

Edgar Filing: NET PERCEPTIONS INC - Form SC TO-T/A

NET PERCEPTIONS INC  
Form SC TO-T/A  
December 17, 2003

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

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SCHEDULE TO  
Tender Offer Statement Under Section 14(d) (1) or 13(e) (1) of  
the Securities Exchange Act of 1934  
(Amendment No. 1)

NET PERCEPTIONS, INC.  
(Name of Subject Company (Issuer))

OBSIDIAN ENTERPRISES, INC.  
(Names of Filing Person (Offeror))  
COMMON STOCK, PAR VALUE \$.0001 PER SHARE  
(Title of Class of Securities)

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64107 U 101  
(CUSIP Number of Class of Securities)

Timothy S. Durham  
Chief Executive Officer  
Obsidian Enterprises, Inc.  
111 Monument Circle, Suite 4800  
Indianapolis, Indiana 46204  
Telephone: (317) 237-4055  
(Name, Address and Telephone Numbers of Person Authorized  
to Receive Notices and Communications on Behalf of Filing Persons)

Copies to:  
Stephen J. Dutton, Esq.  
Barnes & Thornburg  
11 South Meridian Street  
Indianapolis, Indiana 46204  
Telephone: (317) 236-1313

CALCULATION OF FILING FEE

Transaction Valuation*	Amount of Filing Fee**
\$10,976,682	\$888

\* Estimated for purposes of calculating the amount of filing fee only. Transaction value derived by multiplying 28,145,338 (the number of shares of common stock of the subject company outstanding as of October 31, 2003) by \$.39 (the value of each share of subject company as of December 12, 2003).

\*\* The amount of the filing fee, calculated in accordance with Rule 0-11 of the Securities and Exchange Act of 1934, as amended, and Fee Advisory #6

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for Fiscal Year 2004 issued by the Securities and Exchange Commission on November 24, 2003, equals 0.00008090% of the transaction valuation.

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: \$906.60 Filing Party: Obsidian Enterprises, Inc.  
Form or Registration No.: Form S-4

Date Filed: December 15, 2003

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:

This Tender Offer Statement on Schedule TO (this "Schedule TO") relates to the offer (the "Offer") by Obsidian Enterprises, Inc., a Delaware corporation ("Obsidian"), to exchange each issued and outstanding share of common stock, par value \$.0001 per share (the "Net Perceptions Shares"), of Net Perceptions, Inc., a Delaware corporation ("Net Perceptions"), for two shares of common stock, par value \$.0001 of Obsidian ("Obsidian Shares"). Obsidian has effected a 1 for 50 reverse stock split effective for shareholders of record at January 23, 2004. The exchange ratio after the reverse stock split will be 1/25 Obsidian Share for each Net Perception Share. The number of shares and the per share amounts in this Schedule TO have not been adjusted to give effect to that reverse split except as expressly stated in this Schedule TO. In lieu of fractional shares, cash will be provided in an amount equal to the value of the fractional share.

Obsidian has filed a registration statement with the Securities and Exchange Commission on Form S-4 relating to the Obsidian Shares to be issued to stockholders of Net Perceptions in the Offer (the "Registration Statement"). The terms and conditions of the Offer are set forth in the prospectus which is a part of the Registration Statement (the "Prospectus"), and the related Letter of Transmittal, which are exhibits (a)(1) and (a)(2) hereto.

All of the information in the Prospectus and the related Letter of Transmittal, and any Prospectus supplement or other supplement thereto related to the Offer hereafter filed with the Securities and Exchange Commission by Obsidian, is hereby incorporated by reference in answer to Items 2 through 11 of this Schedule TO.

### ITEM 1. SUMMARY TERM SHEET.

The information required by this Item is disclosed to security holders in the Prospectus which meets the requirements of Rule 421(d) of the Securities Act of 1933. A summary term sheet is set forth on page 1 of the Prospectus.

### ITEM 2. SUBJECT COMPANY INFORMATION.

Name and address. The name and address of the subject company is Net Perceptions, Inc., having its principal executive offices at 7700 France Avenue South, Edina, Minnesota 55435 and telephone number (952) 842-5000.

