

Orchard Enterprises, Inc.  
Form 10-K/A  
April 30, 2010

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

**FORM 10-K/A  
Amendment No. 1**

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d)  
OF THE SECURITIES EXCHANGE ACT OF 1934

**For The Fiscal Year Ended December 31, 2009**

**or**

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d)  
OF THE SECURITIES EXCHANGE ACT OF 1934

**For the transition period from to**

**Commission File Number: 000-51761**

# THE ORCHARD ENTERPRISES, INC.

(Exact name of Registrant as Specified in Its Charter)

Delaware  
(State or Other Jurisdiction of  
Incorporation or Organization)

20-3365526  
(I.R.S. Employer  
Identification No.)

**23 East 4<sup>th</sup> Street, 3<sup>rd</sup> Floor  
New York, NY 10003**

(Address of Principal Executive Offices, Including ZIP Code)

**(212) 201-9280**

(Registrant's Telephone Number, Including Area Code)

Securities Registered Pursuant to Section 12(b) of the Act:

Title of Each Class	Name of Exchange on Which Registered
Common Stock, \$0.01 par value	The Nasdaq Stock Market LLC

Securities Registered Pursuant to Section 12(g) of the Act: **None**

Indicate by check if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Act: Yes  No

Indicate by check if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act: Yes  No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days: Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Edgar Filing: Orchard Enterprises, Inc. - Form 10-K/A

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Accelerated Filer  Non-accelerated Filer (Do not check if a smaller reporting company)  Smaller Reporting Company

Large Accelerated Filer

Accelerated Filer

Non-accelerated Filer  (Do not check if a smaller reporting company)

Smaller Reporting Company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act): Yes  No

As of June 30, 2009, the aggregate market value of the registrant's common stock held by non-affiliates was \$6,298,792 based on the closing sales price for the registrant's common stock, as reported on the Nasdaq Global Market System on such date.

As of April 19, 2010, the registrant had 6,378,252 shares of common stock outstanding.

## DOCUMENTS INCORPORATED BY REFERENCE

None

TABLE OF CONTENTS

**THE ORCHARD ENTERPRISES, INC.**

**TABLE OF CONTENTS**

	Page
PART III	
<u>Item 10.</u>	<u>2</u>
<u>Directors, Executive Officers and Corporate Governance</u>	
<u>Item 11.</u>	<u>8</u>
<u>Executive Compensation</u>	
<u>Item 12.</u>	
<u>Security Ownership of Certain Beneficial Owners and Management and Related Stockholder</u>	<u>12</u>
<u>Matters</u>	
<u>Item 13.</u>	<u>14</u>
<u>Certain Relationships and Related Transactions and Director Independence</u>	
<u>Item 14.</u>	<u>15</u>
<u>Principal Accountant Fees and Services</u>	
PART IV	
<u>Item 15.</u>	<u>16</u>
<u>Exhibits, Financial Statement Schedules</u>	
<u>Signatures</u>	<u>20</u>

TABLE OF CONTENTS

## **EXPLANATORY NOTE**

This Amendment No. 1 on Form 10-K/A (the Form 10-K/A ) amends the Annual Report on Form 10-K for the year ended December 31, 2009 filed by The Orchard Enterprises, Inc. (the Company , The Orchard , we , us or our ) with the Securities and Exchange Commission on March 25, 2010 (the Original Report ) and is being filed for the purpose of providing information required by Part III, Item 10 through Item 14 of Form 10-K which the Company originally intended to incorporate by reference from the Company s proxy statement for the 2010 Annual Meeting of Stockholders, which has been delayed. The reference on the cover of the Original Report to incorporation by reference of the Company s proxy statement into Part III of the original Report is hereby amended to delete that reference.

Except for the information described above, the Company has not modified or updated disclosures presented in the Original Report in the Form 10-K/A. Accordingly, the Form 10-K/A does not reflect events occurring after the filing of the Original Report or modify or update those disclosures affected by subsequent events. Information not affected by this amendment is unchanged and reflects the disclosures made at the time the Original Report was filed. Updated certifications of our Chief Executive Officer and Chief Financial Officer have also been provided.

