

EXTREME NETWORKS INC
Form SC TO-I
February 04, 2010

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 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

EXTREME NETWORKS, INC.

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

Options to Purchase Common Stock, Par Value \$0.001 Per Share

(Title of Class of Securities)

30226D106

(CUSIP Number of Class of Securities)

(Underlying Common Stock)

Bob L. Corey

Acting President and Chief Executive Officer,

and Chief Financial Officer

Extreme Networks, Inc.

3585 Monroe Street

Santa Clara, California 95051

(408) 579-2800

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

Copies to:

Howard Clowes, Esq.

Edward Batts, Esq.

W. Michael Hutchings, Esq.

DLA Piper US LLP

2000 University Avenue

East Palo Alto, California 94303

(650) 833-2000

CALCULATION OF FILING FEE

Transaction Valuation*
\$3,260,936

Amount of Filing fee**
\$232.51

* Calculated solely for purposes of determining the filing fee. The calculation of the Transaction Valuation assumes that all options to purchase shares of common stock of Extreme Networks, Inc. that may be eligible for exchange in the offer will be exchange pursuant to the offer. These options cover an aggregate of 5,176,089 shares of Extreme Networks common stock and have an aggregate value of \$3,260,936 as of February 3, 2010, calculated based on a Black-Scholes option pricing model.

** The amount of the filing fee, calculated in accordance with Rule 0-11(b) of the Securities Exchange Act of 1934, as amended, equals \$71.30 per \$1,000,000 of the aggregate amount of the Transaction Valuation. The Transaction Valuation set forth above was calculated for the sole purpose of determining the Amount of Filing Fee and should not be used for any other purpose.

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- 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: Not applicable.
Form or Registration No.: Not applicable.

Filing Party: 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.
 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:

ITEM 1. SUMMARY TERM SHEET.

The information set forth under *Summary of Terms Questions and Answers* in the Offer to Exchange, dated February 4, 2010 (the *Offer to Exchange*), attached hereto as Exhibit (a)(1)(A), is incorporated herein by reference.

ITEM 2. SUBJECT COMPANY INFORMATION.

(a) Name and Address. The name of the issuer is Extreme Networks, Inc., a Delaware corporation (*Extreme* or the *Company*). Extreme's principal executive office is located at 3585 Monroe Street, Santa Clara, California 95051, and its telephone number is (408) 579-2800. The information in the Offer to Exchange under *The Offer to Exchange: Section 10, Information Concerning Extreme Networks; Financial Information*, is incorporated herein by reference.

(b) Securities. This Tender Offer Statement on Schedule TO relates to an offer (the *Offer*) by Extreme to eligible employees, upon the terms and subject to the conditions of the Offer to Exchange, to exchange certain outstanding options to purchase shares of Extreme's common stock having a per share exercise price equal to or greater than \$3.63 for a lesser number of restricted stock units to be settled upon vesting in shares of Extreme's common stock (such restricted stock units being referred to herein as *RSUs*) calculated in accordance with applicable exchange ratios set forth in the Offer to Exchange. A stock option will be eligible for exchange and referred to herein as an *Eligible Option* if it has an exercise price equal to or greater than \$3.63 per share; was granted under one of Extreme's existing equity incentive plans prior to February 4, 2009; and does not expire pursuant to its terms prior to the date on which options surrendered for exchange are canceled. Eligible employees surrendering Eligible Options will receive newly issued RSUs to be granted under the Extreme Networks, Inc. 2005 Equity Incentive Plan (the *2005 Plan*). In the limited cases where Eligible Options have a per share exercise price equal to or greater than \$8.06, instead of replacement RSUs, a cash payment of \$0.05 per share will be made in exchange for surrendered options.

The information set forth in the Offer to Exchange under *Summary Term Sheet Questions and Answers, Certain Risks of Participating in the Offer*, and *The Offer to Exchange: Section 1, Eligible Options; Eligible Employee; Section 2, Replacement Restricted Stock Units; Cash Payments; Expiration Date; Section 6, Acceptance of Eligible Options; Newly Issued Restricted Stock Units; Section 8, Price Range of Our Common Stock*, and Section 9, *Source and Amount of Consideration; Terms of Restricted Stock Units*; is incorporated herein by reference.