Securities. The subject class of securities is the common stock of Net Perceptions, par value \$.0001 per share, which includes associated share purchase rights issued pursuant to Net Perceptions' Rights Agreement, dated as

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of June 1, 2001, between Net Perceptions and Wells Fargo Bank Minnesota, N.A., as rights agent. In its Form 10-Q for the nine months ended September 30, 2003, Net Perceptions stated that as of October 31, 2003, the number of Net Perceptions Shares issued and outstanding was 28,145,338.

Trading market and price. The information required by this section is set forth under the heading "Comparative Market Price Information" on page 44 of the Prospectus, which is incorporated herein by this reference.

### ITEM 3. IDENTITY AND BACKGROUND OF FILING PERSONS.

Name and address. The name, address and telephone number of the filing person is Obsidian Enterprises, Inc., 111 Monument Circle, Suite 4800, Indianapolis, Indiana 46204; (317) 237-4055. The name and address of each of Obsidian's directors and executive officers is set forth on page 9 of the Prospectus, which is incorporated herein by this reference.

Business background of entities. Obsidian's principal business is as a holding company. Obsidian currently conducts business through five subsidiaries: U.S. Rubber Reclaiming, Inc., a butyl-rubber reclaiming operation; Pyramid Coach, Inc., a provider of luxury coach leases; Obsidian Leasing Co., Inc., owner of luxury coaches; United Expressline, Inc., a manufacturer of specialty trailers; and Danzer Industries, Inc., a manufacturer of truck bodies, accessories and cargo trailers. Obsidian is a Delaware corporation.

Business background of natural persons. During the last five years, none of Obsidian, or, to the best of its knowledge, any of its executive officers and directors has (i) been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) or (ii) been a party to any judicial or administrative proceeding (except for matters that were dismissed without sanction or settlement) that resulted in a judgment, decree or final order enjoining the person from future violations of, or prohibiting activities subject to, federal or state securities laws, or a finding of any violation of federal or state securities laws. Each director and executive officer of Obsidian is a U.S. citizen.

### ITEM 4. TERMS OF THE TRANSACTION.

Information regarding the material terms of the Offer is set forth under the following headings of the Prospectus, which are incorporated herein by reference:

- o "The Exchange Offer," page 24 of the Prospectus;
- o "Comparison of Rights of Holders of Obsidian Enterprises Common Stock and Net Perceptions Common Stock," page 46 of the Prospectus;
- o "Accounting Treatment," page 42 of the Prospectus; and
- o "Material U.S. Federal Income Tax Consequences of the Exchange Offer and the Proposed Merger," page 31 of the Prospectus.

### ITEM 5. PAST CONTACTS, TRANSACTIONS, NEGOTIATIONS AND AGREEMENTS.

Information required by this Item is set forth under the heading "Certain Relationships with Net Perceptions" on page 41 of the Prospectus, which is incorporated herein by this reference.

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

Purposes. Information required by this section is set forth under the heading "Purpose of the Exchange Offer; the Proposed Merger" on page 33 of the

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Prospectus, which is incorporated herein by this reference.

Plans. Information required by this section is set forth under the heading "Plans for Net Perceptions After the Proposed Merger" on page 24 of the Prospectus, which is incorporated herein by this reference.

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

Source of funds. The shares of Net Perceptions will be acquired by the exchange of shares of Obsidian, therefore no amount of funds will be required.

Conditions. Obsidian has no alternative financing arrangements or alternative financing plans.

Borrowed funds. Obsidian has made no plans or arrangements for the use of borrowed funds as consideration.

### ITEM 8. INTEREST IN SECURITIES OF THE SUBJECT COMPANY.

Information required by this Item is set forth under the heading "Certain Relationships with Net Perceptions" on page 41 of the Prospectus, which is incorporated herein by this reference.

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

No persons will be employed, retained or compensated to make solicitations or recommendations in connection with the transaction.

