

CNA SURETY CORP  
Form SC TO-T/A  
May 17, 2011

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

**SCHEDULE TO  
(Amendment No. 1)  
Tender Offer Statement under Section 14(d)(1) or 13(e)(1) of the Securities  
Exchange Act of 1934  
CNA SURETY CORPORATION**

Name of Subject Company (issuer)  
**SURETY ACQUISITION CORPORATION**  
(offeror)  
a wholly owned subsidiary of  
**CONTINENTAL CASUALTY COMPANY**  
a wholly owned subsidiary of  
**THE CONTINENTAL CORPORATION**  
a wholly owned subsidiary of  
**CNA FINANCIAL CORPORATION**

Names of Filing Persons (other person(s))  
**Common Stock, \$0.01 Par Value Per Share**

(Title of Class of Securities)  
**12612L1008**

(CUSIP Number of Class of Securities)  
Jonathan D. Kantor, Esq.  
Executive Vice President, General Counsel and Secretary  
CNA Financial Corporation  
333 South Wabash Avenue  
Chicago, Illinois 60604-4107  
Telephone: (312) 822-5000

**With a copy to:**  
Gary Horowitz, Esq.  
Simpson Thacher & Bartlett LLP  
425 Lexington Avenue  
New York, New York 10017-3954  
Telephone: (212) 455-2000

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

**Calculation of Filing Fee**

TRANSACTION VALUATION

AMOUNT OF FILING FEE

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\$466,255,011

\$54,132.21

\* Estimated for purposes of calculating the amount of the filing fee only. The calculation assumes the purchase of all outstanding shares of common stock, par value \$0.01 per share (the Shares ), of CNA Surety Corporation, a Delaware corporation, other than Shares owned by CNA Financial Corporation ( CNAF ) and its subsidiaries, at a purchase price of \$26.55 per Share, net to the seller in cash. As of May 6, 2011, there were 44,986,541 Shares outstanding, of which 27,425,147 Shares are owned by subsidiaries of CNAF. As a result, this calculation assumes the purchase of 17,561,394 Shares.

\*\* The amount of the filing fee is calculated in accordance with Rule 0-11 of the Securities Exchange Act of 1934, as amended, by multiplying the transaction value by 0.00011610.

Check 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: \$54,132.21

Filing Party: CNA Financial Corporation

Form or Registration No.: Schedule TO

Date Filed: May 11, 2011

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

Check the appropriate boxes to designate any transactions to which this statement relates:

third party tender offer subject to Rule 14d-1

going-private transaction subject to Rule 13e-3

issuer tender offer subject to Rule 13e-4

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. 1 amends and supplements the Tender Offer Statement filed on Schedule TO (this Schedule TO ) which relates to the tender offer by Surety Acquisition Corporation ( Purchaser ), a Delaware corporation and an indirect wholly-owned subsidiary of CNA Financial Corporation, a Delaware corporation ( CNA Financial ) to purchase all the outstanding shares of common stock, par value \$0.01 per share (the Shares ), of CNA Surety Corporation, a Delaware corporation ( CNA Surety ), other than Shares owned by CNA Financial and its subsidiaries, at a purchase price of \$26.55 per Share, net to the seller in cash, without interest and less any applicable withholding of taxes, upon the terms and subject to the conditions set forth in the Offer to Purchase, dated May 11, 2011 (as may be amended or supplemented from time to time, the Offer to Purchase ), a copy of which is attached to this Schedule TO as Exhibit (a)(1)(i), and the related Letter of Transmittal (as may be amended or supplemented from time to time, the Letter of Transmittal ), a copy of which is attached to this Schedule TO as Exhibit (a)(1)(ii) (which, as amended or supplemented from time to time, together constitute the Offer ).

Item 11 of this Schedule TO is hereby amended and supplemented as follows:

**Item 11. Additional Information.**

Section a(5) of Item 11 of the Schedule TO is hereby amended in its entirety to read as follows:

**Litigation.**

On May 16, 2011, a putative class action lawsuit captioned *CapGrowth Partners v. John F. Welch, et al.*, No. 11CH17746, was filed by a purported stockholder of CNA Surety in the Circuit Court of Cook County, Illinois (the CapGrowth Action ). The complaint filed in the CapGrowth Action names CNA Financial, CNA Surety and the members of the board of directors of CNA Surety as defendants and alleges that the members of the board of directors of CNA Surety breached and/or aided and abetted the other members of the board of directors of CNA Surety in breaching their fiduciary duties by acting to cause or facilitate the merger agreement entered into on April 20, 2011 among CNA Financial, CNA Surety and Purchaser. The complaint also alleges that CNA Financial aided and abetted the members of the board of directors of CNA Surety in breaching their fiduciary duties and coerced the members of the board of directors of CNA Surety to accept CNA Financial's proposal, and is coercing CapGrowth Partners and CNA Surety's stockholders to accept the Offer. The complaint seeks compensatory and rescissory damages. CNA Financial has reviewed the allegations contained in the complaint filed in the CapGrowth Action and believes they are without merit. CNA Financial intends to defend the CapGrowth Action vigorously.

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*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.

Dated: May 17, 2011

SURETY ACQUISITION CORPORATION

By: /s/ Jonathan D. Kantor  
Jonathan D. Kantor  
Executive Vice President, General  
Counsel and Secretary

CNA FINANCIAL CORPORATION

By: /s/ Jonathan D. Kantor  
Jonathan D. Kantor  
Executive Vice President, General  
Counsel and Secretary

CONTINENTAL CASUALTY COMPANY

By: /s/ Jonathan D. Kantor  
Jonathan D. Kantor  
Executive Vice President, General  
Counsel and Secretary

THE CONTINENTAL CORPORATION

By: /s/ Jonathan D. Kantor  
Jonathan D. Kantor  
Executive Vice President, General  
Counsel and Secretary