

UNITED STATES SURGICAL CORP
Form SC TO-T
June 25, 2010

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

WASHINGTON, D.C. 20549

**SCHEDULE TO
TENDER OFFER STATEMENT**

UNDER

SECTION 14(D)(1) OR SECTION 13(E)(1) OF THE SECURITIES EXCHANGE ACT OF 1934

SOMANETICS CORPORATION

(Name Of Subject Company (Issuer))

UNITED STATES SURGICAL CORPORATION

COVIDIEN DE CORP.

(Names of Filing Persons (Offerors))

Common Shares, par value \$0.01 per share

(Title of Class of Securities)

834445405

(CUSIP Number of Common Stock)

John H. Masterson

United States Surgical Corporation

c/o Covidien

15 Hampshire Street

Mansfield, MA 02048

Telephone: (508) 261-8000

(Name, address and telephone number of person authorized

to receive notices and communications on behalf of filing persons)

with copies to:

Joseph L. Johnson III

Goodwin Procter LLP

Exchange Place

Boston, Massachusetts 02109

Telephone: (617) 570-1000

CALCULATION OF FILING FEE

Transaction Valuation*
\$343,688,025

Amount Of Filing Fee**
\$24,504.96

* Estimated solely for purposes of calculating amount of filing fee in accordance with Rule 0-11 under the Securities Exchange Act of 1934. The transaction value is based upon the offer to purchase 13,747,521 outstanding Common Shares of Somanetics Corporation at a purchase price of \$25.00 cash per share. Such number of outstanding Common Shares represents the total of 11,953,384 issued and outstanding Common Shares outstanding options with respect to 1,794,137 Common Shares, in each case as of June 16, 2010.

** The amount of filing fee is calculated in accordance with Rule 0-11 of the Securities Exchange Act of 1934, as amended, and Fee Rate Advisory No. 4 for fiscal year 2010 issued by the Securities and Exchange Commission. Such fee equals .00713% of the transaction value.

** Check the 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:
Form or Registration No.:

N/A
N/A

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Filing Party:
Date Filed:

N/A
N/A

“ 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 Tender Offer Statement on Schedule TO (this *Schedule TO*) relates to a tender offer by Covidien DE Corp., a Delaware corporation (the *Offeror*) and a wholly owned subsidiary of United States Surgical Corporation, a Delaware corporation (*Parent*) and an indirect wholly owned subsidiary of Covidien plc, to purchase all of the outstanding Common Shares, par value \$0.01 per share (the *Shares*), of Somanetics Corporation, a Michigan corporation (the *Company*), at a purchase price of \$25.00 per Share, net to the seller in cash, without interest thereon, less any applicable withholding taxes, and subject to the conditions set forth in the Offer to Purchase dated June 25, 2010 (the *Offer to Purchase*) and in the related Letter of Transmittal (the *Letter of Transmittal*) which, together with the Offer to Purchase, as each may be amended and supplemented from time to time, constitute the *Offer*). This Schedule TO is being filed on behalf of the Offeror and Parent.

The information set forth in the Offer to Purchase and the Letter of Transmittal, copies of which are filed with this Schedule TO as Exhibits (a)(1)(A) and (a)(1)(B) hereto, respectively, is incorporated by reference in answers to Items 1 through 9 and Item 11 of this Schedule TO, and is supplemented by the information specifically provided in this Schedule TO.

ITEM 1. SUMMARY TERM SHEET

The information set forth in the Summary Term Sheet of the Offer to Purchase is incorporated herein by reference.

ITEM 2. SUBJECT COMPANY INFORMATION

(a) Somanetics Corporation, 2600 Troy Center Drive, Troy, Michigan 48084, (248) 244-1400.

(b) According to the Company, as of June 16, 2010, there were 11,953,384 Shares issued and outstanding (of which 329,775 are restricted shares subject to vesting) and 1,794,137 Shares subject to outstanding share options.

(c) The Shares are traded on The Nasdaq Global Market under the symbol *SMTS*. The information set forth in Section 6 Price Range of the Shares; Dividends on the Shares of the Offer to Purchase is incorporated herein by reference.

ITEM 3. IDENTITY AND BACKGROUND OF FILING PERSON

The information set forth in Section 9 Certain Information Concerning USSC and Covidien DE of the Offer to Purchase and Annex I Directors and Executive Officers of USSC, Covidien DE and Covidien plc of the Offer to Purchase is incorporated herein by reference.

ITEM 4. TERMS OF THE TRANSACTION

The information set forth in the Summary Term Sheet, Section 1 Terms of the Offer, Section 2 Procedures for Tendering Shares, Section 3 Withdrawal Rights, Section 4 Acceptance for Payment and Payment, Section 5 Material U.S. Federal Income Tax Consequences of the Offer and the Merger, Section 7 Possible Effects of the Offer on the Market for the Shares; Share Quotation; Exchange Act Registration; Margin Regulations, Section 12 Purpose of the Offer; the Merger Agreement; Plans for Somanetics and Section 14 Certain Conditions of the Offer of the Offer to Purchase is incorporated herein by reference.

