

Orchard Enterprises, Inc.
Form DEFM14A
June 18, 2010

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

SCHEDULE 14A

**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:

- o Preliminary Proxy Statement
- o **Confidential, for Use of the Commission Only (as Permitted by Rule 14a-6(e)(2))**
- x Definitive Proxy Statement
- o Definitive Additional Materials
- o Soliciting Material under Rule 14a-12

THE ORCHARD ENTERPRISES, INC.

(Name of Registrant as Specified in Its Charter)

N/A

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- o No fee required.
 - x Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11
- (1) Title of each class of securities to which transaction applies:
Common Stock, par value \$0.01 per share, of The Orchard Enterprises, Inc. (Common Stock)
- (2) Aggregate number of securities to which transaction applies:
3,645,888 shares of Common Stock⁽¹⁾

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(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

The maximum aggregate value of the transaction was determined by multiplying 3,645,882 shares of Common Stock by \$2.05 per share, the per share cash merger consideration.⁽²⁾ In accordance with Exchange Act Rule 0-11(c), the filing fee was determined by multiplying 0.00007130 by the amount of the preceding sentence.

(4) Proposed maximum aggregate value of transaction:
\$7,474,070

(5) Total fee paid:
\$532.90

x Fee paid previously with preliminary materials.

Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

(1) Includes 5,963 shares of Common Stock that are issuable upon conversion of 1,789 shares of The Orchard Enterprises, Inc.'s Series A convertible preferred stock held by non-affiliates of Dimensional Associates, LLC. Each outstanding and unexercised stock option and stock appreciation right has an exercise price per share greater than \$2.05 and, consequently, holders thereof will not receive any cash merger consideration at the effective time of the merger. Nonetheless, pre-merger option and stock appreciation rights holders will receive a contingent right to their portion, if any, of any additional consideration in the event of a resale transaction, as described more fully herein. Because the amount of such additional consideration, if any, is not determinable at this time, it has not been included in the calculation of the maximum aggregate value of the transaction.

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**THE ORCHARD ENTERPRISES, INC.
23 East 4th Street, 3rd Floor
New York, New York 10003**

To Our Stockholders:

On July 29, 2010, The Orchard Enterprises, Inc. will hold its 2010 Annual Meeting of Stockholders at the offices of Chadbourne & Parke LLP, 30 Rockefeller Plaza, New York, New York 10112. The meeting will begin at 10:00 a.m., Eastern Daylight Time. The Board of Directors has fixed the close of business on June 11, 2010 as the record date for the purpose of determining the stockholders entitled to receive notice of and vote at the annual meeting and any adjournment or postponement of the annual meeting.

At the annual meeting, you will be asked to consider and vote upon a proposal to approve and adopt the Agreement and Plan of Merger dated as of March 15, 2010, as amended, among The Orchard Enterprises, Inc., a Delaware corporation, Dimensional Associates, LLC, a New York limited liability company, and Orchard Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of Dimensional Associates, and the transactions contemplated thereby. Dimensional Associates is The Orchard's majority stockholder and held, along with its affiliates, approximately 54% of the voting power of The Orchard's voting stock as of the record date for the annual meeting.

If the merger is completed, our stockholders, other than Dimensional Associates and its affiliates and stockholders who properly exercise and perfect their appraisal rights under Delaware law, will have the right to receive, for each share of our common stock they hold at the time of the merger, \$2.05 in cash. In addition, each stockholder, other than Dimensional Associates and its affiliates and stockholders who properly exercise and perfect their appraisal rights under Delaware law, will receive a contingent right to receive additional consideration, under certain circumstances if Dimensional Associates or The Orchard or any of their affiliates enters into a commitment to sell at least 80% of The Orchard's voting securities or assets within six months of the consummation of the merger.

Upon completion of the proposed merger, we will cease to be a publicly traded company and Dimensional Associates will own more than 99% of our outstanding securities, assuming that none of the current Series A convertible preferred stock holders convert their shares into common stock. As a result, you will no longer have any direct or indirect equity interest in The Orchard or any interest in The Orchard's future earnings or growth, if any. Following completion of the merger, the registration of our common stock and our reporting obligations with respect to our common stock under the Securities Exchange Act of 1934 are expected to be terminated. In addition, upon completion of the merger, shares of our common stock will no longer be listed on the Nasdaq Stock Market.

