

MERCURY AIR GROUP INC

Form SC 13E3/A

May 19, 2005

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549**

**AMENDMENT NO. 1 TO
FORM 13E-3**

**RULE 13E-3 TRANSACTION STATEMENT UNDER SECTION 13(e)
SECURITIES EXCHANGE ACT OF 1934**

MERCURY AIR GROUP, INC.

(Name of Issuer)

Mercury Air Group, Inc.

(Name of Person(s) Filing Statement)

Common Stock, par value \$.01 per share
(Title of Class of Securities)

589354406
(CUSIP Number of Class of Securities)

Mercury Air Group, Inc.
c/o Joseph A. Czyzyk, Chief Executive Officer
5456 McConnell Avenue
Los Angeles, California 90066
(310) 827-2737

(Name, Address, and Telephone Numbers of Person Authorized to Receive
Notices and Communications on Behalf of Persons Filing Statement)

With a copy to:

James R. Stern, Esq.
McBreen & Kopko
20 North Wacker Drive
Suite 2520
Chicago, Illinois 60606

This statement is filed in connection with (check the appropriate box):

- a. The filing of solicitation materials or an information statement subject to Regulation 14A (§§240.14a-1 through 240.14b-2), Regulation 14C (§§240.14c-1 through 240.14c-101) or Rule 13e-3(c) (§240.13e-3(c)) under the Securities Exchange Act of 1934 (the Act).
- b. The filing of a registration statement under the Securities Act of 1933.
- c. A tender offer.
- d. None of the above.

Check the following box if the soliciting materials or information statement referred to in checking box (a) are preliminary copies:

Check the following box if the filing is a final amendment reporting the results of the transaction:

Calculation of Filing Fee

Transaction Valuation	Amount of Filing Fee
\$770,452	\$90.68

*Calculated solely for purposes of determining the filing fee. The transaction valuation assumes the payment for 192,613 shares of common stock of the subject company at \$4.00 per share in cash.

Check the box if any part of the fee is offset as provided by §240.1-11(1)(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: \$90.68

Filing Party: Mercury Air Group, Inc.

Form or Registration No.: 005-34478

Date Filed: April 1, 2005

EXPLANATORY NOTE

This Amendment No. 1 to Rule 13e-3 Transaction Statement is being filed concurrently with the filing of a preliminary proxy statement pursuant to Regulation 14A under the Securities Exchange Act of 1934 (the Proxy Statement). The information contained in the Proxy Statement, including all annexes thereto, is hereby expressly incorporated herein by reference. As of the date hereof, the Proxy Statement is in preliminary form and is subject to completion or amendment. Capitalized terms used but not defined in this Amendment No. 1 to Schedule 13E-3 (this Schedule) shall have the meanings given to them in the Proxy Statement.

Item 1. Summary Term Sheet.

The section entitled Summary Term Sheet set forth in the Proxy Statement is incorporated herein by reference.

Item 2. Subject Company Information.

(a) *Name and Address.* The name of the subject company is Mercury Air Group, Inc., a Delaware corporation (the Company). The Company s principal executive offices are located at 5456 McConnell Avenue, Los Angeles, California 90066. The Company s telephone number is (310) 827-2737.

(b) *Securities.* The subject class of equity securities to which this Schedule relates is the Company s common stock, par value \$.01 per share (the Common Stock), of which 3,056,355 shares were outstanding as of May 1, 2005.

(c) *Trading, Market and Prices.* The information set forth in the Proxy Statement under Market for Common Stock and Related Stockholder Matters Market Prices of the Common Stock is incorporated herein by reference.

(d) *Dividends.* The information set forth in the Proxy Statement under Market for Common Stock and Related Stockholder Matters Dividends is incorporated herein by reference.

(e) *Prior Public Offerings.* The Company has not made an underwritten public offering of the Common Stock for cash during the three years preceding the date of the filing of this Schedule.

(f) *Prior Stock Purchases.* The information set forth in the Proxy Statement under Stock Purchases by Mercury and Affiliates is incorporated herein by reference.

Item 3. Identity and Background of Filing Person.

(a) *Name and Address.* The filing person, the Company, is also the subject company. The Company's address and telephone number are provided in Item 2(a) above. The executive officers and directors and persons who may be considered to be in control of the Company are set forth below. The address of each executive officer is c/o Mercury Air Group, Inc. 5456 McConnell Avenue, Los Angeles, California 90066. The name of the executive officers, and the names and addresses of the directors and persons who may be considered to be in control of the Company, are set forth below.

