

interclick, inc.
Form SC TO-T/A
November 18, 2011

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE TO

(Amendment No. 2)

**TENDER OFFER STATEMENT UNDER SECTION 14(d)(1) OR 13(e)(1)
OF THE SECURITIES EXCHANGE ACT OF 1934**

interclick, inc.

(Name of Subject Company (Issuer))

Innsbruck Acquisition Corp.

Yahoo! Inc.

(Names of Filing Persons (Offerors))

Common Stock, par value \$0.001 per share
(Titles of classes of securities)

458483203
(CUSIP number of class of securities)

Michael Callahan, Esq.

Executive Vice President, General Counsel and Secretary

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Yahoo! Inc.

701 First Avenue

Sunnyvale, California 94089

(408) 349-3300

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

Copies to:

Ora Fisher, Esq.

Jamie Leigh, Esq.

Latham & Watkins LLP

140 Scott Drive

Menlo Park, CA 94025

Tel: (650) 328-4600

CALCULATION OF FILING FEE

Transaction Valuation*
\$285,515,451.00

Amount of Filing Fee**
\$32,720.07

- * Estimated solely for purposes of calculating the filing fee. This amount assumes the purchase of up to 31,723,939 shares of common stock of the Issuer and was calculated as follows: (i) 25,260,987 shares issued and outstanding (including 946,325 shares subject to a right of repurchase, risk of forfeiture or restrictions on transfer multiplied by \$9.00 per share, (ii) 670,494 shares issuable upon the exercise of outstanding warrants multiplied by the \$9.00 per share and (iii) 5,792,458 shares issuable pursuant to outstanding options multiplied by \$9.00 per share. The share numbers are based on information provided by the Issuer to the Offeror(s) as of November 11, 2011, the most recent practicable date.
- ** The amount of the filing fee, calculated in accordance with Rule 0-11 of the Securities Exchange Act of 1934, as amended (the Exchange Act), and Fee Rate Advisory #3 for fiscal year 2012, issued September 29, 2011, by multiplying the transaction value by 0.0001146.
- x 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: \$32,720.07
Form or Registration No.: Schedule TO

Filing Party: Innsbruck Acquisition Corp. and Yahoo! Inc.
Date Filed: November 15, 2011

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.. 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: ..

INTRODUCTION

This Amendment No. 2 (this Amendment) amends and supplements the Tender Offer Statement on Schedule TO (the Schedule TO), originally filed with the Securities and Exchange Commission (the SEC) on November 15, 2011, by Innsbruck Acquisition Corp., a Delaware corporation (Purchaser) and a wholly-owned subsidiary of Yahoo! Inc., a Delaware corporation (Yahoo!), relating to an offer by Purchaser to purchase all of the issued and outstanding shares of common stock of interclick, inc., a Delaware corporation (interclick), par value \$0.001 per share (the Shares), at a price of \$9.00 per Share, net to the seller in cash, without interest and less any applicable withholding tax (such price, or any different price per Share as may be paid in the Offer (as defined below), the Offer Price), upon the terms and subject to the conditions set forth in the Offer to Purchase, dated November 15, 2011 (the Offer to Purchase), and in the related Letter of Transmittal, copies of which are filed with the Schedule TO as exhibits (which, together with any amendments or supplements, collectively constitute the Offer). This Amendment is being filed on behalf of Purchaser.

The information contained in the Schedule TO, including any amendments thereto, remains unchanged, except that such information is hereby amended and supplemented to the extent specifically provided herein. Capitalized terms used but not otherwise defined in this Amendment have the meanings ascribed to them in the Schedule TO.

Item 11. Additional Information.

