

Orchard Enterprises, Inc.
Form SC 13D/A
March 18, 2010

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

SCHEDULE 13D

(Rule 13d-101)

**INFORMATION TO BE INCLUDED IN STATEMENTS FILED PURSUANT
TO § 240.13d-1(a) AND AMENDMENTS THERETO FILED PURSUANT TO
§ 240.13d-2(a)**

(Amendment No. 4)

The Orchard Enterprises, Inc.
(Name of Issuer)

Common Stock, par value \$.01 per share
(Title of Class of Securities)

25388X 20 5

(CUSIP Number)

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

March 16, 2010

(Date of Event Which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of §§240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box ☐.

Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See § 240.13d-7 for other parties to whom copies are to be sent.

* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form which respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be filed for the purpose of Section 18 of the Securities Exchange Act of 1934 (Act) or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act.

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NAMES OF REPORTING PERSONS

1
Name: Dimensional Associates, LLC
I.R.S. Identification No.: 13-4244006

CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

2
(a) ☐
(b) ☐

SEC USE ONLY

3

SOURCE OF FUNDS

4
OO

CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO
ITEM 2(d) OR 2(e)

5
☐

CITIZENSHIP OR PLACE OF ORGANIZATION

6
Delaware

SOLE VOTING POWER

7

NUMBER OF

SHARES
BENEFICIALLY OWNED BY
8
4,199,003*

SHARED VOTING POWER

EACH
9
SOLE DISPOSITIVE POWER

REPORTING
PERSON

WITH SHARED DISPOSITIVE POWER

10

4,199,003*

AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

11

4,199,003*

CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

12

o

PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

13

53.3%**

TYPE OF REPORTING PERSON

14

OO

* Reflects the one for three reverse stock split that took effect November 14, 2007 and assumes conversion of 446,918 shares of Series A Preferred Stock of the Issuer, which are convertible into 1,489,727 shares of common stock of the Issuer. See Item 5 below.

** Assumes 6,394,625 shares of common stock of the Issuer issued and outstanding as of November 13, 2009 and conversion of the Series A Preferred Stock of the Issuer. See Item 5 below.

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NAMES OF REPORTING PERSONS

1 Name: JDS Capital, L.P.

I.R.S. Identification No.: 13-4189233

CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

2
(a) ☐
(b) ☐

SEC USE ONLY

3

SOURCE OF FUNDS

4
OO

CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO
ITEM 2(d) OR 2(e)

5
☐

CITIZENSHIP OR PLACE OF ORGANIZATION

6
Delaware

SOLE VOTING POWER

7

NUMBER OF

SHARES	SHARED VOTING POWER
BENEFICIALLY OWNED BY	8
	4,199,003*

EACH
REPORTING PERSON 9 SOLE DISPOSITIVE POWER

WITH 10 SHARED DISPOSITIVE POWER

4,199,003*

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

4,199,003*

12 CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

o

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

53.3%**

14 TYPE OF REPORTING PERSON

PN

* Reflects the one for three reverse stock split that took effect November 14, 2007 and assumes conversion of 446,918 shares of Series A Preferred Stock of the Issuer, which are convertible into 1,489,727 shares of common stock of the Issuer. See Item 5 below.

** Assumes 6,394,625 shares of common stock of the Issuer issued and outstanding as of November 13, 2009 and conversion of the Series A Preferred Stock of the Issuer. See Item 5 below.

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NAMES OF REPORTING PERSONS

1 Name: JDS Capital Management, LLC

I.R.S. Identification No.: 13-3918633

CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

2
(a) ☐
(b) ☐

SEC USE ONLY

3

SOURCE OF FUNDS

4
OO

CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO
ITEM 2(d) OR 2(e)

5
☐

CITIZENSHIP OR PLACE OF ORGANIZATION

6
Delaware

SOLE VOTING POWER

7

NUMBER OF

SHARES BENEFICIALLY OWNED BY	8	SHARED VOTING POWER
		4,199,003*

EACH
REPORTING PERSON 9 SOLE DISPOSITIVE POWER

WITH 10 SHARED DISPOSITIVE POWER

4,199,003*

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON
4,199,003*

12 CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES
o

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)
53.3%**

14 TYPE OF REPORTING PERSON
OO

* Reflects the one for three reverse stock split that took effect November 14, 2007 and assumes conversion of 446,918 shares of Series A Preferred Stock of the Issuer, which are convertible into 1,489,727 shares of common stock of the Issuer. See Item 5 below.