Executive Officers

Joseph A. Czyzyk, Chairman, Chief Executive Officer and President

Kent Rosenthal, Chief Financial Officer

William L. Silva, Executive Vice President and President of Maytag Aircraft Corporation

Wayne J. Lovett, Executive Vice President, Secretary and General Counsel

Directors

Frederick H. Kopko, Jr., 20 North Wacker Drive, Suite 2520, Chicago, IL 60606

Gary J. Feracota, 904 Williams Street, River Forest, IL 60305

Michael J. Janowiak, 6540 West Joliet Road, #38, Countryside, IL 60525

Angelo Pusateri, 17 Cary Road, New Hyde Park, NY 11040

Persons Who May Be Considered to be in Control of the Company.

CK Partners

5456 McConnell Avenue

Los Angeles, CA 90066

CK Partners is a partnership owned and controlled by Messrs. Czyzyk and Kopko.

(b) *Business and Background of Entities.* Not applicable.

(c) *Business and Background of Natural Persons.* The information set forth in Item 2(a) above and in the Proxy Statement under Management of Mercury Directors and Management of Mercury Executive Officers Who Are Not Directors is incorporated herein by reference. All directors and executive officers are United States citizens. During the last five years, neither the Company nor, to its knowledge, any of its directors or executive officers has been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors), or was a party to any judicial or administrative proceeding (except for matters that were dismissed without sanction or settlement) as a result of which any such person was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting activities subject to, federal or state securities laws or finding any violation of those laws.

Item 4. Terms of the Transaction.

(a) *Material Terms.* The information set forth in the Proxy Statement under Summary Term Sheet, The Proposed Amendment, The Special Meeting Vote Required, Special Factors Purpose of and Reasons for the Transaction, Special Factors Background of the Transaction; Board Deliberations and Special Factors U.S. Federal Income Tax Consequences is incorporated herein by reference.

(b) [Reserved]

(c) *Different Terms.* The information set forth in the Proxy Statement under Special Factors - Certain Effects of the Transaction, is incorporated herein by reference.

(d) *Appraisal Rights.* The information set forth in the Proxy Statement under Special Factors No Appraisal or Dissenters Rights; Escheat Laws is incorporated herein by reference.

(e) *Provisions for Unaffiliated Security Holders.* The Company has not made any provision in connection with the transaction to grant unaffiliated security holders access to the Company's corporate files or to obtain counsel or appraisal services at the Company's expense.

(f) *Eligibility for Listing or Trading.* Not applicable.

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

(a) *Transactions.* The information set forth in the Proxy Statement under Certain Transactions is incorporated herein by reference.

(b) *Significant Corporate Events.* The information set forth in the Proxy Statement under Security Ownership of Certain Beneficial Owners and Certain Transactions is incorporated herein by reference.

(c) *Negotiations or Contacts.* The information set forth in the Proxy Statement under Security Ownership of Certain Beneficial Owners and Certain Transactions is incorporated herein by reference.

(d) [Reserved]

(e) *Agreements Involving the Subject Company's Securities.* The information set forth in the Proxy Statement under Summary Term Sheet Transaction Affiliates and Security Ownership of Certain Beneficial Owners is incorporated herein by reference.

Item 6. Purposes of the Transaction and Plans or Proposals.

(a) [Reserved]

(b) *Use of Securities Acquired.* The information set forth in the Proxy Statement under The Proposed Amendment Exchange of Certificates is incorporated herein by reference.

(c) *Plans.* The information set forth in the Proxy Statement under Summary Term Sheet- Purpose of and Reasons for the Transaction , Summary Term Sheet Benefits of the Transaction , Summary Term Sheet Disadvantages of the Transaction , Summary Term Sheet Effects of the Transaction , Special Factors Purpose of and Reasons for the Transaction , Special Factors - Benefits of the Transaction , Special Factors Disadvantages of the Transaction , Special Factors Certain Effects of the Transaction and Special Factors Conduct of Mercury s Business after the Transaction is incorporated herein by reference.

Item 7. Purposes, Alternatives, Reasons and Effects.

(a) *Purposes.* The information set forth in the Proxy Statement under Summary Term Sheet - Purpose of and Reasons for the Transaction, Special Factors Purpose of and Reasons for the Transaction and Special Factors Background of the Transaction; Board and Special Committee Deliberations is incorporated herein by reference.

(b) *Alternatives.* The information set forth in the Proxy Statement under Summary Term Sheet - Alternatives Considered and Special Factors Alternatives Considered is incorporated herein by reference.

(c) *Reasons.* The information set forth in the Proxy Statement under Summary Term Sheet - Purpose of and Reasons for the Transaction and Special Factors Purpose of and Reasons for the Transaction is incorporated herein by reference.

