

TITANIUM METALS CORP
Form SC TO-T/A
November 28, 2012

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE TO

(Rule 14d-100)

TENDER OFFER STATEMENT UNDER SECTION 14(D)(1) OR 13(E)(1)

OF THE SECURITIES EXCHANGE ACT OF 1934

(Amendment No. 2)

Titanium Metals Corporation

(Name of Subject Company (Issuer))

ELIT Acquisition Sub Corp.

(Offeror)

A Wholly Owned Subsidiary of

Precision Castparts Corp.

(Offeror)

COMMON STOCK, PAR VALUE \$0.01 PER SHARE

(Title of Class of Securities)

888339 10 8

(CUSIP Number of Class of Securities)

Roger A. Cooke

Senior Vice President, General Counsel and Secretary

PRECISION CASTPARTS CORP.

4650 S.W. Macadam Ave., Suite 400

Portland, OR 97239-4262

(503) 946-4800

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

Copies to:

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CALCULATION OF FILING FEE

Transaction Valuation(1)

\$2,888,519,271

Amount Of Filing Fee(2)

\$393,994.03

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- (1) Estimated for purposes of calculating the amount of the filing fee only. This calculation assumes the purchase of 175,061,774 shares of common stock, \$0.01 par value per share (the Shares), of Titanium Metals Corporation (the Company) at a purchase price of \$16.50 per Share, net to the seller in cash, without interest and subject to any required withholding of taxes. As of November 12, 2012, 175,061,774 Shares were issued and outstanding.
- (2) The amount of the filing fee was calculated in accordance with Rule 0-11 of the Securities Exchange Act of 1934, as amended, and Fee Rate Advisory #1 for fiscal year 2013, issued August 31, 2012, by multiplying the transaction value by 0.0001364.

- x 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: \$393,994.03
Form or Registration No.: Schedule TO

Filing Party: Precision Castparts Corp. and ELIT Acquisition Sub Corp.
Date Filed: November 20, 2012

- .. 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:

- x 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. ..

If applicable, check the appropriate box(es) below to designate the appropriate rule provision(s) relied upon:

- .. Rule 13e-4(i) (Cross-Border Issuer Tender Offer)

- .. Rule 14d-1(d) (Cross-Border Third-Party Tender Offer)

This Amendment No. 2 (Amendment No. 2) further amends and supplements the Tender Offer Statement on Schedule TO originally filed on November 20, 2012 by (a) ELIT Acquisition Sub Corp., a Delaware corporation (the Purchaser) and a wholly owned subsidiary of Precision Castparts Corp., an Oregon corporation (Parent), and (b) Parent, as amended and supplemented by Amendment No. 1 filed on November 23, 2012 (together with any other amendments and supplements thereto, the Schedule TO). This Schedule TO relates to the offer (the Offer) by the Purchaser to purchase all of the outstanding shares of common stock, par value \$0.01 per share (the Shares), of Titanium Metals Corporation, a Delaware corporation (the Company), at a purchase price of \$16.50 per Share, net to the seller in cash, without interest thereon, less any required withholding taxes, upon the terms and subject to the conditions set forth in the Offer to Purchase dated November 20, 2012 (together with any amendments and supplements thereto, the Offer to Purchase) and in the related Letter of Transmittal, copies of which are attached to the Schedule TO as Exhibits (a)(1)(A) and (a)(1)(B), respectively. Capitalized terms used in this Amendment No. 2 but not defined herein shall have the respective meaning given to such terms in the Schedule TO.

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

Item 11. Additional Information.

