The Board also retains the sole discretion to exempt any person or group from the penalties imposed by the plan.

The preferred stock purchase rights and the plan will expire no later than September 28, 2026. The preferred stock purchase rights and the plan may also expire on an earlier date upon the occurrence of other events, including in the event that, at a special or annual meeting where EMCORE's shareholders are asked to ratify the plan, such plan is not properly approved, or a determination by EMCORE's Board that (i) the plan is no longer necessary or desirable for the preservation of EMCORE's tax attributes, or (ii) no tax attributes may be carried forward.

The issuance of the preferred stock purchase rights pursuant to the plan will not affect EMCORE's reported earnings per share, and such issuance should not be taxable to EMCORE or its shareholders.

Additional information with respect to the plan will be contained in the related Current Report on Form 8-K and Registration Statement on Form 8-A that EMCORE is filing with the SEC. Copies of these documents can be obtained, when available, at the SEC's internet website at [www.sec.gov](http://www.sec.gov).

### About EMCORE

EMCORE is a leading provider of inertial navigation products for the aerospace and defense markets. We leverage industry-leading Photonic Integrated Chip (PIC), Quartz MEMS, and Lithium Niobate chip-level technology to deliver state-of-the-art component and system-level products across our end-market applications. EMCORE has vertically-integrated manufacturing capability at its facilities in Alhambra, CA, Budd Lake, NJ, Concord, CA, and Tinley Park, IL. Our manufacturing facilities maintain ISO 9001 quality management certification, and we are AS9100 aerospace quality certified at our facilities in Alhambra, CA, Budd Lake, NJ, and Concord, CA. For further information about EMCORE, please visit <https://www.emcore.com>.

### Safe Harbor

This press release contains "forward-looking statements" as defined under the U.S. federal securities laws, including the Private Securities Litigation Reform Act of 1995, and is subject to the safe harbors created by such laws. Forward-looking statements contained in this press release may relate to, but are not limited to: statements regarding EMCORE's plan to seek shareholder ratification of the plan at its 2024 annual meeting of shareholders; EMCORE'S future taxable income; EMCORE's ability to utilize and realize the value of its net operating loss carryforwards and how they could be substantially limited if EMCORE experiences an ownership change as defined in Section 382 of the Internal Revenue Code; and whether the plan will reduce the likelihood of such an unintended ownership change from occurring. Such forward-looking statements are based on current expectations that involve a number of known and unknown risks, uncertainties and other factors which may cause actual events to be materially different from those expressed or implied by such forward-looking statements. Information on factors that may impact these forward-looking statements can be found in the "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Risk Factors" sections contained in EMCORE's periodic reports filed with the SEC, including, but not limited to, its latest Annual Report on Form 10-K and subsequent Quarterly Reports on Form 10-Q, copies of which may be obtained from [www.sec.gov](http://www.sec.gov). The forward-looking statements in this press release are made as of the date hereof.

Notwithstanding changes that may occur with respect to matters relating to any forward-looking statements, EMCORE assumes no obligation to publicly update, amend or clarify its forward-looking statements, whether as a result of new information, future events or otherwise, except as may otherwise be required by the federal securities laws. EMCORE, however, reserves the right to update such statements or any portion thereof at any time for any reason.

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Source: EMCORE Corporation