(d) *Effects.* The following information is incorporated by reference to the Proxy Statement: Summary Term Sheet Purpose of and Reasons for the Transaction, Summary Term Sheet - Disadvantages of the Transaction, Summary Term Sheet Benefits of the Transaction, Summary Term Sheet The Transaction, Special Factors Purpose of and Reasons for the Transaction, Special Factors Benefits of the Transaction, Special Factors Disadvantages of the Transaction, Special Factors Certain Effects of the Transaction, and Special Factors U.S. Federal Income Tax Consequences.

Item 8. Fairness of the Transaction.

(a) *Fairness.* The information set forth in the Proxy Statement under Summary Term Sheet - Recommendation of the Special Committee and the Board of Directors and Special Factors - Recommendation of the Board; Fairness of the Transaction is incorporated herein by reference.

(b) *Factors Considered in Determining Fairness.* The information set forth in the Proxy Statement under Summary Term Sheet Recommendation of the Special Committee and

the Board of Directors and Special Factors Recommendation of the Board; Fairness of the Transaction is incorporated herein by reference.

(c) *Approval of Security Holders.* The information set forth in the Proxy Statement under Special Factors Recommendation of the Board; Fairness of the Transaction is incorporated herein by reference.

(d) *Unaffiliated Representatives.* The information set forth in the Proxy Statement under Special Factors Recommendation of the Board; Fairness of the Transaction is incorporated herein by reference.

(e) *Approval of Directors.* The information set forth in the Proxy Statement under Summary Term Sheet Recommendation of the Special Committee and the Board of Directors and Special Factors Recommendation of the Board; Fairness of the Transaction is incorporated herein by reference.

(f) *Other Offers.* The information set forth in the Proxy Statement under Special Factors - Corporate Developments in Last Four Years and Special Factors Background of the Transaction; Board and Special Committee Deliberations is incorporated herein by reference.

Item 9. Reports, Opinions, Appraisals and Negotiations.

(a) *Report, Opinion or Appraisals.* 1. Opinion of Imperial Capital, LLC. 2. Report of SenPro Consulting/Casey & Co. 3. Report of Parson Consulting

(b) *Preparer and Summary of the Report, Opinion or Appraisal.* The information set forth in the Proxy Statement under Summary Term Sheet Fairness Opinion of Imperial Capital, LLC, Special Factors Corporate Developments in Last Four Years, Special Factors Background of the Transaction; Board and Special Committee Deliberations and Special Factors Opinion of Imperial Capital, LLC is incorporated herein by reference.

(c) *Availability of Documents.* The full text of the fairness opinion of Imperial Capital, LLC, dated March 21, 2005, is attached as Appendix B to the Proxy Statement. The full text of the reports of SenPro Consulting/Casey & Co. and Parson Consulting dated February 1, 2005 and March 8, 2005 are attached as exhibits (c)(2) and (c)(3) to this Schedule 13e-3. The full text of all other reports presented by Imperial Capital, LLC are attached as Exhibits (c)(4) to (c)(25) to this Schedule 13e-3. All such documents referenced are also available for inspection and copying at the Company's principal executive offices, 5456 McConnell Avenue, Los Angeles, California 90066.

Item 10. Source and Amounts of Funds or Other Consideration.

(a) *Source of Funds*, (b) *Conditions*, (c) *Expenses* and (d) *Borrowed Funds.* The information set forth in the Proxy Statement under Summary Term Sheet Source of Funds;

Financing of the Transaction and Special Factors Source of Funds; Financing of the Transaction is incorporated herein by reference.

Item 11. Interest in Securities of the Subject Company.

(a) *Securities Ownership*. The information set forth in the Proxy Statement under Security Ownership of Certain Beneficial Owners is incorporated herein by reference

(b) *Securities Transactions*. The Company has not and to the best of the Company's knowledge, none of its directors or executive officers has, effected any transaction in the Common Stock during the 60 days preceding the date of filing this Schedule.

Item 12. The Solicitation or Recommendation.

(a), (b) and (c) [Reserved]

(d) *Intent to Tender or Vote in a Going Private Transaction* and (e) *Recommendations of Others*. The information set forth in the Proxy Statement under The Special Meeting Vote Required, The Special Meeting -Recommendation of the Board of Directors, Special Factors Purpose of and Reasons for the Transaction, Special Factors Benefits of the Transaction, Special Factors - Alternatives Considered and Special Factors Recommendation of the Board; Fairness of the Transaction is incorporated herein by reference.

Item 13. Financial Statements.

(a) *Financial Information*. The audited financial statements and unaudited interim financial statements are incorporated by reference in the proxy statement from the Company's Annual Report on Form 10-K for the year ended June 30, 2004, and the Company's Quarterly Report on Form 10-Q for the quarter ended December 31, 2004, which are annexed to the Proxy Statement. The information set forth in the Proxy Statement under Selected Per Share Financial Information, Financial Information, Documents Incorporated by Reference and Where You Can Find More Information is incorporated herein by reference.

