

MERCATOR SOFTWARE INC

Form SC TO-T/A

September 09, 2003

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Amendment No. 3
to

SCHEDULE TO
(RULE 14d-100)
TENDER OFFER STATEMENT UNDER SECTION 14(D)(1) OR 13(E)(1)
OF THE SECURITIES EXCHANGE ACT OF 1934

MERCATOR SOFTWARE, INC.

(Name of Subject Company)

GREEK ACQUISITION CORPORATION
ASCENTIAL SOFTWARE CORPORATION

(Name of filing persons, Offerors)

Common Stock, par value \$0.01 per share
(Title of Class of Securities)

587587106
(CUSIP Number of Class of Securities)

Peter Gyenes
Chairman and Chief Executive Officer
Ascential Software Corporation
50 Washington Street
Westborough, Massachusetts 01581
Telephone: (508) 366-3888

(Name, Address and Telephone Number of Person Authorized to
Receive Notices and Communications on Behalf of Bidders)

Copies to:

Scott N. Semel, Esq
Vice President, General Counsel and
Secretary
Ascential Software Corporation
50 Washington Street
Westborough, Massachusetts 01581
Telephone: (508) 366-3888

Louis A. Goodman, Esq
Skadden, Arps, Slate, Meagher & Flom LLP
One Beacon Street
Boston, MA 02108
Telephone: (617) 573-4800

CALCULATION OF FILING FEE

<u>Transaction Valuation*</u>	<u>Amount of Filing Fee**</u>
\$105,800,817	\$8,560***

* Estimated for purposes of calculating the amount of the filing fee only. The filing fee calculation assumes the purchase of all 35,266,939 outstanding shares of Mercator Software, Inc. at \$3.00 per share.

** The amount of the filing fee, calculated in accordance with rule 0-11 of the Securities Exchange Act of 1934, as amended, and Fee Advisory #11 for Fiscal Year 2003 issued by the Securities and Exchange Commission on February 21, 2003, equals .008090% of the transaction valuation.

*** Previously paid. See below.

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: \$8,560

Filing parties: Ascential Software Corporation
and
Greek Acquisition Corporation

Form or Registration No.: Schedule TO-T

Date filed: August 8, 2003

o 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:

- x third-party tender offer subject to Rule 14d-1.
- o issuer tender offer subject to Rule 13e-4.
- o going-private transaction subject to Rule 13e-3.
- o amendment to Schedule 13D under Rule 13d-2.

Check the following box if the filing is a final amendment reporting the results of a tender offer: o

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This Amendment No. 3 to Tender Offer Statement on Schedule TO amends and supplements the statement originally filed on August 8, 2003 and amended by Amendment No. 1 filed on August 26, 2003 and Amendment No. 2 filed on September 2, 2003, by Ascential Software Corporation, a Delaware corporation (Ascential), and Greek Acquisition Corporation (Purchaser), a Delaware corporation and wholly owned subsidiary of Ascential. This Schedule TO relates to the offer by Ascential through Purchaser to purchase all of the outstanding shares of common stock, par value \$0.01 per share, and the associated preferred stock purchase rights (together, the Shares), of Mercator Software, Inc., a Delaware corporation (the Company), at \$3.00 per Share, net to the seller in cash, without interest, upon the terms and subject to the conditions set forth in the Offer to Purchase, dated August 8, 2003, as amended (the Offer to Purchase), and in the related Letter of Transmittal (which, together with any amendments or supplements thereto, collectively constitute the Offer).

On September 9, 2003 Ascential announced that based on information from The Bank of New York, the depository for the Offer, 88.6% of the Shares (including Shares tendered by guaranteed delivery) had been validly tendered and not withdrawn and that it was extending the Offer until Thursday, September 11, 2003 at 5:00 (Eastern Daylight Time), unless further extended in accordance with the terms set forth in the Offer.