(c) Trading and Market Price. The information set forth in the Offer to Exchange under *The Offer to Exchange: Section 8, Price Range of Our Common Stock*, is incorporated herein by reference.

ITEM 3. IDENTITY AND BACKGROUND OF FILING PERSON.

(a) Name and Address. Extreme Networks, Inc. is both the subject company and the filing person. The information set forth under Item 2(a) and in the Offer to Exchange under *The Offer to Exchange: Section 11, Interests of Directors and Officers; Transactions and Arrangements Concerning the Options*, is incorporated by reference.

ITEM 4. TERMS OF THE TRANSACTION.

(a) Material Terms. The information set forth in the Offer to Exchange under *Summary of Terms Questions and Answers* and *The Offer to Exchange: Section 1, Eligible Options; Eligible Employees; Section 2, Replacement Restricted Stock Units; Cash Payments; Expiration Date; Section 4, Procedures for Surrendering Eligible Options; Section 5, Withdrawal Rights and Change of Election; Section 6, Acceptance of Eligible Options; Newly Issued Restricted Stock Units; Section 7, Conditions of the Offer; Section 8, Price Range of Our*

Common Stock; Section 9, Source and Amount of Consideration; Terms of Restricted Stock Units; Section 10, Information Concerning Extreme Networks; Financial Information; Section 12, Status of Eligible Options Acquired By Us in the Offer; Accounting Consequences of the Offer; Section 13, Legal Matters; Regulatory Approvals; Section 14, Material U.S. Federal Income Tax Consequences; and Section 15, Extension of Offer; Termination; Amendment, is incorporated herein by reference.

(b) Purchases. Members of Extreme's Board of Directors, executive officers what are subject to the provisions of Section 16 of the Exchange Act, and former employees are not eligible to participate in the Offer. The information set forth in the Offer to Exchange under *The Offer to Exchange: Section 4, Procedures for Surrendering Eligible Options; and Section 11, Interests of Directors and Officers; Transactions and Arrangements Concerning the Options, is incorporated herein by reference.*

ITEM 5. PAST CONTRACTS, TRANSACTIONS, NEGOTIATIONS AND AGREEMENTS.

(e) Agreements Involving the Subject Company's Securities. The information set forth in the Offer to Exchange under *The Offer to Exchange: Section 11, Interests of Directors and Officers; Transactions and Arrangements Concerning the Options, is incorporated herein by reference.* The 2005 Plan, which is included as Exhibit (d) hereto, is also incorporated herein by reference.

ITEM 6. PURPOSES OF THE TRANSACTION AND PLANS OR PROPOSALS.

(a) Purposes. The information set forth in the Offer to Exchange under *Summary Term Sheet Questions and Answers and The Offer to Exchange: Section 3, Purpose of the Offer, is incorporated herein by reference.*

(b) Use of Securities Acquired. The information set forth in the Offer to Exchange under *The Offer to Exchange: Section 6, Acceptance of Eligible Options; Newly Issued Restricted Stock Units; and Section 12, Status of Eligible Options Acquired By Us in the Offer; Accounting Consequences of the Offer, is incorporated herein by reference.*

(c) Plans. The information set forth in the Offer to Exchange under *Summary Term Sheet Questions and Answers and The Offer to Exchange: Section 2, Replacement Restricted Stock Units; Cash Payments; Expiration Date; Section 10, Information Concerning Extreme Networks; Financial Information; and Section 11, Interests of Directors and Officers; Transactions and Arrangements Concerning the Options, is incorporated herein by reference.*

ITEM 7. SOURCE AND AMOUNT OF FUNDS OR OTHER CONSIDERATION.

(a) Source of Funds. The information set forth in the Offer to Exchange under *The Offer to Exchange: Section 9, Source and Amount of Consideration; Terms of Restricted Stock Units; and Section 16, Fees and Expenses, is incorporated herein by reference.*

(b) Conditions. The information set forth in the Offer to Exchange under *The Offer to Exchange: Section 7, Conditions of the Offer, is incorporated herein by reference.*

(d) Borrowed Funds. Not applicable.

ITEM 8. INTEREST IN SECURITIES OF THE SUBJECT COMPANY.