(b) *Pro forma Information*. The information set forth in the Proxy Statement under Financial Information Pro Forma Consolidated Financial Statements (Unaudited) is incorporated herein by reference.

Item 14. Persons/Assets, Retained, Employed, Compensated or Used.

(a) *Solicitation or Recommendation* and (b) *Employees and Corporate Assets*. The information set forth in the Proxy Statement under Cost of Solicitation of Proxies is incorporated herein by reference.

Item 15. Additional Information.

The information contained in the Proxy Statement, including all appendices attached thereto, is incorporated herein by reference.

Item 16. Exhibits.

EXHIBIT INDEX

- (a)(1) Press Release issued by the Company on March 8, 2005.*
- (a)(2) Press Release issued by the Company on March 22, 2005.*
- (b)(1) Loan Agreement dated as of July 29, 2004 by and among Bank of America, N.A., Mercury Air Group, Inc. and certain subsidiaries. Such document was previously filed as an Exhibit to the Company's Current Report on Form 8-K on July 30, 2004 and is incorporated herein by reference.*
- (b)(2) First Amendment to Loan Agreement by and among Bank of America, N.A., Mercury Air Group, Inc. and certain subsidiaries. Such document was previously filed as an Exhibit to the Company's Current Report on Form 8-K on October 27, 2004 and is incorporated herein by reference.*
- (c)(1) Mercury Fairness Opinion dated March 21, 2005.
- (c)(2) Report based on Analysis of SenPro Consulting/Casey & Co. dated February 1, 2005.
- (c)(3) Report of Parson Consulting dated March 8, 2005
- (c)(4) Distribution of Shares presented at Special Committee Meeting of February 25, 2005.
- (c)(5) Comparable Stock Splits Since 2004 presented at Special Committee Meeting of February 25, 2005.
- (c)(6) Pink Sheets Liquidity presented at Special Committee Meeting of February 25, 2005.
- (c)(7) Share Premium Analysis presented at Special Committee Meeting of February 25, 2005.
- (c)(8) Mercury Draft Fairness Opinion & Backup dated February 25, 2005.
- (c)(9) Mercury Draft Fairness Opinion & Backup v3 dated February 25, 2005.
- (c)(10) Pink Sheets Liquidity Analysis - Distressed Breakout presented at Special Committee Meeting of March 1, 2005.
- (c)(11) Comparable Stock Splits presented at Special Committee Meeting of March 3, 2005.
- (c)(12) Share Premium Analysis presented at Special Committee Meeting of March 3, 2005.
- (c)(13) Share Premium Analysis presented at Special Committee Meeting of March 8, 2005.
- (c)(14) Share Premium Analysis presented at Special Committee Meeting of March 8, 2005.

- (c)(15) Share Premium Analysis presented at Special Committee Meeting of March 9, 2005.
- (c)(16) Share Premium Analysis presented at Special Committee Meeting of March 10, 2005.
- (c)(17) Mercury Draft Fairness Opinion & Backup dated March 10, 2005.
- (c)(18) Comparable Stock Splits presented at Special Committee Meeting of March 10, 2005.
- (c)(19) Mercury Draft Fairness Opinion & Backup dated March 14, 2005.
- (c)(20) Share Premium Analysis presented at Special Committee Meeting of March 14, 2005.
- (c)(21) Share Premium Analysis presented at Special Committee Meeting of March 21, 2005.
- (c)(22) Cash to Buyout Fractional Shares at various premiums presented at Special Committee Meeting of March 21, 2005.
- (c)(23) Mercury Draft Fairness Opinion & Backup dated March 21, 2005.
- (c)(24) Mercury Financial Projections dated March 1, 2005
- (c)(25) Agenda dated February 15, 2005.
- (c)(26) Draft Delisting/Deregistration process memorandum dated February 15, 2005.
- (c)(27) Step by Step Memorandum.
- (c)(28) Revised Step by Step Memorandum.
- (c)(29) Revised Step by Step Memorandum.
- (d)(1) Amended and Restated Partnership Agreement dated as of July 30, 2004 of CK Partners by and among Frederick H. Kopko, Jr. and Joseph A. Czyzyk. Such document was previously filed as an Exhibit to the Company's Annual Report on Form 10-K for the year ended June 30, 2004 and is incorporated herein by reference.

* Previously filed.

SIGNATURE

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.

Date: May 17, 2005

MERCURY AIR GROUP, INC.

By: /s/ Joseph A. Czyzyk
Joseph A. Czyzyk
Chief Executive Officer and
Chairman of the Board of Directors

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