### ITEM 10. FINANCIAL STATEMENTS.

Financial Information. The audited financial statements required by this section are set forth in Item 8 on Obsidian's Form 10-K, filed with the SEC on February 13, 2003, which is incorporated herein by this reference. The unaudited financial statements required by this section are set forth in Item 1 on Obsidian's Form 10-Q, filed with the SEC on September 15, 2003, which is incorporated herein by this reference. Copies of Obsidian's Form 10-K and Form 10-Q may be obtained on the Securities and Exchange Commission website at <http://www.sec.gov>.

Book value per share as of July 31, 2003 is set forth under the heading "Comparative Unaudited Per Share Data" on page 16 of the Prospectus, which is incorporated herein by this reference.

Pro Forma Information. The information required by this section is set forth under the heading "Unaudited Condensed Pro Forma Combined Financial Statements" on page F-1 of the Prospectus, which is incorporated herein by this reference.

### ITEM 11. ADDITIONAL INFORMATION.

There is no additional information that would be material to a security holder's decision whether to sell, tender or hold the securities sought.

### ITEM 12. EXHIBITS.

(a)(1) The Prospectus relating to Obsidian Shares to be issued in the Offer is incorporated by reference to the Form S-4 filed on December 15, 2003.

(a)(2) Form of Letter of Transmittal is incorporated by reference to the Form S-4 filed on December 15, 2003.

(a)(3) Exchange Agent Agreement is incorporated by reference to the Form S-4 filed on December 15, 2003.

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(a) (4) Information Agent Agreement is incorporated by reference to the Form S-4 filed on December 15, 2003.

(a) (5) Notice of Guaranteed Delivery is incorporated by reference to the Form S-4 filed on December 15, 2003.

(a) (6) Letter to Broker, Dealers, etc. is incorporated by reference to the Form S-4 filed on December 15, 2003.

(a) (7) Letter to Clients is incorporated by reference to the Form S-4 filed on December 15, 2003.

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

Not applicable.

SIGNATURES

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this Schedule TO is true, complete and correct.

OBSIDIAN ENTERPRISES, INC.

By: /s/ Timothy S. Durham

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Timothy S. Durham  
Chief Executive Officer

Date: December 17, 2003

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On April 7, 2017, the Reporting Persons entered into call option agreements with BV Advisory Partners, LLC and Kuzven Precipio Investor, LLC, which agreements are filed herewith as Exhibit 23 and Exhibit 24, respectively, and incorporated herein by reference (the "Call Option Agreements") pursuant to which the Reporting Persons granted a call option to each party to purchase an aggregate of 7,900,000 shares of Company Common Stock from the Reporting Persons for \$1.00 in the event that certain conditions set forth in the Call Option Agreements are satisfied relating to a proposed bridge financing transaction and prospective merger between New Haven Labs Inc., a wholly owned subsidiary of the Company, and Precipio Diagnostics, LLC (the "Merger").

Item 6. Contracts, Arrangements, Understandings or Relationships with Respect to Securities of the Issuer.

Item 6 of the Original Schedule 13D is hereby amended and supplemented to include the responses in Item 4 above.

Item 7. Material to be Filed as Exhibits.

Item 7 of the Original Schedule 13D is hereby amended and supplemented by the following:



CUSIP No. 89365K206 Page 3 of 5

Exhibit 23 Call Option Agreement by and between Third Security Senior Staff 2008 LLC, Third Security Staff 2010 LLC, Third Security Incentive 2010 LLC, Third Security Staff 2014 LLC and BV Advisory Partners, LLC dated April 7, 2017

Exhibit 24 Call Option Agreement by and between Third Security Senior Staff 2008 LLC, Third Security Staff 2010 LLC, Third Security Incentive 2010 LLC, Third Security Staff 2014 LLC and Kuzven Precipio Investor, LLC dated April 7, 2017

Exhibit 25 Joint Filing Agreement, dated as of April 11, 2017, by and among Randal J. Kirk, Third Security, LLC, Third Security Senior Staff 2008 LLC, Third Security Staff 2010 LLC, Third Security Incentive 2010 LLC and Third Security Staff 2014 LLC

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SIGNATURES

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.

