

EXFO ELECTRO OPTICAL ENGINEERING INC
Form SC TO-I/A
December 09, 2008

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE TO

Tender Offer Statement under Section 14(d)(1) or 13(e)(1)
of the Securities Exchange Act of 1934
(Amendment No. 2)*

EXFO ELECTRO-OPTICAL ENGINEERING INC.
(Name of Subject Company)
EXFO ELECTRO-OPTICAL ENGINEERING INC. (Issuer)
(Names of Filing Persons (identifying status as offeror, issuer or other person))

Subordinate Voting Shares without par value
(Title of Class of Securities)

302043 10 4
(CUSIP Number of Class of Securities)

Benoit Ringuette
EXFO Electro-Optical Engineering Inc.
400 Godin Avenue
Quebec City, Quebec, Canada
G1M 2K2
(418) 683-0211

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

with copies to:

Peter Villani
Fasken Martineau DuMoulin
LLP
The Stock Exchange Tower
P.O. Box 242
Suite 3700, 800 Victoria
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CALCULATION OF FILING FEE:

Transaction Valuation*
\$25,884,000

Amount of Filing Fee
\$1,018

*Estimated solely for the purpose of calculating the amount of the filing fee. This amount is based upon the offer to purchase for not more than Cdn\$30,000,000 a combined aggregate of up to 8,823,529 subordinate voting shares of EXFO Electro-Optical Engineering Inc. at a price of Cdn\$3.40 per share (which is the minimum purchase price under the tender offer) in cash and is calculated based on the inverse of the noon buying rate of Canadian dollars in the city of New York on November 5, 2008 as certified for customs purposes by the Federal Reserve Bank of New York (Cdn\$1 = US\$0.8628).

Check the box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing 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:	\$1,018
Form or Registration No.:	Schedule TO (005-59259)
Filing Party:	EXFO Electro-Optical Engineering Inc.
Date Filed:	November 10, 2008

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 box if the filing is a final amendment reporting the results of the tender offer.

This Amendment No. 2 amends and supplements the Issuer Tender Offer Statement on Schedule TO originally filed with the Securities and Exchange Commission on November 10, 2008, as amended and supplemented by Amendment No. 1 to Schedule TO filed on November 26, 2008 (collectively, as amended and supplemented, the "Schedule TO") by EXFO Electro-Optical Engineering Inc., a corporation existing under the laws of Canada ("EXFO") in connection with its offer to purchase up to an aggregate amount of Cdn\$30,000,000 of its subordinate voting shares at a price of not less than Cdn\$3.40 and not more than Cdn\$3.90 per subordinate voting share, in cash (subject to applicable withholding taxes, if any) without interest, upon the terms and subject to the conditions set forth in the Offer to Purchase, dated November 10, 2008, as amended (the "Offer to Purchase"), the accompanying Issuer Bid Circular (the "Circular"), and the related Letter of Transmittal and Notice of Guaranteed Delivery (together with the Offer to Purchase and the Circular, which, collectively, as amended or supplemented from time to time, constitute the "Tender Offer"). This Amendment No. 2 is intended to satisfy the reporting requirements of Rule 13e-4(c)(3) promulgated under the Securities Exchange Act of 1934, as amended.

The information contained in the Offer to Purchase and the Circular is incorporated in this Amendment No. 2 by reference in response to all of the applicable items in the Schedule TO, except that such information is hereby amended and supplemented to the extent specifically provided herein.

Items 1 through 11.

Items 1 through 11 of the Schedule TO, which incorporate by reference the information contained in the Offer to Purchase and Circular, a copy of which was filed with the Schedule TO as Exhibit (a)(1)(i), are hereby amended and supplemented as follows:

The response to the Summary Term Sheet question, "Are there any conditions to the Offer?" and "Offer to Purchase – Conditions of the Offer" are amended by inserting, in each case, the following at the end thereof:

"On December 9, 2008, we waived the following conditions of the Offer as set forth under "Offer to Purchase – Conditions of the Offer":

(c)(v) any significant decrease in the market price of the Shares (defined as a decrease in excess of 10% of the market price of the Shares on the TSX since the close of business on November 7, 2008);

(c)(vii) any decline in any of the S&P/TSX Composite Index, the NASDAQ Composite Index, the Dow Jones Industrial Average or the S&P 500 Index by an amount in excess of 10%, measured from the close of business on November 7, 2008; and

(f) the Corporation shall have determined, in its sole judgment, acting reasonably, that the Purchase Price exceeds a price equal to the fair market value of a Share (defined, solely for the purposes of the Offer, as 120% of the closing price of the Corporation's Shares on the TSX on the Expiration Date of the Offer), determined without reference to the Offer."

Item 12.

Exhibits.

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

Exhibit Number	Description
(a)(5)(i)	Press Release issued by EXFO Electro-Optical Engineering Inc. on December 9, 2008.

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.

EXFO ELECTRO-OPTICAL ENGINEERING INC.

By: /s/ Germain Lamonde
Name: Germain Lamonde
Title: President and Chief Executive Officer

Dated: December 9, 2008

INDEX TO EXHIBITS

Exhibit Number	Description
(a)(1)(i)*	Offer to Purchase, dated November 10, 2008, and the accompanying Issuer Bid Circular.
(a)(1)(ii)*	Letter of Transmittal.
(a)(1)(iii)*	Notice of Guaranteed Delivery.
(a)(2)	None.
(a)(3)	Not applicable.
(a)(4)	Not applicable.
(a)(5)(i)†	Press Release issued by EXFO Electro-Optical Engineering Inc. on December 9, 2008.
(b)	None.
(d)(i)	Long Term Incentive Plan, dated May 25, 2000, as amended in October 2004 (effective January 12, 2005) (incorporated by reference to Exhibit 4.35 of EXFO's Annual Report on Form 20-F for the fiscal year ended August 31, 2005 (File No. 000-30895)).
(d)(ii)	Deferred Share Unit Plan, effective January 12, 2005 (incorporated by reference to Exhibit 4.36 of EXFO's Annual Report on Form 20-F for the fiscal year ended August 31, 2005 (File No. 000-30895)).
(g)	None.
(h)	None.
*	Previously filed with the Schedule TO on November 10, 2008.
†	Filed herewith.