

AWARE INC /MA/
Form DEF 14A
April 20, 2009

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

SCHEDULE 14A
(RULE 14a-101)

INFORMATION REQUIRED IN PROXY STATEMENT

SCHEDULE 14A INFORMATION

PROXY STATEMENT PURSUANT TO SECTION 14(a)
OF THE SECURITIES EXCHANGE ACT OF 1934

Filed by the Registrant x
Filed by a Party other than the
Registrant o

Check the appropriate box:

- Preliminary Proxy Statement Confidential, for Use of the Commission
only (as permitted by Rule 14a-6(e)(2))
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Under Rule 14a-12

AWARE, INC.
(Name of Registrant as Specified In Its Charter)

NOT APPLICABLE
(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- No fee required.
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- (1) Amount previously paid:
- (2) Form, Schedule or Registration Statement no.:
- (3) Filing Party:
- (4) Date Filed:

* * * * *

Aware, Inc.

Notice of Annual Meeting of Stockholders

to be held on May 20, 2009

Aware, Inc. hereby gives notice that it will hold its annual meeting of stockholders at the Doubletree Hotel Boston/Bedford Glen, 44 Middlesex Turnpike, Bedford, Massachusetts on Wednesday, May 20, 2009, beginning at 10:00 a.m., local time, for the following purposes:

1. To consider and vote upon the election of three Class I directors;
2. To approve amendments to existing equity plans to allow for an option exchange program for employees other than directors and executive officers; and
3. To transact such other business as may properly come before the annual meeting or any adjournment thereof.

The board of directors has fixed the close of business on April 15, 2009 as the record date for the determination of the stockholders of Aware entitled to receive notice of the annual meeting and to vote at the meeting. Only stockholders of record on that date are entitled to receive notice of the annual meeting and to vote at the meeting or any adjournment thereof.

By order of the board of directors,

/s/ Michael A. Tzannes

Michael A. Tzannes
Chief Executive Officer

April 20, 2009
Bedford, Massachusetts

YOUR VOTE IS IMPORTANT

Please sign and return the enclosed proxy or vote your proxy over the Internet or by telephone, whether or not you plan to attend the meeting.

Important Notice Regarding the Availability of Proxy Materials for the Annual Meeting of Stockholders to Be Held on May 20, 2009. The Proxy Statement and our 2008 Annual Report to Stockholders are available on the following web sites: www.envisionreports.com/AWRE for registered holders and www.edocumentview.com for street holders.

Aware, Inc.
40 Middlesex Turnpike
Bedford, Massachusetts 01730
(781) 276-4000

PROXY STATEMENT
ANNUAL MEETING OF STOCKHOLDERS

to be held on May 20, 2009

This proxy statement relates to the 2009 annual meeting of stockholders of Aware, Inc. The annual meeting will take place as follows:

Date: May 20, 2009
Time: 10:00 a.m.
Place: Doubletree Hotel Boston/Bedford Glen
44 Middlesex Turnpike
Bedford, Massachusetts

The board of directors of Aware is soliciting proxies for the annual meeting and adjournments of the annual meeting. If a stockholder returns a properly executed proxy or votes his or her proxy over the Internet or by telephone, the shares represented by the proxy will be voted in accordance with the stockholder's directions. If a stockholder does not specify a vote on any proposal, the shares covered by his or her proxy will be voted on that proposal as management recommends. Aware encourages its stockholders to vote on all proposals. A stockholder may revoke its proxy at any time before it has been exercised.

Aware is mailing this proxy statement and the enclosed form of proxy to stockholders on or about April 22, 2009.

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ANNUAL MEETING OF STOCKHOLDERS

Purpose of the annual meeting

At the annual meeting, Aware will submit two proposals to the stockholders:

- Proposal 1: To elect three Class I directors for three-year terms.
- Proposal 2: To approve amendments to existing equity plans to allow for an option exchange program for employees other than directors and executive officers.

Currently, Aware does not intend to submit any other proposals to the stockholders at the annual meeting. The board of directors was not aware, a reasonable time before mailing this proxy statement to stockholders, of any other business that may be properly presented for action at the annual meeting. If any other business comes before the annual meeting, the persons present will have discretionary authority to vote the shares they own or represent by proxy in accordance with their judgment, to the extent authorized by applicable regulations.

Record date

The board of directors of Aware has fixed the close of business on April 15, 2009 as the record date for the annual meeting. Only stockholders of record at the close of business on that date are entitled to receive notice of the meeting and to vote at the meeting or any adjournment of the meeting. At the close of business on the record date, there were issued and outstanding 23,281,204 shares of Aware's common stock, which are entitled to cast 23,281,204 votes. A list of stockholders entitled to notice of the 2009 annual meeting is available for inspection by any stockholder at our principal office at 40 Middlesex Turnpike, Bedford, MA.

Methods of voting

The shares represented by your properly signed proxy card will be voted in accordance with your directions. If you do not specify a choice with respect to a proposal for which our board of directors has made a recommendation, the shares covered by your signed proxy card will be voted as recommended in this proxy statement. We encourage you to vote on all matters to be considered.