1

---

TABLE OF CONTENTS

**PART III**

Item 10. ***DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE***

**Board of Directors**

Our board of directors currently consists of seven (7) members. The term of all of our directors will expire at the next annual meeting of stockholders of the Company.

Our current board members are as follows:

Name	Age	Positions with the Company
David Altschul	63	Director
Viet Dinh	42	Director
Michael Donahue	51	Chairman of the Board and Director
Bradley Navin	39	Director and Chief Executive Officer
Nathan Peck	56	Director
Daniel Stein	40	Director
Joel Straka	42	Director

Biographical and other information concerning our directors is set forth below.

**David Altschul** has served as a member of our board since February 2006. Since January 2004, Mr. Altschul has been a partner in Altschul & Olin, LLP, a law firm, where his practice is primarily focused upon representing individuals and companies in the worldwide music industry. From January 2003 to December 2003, Mr. Altschul practiced law as a sole practitioner. From March 2002 to July 2002, Mr. Altschul served as an independent consultant to the Record Industry Association of America. From November 1980 to December 2001, Mr. Altschul was employed in various positions for Warner Bros. Records, including serving as General Counsel from 1986 to 1995 and as both Vice Chairman and General Counsel from 1995 to 2001. Mr. Altschul has a B.A. degree from Amherst College and a J.D. degree from Yale Law School. Mr. Altschul has over 30 years of work experience in, and knowledge of, the music industry, including many years as an executive with a major label. In addition, Mr. Altschul served on the Board of Digital Music Group, Inc. prior to the merger with The Orchard Enterprises, Inc. and provides valuable insight into the Company's history and prior business practices and a level of continuity for management and the members of the board. These qualifications and experience were among the factors considered by our board in selecting him to serve as a director.

**Viet Dinh** has served as a member of our board since November 2007. Mr. Dinh has been a Professor of Law and Co-Director of Asian Law and Policy Studies at Georgetown University Law School since 1996. He served as Assistant Attorney General of the United States for Legal Policy from 2001 to 2003. Mr. Dinh specializes in constitutional law, corporations law, and the law and economics of development. Mr. Dinh is a founder and has been a principal at Bancroft Associates PLLC, a law and public policy consulting firm, since June 2003. He serves on the Board of Directors of News Corporation (NYSE: NWS), M&F Worldwide (NYSE: MFW) and two privately held ventures, Deerland Enzymes, Inc. and Bioptics, Inc. On September 16, 2008, Mr. Dinh was appointed by President George W. Bush to serve as a member of the Board of Directors of the Vietnam Education Foundation. Mr. Dinh has an A.B. degree in government and economics from Harvard College and a J.D. degree from Harvard Law School. Mr. Dinh's experience on the board of directors of two other public companies, including as chair of a nominating and corporate governance committee and member of a compensation committee, along with his experience as a professor

of law at Georgetown University Law School and Assistant Attorney General of the United States for Legal Policy provides him with extensive knowledge of a number of important areas, including leadership, executive compensation, compliance and governance. These qualifications and experience were among the factors considered by our board in selecting him to serve as a director.

***Michael Donahue*** has served as a member of our board since November 2007 and became Chairman of the Board in June 2008. Since March 2005, Mr. Donahue has served as an independent advisor to firms in the information and technology industries. He served as executive chairman of Expensewatch.com from 2006 to

TABLE OF CONTENTS

March 2007. In 2005, Mr. Donahue completed a twenty-year career with KPMG LLP, KPMG Consulting and BearingPoint. During his tenure with KPMG and its successors, he most recently served as Group Executive Vice President and Chief Operating Officer (2001 to 2005) and Managing Partner, Technology Solutions (1997 to 2001). He also served on the Board of Directors of KPMG LLP from 1998 to 2001. Mr. Donahue currently serves on the boards of directors of Air Products and Chemicals, Inc. (NYSE: APD) and GSI Commerce, Inc. (NASDAQ: GSIC). From 2000 to 2008, Mr. Donahue served on the Board of Directors of Arbinet, Inc. (NASDAQ: ARBX). Mr. Donahue has degrees in economics and history from the University of Pennsylvania. Mr. Donahue's management experience and his experience in the technology services industry provides insight about the challenges we face due to rapidly changing IT capabilities. He also brings global perspective from his leadership positions and experience in international enterprises and transactions. His service on the boards of other public companies provides valuable insight on corporate governance. He also has mergers and acquisitions experience in the U.S. and globally. These qualifications and experience were among the factors considered by our board in selecting him to serve as a director.

