

AWARE INC /MA/  
Form SC TO-I/A  
April 03, 2009

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UNITED STATES

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

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SCHEDULE TO/A  
Tender Offer Statement under Section 14(d)(1) Or 13(e)(1)  
of the Securities Exchange Act of 1934  
(Amendment No. 2)

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Aware, Inc.  
(Name of Subject Company (Issuer))

Aware, Inc.  
(Name of Filing Person (Offeror/Issuer))

Common Stock (including the associated Preferred Share Purchase Rights)  
Par Value \$.01 Per Share  
(Title of class of securities)

05453N-10-0  
(CUSIP number of class of securities)

Michael A. Tzannes  
Chief Executive Officer  
Aware, Inc.  
40 Middlesex Turnpike  
Bedford, MA 01730  
Telephone: (781) 276-4000

(Name, address and telephone number of person authorized to receive notices and communications on behalf of filing persons)

With a copy to:  
William R. Kolb, Esq.  
Foley Hoag LLP  
155 Seaport Blvd.  
Boston, MA 02210  
Telephone: (617) 832-1000

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CALCULATION OF FILING FEE

Transaction Valuation*	Amount of Filing Fee**
\$9,100,000	\$357.63^

\* Calculated solely for purposes of determining the amount of the filing fee. Pursuant to Rule 0-11(b)(1) of the Securities Exchange Act of 1934, as amended, the Transaction Valuation was calculated assuming that 3,500,000 outstanding shares of common stock, par value \$.01 per share, will be purchased at the maximum tender offer price of \$2.60 per share.

\*\* The amount of the filing fee, calculated pursuant to Rule 0-11(b)(1) of the Securities Exchange Act of 1934, as amended, equals \$39.30 per million dollars of the value of the transaction.

^ Previously paid in connection with the Schedule TO filed with the Securities and Exchange Commission on March 5, 2009.

.. 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: N/A

Filing Party: N/A

Form or Registration

No.: N/A

Date Filed: N/A

.. 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.

x 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: ..

## INTRODUCTION

This Amendment No. 2 amends and supplements the Tender Offer Statement on Schedule TO (the “Original Schedule TO”), originally filed with the Securities and Exchange Commission (the “SEC”) on March 5, 2009, by Aware, Inc., a Massachusetts corporation (“Aware”), as amended by Amendment No. 1 to the Original Schedule TO filed with the SEC on March 31, 2009 (collectively, the “Schedule TO”). The Schedule TO relates to the tender offer to purchase up to 3,500,000 shares of Aware’s common stock, par value \$.01 per share (including the associated preferred share purchase rights), at a price not more than \$2.60 nor less than \$2.20 per share, net to the seller in cash, without interest, upon the terms and subject to the conditions set forth in the offer to purchase, dated March 5, 2009, as amended on March 31, 2009, a copy of which was attached to the Schedule TO as Exhibit (a)(1)(A) (the “Offer to Purchase”), and the related letter of transmittal, a copy of which was attached to the Original Schedule TO as Exhibit (a)(1)(B) (the “Letter of Transmittal”), which together, as each may be amended or supplemented from time to time, constitute the tender offer.

The information contained in the Offer to Purchase is amended and supplemented by Supplement No. 1 to the Offer to Purchase, dated April 3, 2009, attached hereto as Exhibit (a)(1)(F) (the “Supplement”). The Letter of Transmittal is amended and restated in its entirety by the Amended and Restated Letter of Transmittal attached hereto as Exhibit (a)(1)(G). The Notice of Guaranteed Delivery, a copy of which was attached to the Original Schedule TO as Exhibit (a)(1)(C), is amended and restated in its entirety by the Amended and Restated Notice of Guaranteed Delivery, attached hereto as Exhibit (a)(1)(H). The Letter to brokers, dealers, commercial banks, trust companies and other nominees, a copy of which was attached to the Original Schedule TO as Exhibit (a)(1)(D), is amended and restated in its entirety by the Amended and Restated Letter to brokers, dealers, commercial banks, trust companies and other nominees, attached hereto as Exhibit (a)(1)(I). The Letter to clients for use by brokers, dealers, commercial banks, trust companies and other nominees, a copy of which was attached to the Original Schedule TO as Exhibit (a)(1)(E), is amended and restated in its entirety by the Amended and Restated Letter to clients for use by brokers, dealers, commercial banks, trust companies and other nominees, attached hereto as Exhibit (a)(1)(J).

All information in the Supplement is hereby expressly incorporated by reference to supplement Items 1 through 11 of the Schedule TO to the extent such Items incorporate by reference the information contained in the Offer to Purchase, and as more particularly set forth below:

Item 1. Summary Term Sheet.

The information set forth in the Supplement is incorporated herein by reference.

Item 4. Terms of the Transaction.

(a) Material Terms. The information set forth in the Supplement is incorporated herein by reference.

Item 11. Additional Information.

The information set forth in the Supplement is incorporated herein by reference.

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Item 12 of the Schedule TO is hereby amended and restated as follows:

Item 12. Exhibits.