Date: April 11, 2017

/s/ Randal J. Kirk  
Randal J. Kirk

THIRD SECURITY,  
LLC

By: /s/ Randal J. Kirk  
Randal J. Kirk  
Manager

THIRD SECURITY  
SENIOR STAFF  
2008 LLC

By: /s/ Randal J. Kirk  
Randal J. Kirk  
Manager

THIRD SECURITY  
STAFF 2010 LLC

By: /s/ Randal J. Kirk  
Randal J. Kirk  
Manager

THIRD SECURITY  
INCENTIVE 2010  
LLC

By: /s/ Randal J. Kirk  
Randal J. Kirk  
Manager

THIRD SECURITY  
STAFF 2014 LLC

By: /s/ Randal J. Kirk  
Randal J. Kirk  
Manager



EXHIBIT INDEX

- Exhibit 1 Series A Convertible Preferred Stock Purchase Agreement, dated December 29, 2010, by and among Transgenomic, Inc. (the “Company”), Third Security Senior Staff 2008 LLC, Third Security Staff 2010 LLC, and Third Security Incentive 2010 LLC (filed as Exhibit 4.1 to the Company’s Current Report on Form 8-K, dated December 28, 2010, and incorporated herein by reference)
- Exhibit 2 Form of Warrant (filed as Exhibit 4.2 to the Company’s Current Report on Form 8-K, dated December 28, 2010, and incorporated herein by reference)
- Exhibit 3 Certificate of Designation of Series A Convertible Preferred Stock dated as of December 28, 2010 (filed as Exhibit 3.1 to the Company’s Current Report on Form 8-K, dated December 28, 2010, and incorporated herein by reference)
- Exhibit 4 Registration Rights Agreement, dated December 29, 2010, by and among the Company, Third Security Senior Staff 2008 LLC, Third Security Staff 2010 LLC, and Third Security Incentive 2010 LLC (filed as Exhibit 4.3 to the Company’s Current Report on Form 8-K, dated December 28, 2010, and incorporated herein by reference)
- Exhibit 5 Joint Filing Agreement, dated as of January 10, 2011, by and among Randal J. Kirk, Third Security Senior Staff 2008 LLC, Third Security Staff 2010 LLC, and Third Security Incentive 2010 LLC (filed with Original Schedule 13D)
- Exhibit 6 Convertible Promissory Note Purchase Agreement by and among Transgenomic, Inc.; Third Security Senior Staff 2008 LLC; Third Security Staff 2010 LLC; and Third Security Incentive 2010 LLC dated December 30, 2011 (filed as Exhibit 10.1 to the Company’s Current Report on Form 8-K, dated January 6, 2012, and incorporated herein by reference)
- Exhibit 7 Convertible Promissory Note by and between Transgenomic, Inc. and Third Security Senior Staff 2008 LLC dated December 30, 2011 (filed as Exhibit 10.2 to the Company’s Current Report on Form 8-K, dated January 6, 2012, and incorporated herein by reference)
- Exhibit 8 Convertible Promissory Note by and between Transgenomic, Inc. and Third Security Staff 2010 LLC dated December 30, 2011 (filed as Exhibit 10.3 to the Company’s Current Report on Form 8-K, dated January 6, 2012, and incorporated herein by reference)
- Exhibit 9 Convertible Promissory Note by and between Transgenomic, Inc. and Third Security Incentive 2010 LLC dated December 30, 2011 (filed as Exhibit 10.4 to the Company’s Current Report on Form 8-K, dated January 6, 2012, and incorporated herein by reference)
- Exhibit 10 Form of Warrant issued by Transgenomic, Inc. to Third Security Senior Staff 2008 LLC; Third Security Staff 2010 LLC; and Third Security Incentive 2010 LLC on February 3, 2012 (filed as Exhibit 10.2 to the Company’s Current Report on Form 8-K, dated February 7, 2012, and incorporated herein by reference)
- Exhibit 11 Registration Rights Agreement by and among Transgenomic, Inc., certain investors and the Investors (filed as Exhibit 10.4 to the Company’s Current Report on Form 8-K, dated February 7, 2012, and incorporated herein by reference)