**Bradley Navin** was elected as a member of our board in February 2010 in connection with his appointment as our Chief Executive Officer. From October 2009 to February 2010, Mr. Navin was our Interim Chief Executive officer. Prior to October 2009, he was Executive Vice President and General Manager of the Company since April 2008, and prior thereto was Vice President, Global Licensing & Sales of the Company since its acquisition of Orchard Enterprises NY, Inc. (formerly known as The Orchard Enterprises Inc., or Orchard NY) in November 2007. Prior to November 2007, Mr. Navin was Vice President of Licensing & Operations for Orchard NY, which he joined in 2004. From 1999 to 2004, Mr. Navin was VP, Music & Programming at Digital Club Network, and the Executive Director of the New York Nightlife Association in 1999. Mr. Navin was an artist manager with Invasion Group management from 1997 to 1999. Prior to that, Mr. Navin worked for booking agency Artist & Audience Entertainment (1995 to 1997), where he was instrumental in helping to break new artists. Mr. Navin holds a B.A. degree from Loyola College in Maryland. As a result of Mr. Navin's six years with us, as well as his service in senior positions of other companies in the music industry, he has extensive management and leadership experience and a deep knowledge of the music industry, the digital marketplace, as well as other complex operation issues that face digital distributors. These qualifications and experience were among the factors considered by our board in selecting him to serve as a director.

**Nathan Peck** has served as a member of our board since June 2008. Mr. Peck has been a Senior Lecturer at The Johnson Graduate School of Management, Cornell University since 2005. From 1999 to 2005, Mr. Peck served as Executive Vice President and Chief Administrative Officer of KPMG Consulting (subsequently BearingPoint). Mr. Peck served as the Financial Services Consulting Co-Practice Leader and Bank Consulting Practice Leader for KPMG Consulting from 1997 to 1999 and 1995 to 1997, respectively. From 1992 to 1995, Mr. Peck was Senior Vice President and Managing Director for Bankers Trust Company. Mr. Peck is an alumnus of McKinsey & Company, is a certified public accountant and earned M.B.A. and B.A. degrees from Cornell University. Mr. Peck has extensive experience in business, corporate finance, financial reporting and strategic planning through his positions at KPMG Consulting, Bankers Trust Company and McKinsey & Company, as well as his position as a Senior Lecturer at The Johnson Graduate School of Management. These qualifications and experience were among the factors considered by our board in selecting him to serve as a director.

**Daniel C. Stein** has served as a member of our board since November 2007. Mr. Stein serves as President of JDS Capital Management, Inc., an investment firm based in New York that invests in private and public debt and equity, and he has held this position since 2003. Mr. Stein served as our Interim Chief Executive Officer during the month of October 2009. In addition, Mr. Stein has served as chief executive officer of eMusic.com, one of our customers, since March 2009 and prior to that served as interim chief executive officer of eMusic.com from October 2008. Mr. Stein also serves as an executive officer and a director of Dimensional Associates, LLC (Dimensional Associates), the majority stockholder of the Company, and he was a director of Orchard NY from April 2003 until its acquisition by the Company in November 2007. From May 2001 through October 2002, Mr. Stein was the chief executive officer of



TTR Technologies, a company that specialized in copy-protection technologies whose assets were sold to Macrovision (MVSN). From 2000 to 2001, Mr. Stein was President of Javu Technologies, which licenses

## TABLE OF CONTENTS

software and services to corporations that store, manage, deliver or repurpose video assets. From 1999 to May 2000, Mr. Stein was president, chief operating officer and a director of the Wedding List Company, an Internet company with retail outlets specializing in the wedding gift and registry business. Mr. Stein has a B.S. degree from Cornell University. Mr. Stein's experience working with a number of companies as a member of a private equity firm, as well as his experience in senior positions (including chief executive officer) in internet based companies gives him a wide range of experience in a number of industries, including the digital music industry, and a knowledge of the digital marketplace. These qualifications and experience were among the factors considered by our board in selecting him to serve as a director.

