

EPICOR SOFTWARE CORP
Form SC 14D9/A
May 05, 2011

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14D-9

**Solicitation/Recommendation Statement under Section 14(d)(4) of the
Securities Exchange Act of 1934
(Amendment No. 3)**

EPICOR SOFTWARE CORPORATION

(Name of Subject Company)

EPICOR SOFTWARE CORPORATION

(Name of Person(s) Filing Statement)

Common Stock, par value \$0.001 per share

(Title of Class of Securities)

29426L108

(CUSIP Number of Class of Securities)

L. George Klaus

Chairman, President and Chief Executive Officer

Epicor Software Corporation

18200 Von Karman Avenue, Suite 1000

Irvine, California 92612

(949) 585-4000

(Name, address and telephone number of person authorized to receive notices and communications on behalf
of the person(s) filing statement)

With copies to:

John D. Ireland, Esq.

Epicor Software Corporation

18200 Von Karman Avenue, Suite 1000

Irvine, California 92612

(949) 585-4000

Larry W. Sonsini, Esq.

Katharine A. Martin, Esq.

Bradley L. Finkelstein, Esq.

Wilson Sonsini Goodrich & Rosati

Professional Corporation

650 Page Mill Road

Palo Alto, California 94304

(650) 493-9300

.. Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

This Amendment No. 3 (this Amendment No. 3) amends and supplements the Solicitation/Recommendation Statement on Schedule 14D-9 (as amended or supplemented from time to time, the Statement), relating to the tender offer by Element Merger Sub, Inc., a Delaware corporation (Purchaser) and a direct wholly-owned subsidiary of Eagle Parent, Inc., a Delaware corporation (Parent), for all of the outstanding common stock, par value \$0.001 (the Shares), of Epicor Software Corporation, a Delaware corporation (the Company), at a price of \$12.50 per share net to the seller in cash, without interest and less any applicable withholding taxes, if any, upon the terms and conditions set forth in the Offer to Purchase dated April 11, 2011 (as amended, the Offer to Purchase), a copy of which is attached as Exhibit (a)(1)(A) to the Tender Offer Statement on Schedule TO filed by Parent, Purchaser and certain of their affiliates with the SEC on April 11, 2011 (as amended, the Schedule TO), and in the related letter of transmittal, a copy of which is attached as Exhibit (a)(1)(B) to the Schedule TO, which, together with any amendments or supplements thereto, collectively constitute the Offer.

Except as set forth in the Statement and as otherwise set forth below, the information set forth in the original Statement remains unchanged and is incorporated herein by reference as relevant to the items in this Amendment No. 3. Capitalized terms used but not defined herein have the meanings ascribed to them in the Statement.

Item 8. Additional Information

Item 8, Additional Information, is hereby amended and supplemented as follows:

The paragraph under the heading Additional Information Litigation beginning on page 34 of the Statement is amended and restated in its entirety as follows:

Following announcement of the Merger Agreement, four (4) putative stockholder class actions were filed in the Superior Court of California, Orange County, two (2) such suits were filed in Delaware Chancery Court, and one (1) such suit was filed in the United States District Court for the Central District of California. The actions filed in state court in California are entitled, *Kline v. Epicor Software Corp. et al.*, (filed Apr. 6, 2011); *Tola v. Epicor Software Corp. et al.*, (filed Apr. 8, 2011); *Watt v. Epicor Software Corp. et al.*, (filed Apr. 11, 2011), *Frazer v. Epicor Software et al.*, (filed Apr. 15, 2011). The actions pending in Delaware are entitled *Field Family Trust Co. v. Epicor Software Corp. et al.*, (filed Apr. 12, 2011) and *Hull v. Klaus et al.*, (filed Apr. 22, 2011). Amended complaints were filed in the *Tola* and *Field Family Trust* actions on April 13, 2011, and April 14, 2011, respectively. Plaintiff Kline dismissed his lawsuit on April 18, 2011. On April 29, 2011, plaintiff Kline filed the action now pending in the United States District Court for the Central District of California, *Kline v. Epicor Software Corporation, et al.*

The pending suits in California Superior Court and in the Delaware Chancery Court allege that the Epicor directors breached their fiduciary duties of loyalty and due care, among others, by seeking to complete the sale of Epicor to Apax and its affiliates through an allegedly unfair process and for an unfair price and by omitting material information from the Solicitation/Recommendation Statement on Schedule 14D-9 that Epicor filed on April 11, 2011 with the SEC. The complaints also allege that Epicor, Apax, Parent, and Purchaser aided and abetted the directors in the alleged breach of fiduciary duties. The plaintiffs seek certification as a class and relief that includes, among other things, an order enjoining the Tender Offer and Merger, rescission of the Merger, and payment of plaintiff's attorneys' fees and costs. On April 25, 2011,

plaintiff Hull filed a motion for a preliminary injunction in an effort to enjoin the parties from taking any action to consummate the transaction. On April 28, 2011, plaintiff Hull withdrew this motion.

The suit pending in the United States District Court for the Central District of California names Epicor, Apax Partners, L.P., Purchaser, Parent, Epicor Chairman and CEO, L. George Klaus, Epicor director Richard Pickup, and his son, Todd Pickup, as defendants. The suit alleges that support agreements entered into by the defendants in connection with the tender offer violate the Best Price rule found in § 14(d)(7) of the Securities Exchange Act, by allowing Klaus and the Pickups to realize greater consideration for their shares than is available to other shareholders through the tender offer. The plaintiff seeks certification as a class and relief that includes, among other things, an order declaring that defendants violated the federal securities laws, compensatory damages, and payment of plaintiff's attorneys' fees and costs.

We believe the lawsuits are without merit and intend to vigorously contest them. There can, however, be no assurance of the outcome of these lawsuits.

The following paragraph is added to the end of Item 8:

Extension of the Offer Period. On May 4, 2011, the Purchaser extended the expiration of the Offer until 5:00 p.m., Los Angeles time, on Friday, May 13, 2011. The Offer, which was previously scheduled to expire at midnight, Los Angeles time, on Friday, May 6, 2011, was extended with the consent of Epicor and Activant to coincide with the expected closing of the related debt financing transactions. The Depositary has indicated that, as of the close of business on May 4, 2011, a total of approximately 8,689,294 Shares have been validly tendered and not properly withdrawn pursuant to the Offer. The press release announcing the extension of the Offer, among other things, is attached hereto as Exhibit (a)(5)(E) and is incorporated herein by reference.

Item 9. Exhibits.

Item 9, Exhibits is hereby amended and supplemented by adding the following exhibit:

Exhibit No.	Description
(a)(4)	Excerpts from the Eagle Parent, Inc. Confidential Preliminary Offering Memorandum (incorporated by reference to Exhibit 99.1 to the Form 8-K filed by Epicor Software Corporation with the Securities and Exchange Commission on May 2, 2011).
(a)(5)(E)	Joint Press Release issued by Eagle Parent, Inc. and Epicor Software Corporation on May 5, 2011 (incorporated by reference to Exhibit (a)(5)(B) to the Schedule TO).

SIGNATURES

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.

EPICOR SOFTWARE CORPORATION

By: /s/ John D. Ireland
John D. Ireland
Senior Vice President and General Counsel

Dated: May 5, 2011