** Assumes 6,394,625 shares of common stock of the Issuer issued and outstanding as of November 13, 2009 and conversion of the Series A Preferred Stock of the Issuer. See Item 5 below.

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NAMES OF REPORTING PERSONS

1

Name: Joseph D. Samberg

CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

2

(a) ☐

(b) ☐

SEC USE ONLY

3

SOURCE OF FUNDS

4

OO

CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO
ITEM 2(d) OR 2(e)

5

☐

CITIZENSHIP OR PLACE OF ORGANIZATION

6

United States of America

SOLE VOTING POWER

7

NUMBER OF

4,199,003*, **

SHARES
BENEFICIALLY OWNED BY

8

SHARED VOTING POWER

EACH
REPORTING

9

SOLE DISPOSITIVE POWER

PERSON 4,199,003*, **

WITH SHARED DISPOSITIVE POWER
10

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

4,199,003*

12 CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

o

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

53.3%***

14 TYPE OF REPORTING PERSON

IN

* Reflects the one for three reverse stock split that took effect November 14, 2007 and assumes conversion of 446,918 shares of Series A Preferred Stock of the Issuer, which are convertible into 1,489,727 shares of common stock of the Issuer. See Item 5 below.

** As the managing member of JDS Capital Management, LLC, the ultimate parent of Dimensional Associates, LLC, Joseph D. Samberg may be deemed to have sole voting and sole dispositive power with respect to all equity securities of the Issuer that are owned of record by Dimensional Associates, LLC.

*** Assumes 6,394,625 shares of common stock of the Issuer issued and outstanding as of November 13, 2009 and conversion of the Series A Preferred Stock of the Issuer. See Item 5 below.

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NAMES OF REPORTING PERSONS

1

Name: Daniel C. Stein

CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

2

(a) ☐

(b) ☐

SEC USE ONLY

3

SOURCE OF FUNDS

4

OO

CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO
ITEM 2(d) OR 2(e)

5

☐

CITIZENSHIP OR PLACE OF ORGANIZATION

6

United States of America

SOLE VOTING POWER

7

NUMBER OF 35,316*

SHARES SHARED VOTING POWER

BENEFICIALLY **8**

OWNED BY 4,199,003**

SOLE DISPOSITIVE POWER

EACH **9**
REPORTING

PERSON 35,316*

WITH SHARED DISPOSITIVE POWER

10

4,199,003**

AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

11

4,234,319*,**

CHECK IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

12

o

PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

13

53.7%***

TYPE OF REPORTING PERSON

14

IN

* Does not include shares of common stock of the Issuer issuable pursuant to restricted stock awards that have not yet vested.

** Reflects the one for three reverse stock split that took effect November 14, 2007 and assumes conversion of 446,918 shares of Series A Preferred Stock of the Issuer, which are convertible into 1,489,727 shares of common stock of the Issuer. See Item 5 below.

*** Assumes 6,394,625 shares of common stock of the Issuer issued and outstanding as of November 13, 2009 and conversion of the Series A Preferred Stock of the Issuer. See Item 5 below.