(a) Securities Ownership. The information set forth in the Offer to Exchange under *The Offer to Exchange: Section 11, Interests of Directors and Officers; Transactions and Arrangements Concerning the Options, is incorporated herein by reference.*

(b) Securities Transactions. The information set forth in the Offer to Exchange under *The Offer to Exchange: Section 11, Interests of Directors and Officers; Transactions and Arrangements Concerning the Options*, is incorporated herein by reference.

ITEM 9. PERSONS/ASSETS, RETAINED, EMPLOYED, COMPENSATED OR USED.

(a) Solicitations or Recommendations. Not applicable.

ITEM 10. FINANCIAL STATEMENTS.

(a) Financial Information. The information set forth in Item 8, *Financial Statements and Supplementary Data*, of Extreme's Annual Report on Form 10-K for the fiscal year ended June 28, 2009; Part I, Item 1, *Financial Statements*, of Extreme's Quarterly Report on Form 10-Q for the fiscal quarter ended December 27, 2009, and the financial information contained in the Offer to Exchange under *The Offer to Exchange: Section 10, Information Concerning Extreme Networks; Financial Information*; and Section 17, *Additional Information*, is incorporated herein by reference.

(b) Pro Forma Information. Not applicable.

ITEM 11. ADDITIONAL INFORMATION.

(a) Agreements, Regulatory Requirements and Legal Proceedings. The information set forth in the Offer to Exchange under *Certain Risks of Participating in the Offer* and *The Offer to Exchange: Section 11, Interests of Directors and Officers; Transactions and Arrangements Concerning the Options*, and Section 13, *Legal Matters; Regulatory Approvals*, is incorporated herein by reference.

(b) Other Material Information. Not applicable.

ITEM 12. EXHIBITS

The following exhibits are filed with this Schedule TO:

| Exhibit No. | Description | Filed Herewith | Form | Incorporated by Reference | | |
|-------------|---|----------------|------|---------------------------|-----------|-------------|
| | | | | Exhibit No. | File No. | Filing Date |
| (a)(1)(A) | Offer to Exchange Certain Outstanding Options for a Number of Restricted Stock Units and Cash Payments, dated February 4, 2010 | X | | | | |
| (a)(1)(B) | Form of Announcement Email from Bob L. Corey, Extreme Networks Acting President and Chief Executive Officer, and Chief Financial Officer, to Eligible Employees, dated February 4, 2010 | X | | | | |
| (a)(1)(C) | Screenshots of Option Exchange Program Website | X | | | | |
| (a)(1)(D) | Form of Expiration Reminder Email Communication to Eligible Employees | X | | | | |
| (a)(1)(E) | Form of Restricted Stock Unit Agreement under the Extreme Networks, Inc. 2005 Equity Incentive Plan | X | | | | |
| (a)(1)(F) | Annual Report on Form 10-K for the fiscal year ended June 28, 2009 | | 10-K | | 000-25711 | 08/28/2009 |
| (a)(1)(G) | Quarterly Report on Form 10-Q for the fiscal quarter ended September 27, 2009 | | 10-Q | | 000-25711 | 10/30/2009 |
| (a)(1)(H) | Quarterly Report on Form 10-Q for the fiscal quarter ended December 27, 2009 | | 10-Q | | 000-25711 | 02/03/2010 |
| (b) | Not applicable | | | | | |
| (d) | Extreme Networks, Inc. 2005 Equity Incentive Plan | | 8-K | 99.3 | 000-25711 | 10/23/2009 |
| (g) | Not applicable | | | | | |
| (h) | Not applicable | | | | | |

ITEM 13. INFORMATION REQUIRED BY SCHEDULE 13E-3.

Not applicable.

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.

EXTREME NETWORKS, INC.

By: /s/ BOB L. COREY
Name: Bob L. Corey
Title: Acting President and Chief Executive Officer,

Senior Vice President, and

Chief Financial Officer

Dated: February 4, 2010

EXHIBIT INDEX

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| (a)(1)(H) | Quarterly Report on Form 10-Q for the fiscal quarter ended December 27, 2009 | | 10-Q | | 000-25711 | 02/03/2010 |
| (b) | Not applicable | | | | | |
| (d) | Extreme Networks, Inc. 2005 Equity Incentive Plan | | 8-K | 99.3 | 000-25711 | 10/23/2009 |
| (g) | Not applicable | | | | | |
| (h) | Not applicable | | | | | |