Section 16 Certain Legal Matters; Regulatory Approvals Legal Proceedings of the Offer to Purchase is hereby amended by deleting such section in its entirety and replacing it with the following paragraphs:

Between November 13, 2012 and November 27, 2012, the Company, members of the Company Board, and Parent were named as defendants in seven purported class action lawsuits brought by the Company's stockholders challenging the proposed transaction, which were filed in the Court of Chancery of the State of Delaware and captioned *Ira J. Gaines et al. v. Titanium Metals Corp. et al.*, Case Number 8029 (which we refer to as the *Gaines Action*); *Edith Strom v. Titanium Metals Corp. et al.*, Case Number 8040 (which we refer to as the *Strom Action*); *William Rackliffe v. Titanium Metals Corp. et al.*, Case Number 8041 (which we refer to as the *Rackliffe Action*); *Alan Kahn Titanium Metals Corp. et al.*, Case Number 8042 (which we refer to as the *Kahn Action*); *John Mahlke et al. Titanium Metals Corp. et al.*, Case Number 8045 (which we refer to as the *Mahlke Action*); *John Wolfner v. Titanium Metals Corp. et al.*, Case Number 8056 (which we refer to as the *Wolfner Action*); and *Michael Eakle v. Titanium Metals Corp. et al.*, Case Number 8067 (which we refer to as the *Eakle Action* and all of which we refer to collectively as the Delaware Actions). Purchaser and a Company officer were also named defendants in certain of the Delaware Actions. On November 21, 2012, plaintiffs in the *Gaines Action* and the *Kahn Action* both filed amended complaints. The Delaware Actions seek certification of a class of the Company's stockholders and generally allege that, among other things, (i) each member of the Company Board (and in the *Strom Action*, a Company officer) breached his fiduciary duties in connection with the transactions contemplated by the Merger Agreement, (ii) the Company, Parent and Purchaser aided and abetted the purported breaches of fiduciary duties, and (iii) the Schedule 14D-9 was false and misleading. The Delaware Actions seek, among other relief, an injunction prohibiting the transactions contemplated by the Merger Agreement and/or prohibiting defendants from initiating any defensive measures that would inhibit their ability to maximize value for the Company's stockholders, an order requiring defendants to disclose the information allegedly omitted from the Schedule 14D-9 and extending the close of the tender offer in order for that information to be fully disseminated to stockholders, rescission in the event the transactions contemplated by the Merger Agreement are consummated, damages, disgorgement, and attorneys' fees and costs.

On November 14, 2012 and November 16, 2012, the Company, members of the Company Board, Parent, and Purchaser were named as defendants in two shareholder petitions challenging the proposed transaction and filed in the County Court of Dallas County, Texas, captioned *Kristy Jane Flynn v. Titanium Metals Corp. et al.*, Case Number CC-12-06855-A (which we refer to as the *Flynn Action*) and *Kenneth Blew v. Titanium Metals Corp. et al.*, Case Number CC-12-06915-B (which we refer to as the *Blew Action* and together with the *Flynn Action*, the Texas Shareholder Petitions). The Texas Shareholder Petitions include allegations substantially similar to each other that, among other things: (i) each member of the Company Board breached his fiduciary duties in connection with the transactions contemplated by the Merger Agreement, and (ii) the Company, Parent, and

Purchaser aided and abetted the purported breaches of fiduciary duties by the Company Board. The Texas Shareholder Petitions seek, among other relief, an injunction prohibiting the transactions contemplated by the Merger Agreement, rescission in the event such transactions are consummated, and attorneys' fees and costs. On November 16, 2012 and November 19, 2012, the Company, members of the Company Board, Parent, and Purchaser were named as defendants in two purported class action lawsuits brought by the Company's stockholders challenging the proposed transaction, filed in the County Court of Dallas County, Texas, captioned *Doug Gardner v. Titanium Metals Corp. et al.*, Case Number CC-12-06941-D (which we refer to as the *Gardner Action*) and *Sergio Grobler v. Titanium Metals Corp. et al.*, Case Number CC-12-07000-E (which we refer to as the *Grobler Action* and together with the *Gardner Action*, the *Texas Class Actions*). The Texas Class Actions seek certification of a class of the Company's stockholders and contain allegations substantially similar to the allegations in the Texas Shareholder Petitions and seek substantially the same relief. On November 27, 2012, defendants filed joint motions to stay the Texas Shareholder Petitions and Texas Class Actions pending resolution of the Delaware Actions. Defendants argue, among other things, that Texas law requires a stay because the *Gaines Action* in Delaware was the first-filed action and the necessary and discretionary factors that courts consider all support a stay, including that the Texas Shareholder Petitions and Texas Class Actions are substantively identical to the Delaware Actions.

