

CHORDIANT SOFTWARE INC
Form SC TO-T/A
April 16, 2010

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE TO

(Rule 14d-100)

TENDER OFFER STATEMENT UNDER SECTION 14(d)(1) OR 13(e)(1)
OF THE SECURITIES EXCHANGE ACT OF 1934

(Amendment No. 3)

CHORDIANT SOFTWARE, INC.

(Name of subject company (Issuer))

MAPLE LEAF ACQUISITION CORP.

a wholly owned subsidiary of

PEGASYSTEMS INC.

(Name of Filing Persons (Offerors))

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Common Stock, par value \$0.001 per share

170404305

(Title of classes of securities)

(CUSIP number of common stock)

Shawn Hoyt

General Counsel and Secretary

Pegasystems Inc.

101 Main Street

Cambridge, MA 02142

(617) 374-9600

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

Copies to:

Jeffrey D. Saper

Lawrence M. Chu

Wilson Sonsini Goodrich & Rosati,

Professional Corporation

650 Page Mill Road

Palo Alto, CA 94304

(650) 493-9300

CALCULATION OF REGISTRATION FEE

Transaction Valuation ⁽¹⁾

\$165,678,120.00

Amount of Filing Fee ⁽²⁾

\$11,812.85

- (1) Estimated for purpose of calculating the filing fee only. The transaction valuation was determined by multiplying the purchase price of \$5.00 per share by the sum of: (i) the 30,508,289 shares of common stock, par value \$0.001 per share (the Shares), of Chordiant Software, Inc., a Delaware corporation, issued and outstanding as of March 12, 2010; (ii) 804,601 restricted stock units or restricted stock award relating to Shares; and (iii) the 1,822,734 Shares that are issuable under outstanding stock options to purchase Shares as of March 12, 2010 with an exercise price of less than \$5.00 per Share.
- (2) The amount of the filing fee calculated in accordance with the Securities Exchange Act of 1934, as amended, equals \$71.30 for each \$1,000,000 of value.
- 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 previously paid. Identify the previous filing by registration statement number, or the form or schedule and the date of its filing.

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| | | | |
|---------------------------|-------------|---------------|--|
| Amount Previously Paid: | \$11,812.85 | Filing Party: | Maple Leaf Acquisition Corp. and Pegasystems Inc. |
| Form of Registration No.: | Schedule TO | Date Filed: | March 24, 2010 |

“ Check the box if the filing relates solely to preliminary communications made before the commencement of the 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. 3 (this Amendment) amends and supplements the Tender Offer Statement on Schedule TO (which, together with any amendments and supplements thereto, collectively constitute the Schedule TO) filed by (i) Maple Leaf Acquisition Corp., a Delaware corporation (Purchaser) and a wholly owned subsidiary of Pegasystems Inc., a Massachusetts corporation (Pegasystems) and (ii) Pegasystems. The Schedule TO relates to the offer by Purchaser to purchase all outstanding shares (the Shares) of common stock, par value \$0.001 per share, of Chordiant Software, Inc., a Delaware corporation (the Company), at a price of \$5.00 per Share, net to the holder in cash without interest, less any required withholding taxes, upon the terms and subject to the conditions set forth in the Offer to Purchase dated March 24, 2010 (which, together with any amendments and supplements thereto, collectively constitute the Offer to Purchase) and in the related Letter of Transmittal, copies of which are attached as Exhibits (a)(1)(i) and (a)(1)(ii).

The information set forth in the Offer to Purchase (as amended hereby), including Annex I thereto, is hereby incorporated by reference in answer to Items 1 through 11 of the Schedule TO, and is supplemented by the information specifically provided in this Amendment.

This Amendment is being filed to reflect certain updates as described below.

Amendment to the Offer to Purchase

Items 1 through 11 of the Schedule TO, to the extent such Items incorporate by reference the information contained in Section 16 of the Offer to Purchase are amended and supplemented, and Section 16 of the Offer to Purchase is hereby amended and supplemented, by appending the following to the end of the paragraph in the subsection entitled Legal Proceedings in Section 16 of the Offer to Purchase entitled Certain Regulatory and Legal Matters :

On April 16, 2010, the Company, Pegasystems and Purchaser entered into a memorandum of understanding with plaintiffs and the other defendants to settle the *Bennett* lawsuit, the *Suba* lawsuit, the *Paskowitz* lawsuit and a fourth class action lawsuit, filed by Larry Settles on April 12, 2010, in the United States District Court for the Northern District of California.

