

Chart Acquisition Corp.
Form SC 14D9
April 30, 2015

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

SCHEDULE 14D-9

Solicitation/Recommendation Statement under Section 14(d)(4)
of the Securities Exchange Act of 1934

CHART ACQUISITION CORP.

(Name of Subject Company)

CHART ACQUISITION CORP.

(Name of Person Filing Statement)

Warrants to Purchase Shares of Common Stock, Par Value \$0.0001 Per Share

(Title of Class of Securities)

161151 113

(CUSIP Number of Class of Securities)

**Joseph R. Wright
c/o The Chart Group, L.P.
555 5th Avenue, 19th Floor
New York, NY 10017
(212) 350-8205**

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

With copies to:

Douglas S. Ellenoff, Esq.

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Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

ITEM 1. SUBJECT COMPANY INFORMATION.

Name and Address

The name of the subject company to which this Solicitation/Recommendation Statement on Schedule 14D-9 (together with any exhibits attached hereto, this "Statement") relates is Chart Acquisition Corp., a Delaware corporation (the "Company" or "Chart"). The Company's principal executive offices are located at c/o The Chart Group, L.P., 555 5th Avenue, 19th Floor, New York, New York 10017. The Company's telephone number at this address is (212) 350-8205.

Securities

This Statement relates to the Company's outstanding Warrants (as defined below). As of April 21, 2015, the date of commencement of the Offer (as defined below), there were issued and outstanding 7,875,000 Warrants, including 7,500,000 Warrants issued in the Company's initial public offering ("IPO") and 375,000 Warrants issued in a private placement that was consummated simultaneously with the IPO. All such Warrants have an exercise price of \$11.50 per share.

Item 2. IDENTITY AND BACKGROUND OF FILING PERSON.

Name and Address

The Company is the person filing this Statement. The name, business address and business telephone number of the Company are set forth in Item 1 above.

Tender Offer

This Statement relates to the offer by Chart Acquisition Group LLC (the "Sponsor"), Joseph R. Wright ("Mr. Wright") and Cowen Investments LLC ("Cowen" and, together with the Sponsor and Mr. Wright, the "Purchasers") to purchase for cash up to 3,422,400 of the warrants of the Company (the "Warrants") (subject to proration), each warrant exercisable to

purchase one share of common stock, par value \$0.0001 per share, of the Company (the “Common Stock”), at a price of \$0.60 per Warrant, net to the seller in cash, without interest (the “Purchase Price”), for an aggregate purchase price of up to \$2,053,440. The offer is being made upon the terms and subject to certain conditions set forth in the Offer to Purchase dated April 21, 2015 (the “Offer to Purchase”) and in the related Letter of Transmittal (the “Letter of Transmittal”), which, as amended or supplemented from time to time, together constitute the offer (the “Offer”). The Offer is described in a Tender Offer Statement on Schedule TO (together with exhibits thereto, the “Schedule TO”), filed with the Securities and Exchange Commission (the “SEC”) on April 21, 2015 by the Purchasers, The Chart Group L.P., the managing member of the Sponsor, and RCG LV Pearl LLC, the sole member of Cowen and a subsidiary of Cowen Group, Inc. (together with the Purchasers and Chart Group L.P., the “Schedule TO Filing Persons”).

On January 5, 2015, the Company entered into the Agreement and Plan of Merger, dated January 5, 2015 (as amended, the “Merger Agreement”), by and among Tempus Applied Solutions, LLC (“Tempus”), the members of Tempus (the “Sellers”), Benjamin Scott Terry and John G. Gulbin III, together, in their capacity under the Merger Agreement as the representative of the Sellers for the purposes set forth therein (the “Members’ Representative”), the Company, Tempus Applied Solutions Holdings, Inc. (“Tempus Holdings”), Chart Merger Sub Inc. (“Chart Merger Sub”), TAS Merger Sub LLC (“Tempus Merger Sub”), the Sponsor in its capacity under the Merger Agreement as the representative of the equity holders of Chart and Tempus Holdings (other than the Sellers and their successors and assigns) in accordance with the terms thereof (the “Chart Representative”) and the Purchasers, pursuant to which Chart and Tempus will combine under a new holding company called Tempus Holdings (the “Business Combination”). The Merger Agreement was amended on March 20, 2015.