**Joel Straka** has served as a member of our board since June 2008. Mr. Straka has been analyzing investment opportunities for Essex Equity Capital Management, LLC since early 2010. From 2002 to 2008, Mr. Straka served as an investment banker at Goldman, Sachs & Co. covering consumer products and retail companies. From 1994 to 2000, Mr. Straka served as a corporate attorney with Cravath, Swaine & Moore. Mr. Straka received an M.B.A. degree from Columbia Business School, a J.D. degree from the University of Virginia School of Law and an A.B. degree from Harvard College. Mr. Straka's experience as a corporate attorney and investment banker provides him with extensive knowledge of a number of important areas, including finance, valuation and risk assessment. These qualifications and experience were among the factors considered by our board in selecting him to serve as a director.

## **Board and Board Committees**

Our board of directors conducts its business through its meetings and through meetings of certain committees of the board of directors. The Company is a controlled company under the applicable listing standards of the Nasdaq Global Market because more than 50% of the voting power is held by Dimensional Associates. A controlled company is not required to have a majority of its board of directors composed of independent directors. Director nominees are not required to be selected or recommended for the board's selection by a majority of independent directors or a nominating committee composed solely of independent directors, nor do the Nasdaq Global Market listing standards require a controlled company to certify adoption of a formal written charter or board resolution, as applicable, addressing the nominations process. A controlled company is also exempt from Nasdaq Global Market requirements regarding the determination of officer compensation by a majority of independent directors or a compensation committee composed solely of independent directors. A controlled company is required to have an audit committee composed of at least three directors, who are independent as defined under the rules of both the SEC and the Nasdaq Global Market. The Nasdaq Global Market further requires that all members of the audit committee have the ability to read and understand fundamental financial statements and that at least one member of the audit committee possess financial sophistication. The independent directors must also meet at least twice a year in meetings at which only they are present.

We comply voluntarily with the listing standards of the Nasdaq Global Market that otherwise do not apply to controlled companies, except that our Executive, Nominating and Corporate Governance Committee is not composed entirely of independent directors.

*Executive, Nominating and Corporate Governance Committee.* The Executive, Nominating and Corporate Governance Committee currently consists of Messrs. Stein (Chairman), Altschul, Dinh and Donahue. All such members, other than Mr. Stein, are independent directors under the applicable listing standards of the Nasdaq Global Market. The Executive, Nominating and Corporate Governance Committee is responsible for developing and recommending board member selection criteria, identifying and recruiting prospective board candidates, recommending nominees for election to the board, considering committee member qualifications, recommending corporate governance principles to the board, and providing oversight in the evaluation of the board and each

committee. The Executive, Nominating and Corporate Governance Committee also considers nominees proposed by stockholders. It further is responsible for monitoring the progress and status of management's efforts to acquire additional music catalogs and reviewing and approving the terms of all substantive content acquisition and long-term licensing contracts as well as reviewing and approving any new international expansion plans and proposed capital expenditures over a certain threshold. The Executive, Nominating and Corporate Governance Committee has a written charter, which is available on our website at [www.theorchard.com/about/investor-relations](http://www.theorchard.com/about/investor-relations) by clicking on the link Highlights under the heading Corporate Governance .

