

Edgar Filing: BWAY CORP - Form SC TO-I

BWAY CORP  
Form SC TO-I  
June 11, 2001

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

SCHEDULE TO  
(Rule 13e-4)

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

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BWAY CORPORATION  
(Name of Subject Company (Issuer) and Filing Person (Offeror))

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Options Under Bway Corporation's  
1995 Long-Term Incentive Plan  
to Purchase Common Stock, Par Value \$.01 Per Share,  
Held by Option Holders  
(Title of Class of Securities)

-----  
056039100  
(CUSIP Number of Underlying Class of Securities)

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Kevin C. Kern  
Vice President, Administration and  
Chief Financial Officer  
Bway Corporation  
8607 Roberts Drive, Suite 250  
Atlanta, Georgia 30350  
(770) 645-4800

copies to:  
Jeffrey L. Schulte, Esq.  
Heath D. Linsky, Esq.  
Morris, Manning & Martin, L.L.P.  
1600 Atlanta Financial Center  
3343 Peachtree Road, N.E.  
Atlanta, Georgia 30326  
(404) 233-7000

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

CALCULATION OF FILING FEE

Transaction Valuation*	Amount of Filing Fee
\$16,721,930	\$3,345

\* Calculated solely for purposes of determining the filing fee. This amount assumes that options to purchase 1,235,915 shares of common stock of Bway Corporation having a weighted average exercise price of \$13.53 will be exchanged pursuant to this offer. The amount of the filing fee, calculated in accordance with Rule 0-11 of the Securities Exchange Act of 1934, as amended, equals 1/50th of one percent of the value of the transaction.

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Check 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:	Not applicable.
Form or Registration No.:	Not applicable.
Filing party:	Not applicable.
Date filed:	Not applicable.

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:

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### INTRODUCTORY STATEMENT

This Tender Offer Statement on Schedule TO (this "Schedule TO") relates to our offer to exchange options to purchase shares of our common stock, par value \$.01 per share, held by certain employees, directors and other eligible option holders for new options to purchase shares of our common stock at a per share exercise price equal to the fair market value of one share of our common stock on the date of issuance upon the terms and subject to the conditions in the Offer to Exchange dated June 11, 2001, attached hereto as Exhibit (a)(1)(A) (the "Offer to Exchange") and the related Letter of Transmittal attached hereto as Exhibit (a)(1)(B) (the "Letter of Transmittal").

The information in the Offer to Exchange and the Letter of Transmittal is incorporated herein by reference in answer to all applicable items in this Schedule TO, except as otherwise set forth below.

#### ITEM 1. Summary Term Sheet

The information set forth under "Summary Term Sheet" in the Offer to Exchange is incorporated herein by reference.

#### ITEM 2. Subject Company Information

##### (a) Name and Address.

The name of the issuer is Bway Corporation, a Delaware corporation (the "Company"). The Company's principal executive offices are located at 8607 Roberts Drive, Suite 250, Atlanta, Georgia, 30350, and its telephone number is (770) 645-4800. The information set forth in the Offer to Exchange under "Information Concerning Bway" is incorporated herein by reference.

##### (b) Securities.

This Schedule TO related to an offer by the Company to exchange all options outstanding under the Company's 1995 Long-Term Incentive Plan, dated

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June 1995, as amended and restated, to purchase shares of the Company's common stock, par value \$.01 per share (the "Common Stock"), having an exercise price of \$9.00 or more (the "Eligible Options") for new options (the "New Options") to purchase shares of the Common Stock to be granted pursuant to the Plan, upon the terms and conditions described in the Offer to Exchange and the related Letter

of Transmittal. The Letter of Transmittal and the Offer to Exchange, as they may be amended from time to time, are together referred to as the "Offer." The number of shares of Common Stock subject to the New Options will be equal to the number of shares of Common Stock subject to the Eligible Options that are accepted for exchange and canceled. The information set forth in the Offer to Exchange under "Summary Term Sheet," "Introduction," Section 1 ("Number of Options; Expiration Date"), Section 5 ("Acceptance of Options for Exchange and Issuance of New Options") and Section 8 ("Source and Amount of Consideration; Terms of New Options") is incorporated herein by reference.

(c) Trading Market and Price.

The information set forth in the Offer to Exchange under Section 7 ("Price Range of Common Stock Underlying the Options") is incorporated herein by reference.

ITEM 3. Identity and Background of Filing Person.

(a) Name and Address.

The information set forth under Item 2(a) above is incorporated herein by reference.

ITEM 4. Terms of the Transaction.

(a) Material Terms.

The information set forth in the Offer to Exchange under "Summary Term Sheet," "Introduction," Section 1 ("Number of Options; Expiration Date"), Section 3 ("Procedures for Tendering Options"), Section 4 ("Withdrawal Rights"), Section 5 ("Acceptance of Options for Exchange and Issuance of New Options"), Section 6 ("Conditions of the Offer"), Section 11 ("Status of Options Acquired by Us in the Offer; Accounting Consequences of the Offer"), Section 12 ("Legal Matters; Regulatory Approvals"), Section 13 ("Material Federal Income Tax Consequences") and Section 14 ("Extension of Offer; Termination; Amendment") is incorporated herein by reference.