Pursuant to the Merger Agreement, subject to the terms and conditions set forth therein, (i) Chart Merger Sub will merge with and into Chart, with Chart being the surviving entity and a wholly-owned subsidiary of Tempus Holdings (such merger, the “Chart Merger”), (ii) Tempus Merger Sub will merge with and into Tempus, with Tempus being the surviving entity and a wholly owned subsidiary of Tempus Holdings (such merger, the “Tempus Merger”), and (iii) Tempus Holdings will become a publicly traded company. The Chart Merger and the Tempus Merger will occur simultaneously upon the consummation of the Business Combination (the “Closing”).

In the Chart Merger, the outstanding equity securities of Chart will be cancelled and the holders of outstanding shares of Chart common stock and warrants will receive substantially identical securities of Tempus Holdings. In the Tempus Merger, the outstanding membership interests of Tempus will be cancelled in exchange for the right of the Sellers to receive as the aggregate merger consideration 3,700,000 shares of Tempus Holdings common stock, subject to certain adjustments, plus an additional right to receive potentially up to 6,300,000 shares of Tempus Holdings common stock as an earn-out if certain financial milestones are achieved.

As a result of the Closing, each of Chart Merger Sub and Tempus Merger Sub will cease to exist, Chart and Tempus will become wholly-owned subsidiaries of Tempus Holdings, and the equity holders of Chart and Tempus will become the stockholders of Tempus Holdings.

In connection with the Merger Agreement, the Purchasers and Christopher D. Brady (collectively, the "Chart Stockholders") entered into a supporting stockholder agreement, dated as of January 5, 2015 (the "Supporting Stockholder Agreement"), with Tempus and the Members' Representative. Pursuant to the Supporting Stockholder Agreement, the Chart Stockholders (solely in their capacity as stockholders, and not in any capacity as an officer or director) have agreed, among other things, that from the signing date until the termination of the Supporting Stockholder Agreement (the "Voting Period"), to vote all of the shares of Chart common stock held by them (currently 1,766,250 shares of Chart common stock, representing as of the date hereof approximately 33.8% of the voting power of Chart in the aggregate) (a) in favor of (i) the adoption of the Merger Agreement and the transactions contemplated by the Merger Agreement, (ii) the adoption of the Tempus Applied Solutions Holdings, Inc. 2015 Omnibus Equity Incentive Plan and (iii) any amendment to Chart's existing charter and trust agreements to extend the deadline for Chart to consummate the Business Combination, if needed, and (b) against alternative proposals, agreements or transactions to the Business Combination (except as permitted by the Merger Agreement). The Chart Stockholders also agreed during the Voting Period not to submit their shares of Chart common stock to be redeemed by Chart or to otherwise cause such shares to be repurchased or redeemed. The Supporting Stockholder Agreement will automatically terminate upon the first to occur of (i) the mutual written consent of the parties thereto, (ii) the closing of the Business Combination, or (iii) the termination of the Merger Agreement in accordance with its terms.

As set forth in the Schedule TO, the business address of the Sponsor, The Chart Group, L.P. and Mr. Wright are the business address and telephone number of the Company set forth under Item 1 above and the business address of Cowen and RCG LV Pearl LLC is RCG LV Pearl LLC, 599 Lexington Avenue, New York, NY 10022.

The Company does not take any responsibility for the accuracy or completeness of any information set forth in the Schedule TO which is summarized herein or any failure by the Schedule TO Filing Persons to disclose events or circumstances that may have occurred and may affect the accuracy or completeness of such information.

ITEM 3. PAST CONTACTS, TRANSACTIONS, NEGOTIATIONS AND AGREEMENTS.

Conflicts of Interest

The information set forth in the section of the Offer to Purchase titled “The Offer –Section 9. Interests of Directors and Executive Officers; Certain Agreements” and in the sections of the Company’s Annual Report on Form 10-K, as amended, initially filed with the SEC on March 17, 2015 titled “Item 11 –Executive Compensation”, “Item 12 –Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters” and “Item 13 –Certain Relationships and Related Transactions, and Director Independence” are incorporated herein by reference.

