

Orchard Enterprises, Inc.
Form SC 13E3/A
June 07, 2010

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 13E-3
(Amendment No. 1)

(RULE 13e-100)

RULE 13E-3 TRANSACTION STATEMENT UNDER SECTION 13(e) OF THE
SECURITIES EXCHANGE ACT OF 1934

THE ORCHARD ENTERPRISES, INC.

(Name of the Issuer)

The Orchard Enterprises, Inc.
Dimensional Associates, LLC
Orchard Merger Sub, Inc.
JDS Capital, L.P.
JDS Capital Management, LLC
Joseph D. Samberg
Daniel C. Stein
(Name of Person(s) Filing Statement)

Common Stock, Par Value \$0.01 Per Share

(Title of Class of Securities)

25388X 20 5

(CUSIP Number of Class of Securities)

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

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This statement is filed in connection with (check the appropriate box):

- a. The filing of solicitation materials or an information statement subject to Regulation 14A, Regulation 14C or Rule 13e-3(c) under the Securities Exchange Act of 1934
- b. The filing of a registration statement under the Securities Act of 1933.
- c. A tender offer.
- d. None of the above.

Check the following box if the soliciting materials or information statement referred to in checking box (a) are preliminary copies:

Check the following box if this is a final amendment reporting the results of the transaction:

CALCULATION OF FILING FEE

Transaction Valuation(1)	Amount of Filing Fee(2)
\$7,474,070	\$532.90

- (1) Calculated solely for purposes of determining the filing fee, the transaction value was determined based on the product of 3,645,888 shares of common stock that may be exchanged for cash in the transaction multiplied by the \$2.05 per share cash merger consideration (the "Total Consideration").

Each outstanding and unexercised stock option and stock appreciation right has an exercise price per share greater than \$2.05 and, consequently, holders thereof will not receive any cash merger consideration at the effective time of the merger. Nonetheless, pre-merger option and stock appreciation rights holders will receive a contingent right to their portion, if any, of any additional consideration in the event of a resale transaction, as described more fully herein. Because the amount of such additional consideration, if any, is not determinable at this time, it has not been included in the calculation of the maximum aggregate value of the transaction.

The number of shares of common stock includes 5,963 shares of common stock that are issuable upon conversion of 1,789 shares of the Company's Series A convertible preferred stock held by non-affiliates of Dimensional Associates, LLC.

- (2) In accordance with Exchange Act Rule 0-11(c), the filing fee was determined by multiplying 0.00007130 by the Total Consideration.
- Check the box if any part of the fee is offset as provided by Rule 0-11(a)(2) of the Exchange Act 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: \$532.90

Form or Registration No.: Schedule 14A – Preliminary Proxy Statement

Filing Party: The Orchard Enterprises, Inc.

Date Filed: April 27, 2010



INTRODUCTION

This Amendment No. 1 to Transaction Statement on Schedule 13E-3, together with the exhibits hereto (the “Transaction Statement”), is being filed with the Securities and Exchange Commission (“SEC”) by (a) The Orchard Enterprises, Inc., a Delaware corporation (the “Company”), the issuer of the common stock that is subject to the Rule 13e-3 transaction, (b) Dimensional Associates, LLC, a New York limited liability company (“Dimensional Associates”), (c) Orchard Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of Dimensional Associates (“Merger Sub”), (d) JDS Capital, L.P., a Delaware limited partnership (“JDS Capital”), (e) JDS Capital Management, LLC, a Delaware limited liability company (“JDS Capital Management”), (f) Joseph D. Samberg, an individual, and a director and member of Dimensional Associates and managing member of JDS Capital Management, and (g) Daniel C. Stein, an individual, and an executive and director of Dimensional Associates and a member of the Company’s Board of Directors (collectively, the “Filing Persons”). JDS Capital, JDS Capital Management, Mr. Samberg and Mr. Stein are referred to herein collectively as the “Dimensional Affiliates”.

This Transaction Statement relates to the Agreement and Plan of Merger, dated as of March 15, 2010, as amended (the “Merger Agreement”), by and among the Company, Merger Sub and Dimensional Associates. The Merger Agreement provides that, upon the terms and subject to the conditions set forth therein, Merger Sub will merge with and into the Company, with the Company continuing as the surviving corporation (the “Merger”). If the Merger is completed, the Company’s common stockholders, other than Dimensional Associates and its affiliates and stockholders that properly exercise and perfect their appraisal rights under Delaware law, will have the right to receive, for each share of the Company’s common stock they hold at the time of the Merger, \$2.05 in cash and a contingent right to receive additional consideration, under certain circumstances if Dimensional Associates or the Company or any of their affiliates enters into a commitment to sell at least 80% of the Company’s voting securities or assets within six months of the consummation of the Merger.