TABLE OF CONTENTS

*Nominations.* Our Board believes that the Executive, Nominating and Corporate Governance Committee, a majority of the members of which are independent directors of the Company, can adequately identify appropriate candidates to the Board. The Executive, Nominating and Corporate Governance Committee considers properly submitted stockholder nominations for candidates for membership on the Board as described below under Identifying and Evaluating Nominees for Directors. Under our Bylaws, as amended, a stockholder seeking to propose a nominee for Board membership must deliver notice to our Secretary not less than sixty days (60) calendar days before the one year anniversary of the date on which we first mailed our proxy statement to stockholders in connection with the previous year's annual meeting of stockholders. Notwithstanding the foregoing, if no annual meeting was held in the previous year or the date of the annual meeting has been changed by more than thirty (30) days from the date of the prior year's meeting, a stockholder must deliver notice to our Secretary no later than the close of business on the later of thirty (30) calendar days in advance of the annual meeting and twenty (20) calendar days following the date on which public announcement of the date of the meeting is first made in order to have their nominee considered. The stockholder's notice must set forth, as to each proposed nominee, the following: (a) the name, age, business address and residence address of such person; (b) the principal occupation or employment of such person; (c) the class and number of shares of the corporation that are beneficially owned by such person; (d) a description of all arrangements or understandings between the nominating stockholder and such nominee and any other person or persons (naming such person or persons) pursuant to which the nominations are to be made by the stockholder; and (e) any other information relating to such person that is required to be disclosed in solicitations of proxies for elections of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Exchange Act (including without limitation such person's written consent to being named in the proxy statement, if any, as a nominee and to serving as a director if elected). In addition, the stockholder's notice must set forth, as to such stockholder, (a) a brief description of the business desired to be brought before the meeting and reasons for conducting such business at the annual meeting; (b) the name and address, as they appear on our books, of the stockholder proposing such business; (c) the class and number of our shares that are beneficially owned by the stockholder; (d) any material interest of the stockholder in such business; and (e) any other information that is required to be provided by the stockholder pursuant to Regulation 14A under the Exchange Act in the stockholder's capacity as a proponent to a stockholder proposal. The presiding officer of the meeting may refuse to acknowledge any stockholder nomination not made in compliance with the foregoing procedure.

*Director Qualifications.* While the Executive, Nominating and Corporate Governance Committee has not established formal procedures, specific minimum qualifications or a formal diversity policy for the evaluation of director candidates, the candidates for board membership should have the highest professional and personal ethics and values, and conduct themselves consistent with the Company's Code of Business Conduct. Additionally, candidates and nominees must ultimately reflect a board that is composed of directors who (i) have broad, relevant and diverse experience, (ii) are predominantly independent, (iii) are of high integrity, (iv) have qualifications that will increase overall board effectiveness and (v) meet other requirements as may be required by applicable rules, such as financial literacy or financial expertise with respect to Audit Committee members.

*Identifying and Evaluating Nominees for Directors.* Typically, any new candidates for nomination to the board are suggested by existing directors or our executive officers, although candidates may also come to our attention through stockholders, professional search firms or other persons. The Executive, Nominating and Corporate Governance Committee of the board will carefully review the qualifications of any candidates who have been properly brought to its attention. Such a review may, in the Committee's discretion, include a review solely of information provided to the Committee or it may also include discussion with persons familiar with the candidate, an interview with the candidate or other actions that the Committee deems proper. In the case of new director candidates, the questions of independence and financial expertise are important to determine what roles can be performed by the candidate, and the Executive, Nominating and Corporate Governance Committee determines whether the candidate will meet independence standards set forth in the SEC rules and regulations and the applicable listing standards of the Nasdaq

Global Market, and the level of the candidate's financial expertise. In the case of incumbent directors whose terms of service are set to expire, the Executive, Nominating and Corporate Governance Committee reviews such directors overall service to our Company during their terms, including attendance at meetings, level of participation, quality of

TABLE OF CONTENTS

performance, and whether the director continues to meet the independence standards set forth in the applicable SEC rules and regulations and the applicable listing standards of the Nasdaq Global Market. The Committee shall consider the suitability of each candidate, including the current members of the board, in light of the current size and composition of the board. In evaluating the qualifications of the candidates, the Committee considers many factors, including character, integrity, reputation, business judgment, independence, relevant business and industry expertise, diversity of experience, geographic location of the candidate, length of service and other criteria. The Committee evaluates such factors, among others, and does not assign any particular weighting or priority to any of these factors.