Item 11 of the Schedule TO is hereby amended and supplemented by replacing the first paragraph of Section 17 entitled Legal Proceedings of the Offer to Purchase with the following paragraph:

On November 8, 2011, a putative class action lawsuit captioned *Elghanian v. interclick, inc., et al. Index No. 653101/2011* was filed in the Supreme Court of the State of New York, County of New York (Elghanian Action). The Elghanian Action names as defendants the members of the board of directors of interclick, as well as interclick. On November 16, 2011, an amended complaint was filed in the Elghanian Action. The Elghanian Action alleges that the interclick board of directors breached its fiduciary duties to interclick's stockholders in connection with the Offer and the Merger, that the Offer and the Merger involve an unfair price and an inadequate sales process, that certain provisions of the Merger Agreement dissuade competing offers for interclick and coerce interclick's stockholders to support the Offer and the Merger, that defendant members of the board of directors of interclick agreed to the transactions to benefit themselves personally, and that the interclick board of directors failed to disclose all material information necessary to enable interclick's shareholders to make an informed decision about whether to tender their shares in connection with the proposed transaction. The Elghanian Action seeks injunctive relief, including to enjoin the Offer and the Merger, and an award of attorneys' and other fees and costs, in addition to other relief. The plaintiff in the Elghanian Action has also filed a motion for expedited proceedings and a motion for a preliminary injunction. A copy of the amended complaint in the Elghanian Action is attached hereto as an exhibit and is hereby incorporated herein by reference. The foregoing description of the Elghanian Action is qualified in its entirety by reference to the copy of the amended complaint in the Elghanian Action attached hereto as an exhibit.

Item 11 of the Schedule TO is hereby amended and supplemented by replacing the second paragraph of Section 17 entitled Legal Proceedings of the Offer to Purchase with the following paragraph:

On November 11, 2011, putative class action lawsuits captioned *Lieberman v. interclick, Inc., et al., Index No. 7039/2011* (the Lieberman Action) and *Whaley v. Brauser, et al., Index No. 7038/2011* (the Whaley Action) were filed in the Delaware Court of Chancery. On November 17, 2011, an amended complaint was filed in the Whaley Action. The Lieberman and Whaley Actions name as defendants the members of the board of directors of interclick, as well as interclick, Yahoo!, and Purchaser. The Lieberman and Whaley Actions allege that the interclick board of directors breached its fiduciary duties to interclick's stockholders in connection with the Offer and the Merger, that the Offer and the Merger involve an unfair price and an inadequate sales process, and that defendant members of the board of directors of interclick agreed to the transactions to benefit themselves personally. The Lieberman Action alleges that certain provisions of the Merger Agreement dissuade competing offers for interclick and coerce interclick's stockholders to support the Offer and the Merger. The Whaley Action alleges that the board of directors of interclick has failed to disclose all information necessary for interclick stockholders to make a decision with respect to the Offer and the Merger. The Lieberman Action and the Whaley Action allege that Yahoo! and Purchaser aided and abetted those breaches of fiduciary duty. The Lieberman and Whaley Actions seek injunctive relief, including to enjoin the Offer and the Merger, and an award of attorneys' and other fees and costs, in addition to other relief. The plaintiff in the Whaley Action has also filed a motion for expedited proceedings and a motion for a preliminary injunction. Copies of the complaint in the Lieberman Action and amended complaint in the Whaley Action are attached hereto as exhibits and are hereby incorporated herein by reference. The foregoing description of the Lieberman Action and Whaley Action is qualified in its entirety by reference to the copies of the complaint in the Lieberman Action and the amended complaint in the Whaley Action attached hereto as exhibits.

Item 11 of the Schedule TO is hereby amended and supplemented by replacing the last paragraph of Section 12 entitled Purpose of the Offer; Plans for interclick after the Offer and the Merger of the Offer to Purchase with the following paragraph:

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On November 8, 2011, a putative class action lawsuit captioned *Elghanian v. interclick, inc., et al.* was filed in the Supreme Court of the State of New York, County of New York, naming as defendants the members of the board of directors of interclick, as well as interclick. On November 16, 2011, an amended complaint was filed in the Elghanian Action. On November 11, 2011, putative class action lawsuits captioned *Lieberman v. interclick, inc., et al.* and *Whaley v. Brauser et al.* were filed in the Delaware Court of Chancery, each naming as defendants the members of the board of directors of interclick, as well as interclick, Yahoo!, and Purchaser. On November 17, 2011, an amended complaint was filed in the Whaley Action. See Section 17 Legal Proceedings for a more detailed description of these lawsuits.