ITEM 4. THE SOLICITATION OR RECOMMENDATION.

Solicitation or Recommendation

The Board of Directors has determined to take no position and make no recommendation, and to express no opinion and to remain neutral, with respect to the Offer. The Board of Directors has determined that the decision of the holders of the Warrants (the “Holders”) regarding whether or not to tender their Warrants in the Offer is a personal investment decision based upon each individual Holder’s particular circumstances. The Board of Directors urges each Holder to make its own decision regarding the Offer based on all of the available information, including the adequacy of the Offer price in light of the Holder’s own investment objectives, the Holder’s views as to the Company’s prospects and outlook, the factors considered by the Board of Directors, as described below, and any other factors that the Holder deems relevant to its investment.

Reasons for the Recommendation of the Company’s Board of Directors

In determining not to make a recommendation to Holders with respect to the Offer, the Board of Directors considered a number of factors, including the following:

On December 13, 2012, the registration statement (File No. 333-177280) for the IPO was declared effective by the SEC. In connection with the IPO, the Purchasers committed to offer to purchase up to 3,750,000 Warrants at a purchase price of \$0.60 per Warrant in a proposed tender offer that would commence after the announcement of the Company’s initial business combination and would be completed upon consummation of such business combination and in the event the Company liquidates upon a failure to consummate an initial business combination Holders would receive a pro rata distribution of the amount in an escrow account set up by the Purchasers in the amount of \$0.30 for each Warrant they hold.

Pursuant to the Company’s amended and restated articles of incorporation, the Company currently must complete a business combination by June 13, 2015 (the “Termination Date”). On January 5, 2015, the Company signed the Merger Agreement for a business combination transaction with Tempus. On January 9, 2015, Tempus Holdings filed a registration statement on Form S-4, as amended, with the SEC (the “Form S-4”), which includes a preliminary proxy statement/prospectus with respect to the Business Combination.

In connection with the Business Combination, the Purchasers have collectively agreed to conduct the Offer to purchase up to 3,422,400 of the outstanding Warrants (subject to proration) at a price of \$0.60 per Warrant (reduced

from 3,750,000 Warrants originally contemplated in connection with the IPO by one Warrant for every two Warrants previously purchased by the Purchasers in the Initial Warrant Tender Offer (as defined in the Schedule TO) and in the Second Warrant Tender Offer (as defined in the Schedule TO)) in connection with, and contingent upon, stockholder approval of the Business Combination and related proposals set forth in the proxy statement/prospectus included in the Form S-4. The Purchasers are making the Offer to purchase the Warrants to provide Holders that may not wish to retain their Warrants following the Business Combination the possibility of receiving cash for their Warrants and enable them to receive \$0.60 per Warrant (subject to proration).

In the event that the Business Combination is consummated, any Warrants not tendered would remain issued and outstanding following the Business Combination, and may be worth more or less than the \$0.60 price of the Offer. In addition, there is no certainty as to when the Common Stock would trade above the \$11.50 exercise price, if ever. The Warrants will expire five years from the consummation of the Business Combination (or earlier upon the liquidation of the Company).

In the event that the Company were to liquidate upon a failure to consummate an initial business combination prior to the Termination Date, Holders would receive a pro rata distribution of the amount in an escrow account set up by the Purchasers in the amount of \$0.30 for each Warrant they hold. Consequently, Holders that do not tender their Warrants in the Offer would still receive \$0.30 per Warrant in the event that the Company were to liquidate upon a failure to consummate a business combination.

The foregoing discussion of material factors considered by the Board of Directors is not intended to be exhaustive. In view of the variety of factors considered in connection with its evaluation of the Offer, the Board of Directors did not find it practicable to, and did not, quantify or otherwise assign relative weights to the factors summarized above in reaching its neutral recommendation. In addition, individual members of the Board of Directors may have assigned different weights to different factors.

Intent to Tender

After reasonable inquiry and to our knowledge, none of our directors, executive officers, affiliates or subsidiaries currently intends to tender any Warrants held of record or beneficially owned by such person pursuant to the Offer.

Item 5. PERSONS/ASSETS RETAINED, EMPLOYED, COMPENSATED OR USED.