Candidates properly recommended by stockholders are evaluated by the Executive, Nominating and Corporate Governance Committee using the same criteria as other candidates. Candidates are first screened by the Executive, Nominating and Corporate Governance Committee, and if approved by the Executive, Nominating and Corporate Governance Committee, they are then screened by other members of the board. The full board approves the final nomination(s) based on recommendations from the Executive, Nominating and Corporate Governance Committee. The Chairman of the Board, acting on behalf of the full board, will extend the formal invitation to become a nominee of the board. Qualified candidates for membership on the board will be considered without regard to race, color, religion, sex, national origin, age, medical condition or disability, sexual orientation, veteran status or any other characteristic protected by law.

*Audit Committee.* The Audit Committee currently consists of Messrs. Peck (Chairman), Donahue and Straka. The Audit Committee is responsible for reviewing and monitoring our corporate accounting and financial reporting processes, the periodic public release of financial results and the periodic filing of financial reports with the SEC, and selecting the independent registered public accounting firm to audit our consolidated financial statements, including approving their compensation and monitoring their qualifications, independence and performance. Our board has determined that each member of the Audit Committee is independent under the applicable listing standards of the Nasdaq Global Market, and that Mr. Peck qualifies as an audit committee financial expert under Item 407(d)(5) of Regulation S-K promulgated by the SEC. Mr. Peck qualifies as an audit committee financial expert by virtue of his experience with KPMG Audit. In addition, Mr. Peck is a certified public accountant. The Audit Committee has a written charter, which is available on our website at [www.theorchard.com/about/investor-relations](http://www.theorchard.com/about/investor-relations) by clicking on the link **Highlights** under the heading **Corporate Governance**.

*Compensation Committee.* The Compensation Committee currently consists of Messrs. Dinh (Chairman) and Straka. Both members are independent directors under the applicable listing standards of the Nasdaq Global Market. The Compensation Committee is responsible for determining salaries, incentives and other forms of compensation for our Company's executive officers and compensation for non-employee directors, as well as administering the Amended and Restated Orchard Enterprises, Inc. 2008 Stock Plan (the **Company Stock Plan**) and other incentive compensation and employee benefit plans of the Company. The Compensation Committee has a written charter, which is available on our website at [www.theorchard.com/about/investor-relations](http://www.theorchard.com/about/investor-relations) by clicking on the link **Highlights** under the heading **Corporate Governance**.

*Search Committee.* In connection with the resignation of Greg Scholl as President and Chief Executive Officer and as a member of the board of directors on September 25, 2009, the board formed a search committee to identify qualified candidates to serve as the Company's chief executive officer and appointed Michael Donahue to head the committee. The other members of the search committee were Viet Dinh, Nathan Peck, Daniel Stein and Joel Straka. On February 17, 2010, the board elected Bradley Navin as Chief Executive Officer and a director of The Orchard effective February 18, 2010. Mr. Navin's election was unanimously recommended by the search committee and the committee was dissolved.

*Special Committee.* On October 19, 2009, the board formed a special committee of independent and disinterested directors to review and evaluate a proposal by Dimensional Associates to enter into non-binding discussions with the

Company regarding a potential transaction through which Dimensional would acquire all of the outstanding shares of common stock of the Company not currently owned by Dimensional.

6

---

TABLE OF CONTENTS

## Executive Officers

The following sets forth certain information regarding our executive officers.

Name	Age	Position(s)
Bradley Navin	39	Chief Executive Officer
Nathan Fong	46	Executive Vice President and Chief Financial Officer
Steven Haase	35	Executive Vice President, Business Development
Alexis H. Shapiro	42	Senior Vice President, General Counsel and Secretary

To our knowledge, there are no family relationships between any of our directors and executive officers.

The following is a summary of the background and business experience of our executive officers other than Mr. Navin (whose background and business experience is described in connection with his status as a director):

**Nathan Fong** joined The Orchard as Chief Financial Officer in February 2008 and was designated Executive Vice President and Chief Financial Officer in April 2008. From 2007 until he joined The Orchard in February 2008, Mr. Fong served as Chief Financial Officer for In-Demand Networks. From 2004 – 2007, he served as Chief Financial Officer, Rodale International, Rodale, Inc. From 2003 – 2004, Mr. Fong was Senior Vice President, Chief Financial Officer for Discovery Networks International, Discovery Communications, Inc. From 1997 – 2003, Mr. Fong served as Regional Vice President, Asia Pacific and later Divisional Vice President of Finance and Administration for Twentieth Century Fox International. Mr. Fong has a B.A. degree in accounting from Michigan State University and an M.B.A. degree from the University of Rochester and is a certified public accountant.

