

Edgar Filing: NET PERCEPTIONS INC - Form SC TO-T/A

NET PERCEPTIONS INC
Form SC TO-T/A
March 11, 2004

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

SCHEDULE TO

Tender Offer Statement Under Section 14(d) (1) or 13(e) (1) of
the Securities Exchange Act of 1934
(Amendment No. 10)

NET PERCEPTIONS, INC.
(Name of Subject Company (Issuer))

OBSIDIAN ENTERPRISES, INC.
(Names of Filing Person (Offeror))

COMMON STOCK, PAR VALUE \$.0001 PER SHARE
(Title of Class of Securities)

64107 U 101
(CUSIP Number of Class of Securities)

Timothy S. Durham
Chief Executive Officer
Obsidian Enterprises, Inc.
111 Monument Circle, Suite 4800
Indianapolis, Indiana 46204
Telephone: (317) 237-4055
(Name, Address and Telephone Numbers of Person Authorized
to Receive Notices and Communications on Behalf of Filing Persons)

Copies to:
Stephen J. Dutton, Esq.
Barnes & Thornburg
11 South Meridian Street
Indianapolis, Indiana 46204
Telephone: (317) 236-1313

CALCULATION OF FILING FEE

| Transaction Valuation* | Amount of Filing Fee** |
|------------------------|------------------------|
| \$11,206,411 | \$906.60 |

* Estimated for purposes of calculating the amount of filing fee only. Transaction value derived by multiplying 28,734,388 (the number of shares of common stock of the subject company outstanding as of October 31, 2003) by \$.39 (the value of each share of subject company as of December 12, 2003).

** The amount of the filing fee, calculated in accordance with Rule 0-11 of the Securities and Exchange Act of 1934, as amended, and Fee Advisory #6 for Fiscal Year 2004 issued by the Securities and Exchange Commission on November 24, 2003, equals 0.00008090% of the transaction valuation.

[X] 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

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previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: \$906.60 Filing Party: Obsidian Enterprises, Inc.
Form or Registration No.: Form S-4 Date Filed: December 15, 2003

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:

- third-party tender offer subject to Rule 14d-1.
- issuer tender offer subject to Rule 13e-4.
- going-private transaction subject to Rule 13e-3.
- 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:

This Amendment No. 10 amends and supplements the Tender Offer Statement on Schedule TO originally filed with the Securities and Exchange Commission (the "Commission") on December 15, 2003, as amended and supplemented by the following amendments (as amended and supplemented, this "Schedule TO"):

- o Amendment No. 1 filed with the Commission on December 17, 2003;
- o Amendment No. 2 filed with the Commission on December 23, 2003;
- o Amendment No. 3 filed with the Commission on January 21, 2004;
- o Amendment No. 4 filed with the Commission on February 17, 2004;
- o Amendment No. 5 filed with the Commission on February 20, 2004;
- o Amendment No. 6 filed with the Commission on February 27, 2004;
- o Amendment No. 7 filed with the Commission on March 5, 2004;
- o Amendment No. 8 filed with the Commission on March 9, 2004; and
- o Amendment No. 9 filed with the Commission on March 11, 2004.

This Schedule TO relates to the offer (the "Offer") by Obsidian Enterprises, Inc., a Delaware corporation ("Obsidian"), to exchange each issued and outstanding share of common stock, par value \$.0001 per share (the "Net Perceptions Shares"), of Net Perceptions, Inc., a Delaware corporation ("Net Perceptions"), for 3/100 of a share of common stock, par value \$.0001 of Obsidian ("Obsidian Shares") and \$0.20 per share in cash. In lieu of fractional shares, cash will be provided in an amount equal to the value of the fractional share.

Obsidian has filed a registration statement with the Commission on Form S-4 (Reg. No. 333-111191) relating to the Obsidian Shares to be issued to stockholders of Net Perceptions in the Offer (as amended, the "Registration Statement"). The terms and conditions of the Offer are set forth in the prospectus which is a part of the Registration Statement (the "Prospectus") and the related Letter of Transmittal. Obsidian has filed the following amendments to the Registration Statement:

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- o Amendment No. 1 filed with the Commission on December 17, 2003; and
- o Amendment No. 2 filed with the Commission on March 11, 2004.

On March 11, 2004, Obsidian released a statement in response to Net Perceptions' March 10, 2004 press release.

A copy of the March 11, 2004 press release is incorporated by reference into this Schedule TO.

ITEM 12. EXHIBITS.

(a) (5) (ix) Press Release issued by Obsidian, dated March 11, 2004

SIGNATURES

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this Amendment No. 9 to Schedule TO is true, complete and correct.

OBSIDIAN ENTERPRISES, INC.

By: /s/ Timothy S. Durham

Timothy S. Durham
Chief Executive Officer

Date: March 11, 2004