Neither the Company nor the Board of Directors nor any person acting on their behalf has employed, retained or agreed to compensate any person to make solicitations or recommendations to the Holders with respect to the Offer, except that the Company has agreed to reimburse the Schedule TO Filing Persons for all expenses they incur in connection with the Offer, provided that the Business Combination is consummated.

Item 6. INTEREST IN SECURITIES OF THE SUBJECT COMPANY.

No transactions with respect to the Warrants have been effected by the Company or, to the knowledge of the Company, by any of its executive officers, directors, affiliates or subsidiaries within the past 60 days, except for the purchase of 647,500 Warrants by the Purchasers for \$0.30 per Warrant pursuant to the Second Warrant Tender Offer on March 11, 2015.

Item 7. PURPOSES OF THE TRANSACTION AND PLANS OR PROPOSALS.

Except as described in this Statement and in the Form S-4, the Company is not undertaking or engaged in any negotiations in response to the Offer that relate to: (i) a tender offer or other acquisition of the Warrants by the Company, any of its subsidiaries or any other person; (ii) any extraordinary transaction, such as a merger, reorganization or liquidation, involving the Company or any of its subsidiaries; (iii) any purchase, sale or transfer of a material amount of assets of the Company or any of its subsidiaries; or (iv) any material change in the present dividend rate or policy, or indebtedness or capitalization of the Company. Except as described in this Statement and in the Form S-4, to the knowledge of the Board and the Company, there are no transactions, board resolutions, agreements in principle or signed contracts entered into in response to the Offer which relate to one or more of the matters referred to in the preceding sentence.

Item 8. ADDITIONAL INFORMATION.

Not applicable.

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Item 9. EXHIBITS.

The following exhibits are filed herewith:

| Exhibit Number | Description |
|-----------------------|--|
| (a) | Not applicable. |
| (e)(1) | Underwriting Agreement, dated December 13, 2012, by and between Chart Acquisition Corp., Deutsche Bank Securities Inc. and Cowen and Company, LLC, as representatives of the underwriters (incorporated by reference to Exhibit 1.1 to the Form 8-K filed by Chart Acquisition Corp. on December 19, 2012). |
| (e)(2) | Second Amended and Restated Warrant Agreement, dated March 11, 2015, by and between Chart Acquisition Corp. and Continental Stock Transfer & Trust Company (incorporated by reference to Exhibit 10.2 to the Form 8-K filed by Chart Acquisition Corp. on March 13, 2015). |
| (e)(3) | Second Amended and Restated Letter Agreement, dated March 11, 2015, by and among Chart Acquisition Corp., certain of Chart Acquisition Corp.'s security holders and the officers and directors of Chart Acquisition Corp., Deutsche Bank Securities, Inc. and Cowen Investments, LLC (incorporated by reference to Exhibit 10.4 to the Form 8-K filed by Chart Acquisition Corp. on March 13, 2015). |
| (e)(4) | Second Amended and Restated Investment Management Trust Agreement, dated March 11, 2015, by and between Chart Acquisition Corp. and Continental Stock Transfer & Trust Company (incorporated by reference to Exhibit 10.1 to the Form 8-K filed by Chart Acquisition Corp. on March 13, 2015). |
| (e)(5) | Registration Rights Agreement, dated December 13, 2012, by and among Chart Acquisition Corp., Chart Acquisition Group LLC, Cowen Overseas Investment LP and the other signatories thereto (incorporated by reference to Exhibit 10.2 to the Form 8-K filed by Chart Acquisition Corp. on December 19, 2012). |
| (e)(6) | Promissory Note, dated February 7, 2014, issued to Joseph R. Wright (incorporated by reference to Exhibit 10.13 to the Form 10-K filed by Chart Acquisition Corp. on March 17, 2014). |
| (e)(7) | Promissory Note, dated February 4, 2014, issued to Cowen Overseas LP (incorporated by reference to Exhibit 10.14 to the Form 10-K filed by Chart Acquisition Corp. on March 17, 2014). |
| (e)(8) | Promissory Note, dated February 11, 2014, issued to Chart Acquisition Group (incorporated by reference to Exhibit 10.15 to the Form 10-K filed by Chart Acquisition Corp. on March 17, 2014). |
| (e)(9) | Form of Convertible Promissory Note, dated September 9, 2014 (incorporated by reference to Exhibit 10.1 to the Form 8-K filed by Chart Acquisition Corp. on September 12, 2014). |
| (e)(10) | Promissory Note, dated February 11, 2014, issued to Chart Acquisition Group (incorporated by reference to Exhibit 10.2 to the Form 8-K filed by Chart Acquisition Corp. on September 12, 2014). |