- (a)(1)(A) Offer to Purchase, as amended, dated March 5, 2009 (filed with the SEC on March 31, 2009 as Exhibit (a)(1)(A) to Amendment No. 1 to the Schedule TO and incorporated herein by reference).
- (a)(1)(B) Letter of Transmittal (filed with the SEC on March 5, 2009 as Exhibit (a)(1)(B) to the Schedule TO and incorporated herein by reference).
- (a)(1)(C) Notice of Guaranteed Delivery (filed with the SEC on March 5, 2009 as Exhibit (a)(1)(C) to the Schedule TO and incorporated herein by reference).
- (a)(1)(D) Letter to brokers, dealers, commercial banks, trust companies and other nominees, dated March 5, 2009 (filed with the SEC on March 5, 2009 as Exhibit (a)(1)(D) to the Schedule TO and incorporated herein by reference).
- (a)(1)(E) Letter to clients for use by brokers, dealers, commercial banks, trust companies and other nominees, dated March 5, 2009 (filed with the SEC on March 5, 2009 as Exhibit (a)(1)(E) to the Schedule TO and incorporated herein by reference).
- (a)(1)(F) Supplement No. 1 to Offer to Purchase, dated April 3, 2009.
- (a)(1)(G) Amended and Restated Letter of Transmittal.
- (a)(1)(H) Amended and Restated Notice of Guaranteed Delivery.
- (a)(1)(I) Amended and Restated Letter to brokers, dealers, commercial banks, trust companies and other nominees, dated April 3, 2009.
- (a)(1)(J) Amended and Restated Letter to clients for use by brokers, dealers, commercial banks, trust companies and other nominees, dated April 3, 2009.
- (a)(2) Not applicable.
- (a)(3) Not applicable.
- (a)(4) Not applicable.
- (a)(5)(A) Press release dated March 5, 2009 (filed as Exhibit 99.1 to the Company's Form 8-K filed on March 5, 2009 and incorporated herein by reference).
- (a)(5)(B) Press release dated April 3, 2009.
- (b) Not applicable.
- (c) Not applicable.

- (d)(1) Rights Agreement dated as of October 2, 2001 between Aware, Inc. and Equiserve Trust Company, N.A., as Rights Agent (filed as Exhibit 4(a) to the Company's Form 8-K filed on October 3, 2001 and incorporated herein by reference).
  - (d)(2) Terms of Series A Participating Cumulative Preferred Stock of Aware, Inc. (filed as Exhibit A to the Rights Agreement filed as Exhibit 4(a) to the Company's Form 8-K filed on October 3, 2001 and incorporated herein by reference).
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- (d)(3) Form of Right Certificate (filed as Exhibit B to the Rights Agreement filed as Exhibit 4(a) to the Company's Form 8-K filed on October 3, 2001 and incorporated herein by reference).
  - (d)(4) Amendment No. 1 to Rights Agreement dated September 6, 2007 between Aware, Inc. and Computershare Trust Company, N.A., as Rights Agent (filed as Exhibit 4.1 to the Company's Form 8-K filed on September 7, 2007 and incorporated herein by reference).
  - (d)(5) 1996 Stock Option Plan, as amended and restated (filed as Annex A to the Company's Definitive Proxy Statement filed on April 11, 2000 and incorporated herein by reference).
  - (d)(6) 1996 Employee Stock Purchase Plan, as amended and restated (filed as Exhibit 99.1 to the Company's Current Report on Form 8-K filed on November 29, 2005 and incorporated herein by reference).
  - (d)(7) Form of Director and Officer Indemnification Agreement (filed as Exhibit 10.4 to the Company's Form 10-K for the year ended December 31, 2002 and incorporated herein by reference).
  - (d)(8) 2001 Nonqualified Stock Plan (filed as Exhibit 99(d)(4) to the Company's Schedule TO filed on March 3, 2003 and incorporated herein by reference).
  - (d)(9) Form of Nonqualified Stock Option Agreement under the 2001 Nonqualified Stock Plan for options granted to executive officers and directors prior to May 21, 2008 (filed as Exhibit 10.6 to the Company's Form 10-K for the year ended 2006 and incorporated herein by reference).
  - (d)(10) Form on Nonqualified Stock Option Agreement under the 2001 Nonqualified Stock Plan for options granted to executive officers and directors from and after May 21, 2008 (filed as Exhibit 10.8 to Company's Form 8-K filed on May 22, 2008 and incorporated herein by reference).
  - (d)(11) Offer letter date December 17, 2007 by and between Richard Moberg and Aware, Inc. (filed as Exhibit 99.2 to Company's Form 8-K filed on December 18, 2007 and incorporated herein by reference).
  - (e) Not applicable.
  - (f) Not applicable.
  - (g) Not applicable.
  - (h) Not applicable.
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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.

AWARE, INC.

By: /s/ Michael A. Tzannes  
Name: Michael A. Tzannes  
Title: Chief Executive Officer

Dated: April 3, 2009

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EXHIBIT INDEX

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