Voting by mail:

By signing and returning the proxy card in the enclosed envelope, you are enabling the individuals named on the proxy card (known as "proxies") to vote your shares at the meeting in the manner you indicate. We encourage you to sign and return the proxy card even if you plan to attend the meeting. In this way, your shares will be voted even if you are unable to attend the meeting. If you received more than one proxy card, it is an indication that your shares are held in multiple accounts. Please sign and return all proxy cards to ensure that all of your shares are voted.

Voting by telephone:

To vote by telephone, please follow the instructions included on your proxy card. If you vote by telephone, you do not need to complete and mail your proxy card.

Voting on the Internet:

To vote on the Internet, please follow the instructions included on your proxy card. If you vote on the Internet, you do not need to complete and mail your proxy card.

Voting in person at the meeting:

If you plan to attend the meeting and vote in person, we will provide you with a ballot at the meeting. If your shares are registered directly in your name, you are considered the stockholder of record and you have the right to vote in person at the meeting. If your shares are held in the name of your broker or other nominee, you are considered the beneficial owner of the shares held in street name. If you wish to vote shares held in street name at the meeting, you will need to bring with you to the meeting a legal proxy from your broker or other nominee authorizing you to vote your shares.

Quorum

Aware's by-laws provide that a quorum at the annual meeting will be a majority in interest of all stock issued, outstanding and entitled to vote at the meeting. Aware will treat shares of common stock represented by a properly signed and returned proxy or a proxy properly delivered over the Internet or by telephone as present at the meeting for purposes of determining the existence of a quorum at the meeting. In general, Aware will count votes withheld from any nominee for election as director, abstentions and broker "non-votes" as present or represented for purposes of determining the existence of a quorum at the meeting. A broker "non-vote" occurs when a broker or nominee holding shares for a beneficial owner does not vote on a proposal because the broker or nominee does not have discretionary voting power and has not received instructions from the beneficial owner with respect to that proposal.

Vote required; tabulation of votes

The election of each Class I director will require the affirmative vote of a plurality of the shares of common stock properly cast on the proposal. The approval of the amendments to certain of our existing equity plans requires the affirmative vote of a majority of the votes properly cast on the proposal. Abstentions, votes withheld from the director-nominee, and broker non-votes will not count as votes cast for or against the applicable proposal and accordingly will not affect the outcome of the vote.

Aware's transfer agent, Computershare Trust Co., Inc., will tabulate the votes at the annual meeting. Computershare will tabulate separately the vote on each matter submitted to stockholders.

Revocation of proxies

A stockholder who has executed a proxy may revoke the proxy at any time before it is exercised at the annual meeting in three ways:

- by giving written notice of revocation to the Secretary of Aware at the following address:

Aware, Inc.
40 Middlesex Turnpike
Bedford, Massachusetts 01730
Attention: Secretary

- by signing and returning another proxy with a later date; or
- by attending the annual meeting and informing the Secretary of Aware in writing that he or she wishes to vote in person.

Mere attendance at the annual meeting will not in and of itself revoke the proxy. Accordingly, stockholders who have delivered proxies in advance of the annual meeting may change their votes at any time before or at the annual meeting.

Solicitation of proxies

Aware will bear all costs incurred in connection with the solicitation of proxies for the annual meeting. Aware will reimburse brokers, banks, fiduciaries, nominees and others for the out-of-pocket expenses and other reasonable clerical expenses they incur in forwarding proxy materials to beneficial owners of common stock held in their names. In addition to this solicitation by mail, Aware's directors, officers and employees may solicit proxies, without additional remuneration, by telephone, facsimile, electronic mail, telegraph and in person. Aware expects that the expenses of any special solicitation will be nominal. At present, Aware does not expect to pay any compensation to any other person or firm for the solicitation of proxies.

Internet access to proxy materials

The notice of annual meeting, this proxy statement and our 2008 annual report to stockholders are available on the Internet at www.envisionreports.com/AWRE for registered holders and www.edocumentview.com for street holders. These web sites do not use "cookies" to track or identify visitors to the web site.

Directions to annual meeting

If you are planning to attend our 2009 annual meeting of stockholders, below are directions to the Doubletree Hotel Boston/Bedford Glen, 44 Middlesex Turnpike, Bedford, Massachusetts:

From Boston

Take I-93 North to Exit 37B (I-95/Route 128 South). Follow I-95/Route 128 South to Exit 32A (Route 3 North). Take Exit 26, Route 62 and turn right at bottom of the ramp onto Route 62. Follow approximately one mile to the third set of traffic lights; turn left on Middlesex Turnpike. Hotel is on the left.

From Manchester

New Hampshire Route 3 South to Exit 26 (Route 62/Bedford-Burlington). Turn left at the bottom of the ramp onto Route 62. Follow to third set of traffic lights; turn left on Middlesex Turnpike. Hotel is on the left.

From Bedford/ Laurence G Hanscom Field, Massachusetts

Take I-95/Route 128 North to Exit 32A (Route 3 North). Take Exit 26, Route 62 and turn right at the bottom of the ramp onto Route 62. Follow approximately one mile to third set of traffic lights; turn left on Middlesex Turnpike. Hotel is on the left.