Concurrently with the filing of this Transaction Statement, the Company is filing with the SEC an amended preliminary Proxy Statement on Schedule 14A (the “Proxy Statement”) under Regulation 14A of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), relating to the annual meeting of the stockholders of the Company at which the stockholders of the Company will consider and vote upon a proposal to approve the Merger and approve and adopt the Merger Agreement and the transactions contemplated thereby. The approval of the Merger will require the affirmative vote of: (i) the holders of a majority of all of the Company’s outstanding shares of voting stock as of the record date for the annual meeting, and (ii) the holders of a majority of all of the Company’s outstanding shares of voting stock as of the record date for the annual meeting, other than shares of voting stock held by Dimensional Associates and its affiliates.

Pursuant to General Instruction F to Schedule 13E-3, the information in the Proxy Statement, including all annexes, exhibits and appendices thereto, is expressly incorporated by reference herein in its entirety, and responses to each item herein are qualified in their entirety by the information contained in the Proxy Statement. The cross-references below are being supplied pursuant to General Instruction G to Schedule 13E-3 and show the location in the Proxy Statement of the information required to be included in response to the items of Schedule 13E-3. As of the date hereof, the Proxy Statement is in preliminary form and is subject to completion or amendment. Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Proxy Statement. All information contained in this Transaction Statement concerning any of the Filing Persons has been provided by such Filing Person and such Filing Person takes responsibility for the accuracy of such information.

Item 1. Summary Term Sheet

The information set forth in the Proxy Statement under the following captions is incorporated herein by reference:

- “SUMMARY TERM SHEET”
- “QUESTIONS AND ANSWERS ABOUT THE MERGER AND THE ANNUAL MEETING OF STOCKHOLDERS”

Item 2. Subject Company Information

(a) Name and Address. The Company’s name and the address and telephone number of its principal executive office are as follows: The Orchard Enterprises, Inc., 23 East 4th Street, 3rd Floor, New York, New York 10003, (212) 201-9280.

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(b) Securities. The information set forth in the Proxy Statement under the following caption is incorporated herein by reference:

- “QUESTIONS AND ANSWERS ABOUT THE MERGER AND THE ANNUAL MEETING OF STOCKHOLDERS — Who is entitled to attend and vote at the annual meeting?”
- “THE ANNUAL MEETING — Record Date; Shares Entitled to Vote; Quorum”
- “STOCK OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT”

(c) Trading Market and Price. The Company’s common stock is currently listed and traded on the Nasdaq Global Market. The information set forth in the Proxy Statement under the following captions is incorporated herein by reference:

- “SUMMARY TERM SHEET — Market Price of Our Common Stock”
- “IMPORTANT INFORMATION REGARDING THE ORCHARD — Market Price of our Common Stock and Dividend Information”

(d) Dividends. The information set forth in the Proxy Statement under the following caption is incorporated herein by reference:

- “IMPORTANT INFORMATION REGARDING THE ORCHARD — Market Price of our Common Stock and Dividend Information”

(e) Prior Public Offerings. None.

(f) Prior Stock Purchases. The information set forth in the Proxy Statement under the following captions is incorporated herein by reference:

- “IMPORTANT INFORMATION REGARDING THE ORCHARD — Transactions in Common Stock”
- “ELECTION OF DIRECTORS — Director Compensation”

Item 3. Identity and Background of Filing Persons

(a) – (c) Name and Address; Business and Background of Entities; Business and Background of Natural Persons. The information set forth in the Proxy Statement under the following captions is incorporated herein by reference:

- “SUMMARY TERM SHEET — The Parties to the Merger”
- “IMPORTANT INFORMATION REGARDING THE ORCHARD — Description of Business”
- “IMPORTANT INFORMATION REGARDING MERGER SUB”
- “IMPORTANT INFORMATION REGARDING DIMENSIONAL ASSOCIATES AND CERTAIN OF ITS AFFILIATES”
- “ELECTION OF DIRECTORS — Nominees”

Item 4. Terms of the Transaction

(a) Material Terms.

(1) Tender Offers. Not applicable.

