

MERCURY COMPUTER SYSTEMS INC
Form SC TO-I/A
September 07, 2006

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 20549

SCHEDULE TO

(Rule 13e-4)

TENDER OFFER STATEMENT UNDER SECTION 14(d)(1) OR 13(e)(1)

OF THE SECURITIES EXCHANGE ACT OF 1934

(Amendment No. 3)

MERCURY COMPUTER SYSTEMS, INC.

(Name of Subject Company (Issuer) and Filing Person (Offeror))

Options to Purchase Common Stock, Par Value \$.01 Per Share,

of Mercury Computer Systems, Inc.

(Title of Class of Securities)

589378 10 8

(CUSIP Number of Class of Securities (Underlying Common Stock))

Craig Barrows, Esq.

Vice President and General Counsel

Mercury Computer Systems, Inc.

199 Riverneck Road

Chelmsford, Massachusetts 01824

(978) 256-1300

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

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Copies of all communications should be sent to:

Anthony J. Medaglia, Jr., P.C.

Goodwin Procter LLP

Exchange Place

Boston, Massachusetts 02109

(617) 570-1000

CALCULATION OF FILING FEE

Transaction Value*
\$15,311,708

Amount of Filing Fee**
\$1,638.36

* Calculated solely for purposes of determining the filing fee. This amount assumes that options to purchase 2,188,434 shares of common stock of Mercury Computer Systems, Inc., which options have an approximate aggregate value of \$15,311,708, will be exchanged pursuant to this offer. The aggregate value of such options was calculated based on the Black-Scholes option pricing model, as of July 31, 2006.

** The amount of the filing fee, calculated in accordance with Rule 0-11 under the Securities Exchange Act of 1934, as amended, equals \$107.00 per million dollars of the value of the transaction. The filing fee was previously paid on August 11, 2006 in connection with the initial filing of this Schedule TO.

.. Check the box if any part of the fee is offset as provided in 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: Not applicable

Filing Party: Not applicable

Form or Registration No.: Not applicable

Date Filed: Not applicable

.. 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.

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“ 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: ”

Introductory Statement

This Amendment No. 3 to Schedule TO amends and supplements the Tender Offer Statement on Schedule TO filed by Mercury Computer Systems, Inc., a Massachusetts corporation (Mercury), with the Securities and Exchange Commission on August 11, 2006 (as amended by Amendment No. 1 thereto on August 11, 2006 and Amendment No. 2 thereto on September 1, 2006) in connection with Mercury s offer to exchange certain outstanding eligible options to purchase shares of Mercury s common stock, par value \$.01 per share, that were originally granted under Mercury s 1997 Stock Option Plan for shares of restricted stock or phantom stock units that will be granted under Mercury s 2005 Stock Incentive Plan, upon the terms and subject to the conditions set forth in the amended Offer to Exchange that was filed as Exhibit (a)(1)(A)(ii) to the Schedule TO.

This Amendment No. 3 is being filed solely to add an additional exhibit to the Schedule TO. Attached as Exhibit (a)(1)(Q) hereto is a form of email notification of receipt of Elections to Participate.

ITEM 12. EXHIBITS.

The Exhibit Index included in this Amendment No. 3 to Schedule TO is incorporated herein by reference.

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.

MERCURY COMPUTER SYSTEMS, INC.

(Registrant)

