

OPSWARE INC
Form SC TO-T/A
August 31, 2007

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

Schedule TO

(Amendment No. 5)

Tender Offer Statement under Section 14(d)(1) or 13(e)(1)
of the Securities Exchange Act of 1934

OPSWARE INC.

(Name of Subject Company (Issuer))

**HEWLETT-PACKARD COMPANY
ORCA ACQUISITION CORPORATION**

(Names of Filing Persons (Offerors))

Common Stock, par value \$0.001 per share

(Title of Class of Securities)

68383A 10 1

(CUSIP Number of Class of Securities)

Charles N. Charnas, Esq.

Vice President, Deputy General Counsel and Assistant Secretary

Hewlett-Packard Company

3000 Hanover Street

Palo Alto, California 94304

(650) 857-1501

(Name, Address and Telephone Numbers of Person Authorized
to Receive Notices and Communications on Behalf of Filing Persons)

Copies to:

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New York, New York 10006
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CALCULATION OF FILING FEE

Transaction Valuation*

Amount of
Filing Fee**

\$1,706,967,870.19

\$52,404

* Estimated for purposes of calculating the filing fee only. The transaction valuation was calculated by adding the sum of (i) the offer price of \$14.25 per share multiplied by 105,811,082 shares of common stock, par value \$0.001 per share, of Opsware Inc. outstanding as of July 16, 2007 and (ii)(a) 24,618,041 shares of common stock par value \$0.001 per share, of Opsware Inc., which were subject to issuance pursuant to the exercise of outstanding options as of July 16, 2007, multiplied by (b) the amount equal to \$14.25 minus \$6.16 (the weighted average exercise price of such outstanding options as of July 16, 2007).

** The filing fee, calculated in accordance with the Securities Exchange Act of 1934, equals \$30.70 for each \$1,000,000 of value.

ý Check the box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: \$52,404

Filing Party: Hewlett-Packard Company and Orca Acquisition Corporation

Form or Registration No.: Schedule TO

Date Filed: August 3, 2007

o Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

Check the appropriate boxes below to designate any transactions to which the statement relates:

ý third-party tender offer subject to Rule 14d-1.

o issuer tender offer subject to Rule 13e-4.

o going-private transaction subject to Rule 13e-3.

o amendment to Schedule 13D under Rule 13d-2.

Check the following box if the filing is a final amendment reporting the results of the tender offer: o

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This Amendment No. 5 to Tender Offer Statement on Schedule TO (this "**Amendment**"), filed with the Securities and Exchange Commission (the "**SEC**") on August 31, 2007, amends and supplements the Tender Offer Statement on Schedule TO (as amended, the "**Schedule TO**") filed with the SEC on August 3, 2007 and subsequently amended by (i) Orca Acquisition Corporation, a Delaware corporation ("**Purchaser**") and wholly-owned subsidiary of Hewlett-Packard Company, a Delaware corporation ("**Parent**"), and (ii) Parent. The Schedule TO relates to the offer by Purchaser to purchase all outstanding shares of common stock, par value \$0.001 per share (the "**Shares**"), of Opware Inc., a Delaware corporation (the "**Company**"), at a purchase price of \$14.25 per Share, net to the seller in cash without interest thereon and less any required withholding taxes, upon the terms and subject to the conditions set forth in the Offer to Purchase dated August 3, 2007 (the "**Offer to Purchase**") and in the related Letter of Transmittal, copies of which are attached to the Schedule TO as Exhibits (a)(1)(i) and (a)(1)(ii), respectively. Capitalized terms used but not defined herein have the meanings ascribed to those terms in the Schedule TO.

The information in the Offer to Purchase and in the related Letter of Transmittal is incorporated into this Amendment by reference to all of the applicable items in the Schedule TO, except that such information is hereby amended and supplemented to the extent specifically provided herein.

Item 11. Additional Information.