(b) Purchases.

The information set forth in the Offer to Exchange under Section 10 ("Interests of Directors and Officers; Transactions and Arrangements Concerning the Options") and Schedule A is incorporated herein by reference.

ITEM 5. Past Contacts, Transactions, Negotiations and Agreements.

(e) Agreements Involving the Subject Company's Securities

The information set forth in the Offer to Exchange under Section 10 ("Interests of Directors and Officers; Transactions and Arrangements Concerning the Options") is incorporated herein by reference.

ITEM 6. Purposes of the Transaction and Plan or Proposals.

(a) Purposes.

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The information set forth in the Offer to Exchange under Section 2 ("Purpose of the Offer") is incorporated herein by reference.

(b) Use of Securities Acquired.

The information set forth in the Offer to Exchange under Section 5 ("Acceptance of Options for Exchange and Issuance of New Options) and Section 11 ("Status of Options Acquired by Us in the Offer; Accounting Consequences of the Offer") is incorporated herein by reference.

(c) Plans.

The information set forth in the Offer to Exchange under Section 2 ("Purpose of the Offer") is incorporated herein by reference.

### ITEM 7. Source and Amount of Funds or Other Consideration.

(a) Source of Funds.

The information set forth in the Offer to Exchange under Section 8 ("Source and Amount of Consideration; Terms of New Options") and Section 15 ("Fees and Expenses") is incorporated herein by reference.

(b) Conditions.

The information set forth in the Offer to Exchange under Section 6 ("Conditions of the Offer") is incorporated herein by reference.

(d) Borrowed Funds.

Not applicable

### ITEM 8. Interests in Securities of the Subject Company.

(a) Securities Ownership.

Not applicable

(b) Securities Transactions.

The information set forth in the Offer to Exchange under Section 10 ("Interests of Directors and Officers; Transactions and Arrangements Concerning the Options") is incorporated herein by reference.

### ITEM 9. Person/Assets, Retained, Employed, Compensated or Used.

(a) Solicitations or Recommendations

Not applicable

### ITEM 10. Financial Statements.

(a) Financial Information

The information set forth in the Offer to Exchange under Section 9 ("Information About Bway") and Section 14 ("Exhibits, Financial Statement Schedules, and Reports on Form 8-K" on page 15 and F-1 through F-25), of Bway's Annual Report on Form 10-K, for its fiscal year ended October 1, 2000, and on pages 2 through 10 of Bway's Quarterly Report on Form 10-Q, for its fiscal quarter ended April 1, 2001, is incorporated herein by reference.

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### ITEM 11. Additional Information.

#### (a) Agreements, Regulatory Requirements and Legal Proceedings.

The information set forth in the Offer to Exchange under Section 10 ("Interests of Directors and Officers; Transactions and Arrangements Concerning the Options") and Section 12 ("Legal Matters; Regulatory Approvals") is incorporated herein by reference.

#### (b) Other Material Information.

Not applicable

### ITEM 12 Exhibits.

- (a) (1) (A) Offer to Exchange dated June 11, 2001.
- (a) (1) (B) Form of Letter of Transmittal.
- (a) (1) (C) Form of Letter to Eligible Option Holders Regarding Offer.
- (a) (1) (D) Form of Notice of Withdrawal by Option Holder.
- (a) (1) (E) Form of Letter to Tendering Option Holders Regarding Acceptance of Tendered Options.
- (a) (1) (F) Bway Corporation Annual Report on Form 10-K for its fiscal year ended October 1, 2000, filed with the Securities and Exchange Commission on December 22, 2000, and incorporated herein by reference.
- (a) (1) (G) Bway Corporation Quarterly Report on Form 10-K for its fiscal quarter ended April 1, 2001, filed with the Securities and Exchange Commission on May 16, 2001, and incorporated herein by reference.
- (b) Not applicable.
- (d) (1) Bway Corporation Fourth Amended and Restated 1995 Long-Term Incentive Plan, filed as Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q for its fiscal quarter ended April 2, 2000, filed with the Securities and Exchange Commission on May 5, 2000, and incorporated herein by reference.
- (d) (2) Form of New Non-Qualified Option Agreement related to the Fourth Amended and Restated 1995 Long-Term Incentive Plan.
- (d) (3) Form of New Incentive Stock Option Agreement related to the Fourth Amended and Restated 1995 Long-Term Incentive Plan.
- (g) Not applicable.
- (h) Not applicable.

### ITEM 13. Information Required by Schedule 13e-3

Not Applicable

### SIGNATURE

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.

Bway Corporation

/s/ Kevin C. Kern

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Kevin C. Kern  
Vice President, Administration and  
Chief Financial Officer

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Date: June 11, 2001

## INDEX TO EXHIBITS

### Exhibit

Number      Description  
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