

AVOCENT CORP
Form SC TO-T/A
December 01, 2009

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. 4)

AVOCENT CORPORATION
(Name of Subject Company)

GLOBE ACQUISITION CORPORATION
EMERSON ELECTRIC CO.
(Names of Filing Persons – Offeror)

Common Stock, Par Value \$0.001 Per Share
(Title of Class of Securities)

053893103
(Cusip Number of Class of Securities)

Frank L. Steeves
Senior Vice President, Secretary and General Counsel
Emerson Electric Co.
8000 West Florissant Avenue
St. Louis, Missouri 63136
Telephone: (314) 553-2000
(Name, Address and Telephone Number of Person Authorized to Receive Notices
and Communications on Behalf of Filing Persons)

Copies to:
Phillip R. Mills, Esq.
Marc O. Williams, Esq.
Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
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☐ 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. ☐

This Amendment No. 4 (“Amendment No. 4”) amends and supplements the Tender Offer Statement on Schedule TO (the “Schedule TO”) originally filed on October 15, 2009, as previously amended, by Emerson Electric Co., a Missouri corporation (“Emerson”), and Globe Acquisition Corporation, a Delaware corporation (“Purchaser”) and a wholly owned subsidiary of Emerson, relating to the offer by Purchaser to purchase all outstanding shares of common stock, par value \$0.001 per share (“Shares”), of Avocent Corporation, a Delaware corporation (“Avocent”), for \$25.00 per Share in cash, without interest, less certain applicable taxes, upon the terms and subject to the conditions set forth in the Offer to Purchase dated October 15, 2009 (the “Offer to Purchase”) and in the related Letter of Transmittal (which, together with any amendments or supplements thereto, collectively constitute the “Offer”).

All capitalized terms used in this Amendment No. 4 without definition have the meanings ascribed to them in the Schedule TO.

The items of the Schedule TO set forth below are hereby amended and supplemented as follows:

Item 4. Terms of the Transaction.

Item 4 of the Schedule TO is hereby amended and supplemented by adding the following text thereto:

“The Expiration Date of the Offer is extended to 5:00 p.m., New York City time, on December 7, 2009. As of 5:00 p.m. on November 30, 2009, approximately 42.1 million Shares had been tendered and not withdrawn pursuant to the Offer, including approximately 3.5 million Shares tendered pursuant to a notice of guaranteed delivery. The press release announcing the extension of the Offer is filed as Exhibit (a)(12) hereto and is incorporated herein by reference.”

Item 11. Additional Information.

Item 11 of the Schedule TO is hereby amended and supplemented by adding the following text thereto:

“On November 18, 2009, the Federal Competition Authority in Austria informed Emerson that neither the Federal Competition Authority nor the Federal Cartel Attorney requested an in-depth investigation before the Cartel Court and therefore the transactions contemplated by the Merger Agreement were cleared. Accordingly, the condition to the Offer relating to the receipt of clearance in Austria has been satisfied.

On November 18, 2009, the German Federal Cartel Office approved the transactions contemplated by the Merger Agreement under the Act Against Restraints of Competition. Accordingly, the condition to the Offer relating to the receipt of approval in Germany has been satisfied.”

Item 12. Exhibits.

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

“(a)(12) Press release issued by Emerson dated November 30, 2009.”

SIGNATURES

After due inquiry and to the best knowledge and belief of the undersigned, each of the undersigned certifies that the information set forth in this statement is true, complete and correct.

Date: November 30, 2009

GLOBE ACQUISITION CORPORATION

By: /s/ Alan Miencusny
Name: Alan Miencusny
Title: Vice President

EMERSON ELECTRIC CO.

By: /s/ Victor Lazzaretti
Name: Victor Lazzaretti
Title: Vice President, Deputy General Counsel &
Assistant Secretary

EXHIBIT INDEX

Exhibit No. Description

(a)(12) Press release issued by Emerson dated November 30, 2009.