On November 27, 2012, the Company, members of the Company Board, a Company officer, Parent, and Purchaser were named as defendants in a purported class action lawsuit brought by the Company's stockholders challenging the proposed transaction and filed in the United States District Court for the District of Delaware, captioned *Empire State Supply Retirement Plan v. Titanium Metals Corp. et al.*, Case Number 1:99-mc-09999 (which we refer to as the *Empire Action*). The *Empire Action* seeks certification of a class of the Company's stockholders and generally alleges that, among other things, (i) all defendants violated Section 14(e) of the Exchange Act based on the allegedly false and misleading Schedule 14D-9, (ii) each member of the Company Board and the Company officer violated Section 20(a) of the Exchange Act as control persons of the Company, (iii) each member of the Company Board and the Company officer breached his fiduciary duties in connection with the transactions contemplated by the Merger Agreement, and (iv) the Company and Parent aided and abetted the transactions contemplated by the Merger Agreement, rescission in the event such transactions are consummated, an order invalidating and setting aside the break-up fee, compensatory and punitive damages, and attorneys' fees and costs.

Item 12. Exhibits.

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

| Exhibit | Exhibit Name |
|-----------|--|
| (a)(5)(M) | Complaint filed by John Wolfner, on behalf of himself and all others similarly situated, on November 26, 2012, in the Court of Chancery of the State of Delaware. |
| (a)(5)(N) | Complaint filed by Empire State Supply Retirement Plan, on behalf of itself and all others similarly situated, on November 27, 2012, in the United States District Court for the District of Delaware. |
| (a)(5)(O) | Complaint filed by Michael Eakle, on behalf of himself and all others similarly situated, on November 27, 2012, in the Court of Chancery of the State of Delaware. |

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.

ELIT ACQUISITION SUB CORP.

By: /s/ SHAWN R. HAGEL
Name: Shawn R. Hagel
Title: Executive Vice President and Chief Financial Officer

Date: November 28, 2012

PRECISION CASTPARTS CORP.

By: /s/ SHAWN R. HAGEL
Name: Shawn R. Hagel
Title: Executive Vice President, Chief Financial Officer and
Assistant Secretary