(2) Mergers or Similar Transactions. The information set forth in the Proxy Statement under the following captions is incorporated herein by reference:

- “SUMMARY TERM SHEET”
- “QUESTIONS AND ANSWERS ABOUT THE MERGER AND THE ANNUAL MEETING OF STOCKHOLDERS”
- “SPECIAL FACTORS”

- “THE ANNUAL MEETING — Vote Required”
- “APPROVAL AND ADOPTION OF THE MERGER AGREEMENT — Vote Required”
- “THE MERGER AGREEMENT”
- “APPENDIX A — AGREEMENT AND PLAN OF MERGER”
- “APPENDIX A-1 — AMENDMENT NO. 1 TO AGREEMENT AND PLAN OF MERGER”
- “APPENDIX A-2 — AMENDMENT NO. 2 TO AGREEMENT AND PLAN OF MERGER”

(c) Different Terms. The information set forth in the Proxy Statement under the following captions is incorporated herein by reference:

- “SUMMARY TERM SHEET — The Parties to the Merger”
- “SUMMARY TERM SHEET — The Merger and Its Effects”
- “SUMMARY TERM SHEET — Merger Consideration”
- “SUMMARY TERM SHEET — Treatment of Options, Restricted Stock, Stock Appreciation Rights and Warrants”
- “SPECIAL FACTORS — Background of the Merger”
- “SPECIAL FACTORS — Interests of Certain Persons in the Merger”
- “THE MERGER AGREEMENT”
- “IMPORTANT INFORMATION ABOUT THE ORCHARD”
- “HISTORICAL RELATIONSHIP BETWEEN DIMENSIONAL ASSOCIATES AND THE ORCHARD”
- “APPENDIX A — AGREEMENT AND PLAN OF MERGER”
- “APPENDIX A-1 — AMENDMENT NO. 1 TO AGREEMENT AND PLAN OF MERGER”
- “APPENDIX A-2 — AMENDMENT NO. 2 TO AGREEMENT AND PLAN OF MERGER”

(d) Appraisal Rights. The information set forth in the Proxy Statement under the following captions is incorporated herein by reference:

- “SUMMARY TERM SHEET — Rights of Appraisal”
- “SPECIAL FACTORS — Fairness of the Merger, Recommendation of the Special Committee and the Board of Directors — Availability of Appraisal Rights”

- “THE ANNUAL MEETING — Rights of Stockholders Who Object to the Merger”
- “THE MERGER AGREEMENT — Appraisal Rights”
- “APPRAISAL RIGHTS”
- “APPENDIX D — SECTION 262 OF THE GENERAL CORPORATION LAW OF THE STATE OF DELAWARE”

(e) Provisions for Unaffiliated Security Holders. The information set forth in the Proxy Statement under the following caption is incorporated herein by reference:

- “SPECIAL FACTORS — Provisions for Non-Continuing Stockholders”

(f) Eligibility for Listing or Trading. Not applicable.

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Item 5. Past Contacts, Transactions, Negotiations and Agreements

(a) Transactions. The information set forth in the Proxy Statement under the following captions is incorporated herein by reference:

- “SUMMARY TERM SHEET — Interests of Certain Persons in the Merger”
- “SPECIAL FACTORS — Background of the Merger”
- “SPECIAL FACTORS — Interests of Certain Persons in the Merger”
- “THE MERGER AGREEMENT”
- “HISTORICAL RELATIONSHIP BETWEEN DIMENSIONAL ASSOCIATES AND THE ORCHARD”
- “CERTAIN TRANSACTIONS”
- “TRANSACTIONS WITH RELATED PERSONS”

(b) – (c) Significant Corporate Events; Negotiations or Contacts. The information set forth in the Proxy Statement under the following captions is incorporated herein by reference:

- “SUMMARY TERM SHEET — The Parties to the Merger”
- “SUMMARY TERM SHEET — The Merger and Its Effects”
- “SUMMARY TERM SHEET — Merger Consideration”
- “SUMMARY TERM SHEET — Interests of Certain Persons in the Merger”
- “QUESTIONS AND ANSWERS ABOUT THE MERGER AND THE ANNUAL MEETING OF STOCKHOLDERS”
- “SPECIAL FACTORS — Background of the Merger”
- “SPECIAL FACTORS — Fairness of the Merger, Recommendation of the Special Committee and the Board of Directors”
- “SPECIAL FACTORS — Interests of Certain Persons in the Merger”
- “THE MERGER AGREEMENT”
- “HISTORICAL RELATIONSHIP BETWEEN DIMENSIONAL ASSOCIATES AND THE ORCHARD”
- “TRANSACTIONS WITH RELATED PERSONS”
- “APPENDIX A — AGREEMENT AND PLAN OF MERGER”

- “APPENDIX A-1 — AMENDMENT NO. 1 TO AGREEMENT AND PLAN OF MERGER”