Under the terms of the memorandum of understanding, the Company, Pegasystems, Purchaser, the other named defendants and the plaintiffs have agreed to settle the lawsuits, subject to court approval. As part of the settlement, the defendants deny all allegations of wrongdoing and deny that the previous disclosures were inadequate, but the Company agreed to make available certain additional information to its stockholders, which is set forth in an amendment to the Schedule 14D-9 filed by the Company. The memorandum of understanding further contemplates that the parties will enter into a stipulation of settlement. The stipulation of settlement will be subject to customary conditions, including court approval following notice to members of the proposed settlement class and consummation of the Merger as contemplated by the Merger Agreement. If finally approved by the court, the settlement will resolve all of the claims that were or could have been brought on behalf of the proposed settlement class in the action being settled, including all claims relating to the Offer, the Merger, the Merger Agreement, the adequacy of the price per Share paid in the Offer and the Merger, the negotiations preceding the Merger Agreement, the adequacy and completeness of the disclosures made in connection with the Offer and the Merger and any actions of the individual defendants in connection with the Offer, the Merger or the Merger Agreement, including any alleged breaches of the fiduciary duties of any of the defendants, or the aiding and abetting thereof. If the court approves the settlement after a notice period, then all public stockholders who did not elect to opt out of such settlement will be bound thereby.

In addition, in connection with the settlement and as provided in the memorandum of understanding, and subject to approval by the court, the Company or its insurer will pay to plaintiffs' counsel for their fees and expenses an amount not to exceed \$350,000. This payment will not affect the amount of consideration to be paid to stockholders of the Company in connection with the Offer and the Merger.

Under the terms of the Merger Agreement, the settlement is subject to the approval of Pegasystems, which may not be unreasonably withheld. Pegasystems has given its approval to the settlement described by the memorandum of understanding.

The Company, Pegasystems, Purchaser and the other defendants maintain that the lawsuits are without merit. Nevertheless, in order to avoid costly litigation and eliminate the risk of any delay to the closing of the Offer and the Merger, and because the only effect of the settlement on the Company's stockholders is to provide additional disclosure, the defendants have agreed to the settlement contemplated in the memorandum of understanding.

After due inquiry and to the best of its knowledge and belief, each of the undersigned certifies that the information set forth in this statement is true, complete and correct.

MAPLE LEAF ACQUISITION CORP.

By: /s/ Shawn Hoyt

Name: Shawn Hoyt

Title: Secretary

PEGASYSTEMS INC.

By: /s/ Shawn Hoyt

Name: Shawn Hoyt

Title: General Counsel and Secretary

Dated: April 16, 2010

EXHIBIT INDEX

| Exhibit Number | Description |
|----------------|--|
| (a)(1)(i) | Offer to Purchase, dated March 24, 2010.* |
| (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 Other Nominees.* |
| (a)(1)(vi) | Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9.* |
| (a)(1)(vii) | Instructions for the Requestor of Forms W-8BEN, W-8ECI, W-8EXP, and W-8IMY* |
| (a)(1)(viii) | Form of Summary Advertisement as published on March 24, 2010 in <i>The New York Times</i> . |
| (a)(5)(i) | Joint Press Release issued by Pegasystems Inc. and Chordiant Software, Inc. on March 15, 2010. (1) |
| (a)(5)(ii) | Presentation, dated March 15, 2010. (2) |
| (a)(5)(iii) | Investor Conference Call Transcript, dated March 15, 2010. (3) |
| (a)(5)(iv) | Press Release issued by Pegasystems Inc. on March 31, 2010. |
| (b) | None. |
| (d)(1) | Agreement and Plan of Merger, dated as of March 14, 2010, by and among Pegasystems Inc., Maple Leaf Acquisition Corp. and Chordiant Software, Inc. (4) |
| (d)(2) | Form of Tender and Voting Agreement (5) |
| (d)(3) | Confidentiality Agreement, dated as of February 16, 2009, by and between Pegasystems Inc. and Chordiant Software, Inc., as amended. |
| (g) | None. |
| (h) | None. |

* Included in mailing to stockholders.
Previously filed.

- (1) Incorporated by reference to Exhibit 99.1 to the Form 8-K filed by Pegasystems Inc. on March 15, 2010.
- (2) Incorporated by reference to Exhibit 99.1 to the Schedule TO-C filed by Pegasystems Inc. on March 15, 2010.
- (3) Incorporated by reference to Exhibit 99.1 to the Schedule TO-C filed by Pegasystems Inc. on March 16, 2010.
- (4) Incorporated by reference to Exhibit 2.1 to the Form 8-K filed by Pegasystems Inc. on March 15, 2010.
- (5) Incorporated by reference to Exhibit 10.1 to the Form 8-K filed by Pegasystems Inc. on March 15, 2010.