Item 11 of the Schedule TO is hereby amended and supplemented by adding the following:

"On August 31, 2007, Parent announced that it and Purchaser had extended the Offer, upon the terms and conditions set forth in the Offer to Purchase, until 5:00 p.m., New York City time, on Friday, September 14, 2007. The Offer had been previously scheduled to expire at 12:00 Midnight, New York City time, on Thursday, August 30, 2007. The depository for the Offer has advised Parent and Purchaser that, as of 12:00 Midnight, New York City time, on Thursday, August 30, 2007, an aggregate of approximately 93.9 million Shares had been tendered and not withdrawn from the Offer."

Item 11 of the Schedule TO is further hereby amended and supplemented by adding the following:

"On August 28, 2007, Parent received antitrust regulatory clearance from the Federal Cartel Office under the Act against Restraints of Competition in Germany. Except for the termination of the required waiting period under the HSR Act, which occurred on August 20, 2007, the Offer continues to be conditioned upon the other conditions described in Section 15 "Conditions to the Offer" of the Offer to Purchase, including, among other things, the expiration of the waiting period under the M&A Regulations in China, which will expire on September 13, 2007, unless terminated earlier or extended."

Item 12. Exhibits.

Item 12 of the Schedule TO is hereby amended and supplemented by adding the following exhibit:

"(a)(5)(v) Press release issued by Hewlett-Packard Company on August 31, 2007."

SIGNATURE

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

HEWLETT-PACKARD COMPANY

By: /s/ CHARLES N. CHARNAS

Name: Charles N. Charnas
Title Vice President, Deputy General Counsel and Assistant Secretary

ORCA ACQUISITION CORPORATION

By: /s/ CHARLES N. CHARNAS

Name: Charles N. Charnas
Title President and Secretary

Dated: August 31, 2007

EXHIBIT INDEX

- (a)(1)(i) Offer to Purchase, dated August 3, 2007.*
- (a)(1)(ii) Form of Letter of Transmittal.*
- (a)(1)(iii) Form of Notice of Guaranteed Delivery.*
- (a)(1)(iv) Form of Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.*
- (a)(1)(v) Form of Letter to Clients for Use by Brokers, Dealers, Commercial Banks, Trust Companies and Nominees.*
- (a)(1)(vi) Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9.*
- (a)(1)(vii) Form of Summary Advertisement as published on August 3, 2007 in The Wall Street Journal.
- (a)(5)(i) Press release issued by Hewlett-Packard Company on July 23, 2007.(1)
- (a)(5)(ii) Opware Employee FAQs dated August 10, 2007.
- (a)(5)(iii) Opware Inc. FAQs dated August 17, 2007 regarding the tender offer and merger process, the treatment of Opware options and restricted stock, and the treatment of the Opware Employee Stock Purchase Plan.
- (a)(5)(iv) PowerPoint Presentation dated August 27, 2007 entitled "HP U.S. Benefits Overview."
- (a)(5)(v) Press release issued by Hewlett-Packard Company on August 31, 2007.
- (b) Not applicable.
- (d)(1) Agreement and Plan of Merger, dated as of July 20, 2007, by and among Hewlett-Packard Company, Orca Acquisition Corporation and Opware Inc.(2)
- (d)(2) Form of Tender and Stockholder Support Agreement entered into among Hewlett-Packard Company, Orca Acquisition Corporation and each of the directors and executive officers of Opware Inc. and certain affiliated entities as of July 20, 2007.(3)
- (d)(3) Mutual Nondisclosure Agreement dated as of May 9, 2007 between Parent and the Company.
- (g) Not applicable.
- (h) Not applicable.

*

Included in mailing to stockholders.

Previously filed.

- (1) Incorporated by reference to Exhibit 99.1 to the Form 8-K filed by Hewlett-Packard Company on July 23, 2007.
 - (2) Incorporated by reference to Exhibit 99.2 to the Form 8-K filed by Hewlett-Packard Company on July 23, 2007.
 - (3) Incorporated by reference to Exhibit 2 to the Schedule 13D with respect to Opware Inc.'s securities filed by Hewlett-Packard Company on July 30, 2007.
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SIGNATURE

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