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EXPLANATORY NOTE

The Schedule 13D filed by the Reporting Persons with the Securities and Exchange Commission (the SEC) on November 21, 2007 (the Schedule 13D), Amendment No. 1 thereto, filed with the SEC on November 2, 2009 (Amendment No. 1), Amendment No. 2 thereto, filed with the SEC on January 12, 2010 (Amendment No. 2), and Amendment No. 3 thereto, filed with the SEC on March 16, 2010 (Amendment No. 3), in each case, with respect to the shares of common stock, par value \$0.01 per share (the Issuer Common Stock), issued by The Orchard Enterprises, Inc. (formerly Digital Music Group, Inc.), a Delaware corporation (the Issuer), are hereby amended by this Amendment No. 4 (Amendment No. 4) to furnish the additional information set forth herein. All capitalized terms contained herein, but not otherwise defined, shall have the meanings ascribed to such terms in Amendment No. 1.

The Reporting Persons are filing this Amendment No. 4 in connection with Dimensional's entry into Amendment No. 1 to the Agreement and Plan of Merger with the Issuer described in Item 4 below.

ITEM 4. Purpose of Transaction.

The information set forth or incorporated by reference in Item 6 below and in Item 3 of Amendment No. 3 is hereby incorporated by reference herein.

As described in more detail in Item 3 of Amendment No. 3, each of the Reporting Persons acquired beneficial ownership of shares of Issuer Common Stock upon consummation of the DMGI Merger pursuant to the DMGI Merger Agreement and hold a controlling equity interest in the Issuer. In addition, (a) on June 4, 2008, Daniel C. Stein was granted options to acquire 28,790 shares of Issuer Common Stock (of which 19,193 are currently vested and exercisable) and 9,596 shares of restricted Issuer Common Stock (of which 6,396 shares have vested), and (b) on June 2, 2009, Mr. Stein was granted 19,455 shares of restricted Issuer Common Stock (of which 9,727 shares have vested), in recognition for his service on the Board.

In connection with the DMGI Merger, the Issuer, Dimensional and certain other stockholders of The Orchard entered into a Registration Rights Agreement, dated November 13, 2007 (the Registration Rights Agreement). Under the terms of the Registration Rights Agreement, (i) Dimensional may demand the Issuer to file a registration statement for the resale of the shares of Issuer Common Stock beneficially owned by Dimensional at any time from and after the date that is six (6) months following the closing of the DMGI Merger or (ii) Dimensional and any other holders of Registrable Securities (as such term is defined in the Registration Rights Agreement) may demand that, upon the determination by the Issuer to prepare and file with the SEC a registration statement relating to an offering for its own account or the account of others of any of its equity securities at any time from and after the date that is twelve (12) months following the closing of the DMGI Merger, the shares of Issuer Common Stock beneficially owned by Dimensional and/or such other holders, as applicable, be included in any such registration statement filed by the Issuer.

As contemplated by the DMGI Merger Agreement, the Board of Directors of the Issuer was decreased to seven members in connection with the DMGI Merger. As contemplated by the DMGI Merger Agreement, certain Directors of the Issuer's Board resigned in connection with the DMGI Merger and The Orchard had the right to designate four members to fill such vacancies. One of The Orchard's designees is Daniel C. Stein.

On October 15, 2009, Dimensional delivered to the Board of Directors of the Issuer a letter in which Dimensional proposed to enter into non-binding discussions with the Issuer regarding a potential transaction through which Dimensional would acquire all of the outstanding shares of Issuer Common Stock that are not currently owned by Dimensional at a price of \$1.68 per share. The Board of Directors of the Issuer formed a Special Committee comprised of independent and disinterested directors to review and evaluate Dimensional's proposal. The Special Committee also engaged independent legal counsel and an independent financial advisor to assist in its review and evaluation. After preliminary discussions with representatives of the Special Committee, Dimensional revised its proposed price to \$1.84 per share.

On January 8, 2010, Dimensional delivered to the Special Committee a letter in which Dimensional (a) reaffirmed its interest regarding its proposal that was the subject of the October 15, 2009 letter and (b) described the circumstances under which it would be willing to increase its proposed price in any such proposed transaction to \$2.00

per share.