Date: November 28, 2012

EXHIBIT INDEX

| Exhibit Number | Description |
|-----------------------|---|
| (a)(1)(A) | Offer to Purchase dated November 20, 2012.* |
| (a)(1)(B) | Letter of Transmittal.* |
| (a)(1)(C) | Notice of Guaranteed Delivery.* |
| (a)(1)(D) | Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.* |
| (a)(1)(E) | Letter to Clients for use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.* |
| (a)(1)(F) | Summary Newspaper Advertisement as published in The New York Times on November 20, 2012.* |
| (a)(5)(A) | Press Release issued by Precision Castparts Corp. on November 9, 2012 (incorporated herein by reference to Exhibit 99.1 to Precision Castparts Corp. s Current Report on Form 8-K filed with the Securities and Exchange Commission on November 9, 2012). |
| (a)(5)(B) | Press Release issued by Precision Castparts Corp. on November 20, 2012.* |
| (a)(5)(C) | Complaint filed by Ira J. Gaines and Sunshine Wire and Cable Defined Pension Benefit Plan Dates 1/1/92, on behalf of themselves and all others similarly situated, on November 14, 2012, in the Court of Chancery of the State of Delaware.* |
| (a)(5)(D) | Petition filed by Kenneth Blew on November 16, 2012, in the County Court of Dallas County, Texas.* |
| (a)(5)(E) | Petition filed by Kristy Jane Flynn on November 14, 2012, in the County Court of Dallas County, Texas.* |
| (a)(5)(F) | Complaint filed by Edith Strom, on behalf of herself and all others similarly situated, on November 19, 2012, in the Court of Chancery of the State of Delaware.* |
| (a)(5)(G) | Petition filed by Doug Gardner, on behalf of himself and all others similarly situated, on November 16, 2012, in the County Court of Dallas County, Texas.* |
| (a)(5)(H) | Complaint filed by William Rackliffe, on behalf of himself and all others similarly situated, on November 19, 2012, in the Court of Chancery of the State of Delaware.* |
| (a)(5)(I) | Petition filed by Sergio Grobler on behalf of himself and all others similarly situated, on November 19, 2012, in the County Court of Dallas County, Texas.* |
| (a)(5)(J) | Complaint filed by John Mahlke and Robert Wiggins, on behalf of themselves and all others similarly situated, on November 20, 2012, in the Court of Chancery of the State of Delaware.* |
| (a)(5)(K) | Amended complaint filed by Alan Kahn, on behalf of himself and all others similarly situated, on November 21, 2012, in the Court of Chancery of the State of Delaware.* |
| (a)(5)(L) | Amended complaint filed by Ira J. Gaines and Sunshine Wire and Cable Defined Pension Benefit Plan Dates 1/1/92, on behalf of themselves and all others similarly situated, on November 21, 2012, in the Court of Chancery of the State of Delaware.* |
| (a)(5)(M) | Complaint filed by John Wolfner, on behalf of himself and all others similarly situated, on November 26, 2012, in the Court of Chancery of the State of Delaware. |
| (a)(5)(N) | Complaint filed by Empire State Supply Retirement Plan, on behalf of itself and all others similarly situated, on November 27, 2012, in the United States District Court for the District of Delaware. |
| (a)(5)(O) | Complaint filed by Michael Eakle, on behalf of himself and all others similarly situated, on November 27, 2012, in the Court of Chancery of the State of Delaware. |

| Exhibit Number | Description |
|----------------|---|
| (b) | Commitment Letter dated November 9, 2012, by and among, among others, Precision Castparts Corp., Bank of America, N.A., Citigroup Global Markets Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated (incorporated herein by reference to Exhibit 10.2 to Precision Castparts Corp. s Current Report on Form 8-K with the Securities and Exchange Commission on November 15, 2012). |
| (d)(A) | Agreement and Plan of Merger dated November 9, 2012, by and among Precision Castparts Corp., ELIT Acquisition Sub Corp. and Titanium Metals Corporation (incorporated herein by reference to Exhibit 2.1 to Precision Castparts Corp. s Current Report on Form 8-K filed with the Securities and Exchange Commission on November 15, 2012). |
| (d)(B) | Support Agreement dated November 9, 2012, by and among Precision Castparts Corp., ELIT Acquisition Sub Corp. and certain stockholders of Titanium Metals Corporation (incorporated herein by reference to Exhibit 10.1 to Precision Castparts Corp. s Current Report on Form 8-K filed with the Securities and Exchange Commission on November 15, 2012). |
| (d)(C) | 401(k) Support Agreement dated November 9, 2012, by and among Precision Castparts Corp., ELIT Acquisition Sub Corp. and Contran Corporation.* |
| (d)(D) | The Combined Master Retirement Trust Support Letter dated November 14, 2012 (incorporated herein by reference to Exhibit 3 to Precision Castparts Corp. s Schedule 13D filed with the Securities and Exchange Commission on November 19, 2012). |
| (d)(E) | Confidentiality Agreement dated October 18, 2012, by and between Precision Castparts Corp. and Titanium Metals Corporation (incorporated herein by reference to Exhibit 4 to Precision Castparts Corp. s Schedule 13D filed with the Securities and Exchange Commission on November 19, 2012). |
| (d)(F) | Acknowledgement and Agreement dated November 19, 2012, by and among Precision Castparts Corp., ELIT Acquisition Sub Corp. and Titanium Metals Corporation.* |
| (d)(G) | Mutual Confidentiality Agreement dated October 15, 2012, by and between Precision Castparts Corp. and Contran Corporation.* |
| (g) | Not applicable. |
| (h) | Not applicable. |

* Previously filed.