**Steve Haase** has been Executive Vice President, Business Development of the Company since January 2009, was Senior Vice President, Business Development of the Company from April 2008 to December 2008, and prior thereto was Vice President of Business Development of the Company since its acquisition of Orchard NY in November 2007.

Mr. Haase is responsible for the Company's digital music and video service sales relationships worldwide. Prior to that, Mr. Haase was Vice President of Business Development of Orchard NY from April 2003. From 1997 until April 2003, he served as General Manager of Orchard NY overseeing virtually all departments, including content management, distribution, artist and label relations, operations and technology. From June until November 1997, Mr. Haase served as Head of A&R at Sol 3 Records, where he worked with emerging artists distributed by BMG and Warner Bros. Mr. Haase serves as a member of the Advisory Board of Music Intelligence Solutions. Mr. Haase holds a B.A. degree from Catholic University in Washington, D.C.

**Alexis H. Shapiro** has been Senior Vice President, General Counsel and Secretary of the Company since February 2009. Ms. Shapiro was previously Senior Counsel of the Company from May 2008 to February 2009. Prior to joining the Company, Ms. Shapiro was with the law firm of Pryor Cashman LLP since April 2000. Ms. Shapiro holds a B.A. degree from Smith College and a J.D. degree from Boston College Law School.

## Section 16(a) Beneficial Ownership Reporting Compliance

Section 16(a) of the Exchange Act requires our executive officers, directors and persons who beneficially own more than 10% of our common stock to file initial reports of ownership and reports of changes in ownership with the SEC.

Such persons are required by SEC regulations to furnish us with copies of all Section 16(a) forms filed by such persons. To our knowledge, based solely upon our review of such forms or certain written representations from such reporting persons, we believe that in 2009 all of our executive officers, directors and greater than 10% beneficial



owners were in compliance with all applicable filing requirements, other than Daniel Pifer, formerly our Executive Vice President, Operations and Technology, who filed one Form 4 late relating to one transaction (which was an exempt disposition of shares to cover taxes).

## **Code of Business Conduct**

Our Company is committed to maintaining the highest standards of business conduct and ethics. We have adopted a Code of Business Conduct for our directors, officers and other employees. The Code of Business

7

---

TABLE OF CONTENTS

Conduct reflects our values and the business practices and principles of behavior that support this commitment. The Code of Business Conduct is available on our website at [www.theorchard.com/about/investor-relations](http://www.theorchard.com/about/investor-relations) by clicking on the link [Highlights](#) under the heading [Corporate Governance](#). We will post any amendment to the Code, as well as any waivers that are required to be disclosed by the rules of the SEC or Nasdaq, on our website.

Item 11. **EXECUTIVE COMPENSATION****Summary Compensation Table**

The following table summarizes the compensation of our named executive officers for the year ended December 31, 2009. Our named executive officers include our Chief Executive Officer, any other person who served as our principal executive officer at any time during 2009, our other two most highly compensated executive officers who were serving as such on December 31, 2009 and other individuals who would have been included as one of the two most highly compensated executive officers if they had been an executive officer on December 31, 2009.

Name	Year	Salary (\$)	Bonus (\$)	Stock Awards (\$) <sup>(1)</sup>	Option Awards (\$) <sup>(2)</sup>	Non-Equity Incentive Plan Compensation (\$) <sup>(3)</sup>	Total Compensation (\$)
Bradley Navin <sup>(4)</sup>	2009	203,748					203,748
<i>Chief Executive Officer</i>	2008	160,000	18,333	118,336	11,606	22,917	331,191
Nathan Fong <sup>(5)</sup>	2009	236,250					236,250
<i>Executive Vice President and Chief Financial Officer</i>	2008	187,755	25,000	206,331	67,636	31,250	517,972
Steve Haase	2009	162,750					162,750
<i>Executive Vice President, Business Development</i>							