ITEM 5. PAST CONTACTS, TRANSACTIONS, NEGOTIATIONS AND AGREEMENTS

(a), (b) The information set forth in the Introduction, Section 9 Certain Information Concerning USSC and Covidien DE, Section 11, Contacts and Transactions with Somanetics; Background of the Offer, Section 12 Purpose of the Offer; the Merger Agreement; Plans for Somanetics, Section 13 Dividends and Distributions and Section 14 Certain Conditions of the Offer of the Offer to Purchase is incorporated herein by reference.

ITEM 6. PURPOSES OF THE TRANSACTION AND PLANS OR PROPOSALS

(a), (c)(1)-(7) The information set forth in the Introduction, Section 7 Possible Effects of the Offer on the Market for the Shares; Share Quotation; Exchange Act Registration; Margin Regulations, Section 12 Purpose of the Offer; the Merger Agreement; Plans for Somanetics and Section 13 Dividends and Distributions of the Offer to Purchase is incorporated herein by reference.

ITEM 7. SOURCE AND AMOUNT OF FUNDS OR OTHER CONSIDERATION

(a), (b), (d) The information set forth in Section 10 Source and Amount of Funds of the Offer to Purchase is incorporated herein by reference.

ITEM 8. INTEREST IN SECURITIES OF THE SUBJECT COMPANY

The information set forth in Section 9 Certain Information Concerning USSC and Covidien DE of the Offer to Purchase is incorporated herein by reference.

ITEM 9. PERSONS/ASSETS, RETAINED, EMPLOYED, COMPENSATED OR USED

The information set forth in Section 16 Fees and Expenses of the Offer to Purchase is incorporated herein by reference.

ITEM 10. FINANCIAL STATEMENTS

Not applicable.

ITEM 11. ADDITIONAL INFORMATION

(a)(1) Except as disclosed in Items 1 through 10 above, there are no present or proposed material agreements, arrangements, understandings or relationships between (i) the Parent, the Offeror, or any of their respective executive officers, directors, controlling persons or subsidiaries and (ii) the Company or any of its executive officers, directors, controlling persons or subsidiaries.

(a)(2)-(4) The information set forth in Section 7 Possible Effects of the Offer on the Market for the Shares; Share Quotation; Exchange Act Registration; Margin Regulations, and Section 15 Certain Legal Matters of the Offer to Purchase is incorporated herein by reference.

(a)(5) None.

(b) The information set forth in the Offer to Purchase and the Letter of Transmittal, copies of which are attached hereto as Exhibits (a)(1)(A) and (a)(1)(B), respectively, to the extent not otherwise incorporated herein by reference, is incorporated herein by reference.

ITEM 12. EXHIBITS

(a)(1)(A) Offer to Purchase for Cash, dated June 25, 2010.

(a)(1)(B) Form of Letter of Transmittal.

(a)(1)(C) Form of Notice of Guaranteed Delivery.

(a)(1)(D) Form of Letter to Brokers, Dealers, Banks, Trust Companies and Other Nominees.

(a)(1)(E) Form of Letter to Clients for Use by Brokers, Dealers, Banks, Trust Companies and Other Nominees.

(a)(2) None.

- (a)(3) None.
- (a)(4) None.
- (a)(5)(A) Joint Press Release issued by Covidien plc and Somanetics Corporation, dated June 16, 2010 (incorporated herein by reference to Exhibit 99.1 to the Current Report on Form 8-K filed by Covidien plc on June 16, 2010).
- (a)(5)(B) Summary Advertisement published in the Wall Street Journal on June 25, 2010.
- (b) None.
- (d)(1) Agreement and Plan of Merger, dated as of June 16, 2010, by and between United States Surgical Corporation, Covidien DE Corp. and Somanetics Corporation.
- (d)(2) Tender and Voting Agreement, dated as of June 16, 2010, by and between United States Surgical Corporation, Covidien DE Corp. and Bruce J. Barrett.
- (d)(3) Confidentiality and Standstill Agreement, dated as of March 16, 2010, by and between Tyco Healthcare Group LP d/b/a Covidien and Somanetics Corporation
- (d)(4) Guaranty, dated as of June 16, 2010, by Covidien International Finance S.A.
- (g) None.
- (h) None.

ITEM 13. INFORMATION REQUIRED BY SCHEDULE 13E-3

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.

UNITED STATES SURGICAL CORPORATION

Dated: June 25, 2010

By: */s/* MATTHEW J. NICOLELLA
Name: **Matthew J. Nicolella**
Title: **Vice President and Assistant Secretary**

COVIDIEN DE CORP.

Dated: June 25, 2010

By: */s/* MATTHEW J. NICOLELLA
Name: **Matthew J. Nicolella**
Title: **Vice President and Assistant Secretary**

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