Item 12. Exhibits

Item 12 of the Schedule TO is hereby amended and supplemented by adding the following exhibit:

(a)(5)(G) Amended Complaint filed by Ronald Whaley in the Delaware Court of Chancery, on November 17, 2011.

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.

Innsbruck Acquisition Corp.

By: /s/ Michael J. Callahan
Name: Michael J. Callahan
Title: Vice President and Secretary

Yahoo! Inc.

By: /s/ Michael J. Callahan
Name: Michael J. Callahan
Title: Executive Vice President, General Counsel and Secretary

Date: November 18, 2011

EXHIBIT INDEX

- (a)(1)(A)* Offer to Purchase, dated as of November 15, 2011.
- (a)(1)(B)* Letter of Transmittal.
- (a)(1)(C)* Notice of Guaranteed Delivery.
- (a)(1)(D)* Letter to Brokers, Dealers, Banks, Trust Companies and other Nominees.
- (a)(1)(E)* Letter to Clients for use by Brokers, Dealers, Banks, Trust Companies and other Nominees.
- (a)(1)(F)* Joint Press Release of Yahoo! and interclick on November 1, 2011 (incorporated by reference to the Schedule TO-C filed by Yahoo! with the SEC on November 1, 2011).
- (a)(5)(A)* Summary Advertisement published in the New York Times on November 15, 2011.
- (a)(5)(B)* Press Release of Yahoo! on November 15, 2011.
- (a)(5)(C)* Complaint filed by Sam Elghanian in the Supreme Court of the State of New York, County of New York, on November 8, 2011.
- (a)(5)(D)* Complaint filed by David Lieberman in the Delaware Court of Chancery, on November 11, 2011.
- (a)(5)(E)* Complaint filed by Ronald Whaley in the Delaware Court of Chancery, on November 11, 2011.
- (a)(5)(F)* Amended Complaint filed by Sam Elghanian in the Supreme Court of the State of New York, County of New York, on November 16, 2011.
- (a)(5)(G) Amended Complaint filed by Ronald Whaley in the Delaware Court of Chancery, on November 17, 2011.
- (d)(1)* Agreement and Plan of Merger, dated as of October 31, 2011, among Yahoo!, Purchaser and interclick (incorporated by reference to Exhibit 2 to the Schedule 13D filed by Yahoo! with the SEC on November 10, 2011).
- (d)(2)* Form of Tender and Support Agreement entered into by and among Yahoo!, Purchaser and each of Michael Brauser, Barry Honig, Michael Katz, Frank Cotroneo, Brett Cravatt, David Hills, Michael Mathews, William Wise, Roger Clark, Andrew Katz, Keith Kaplan, David Myers and Jason Lynn on October 31, 2011 (incorporated by reference to Exhibit 3 to the Schedule 13D filed by Yahoo! with the SEC on November 10, 2011).
- (d)(3)* Form of Non-Competition Agreement entered into by and among Yahoo! and each of Michael Katz, Andrew Katz, Jason Lynn, David Myers, Michael Marvul, Andrew Greenberg, Jake Dell Aquila, Joseph Blodgett and Keith Kaplan on October 31, 2011.
- (d)(4)* Mutual Nondisclosure Agreement, dated as of July 2, 2011, by and between interclick and Yahoo!.
- (d)(5)* Letter Agreement, dated as of October 3, 2011, by and between interclick and Yahoo!, as amended on October 23, 2011, October 27, 2011 and October 30, 2011.
- (d)(6)* Employment Offer Letter by and between Yahoo! and Michael Katz.
- (d)(7)* Employment Offer Letter by and between Yahoo! and Andrew Katz.
- (d)(8)* Employment Offer Letter by and between Yahoo! and Jason Lynn.
- (d)(9)* Employment Offer Letter by and between Yahoo! and David Myers.

* Previously filed.