- (e)(11) Form of Promissory Note, dated February 4, 2015 (incorporated by reference to Exhibit 10.1 to the Form 8-K filed by Chart Acquisition Corp. on February 5, 2015).

- (e)(12) Second Amended and Restated Escrow Agreement, dated March 11, 2015, by and between Chart Acquisition Group, LLC, Joseph Wright, and Cowen Investments LLC, Continental Stock Transfer & Trust Company, Deutsche Bank Securities, Inc. and Cowen and Company, LLC (incorporated by reference to Exhibit 10.5 to the Form 8-K filed by Chart Acquisition Corp. on March 13, 2015).

- (e)(13) Agreement and Plan of Merger, dated January 5, 2015, by and among Tempus Applied Solutions, LLC, the Members of Tempus Applied Solutions, LLC, the Members' Representative, Chart Acquisition Corp., Tempus Applied Solutions Holdings, Inc., Chart Merger Sub Inc., TAS Merger Sub LLC, the Chart Representative and the Warrant Offerors (incorporated by reference to Exhibit 2.1 to the Form 8-K filed by Chart Acquisition Corp. on January 7, 2015).

- (e)(14) First Amendment to the Agreement and Plan of Merger, dated March 20, 2015, by and among Tempus Applied Solutions, LLC, the Members of Tempus Applied Solutions, LLC, the Members' Representative, Chart Acquisition Corp., Tempus Applied Solutions Holdings, Inc., Chart Merger Sub Inc., TAS Merger Sub LLC, the Chart Representative and the Warrant Offerors (incorporated by reference to Exhibit 10.1 to the Form 8-K filed by Chart Acquisition Corp. on March 20, 2015).

- (e)(15) Supporting Stockholder Agreement, dated January 5, 2015, by and among Tempus Applied Solutions LLC, the Members' Representative and the stockholders of Chart Acquisition Corp. named therein (incorporated by reference to Exhibit 10.1 to the Form 8-K filed by Chart Acquisition Corp. on January 7, 2015).

- (e)(16) Form of Registration Rights Agreement by and among Tempus Applied Solutions Holdings, Inc. and the stockholders of Tempus Applied Solutions Holdings, Inc. named therein (incorporated by reference to Exhibit 10.2 to the Form 8-K filed by Chart Acquisition Corp. on January 7, 2015).

- (g) Not applicable.

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.

Dated: April 30, 2015

CHART ACQUISITION CORP.

By: /s/ Michael LaBarbera

Name: Michael LaBarbera

Title: Chief Financial Officer and Secretary

INDEX TO EXHIBITS

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| (e)(4) | Second Amended and Restated Investment Management Trust Agreement, dated March 11, 2015, by and between Chart Acquisition Corp. and Continental Stock Transfer & Trust Company (incorporated by reference to Exhibit 10.1 to the Form 8-K filed by Chart Acquisition Corp. on March 13, 2015). |
| (e)(5) | Registration Rights Agreement, dated December 13, 2012, by and among Chart Acquisition Corp., Chart Acquisition Group LLC, Cowen Overseas Investment LP and the other signatories thereto (incorporated by reference to Exhibit 10.2 to the Form 8-K filed by Chart Acquisition Corp. on December 19, 2012). |
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Second Amended and Restated Escrow Agreement, dated March 11, 2015, by and between Chart Acquisition Group, LLC, Joseph Wright, and Cowen Investments LLC, Continental Stock Transfer & Trust Company, Deutsche Bank Securities, Inc. and Cowen and Company, LLC (incorporated by reference to Exhibit 10.5 to the Form 8-K filed by Chart Acquisition Corp. on March 13, 2015).

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