After careful consideration, our Board of Directors has determined that the merger is advisable and that the terms of the merger are fair to, and in the best interest of, The Orchard and its stockholders and, therefore, has approved the merger agreement and the transactions contemplated thereby, including the merger, and recommends that you vote FOR approval of the merger agreement and the transactions contemplated thereby. This recommendation is based upon the unanimous recommendation of a special committee of the Board of Directors consisting of five independent and disinterested directors.

In addition, you are being asked at the annual meeting (1) to approve an amendment to the Certificate of Designations of our Series A convertible preferred stock, necessary to permit the transactions contemplated by the merger

agreement to be effected, (2) to elect seven (7) directors, each for a one (1) year term, until his successor is duly elected and qualified, (3) to ratify the appointment of Marcum LLP as our independent registered public accounting firm for fiscal year 2010 and (4) to approve the adjournment of the annual meeting, if necessary, to permit further solicitation and vote of proxies if there are insufficient votes at the time of the annual meeting to approve the merger and to approve and adopt the merger agreement. The proposal to

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amend our Certificate of Designations is conditioned upon and subject to the approval of the merger agreement and the transactions contemplated thereby. If the merger agreement proposal is not approved, the Certificate of Designations proposal will not be presented at the meeting. Our Board of Directors unanimously recommends that you vote (1) FOR the amendment to our Certificate of Designations, (2) FOR the election of each nominee for director as proposed, (3) FOR the ratification of our independent registered public accounting firm for fiscal year 2010 and (4) FOR the adjournment of the annual meeting, if necessary, to permit further solicitation and vote of proxies if there are insufficient votes at the time of the annual meeting to approve the merger and to approve and adopt the merger agreement. The accompanying notice of annual meeting and proxy statement provide information regarding the matters to be acted on at the annual meeting, including any adjournment or postponement of the annual meeting.

Please read these materials carefully.

YOUR VOTE IS VERY IMPORTANT, regardless of the number of shares you own. We cannot complete the merger unless the holders of a majority of all the outstanding shares of our voting securities entitled to vote on the matter, other than voting securities held by Dimensional Associates and its affiliates, vote to approve the merger and to approve and adopt the merger agreement. Once you have read the accompanying materials, please take the time to vote on the matters submitted to stockholders at the annual meeting, whether or not you plan to attend the annual meeting. I urge you to vote your shares promptly by using the telephone or Internet or by signing and returning the enclosed proxy card. Voting by proxy will not prevent you from voting your shares in person if you subsequently choose to attend the annual meeting in person. Your vote in person will revoke any proxy previously submitted.

If your shares are held in street name by your broker, bank or other nominee, your broker, bank or other nominee will be unable to vote your shares on the merger proposal or any of the other proposals, other than the ratification of the appointment of our independent registered public accounting firm, without instructions from you. You should instruct your broker, bank or other nominee to vote your shares by following the procedures provided by your broker, bank or other nominee.

Our Board of Directors and management urge you to vote FOR all of the proposals.

Sincerely,

Michael J. Donahue
*Chair of the Special Committee and
Chairman of the Board of Directors*

Neither the Securities and Exchange Commission nor any state securities regulatory agency has approved or disapproved the merger, passed upon the merits or fairness of the merger or passed upon the adequacy or accuracy of the disclosure in this document. Any representation to the contrary is a criminal offense.

The proxy statement is dated June 18, 2010, and is first being mailed to stockholders on or about June 21, 2010.

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THE ORCHARD ENTERPRISES, INC.

**23 East 4th Street, 3rd Floor
New York, New York 10003**

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS To Be Held July 29, 2010

To Our Stockholders:

On July 29, 2010, The Orchard Enterprises, Inc., a Delaware corporation (the Company or The Orchard), will hold its 2010 Annual Meeting of Stockholders at the offices of Chadbourne & Parke LLP, 30 Rockefeller Plaza, New York, New York 10112. The meeting will begin at 10:00 a.m., Eastern Daylight Time, for the following purposes:

- To consider and vote on a proposal to approve and adopt the Agreement and Plan of Merger dated as of March 15, 2010, as amended, among The Orchard Enterprises, Inc., a Delaware corporation, Dimensional Associates, LLC, a New York limited liability company, and Orchard Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of Dimensional Associates, and to approve the merger and the other transactions contemplated thereby (the Merger Proposal).
- To approve an amendment to the Certificate of Designations of the Series A convertible preferred stock (the Certificate Amendment Proposal) that would permit The Orchard to consummate the merger as contemplated by the merger agreement, without which amendment the merger consideration that our common stockholders would otherwise receive in the merger would be required to be allocated first to holders of our Series A convertible preferred stock, primarily Dimensional Associates, to satisfy their right to a liquidation preference. The Certificate Amendment Proposal is conditioned upon and subject to the approval of the Merger Proposal. If the Merger Proposal is not adopted, the Certificate Amendment Proposal will not be presented at the meeting.
- To elect the seven (7) nominees named in the attached proxy statement to our Board of Directors to serve a one (1) year term.
- To ratify the appointment of our independent registered public accounting firm for fiscal year 2010.
- To approve the adjournment of the annual meeting, if necessary, to permit further solicitation and vote of proxies if there are insufficient votes at the time of the annual meeting to approve the merger and to approve and adopt the merger agreement (the Adjournment Proposal).
- To transact such other business as may properly come before the meeting or any adjournment or postponement of the meeting.
- Only stockholders who owned shares of our common stock or our Series A convertible preferred stock at the close of business on June 11, 2010 will be entitled to notice of, and to vote at, this meeting or any adjournments or postponements of the meeting. A complete list of stockholders entitled to vote at the meeting will be available for examination by any stockholder, for any purpose relating to the meeting, during ordinary business hours at our principal offices located at 23 East 4th Street, 3rd Floor, New York, New York 10003, at least ten days before the

meeting.

We urge you to read the accompanying proxy statement carefully as it sets forth details of each proposal to be voted on, including the proposed merger and other important information related to the merger.

Under Delaware law, if the merger is completed, holders of our common stock who do not vote in favor of approval and adoption of the merger agreement will have the right to seek appraisal of the fair value of their shares as determined by the Delaware Court of Chancery. In order to exercise your appraisal rights, you

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must (i) submit a written demand for an appraisal prior to the stockholder vote on the merger agreement, (ii) not vote in favor of approval and adoption of the merger agreement and (iii) comply with other Delaware law procedures explained in the proxy statement.

Your vote is important and we urge you to submit your proxy for voting at the annual meeting on the Internet, by telephone or by completing, signing, dating and returning your proxy card as promptly as possible by mail, whether or not you expect to attend the annual meeting. If you are unable to attend in person and you return your properly executed proxy card in time for the annual meeting, your shares will be voted at the annual meeting in accordance with your instructions as reflected on your proxy. Properly executed proxies that do not contain voting instructions will be voted FOR the approval of the Merger Proposal, FOR the approval of the Certificate Amendment Proposal, FOR each director nominee, FOR the ratification of our independent registered public accounting firm and FOR approval of the Adjournment Proposal. If your shares are held in street name by your broker, bank or other nominee, only that holder can vote your shares unless you obtain a valid legal proxy from such broker, bank or nominee. You should follow the directions provided by your broker, bank or nominee regarding how to instruct such broker, bank or nominee to vote your shares.

The merger is described in the accompanying proxy statement, which we urge you to read carefully. A copy of the merger agreement and the amendments to the merger agreement are attached as Appendices A, A-1 and A-2 to the proxy statement.

Important Notice Regarding the Availability of Proxy Materials for the Annual Meeting of Stockholders to be Held on July 29, 2010. Our proxy statement is attached. Financial and other information concerning The Orchard is contained in (1) our Annual Report on Form 10-K for the fiscal year ended December 31, 2009 filed with the Securities and Exchange Commission (SEC) on March 25, 2010, as amended on April 30, 2010, a copy of which is enclosed with this proxy statement as part of our 2009 Annual Report to Stockholders and (2) our Quarterly Report on Form 10-Q for the quarter ended March 31, 2010 filed with the SEC on May 14, 2010, a copy of which is enclosed with this proxy statement. This proxy statement, our fiscal 2009 Annual Report and our Quarterly Report on Form 10-Q are available on our website at www.theorchard.com/about/investor-relations. Additionally, and in accordance with SEC rules, registered stockholders may access our proxy materials at www.envisionreports.com/ORCD and beneficial stockholders may access our proxy materials at www.edocumentview.com/ORCD.

Your Board of Directors recommends that you vote in favor of the five proposals outlined in the proxy statement. Please refer to the proxy statement for detailed information on each of the proposals.

By Order of the Board of Directors,

Alexis H. Shapiro
Senior Vice President, General Counsel and Secretary
New York, New York
June 18, 2010

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