On March 9, 2010, Dimensional formed Orchard Merger Sub, Inc., a Delaware corporation and wholly owned subsidiary of Dimensional (Merger Sub). On March 15, 2010, the Issuer, Dimensional and Merger Sub entered into an Agreement and Plan of Merger (the Merger Agreement). The Merger Agreement provides that, upon the terms and subject to the conditions set forth in the Merger Agreement, Merger Sub will merge with and into the Issuer (the Merger), with the Issuer continuing as the surviving

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corporation and a wholly owned subsidiary of Dimensional. As of the effective time of the Merger, each outstanding share of the Issuer Common Stock, other than outstanding shares of Issuer Common Stock (i) held by Dimensional, its affiliates or Merger Sub, or (ii) with respect to which dissenters rights are properly exercised, will be converted and exchanged into the right to receive:

\$2.05 in cash; and

a contingent right to receive a share of additional consideration (Additional Consideration).

The Additional Consideration will be paid, if, on or prior to the six-month anniversary of the consummation of the Merger, Dimensional, the Issuer or any of their affiliates enters into a commitment (the Resale Transaction) to sell at least 80% of the outstanding voting securities of the Issuer or at least 80% of the assets of the Issuer. The Additional Consideration will be an amount equal to 15% of the difference between the enterprise value of the Issuer in the Resale Transaction and the enterprise value of the Issuer immediately prior to the consummation of the Merger as calculated in accordance with the terms of the Merger Agreement. If the Additional Consideration is to be paid, Dimensional will pay such amount to the paying agent, for the benefit of, and distribution to, the Issuer's pre-Merger stockholders and, if applicable, the Issuer's pre-Merger option and stock appreciation rights holders.

On March 16, 2010, the Issuer, Dimensional and Merger Sub entered into Amendment No. 1 (the Merger Agreement Amendment) to the Merger Agreement. The Merger Agreement Amendment clarifies the intention of the parties that the condition to the completion of the Merger requiring the Merger Agreement and the Merger to be approved and adopted by holders of a majority of the Issuer Common Stock not owned by Dimensional, its affiliates or Merger Sub, is not waivable.

Pursuant to the terms of the Merger Agreement, at the effective time of the Merger, the officers and directors of Merger Sub at the effective time of the Merger will become the officers and directors of the surviving corporation, until their respective successors are duly elected or appointed and qualified in accordance with applicable law. Also, at the effective time of the Merger, the Amended and Restated Certificate of Incorporation of the surviving corporation as then in effect will be amended and restated as provided in the Merger Agreement until amended in accordance with applicable law.

Upon consummation of the Merger, the Issuer Common Stock will be delisted from The Nasdaq Global Market and will become eligible for termination of registration under Section 12(g)(4) of the Securities Exchange Act of 1934.

Consummation of the Merger, which is currently anticipated to occur in the third quarter of the Issuer's fiscal year 2010, is subject to certain customary closing conditions, including, among others, (i) the approval and adoption of the Merger and the Merger Agreement by holders of a majority of the Issuer Common Stock not owned by Dimensional, its affiliates or Merger Sub at a meeting of the Issuer's stockholders to be called to vote on the matter and (ii) the approval of an amendment to the Issuer's certificate of incorporation by holders of a majority of the Issuer's voting securities. There can be no assurance that the Merger will be approved or consummated.

Except as described in this Item 4, the Reporting Persons do not have, as of the date of this Amendment, any plans or proposals that relate to or would result in any of the actions or events specified in clauses (a) through (j) of Item 4 of this Amendment. The current plans and proposals of the Reporting Persons assume that the transactions described in this Item 4 are completed; therefore, if these transactions are not completed for any reason, the Reporting Persons may change their plans or proposals in the future in that event, which may include future transactions in the Issuer's securities. In determining from time to time whether to sell the Issuer Common Stock or additional Issuer securities reported as beneficially owned in this Amendment (and in what amounts) or to retain such securities, the Reporting Persons will take into consideration such factors as they deem relevant, including the business and prospects of the Issuer, anticipated future developments concerning the Issuer, existing and anticipated market conditions from time to time, general economic conditions, regulatory matters, and other opportunities available to the Reporting Persons. The Reporting Persons reserve the right to acquire additional securities of the Issuer in the open market, in privately negotiated transactions (which may be with the Issuer or with third parties) or otherwise, to dispose of all or a portion

of their holdings of securities of the Issuer or to change their intention with respect to any or all of the matters referred to in this Item 4.