From Worcester

Take I-290 E toward MARLBORO/I-190. Merge onto I-495 N via EXIT 26B on the LEFT toward LOWELL. Merge onto US-3 S via EXIT 35A toward BURLINGTON. Take the RT-62 exit (EXIT 26) toward BEDFORD/BURLINGTON. Turn left at the bottom of the ramp onto Route 62. Follow to third set of traffic lights; turn left on Middlesex Turnpike. Hotel is on the left.

From Boston/Cambridge

Take Route 2 West to I-95/Route 128 North. Follow I-95/Route 128 North to Exit 32B (Burlington/Middlesex Turnpike). Turn right onto Middlesex Turnpike and follow approximately 2 1/2 miles to set of lights at the Lemon Tree restaurant. Bear right at lights to stay on Middlesex Turnpike. Hotel is on the left.

MATTERS TO BE CONSIDERED AT THE ANNUAL MEETING

PROPOSAL ONE—ELECTION OF DIRECTORS

The board of directors, upon the recommendation of the nominating and corporate governance committee, has nominated for election as Class I directors G. David Forney, Jr., Charles K. Stewart, and Michael A. Tzannes, each of whom is currently a Class I director of Aware. Mr. Tzannes serves as Aware's CEO. The directors elected at the annual meeting will hold office until the annual meeting of stockholders in 2012 and until their successors are duly elected and qualified.

Each nominee has agreed to serve if elected, and Aware has no reason to believe that a nominee will be unable to serve. If a nominee is unable or declines to serve as a director at the time of the annual meeting, proxies will be voted for another nominee that our board's nominating and corporate governance committee will designate at that time. Proxies cannot be voted for more than one nominee.

The board of directors recommends that you vote FOR the election of G. David Forney, Jr., Charles K. Stewart, and Michael A. Tzannes, as Class I directors of Aware.

PROPOSAL TWO—APPROVAL OF PLAN AMENDMENTS TO AUTHORIZE A
STOCK OPTION EXCHANGE PROGRAM FOR EMPLOYEES OTHER THAN
EXECUTIVE OFFICERS AND DIRECTORS

The board of directors has determined that it would be in the best interest of Aware to implement a stock option exchange program for all current employees of Aware who hold non-qualified and incentive stock options excluding executive officers and directors (the “Option Exchange Program”). The board of directors has approved amendments, subject to stockholder approval, to the Aware, Inc. 1996 Stock Option Plan and the Aware, Inc. 2001 Nonqualified Stock Plan (together, the “Plans”) to expressly permit Aware to offer its employees the opportunity to exchange certain outstanding non-qualified and incentive stock options under the Plans that are underwater (i.e., where the fair market value of the shares underlying such options is less than the option exercise price on the date of determination (“Underwater Options”)) for a grant of the right to receive new shares of unrestricted common stock of Aware, which shares will be issued to eligible employees over a period of up to two years from the date of grant (“New Shares”). Only stock options that were granted more than two years prior to the date of the exchange offer will be eligible for the Option Exchange Program.

Aware’s compensation philosophy is intended to attract, retain and motivate employees using an appropriate mix and various levels of cash and equity compensation. Equity compensation for Aware’s employees is very important in the implementation of this philosophy. The decline in Aware’s stock price has posed a challenge to the overall goal of retaining and motivating employees upon whom Aware and stockholders rely to help move Aware forward in these challenging times. Many of the stock options that were granted in past years now have exercise prices that are higher than the trading price in recent months of Aware’s common stock and, as such, are ineffective as retention or incentive tools for future performance. As of April 15, 2009, the record date for the annual meeting, employees (other than executive officers and directors) held stock options to purchase over 3,490,156 million shares of Aware’s common stock with exercise prices above the fair market value of Aware’s common stock on that date (\$2.24 per share). The board of directors has determined that the magnitude of this problem weakens the effectiveness of Aware’s long-term incentive program and detracts from the effectiveness of overall compensation.

The Option Exchange Program has been designed to reinstate, as of a current date, the retention and motivational value of Aware’s equity compensation program and to balance the interests of employees and stockholders, by offering certain employees an opportunity to exchange Underwater Options for the right to receive New Shares. Aware has incorporated market “best practices” to address what it considers to be the key concerns of stockholders. These include the following:

- Options exchanged under the Option Exchange Program will reduce the overall number of shares underlying outstanding options (“overhang”).
- Aware’s executive officers and directors will not be eligible to participate in the Option Exchange Program.

- Only outstanding stock options that are underwater and were granted more than two years prior to the date of the exchange offer will be eligible for the Option Exchange Program.
- Exchange ratios will be set with the intention that the New Shares granted will have a value that is less than or equal to the value (established in accordance with a generally accepted option valuation method) of the exchanged stock option(s).
- The New Shares granted under the Option Exchange Program will be issued over a period of up to two years.
- Participation in the Option Exchange Program will be entirely at the election of the employee; any employee who chooses not to participate will continue to hold his or her current stock options.

Set forth below are summaries of the Option Exchange Program and the amendments to the Plans.

Description of Option Exchange Program