Date: September 7, 2006

By: /s/ **ROBERT E. HULT**
Robert E. Hult

Senior Vice President,

Chief Financial Officer

EXHIBIT INDEX

| Exhibit Number | Exhibit Description | Incorporated by Reference | | | | Filed Herewith |
|----------------|---|---------------------------|-----------|---------------|--------------------|----------------|
| | | Form | File No. | Exhibit | Filing Date | |
| (a)(1)(A) (i) | Offer to Exchange, dated August 11, 2006, including Transmittal Letter, form of Election to Participate and form of Notice of Withdrawal. | TO-I | 005-52823 | (a)(1)(A) | August 11, 2006 | |
| (a)(1)(A)(ii) | Amended Offer to Exchange, dated September 1, 2006, including form of Election to Participate and form of Notice of Withdrawal. | TO-I/A | 005-52823 | (a)(1)(A)(ii) | September 1, 2006 | |
| (a)(1)(B) | Form of Personnel Grant Status. | TO-I | 005-52823 | (a)(1)(B) | August 11, 2006 | |
| (a)(1)(C) | Email dated August 11, 2006 announcing the commencement of the election period for the exchange program. | TO-I | 005-52823 | (a)(1)(C) | August 11, 2006 | |
| (a)(1)(D) | Form of email reminder of option exchange program expiration date. | TO-I | 005-52823 | (a)(1)(D) | August 11, 2006 | |
| (a)(1)(E) | Preliminary Proxy Statement. | 14A | 000-23599 | N/A | June 27, 2006 | |
| (a)(1)(F) | Definitive Proxy Statement. | 14A | 000-23599 | N/A | July 10, 2006 | |
| (a)(1)(G) | Mercury s 2005 Stock Incentive Plan, amended and restated through August 7, 2006. | 8-K | 000-23599 | 10.1 | August 8, 2006 | |
| (a)(1)(H) | Form of Restricted Stock Award Agreement under Mercury s 2005 Stock Incentive Plan. | 8-K | 000-23599 | 10.3 | November 16, 2005 | |
| (a)(1)(I) | Form of Deferred Stock Award Agreement under Mercury s 2005 Stock Incentive Plan. | 10-Q | 000-23599 | 10.1 | May 9, 2006 | |
| (a)(1)(J) | French Guidelines for Stock Free Awards to employees and corporate officers of Mercury s French subsidiaries. | TO-I | 005-52823 | (a)(1)(J) | August 11, 2006 | |
| (a)(1)(K) | Mercury s Annual Report on Form 10-K for the fiscal year ended June 30, 2005. | 10-K | 000-23599 | N/A | September 13, 2005 | |
| (a)(1)(L) | Mercury s Quarterly Report on Form 10-Q for the quarter ended September 30, 2005. | 10-Q | 000-23599 | N/A | November 9, 2005 | |
| (a)(1)(M) | Mercury s Quarterly Report on Form 10-Q for the quarter ended December 31, 2005. | 10-Q | 000-23599 | N/A | February 9, 2006 | |
| (a)(1)(N) | Mercury s Quarterly Report on Form 10-Q for the quarter ended March 31, 2006. | 10-Q | 000-23599 | N/A | May 9, 2006 | |
| (a)(1)(O) | PowerPoint Presentation Regarding the Exchange Program. | TO-I/A | 005-52823 | (a)(1)(O) | August 11, 2006 | |
| (a)(1)(P) | Email notifying eligible employees of the availability of the amended Offer to Exchange on Mercury s intranet. | TO-I/A | 005-52823 | (a)(1)(P) | September 1, 2006 | |

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| Exhibit Number | Exhibit Description | Incorporated by Reference | | | | Filed Herewith |
|----------------|--|---------------------------|-----------|---------|--------------------|----------------|
| | | Form | File No. | Exhibit | Filing Date | |
| (a)(1)(Q) | Form of email notification of receipt of Elections to Participate. | | | | | X |
| (b) | Not applicable. | | | | | |
| (d)(1) | Mercury s 1997 Stock Option Plan, as amended and restated. | 8-K | 000-23599 | 10.1 | November 18, 2004 | |
| (d)(2) | Form of Option Agreement under Mercury s 1997 Stock Option Plan. | 10-Q | 000-23599 | 10.1 | November 1, 2004 | |
| (d)(3) | Form of Restricted Stock Award Agreement under Mercury s 1997 Stock Option Plan. | 8-K | 000-23599 | 10.1 | August 17, 2005 | |
| (d)(4) | Form of Restricted Stock Award Agreement with James R. Bertelli under Mercury s 1997 Stock Option Plan. | 10-K | 000-23599 | 10.2.4 | September 13, 2005 | |
| (d)(5) | Form of Stock Option Agreement under Mercury s 2005 Stock Incentive Plan. | 8-K | 000-23599 | 10.2 | November 16, 2005 | |
| (d)(6) | Form of Restricted Stock Award Agreement under Mercury s 2005 Stock Incentive Plan. | 8-K | 000-23599 | 10.3 | November 16, 2005 | |
| (d)(7) | Form of Restricted Stock Award Agreement with James R. Bertelli under Mercury s 2005 Stock Incentive Plan. | 8-K | 000-23599 | 10.4 | November 16, 2005 | |
| (d)(8) | Form of Stock Option Agreement under Mercury s 2005 Stock Incentive Plan. | 8-K | 000-23599 | 10.1 | June 2, 2006 | |
| (d)(10) | Form of Change in Control Severance Agreement. | 8-K | 000-23599 | 10.1 | February 23, 2006 | |
| (d)(11) | Form of Stock Option Agreement under Mercury s 2005 Stock Incentive Plan. | 8-K | 000-23599 | 10.1 | August 21, 2006 | |
| (g) | Not applicable. | | | | | |
| (h) | Not applicable. | | | | | |