References to and descriptions of the Merger Agreement, the Merger Agreement Amendment, the DMGI Merger Agreement and the Registration Rights Agreement set forth above in this Item 4 do not purport to be complete and are qualified in their entirety by reference to the full text of each such agreement. The Merger Agreement Amendment is attached hereto as Exhibit 99.6 and is incorporated herein by reference.

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ITEM 6. Contracts, Arrangements, Understandings or Relationships With Respect to Securities of the Issuer.

The information set forth or incorporated by reference in Item 4 above and in Items 3 and 5 of Amendment No. 3 is hereby incorporated herein by reference.

References to and descriptions of the Merger Agreement, the Merger Agreement Amendment, the DMGI Merger Agreement and the Registration Rights Agreement incorporated in this Item 6 do not purport to be complete and are qualified in their entirety by reference to the full text of each such agreement.

Except as described herein, there are no contracts, arrangements, understandings or relationships (legal or otherwise) between the persons named in Item 2 of Amendment No. 3 and any person with respect to any securities of the Issuer, including but not limited to transfer or voting of any other securities, finder's fees, joint ventures, loan or option arrangements, puts or calls, guarantees of profits, divisions of profits or loss, or the giving or withholding of proxies.

ITEM 7. Material to be filed as Exhibits.

Number	Description
--------	-------------

- | | |
|------|---|
| 99.1 | Joint Filing Agreement, dated as of November 21, 2007, by and among Dimensional Associates, LLC, JDS Capital, L.P., JDS Capital Management, LLC, Joseph D. Samberg and Daniel C. Stein.* |
| 99.2 | Agreement and Plan of Merger, dated as of July 10, 2007, by and among Digital Music Group, Inc., The Orchard Enterprises Inc. and DMGI New York, Inc., as amended by the Amended and Restated Agreement and Plan of Merger, dated September 13, 2007, as further amended by the Second Amended and Restated Agreement and Plan of Merger, dated October 5, 2007.* |
| 99.3 | Amendment No. 1 to the Second Amended and Restated Agreement and Plan of Merger, dated November 7, 2007.* |
| 99.4 | Registration Rights Agreement, dated November 13, 2007, by and among Digital Music Group, Inc. and certain stockholders of The Orchard Enterprises Inc.* |
| 99.5 | Agreement and Plan of Merger, dated as of March 15, 2010, by and among The Orchard Enterprises, Inc., Dimensional Associates, LLC and Orchard Merger Sub, Inc.* |
| 99.6 | Amendment No. 1, dated as of March 16, 2010, to Agreement and Plan of Merger, dated as of March 15, 2010, by and among The Orchard Enterprises, Inc., Dimensional Associates, LLC and Orchard Merger Sub, Inc. |

* Previously filed as an exhibit to the Schedule 13D filed by the Reporting Persons with the Securities and Exchange Commission on November 21, 2007.

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SIGNATURES**

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After reasonable inquiry and to the best of their knowledge and belief, the undersigned certify that the information set forth in this statement is true, complete and correct.

Dated: March 18, 2010

DIMENSIONAL ASSOCIATES, LLC

By: JDS Capital, L.P.
its Manager

By: JDS Capital Management, LLC
its general partner

By: /s/ JOSEPH D. SAMBERG
Joseph D. Samberg
Managing Member

JDS CAPITAL, L.P.

By: JDS Capital Management, LLC
its general partner

By: /s/ JOSEPH D. SAMBERG
Joseph D. Samberg
Managing Member

JDS CAPITAL MANAGEMENT, LLC

By: /s/ JOSEPH D. SAMBERG
Joseph D. Samberg
Managing Member

JOSEPH D. SAMBERG

/s/ JOSEPH D. SAMBERG

DANIEL C. STEIN

/s/ DANIEL C. STEIN