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- Exhibit 12 Joint Filing Agreement, dated as of February 7, 2012, by and among Randal J. Kirk, Third Security Senior Staff 2008 LLC, Third Security Staff 2010 LLC, and Third Security Incentive 2010 LLC (filed with Original Schedule 13D)
- Exhibit 13 Securities Purchase Agreement by and among Transgenomic, Inc. certain investors and the Investors, dated January 25, 2013 (filed as Exhibit 10.1 to the Company's Current Report on Form 8-K/A, dated January 30, 2013, and incorporated herein by reference)
- Exhibit 14 Form of Warrant issued by Transgenomic, Inc. to certain investors and the Investors (filed as Exhibit 10.2 to the Company's Current Report on Form 8-K/A, dated January 30, 2013, and incorporated herein by reference)
- Exhibit 15 Registration Rights Agreement by and among Transgenomic, Inc., certain investors and the Investors (filed as Exhibit 10.3 to the Company's Current Report on Form 8-K/A, dated January 30, 2013, and incorporated herein by reference)
- Exhibit 16 Joint Filing Agreement, dated as of January 31, 2013, by and among Randal J. Kirk, Third Security, LLC, Third Security Senior Staff 2008 LLC, Third Security Staff 2010 LLC, and Third Security Incentive 2010 LLC
- Exhibit 17 Securities Purchase Agreement by and among the Company and the Investors, dated March 5, 2014 (filed as Exhibit 10.2 to the Company's Current Report on Form 8-K/A, dated March 5, 2014 and filed on March 6, 2014, and incorporated herein by reference)
- Exhibit 18 Registration Rights Agreement by and among the Company and the Investors (filed as Exhibit 10.2 to the Company's Current Report on Form 8-K/A, dated March 5, 2014 and filed on March 6, 2014, and incorporated herein by reference)
- Exhibit 19 Joint Filing Agreement, dated as of March 7, 2014, by and among Randal J. Kirk, Third Security, LLC, Third Security Senior Staff 2008 LLC, Third Security Staff 2010 LLC, Third Security Incentive 2010 LLC and Third Security Staff 2014 LLC
- Exhibit 20 Securities Purchase Agreement by and among the Company and the Investors, dated January 6, 2016 (filed as Exhibit 10.1 to the Company's Current Report on Form 8-K, dated January 6, 2016 and filed on January 11, 2016, and incorporated herein by reference)
- Exhibit 21 Registration Rights Agreement by and among the Company and the Investors (filed as Exhibit 4.1 to the Company's Current Report on Form 8, dated January 6, 2016 and filed on January 11, 2016, and incorporated herein by reference)
- Exhibit 22 Joint Filing Agreement, dated as of January 12, 2016, by and among Randal J. Kirk, Third Security, LLC, Third Security Senior Staff 2008 LLC, Third Security Staff 2010 LLC, Third Security Incentive 2010 LLC and Third Security Staff 2014 LLC
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Exhibit  
23 Call Option Agreement by and between Third Security Senior Staff 2008 LLC, Third Security Staff 2010 LLC, Third Security Incentive 2010 LLC, Third Security Staff 2014 LLC and BV Advisory Partners, LLC dated April 7, 2017

Exhibit  
24 Call Option Agreement by and between Third Security Senior Staff 2008 LLC, Third Security Staff 2010 LLC, Third Security Incentive 2010 LLC, Third Security Staff 2014 LLC and Kuzven Precipio Investor, LLC dated April 7, 2017

Exhibit  
25 Joint Filing Agreement, dated as of April 11, 2017, by and among Randal J. Kirk, Third Security, LLC, Third Security Senior Staff 2008 LLC, Third Security Staff 2010 LLC, Third Security Incentive 2010 LLC and Third Security Staff 2014 LLC

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