Item 12. Materials to be Filed as Exhibits

- (a)(1)(A) Offer to Purchase, dated August 8, 2003*
 - (a)(1)(B) Letter of Transmittal*
 - (a)(1)(C) Notice of Guaranteed Delivery*
 - (a)(1)(D) Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees*
 - (a)(1)(E) Letter to Clients for Use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees*
 - (a)(1)(F) Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9*
 - (a)(1)(G) Summary Advertisement as published in the Wall Street Journal on August 8, 2003*
 - (a)(1)(H) Letter to Stockholders, dated August 8, 2003, from the Chairman and Chief Executive Officer of Mercator Software, Inc., dated August 8, 2003 (incorporated by reference to Exhibit (a)(3) to Mercator Software, Inc.'s Solicitation/Recommendation Statement on Schedule 14D-9 filed by Mercator on August 8, 2003)
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- (a)(1)(I) Press Release issued by Ascential and Mercator on August 4, 2003 (incorporated herein by reference to the precommunication Schedule TO filed by Ascential on August 4, 2003)
- (a)(1)(J) Letter from the President of Ascential to Customers and Partners, distributed on August 4, 2003 (incorporated herein by reference to the precommunication Schedule TO filed by Ascential on August 4, 2003)
- (a)(1)(K) Frequently Asked Questions distributed on August 4, 2003 (incorporated herein by reference to the precommunication Schedule TO filed by Ascential on August 4, 2003)
- (a)(1)(L) Messaging Document (incorporated herein by reference to the precommunication Schedule TO filed by Ascential on August 4, 2003)
- (a)(1)(M) Transcript of August 4, 2003 conference call (incorporated herein by reference to the precommunication Schedule TO filed by Ascential on August 4, 2003)
- (a)(1)(N) Reminder Letter dated August 21, 2003*
- (a)(1)(O) Press Release issued by Ascential on August 26, 2003*
- (a)(1)(P) Press Release issued by Ascential on September 9, 2003
- (b) Not applicable
- (d)(1) Agreement and Plan of Merger, dated as of August 2, 2003, by and among Ascential Software Corporation, Greek Acquisition Corporation and Mercator Software, Inc. (incorporated herein by reference to Exhibit 2.1 to Ascential's Current Report on Form 8-K, dated August 2, 2003, filed with the Commission on August 5, 2003)
- (d)(2) Stock Tender Agreement, dated as of August 2, 2003, by and among Ascential Software Corporation, Greek Acquisition Corporation and the directors and certain executive and other officers of Mercator Software, Inc. set forth therein (incorporated herein by reference to Exhibit 10.1 to Ascential's Current Report on Form 8-K, dated August 2, 2003, filed with the Commission on August 5, 2003)
- (d)(3) Common Stock Option Agreement, dated as of August 2, 2003, by and among Ascential Software Corporation, Greek Acquisition Corporation and Mercator Software, Inc. (incorporated herein by reference to Exhibit 10.2 to Ascential's Current Report on Form 8-K, dated August 2, 2003, filed with the Commission on August 5, 2003)
- (d)(4) Confidentiality Agreement, dated April 28, 2003, by and among Bear, Stearns & Co. Inc., on behalf of Ascential Software Corporation, and JP Morgan and Mercator Software, Inc., as amended July 17, 2003*

- (d)(4) Confidentiality Agreement, dated April 28, 2003, by and among Bear, Stearns & Co. Inc., on behalf of Ascential Software Corporation, and JP Morgan and Mercator Software, Inc., as amended July 17, 2003*
- (d)(5) Key Employee Agreement, dated as of August 1, 2003, by and between Ascential Software Corporation and Mark W. Register; and Non-Competition, Non-Disclosure and Developments Agreement, dated August 1, 2003 among Ascential Software Corporation and Mark W. Register*
- (d)(6) Key Employee Agreement, dated as of August 1, 2003, between Ascential Software Corporation and Thracy P. Varvoglis; and Non-Competition, Non-Disclosure and Developments Agreement, dated August 1, 2003 among Ascential Software Corporation and Thracy P. Varvoglis*
- (d)(7) Form of Retention Agreement among Ascential Software Corporation, Mercator Software, Inc. and each of Mark W. Register and Thracy P. Varvoglis*
- (d)(8) Forms of Executive Non-Competition, Non-Solicitation and Developments Agreement among Ascential Software Corporation, Mercator Software, Inc. and certain of Mercator's executive officers*
- (d)(9) Amendment to Executive Non-Competition, Non-Solicitation and Developments Agreement, dated as of August 1, 2003, among Ascential Software Corporation, Mercator Software, Inc. and David S. Linthicum*
- (d)(10) Executive Non-Competition, Non-Solicitation and Developments Agreement, as of August 1, 2003, among Ascential Software Corporation, Mercator Software, Inc. and Kenneth J. Hall*
- (g) Not applicable
- (h) Not applicable

* Previously filed.

SIGNATURE

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this Amendment No. 3 is true, complete and correct.

ASCENTIAL SOFTWARE CORPORATION

By: /s/ Robert McBride

Name: Robert McBride

Title: Chief Financial Officer

GREEK ACQUISITION CORPORATION

By: /s/ Robert McBride

Name: Robert McBride

Title: Chief Financial Officer