

APPLICA INC
Form SC TO-T/A
December 26, 2006

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
SCHEDULE TO/A
Tender Offer Statement under Section 14(d)(1) or 13(e)(1)
of the Securities Exchange Act of 1934
(Amendment No. 3)**

APPLICA INCORPORATED
(Name of Subject Company (Issuer))

**Apex Acquisition Corporation
NACCO Industries, Inc.**

(Names of Filing Persons (Offerors))

Common Stock, par value \$0.10 per share

(Title of Class of Securities)

03815A106

(CUSIP Number of Class of Securities)

**Charles A. Bittenbender, Esq.
Vice President, General Counsel, and Secretary**

NACCO Industries, Inc.

5875 Landerbrook Drive

Cleveland, Ohio 44124

(440) 449-9600

(Name, Address and Telephone Numbers of Person
Authorized to Receive Notices and Communications on Behalf of Filing Persons)

Copy to:

Thomas C. Daniels, Esq.

Jones Day

North Point

901 Lakeside Avenue

Cleveland, Ohio 44114-1190

(216) 586-3939

CALCULATION OF FILING FEE

Transaction Valuation*

\$193,316,500

Amount of Filing Fee**

\$20,674.17

*For purposes of calculating the filing fee pursuant to Rule 0-11(d) only, the Transaction Valuation was calculated on the basis of (i) the aggregate of 25,762,200 shares of common stock, par value \$0.10 per share, of Applica Incorporated outstanding on a fully diluted basis consisting of (a) 25,001,100 shares of common stock outstanding and (b) 761,100 shares of common stock subject to outstanding options granted under Applica s equity incentive plans and (ii) the tender offer price of \$7.50 per Share (as defined herein).

** The filing fee, calculated in accordance with Rule 0-11 of the Securities Exchange Act of 1934, is calculated by multiplying the Transaction Valuation by 0.000107.

þ 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.

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Amount Previously Paid: \$1,378.28
Form or Registration No.:
Schedule TO-T/A

Filing Party: Apex Acquisition Corporation/NACCO
Industries, Inc.
Date Filed: December 21, 2006

Amount Previously Paid: \$17,917.61
Form or Registration No.:
Schedule TO-T

Filing Party: Apex Acquisition Corporation/NACCO
Industries, Inc.
Date Filed: December 15, 2006

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:

Items 1 through 9, and Item 11.

This Amendment No. 3 (this Amendment) to the Tender Offer Statement on Schedule TO amends and supplements the tender offer statement originally filed with the Securities and Exchange Commission on December 15, 2006, as amended (as so amended and supplemented, the Schedule TO), by Apex Acquisition Corporation, a Florida corporation (Purchaser) and a newly formed, indirect, wholly owned subsidiary of NACCO Industries, Inc., a Delaware corporation (NACCO). The Schedule TO relates to the offer by Purchaser to purchase all outstanding shares of common stock, par value \$0.10 per share (the Shares), of Applica Incorporated, a Florida corporation (the Company), other than Shares held by NACCO or its affiliates, at a price of \$7.00 per Share, net to the seller in cash, without interest, upon the terms and subject to the conditions set forth in the Offer To Purchase dated December 15, 2006, as amended, and in the related Letter of Transmittal (which, together with the Offer To Purchase and any amendments or supplements thereto constitute the Offer). Capitalized terms used but not defined herein have the meanings specified in the Offer To Purchase and the Schedule TO. The item numbers referenced herein are in accordance with the requirements of Schedule TO. Except as specifically provided herein, this Amendment does not modify any of the information previously reported on Schedule TO.

The price per Share to be paid pursuant to the Offer has been increased from \$7.00 per Share to \$7.50 per Share, net to the seller in cash, without interest. The full text of the press release issued by NACCO on December 26, 2006 announcing the increase in the Offer Price is filed herewith as Exhibit (a)(5)(iii).

The Offer To Purchase and the related Letter of Transmittal, together with the Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees, and the Letter to Clients for Use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees, are each hereby amended to delete all references to the Offer Price of \$7.00 per Share and to replace them with references to \$7.50 per Share except in the paragraph of The Offer Section 11. Contacts and Transactions with the Company; Background of the Offer describing the price increase made by Purchaser and NACCO on December 21, 2006.

The conditions set forth in The Offer Section 14. Conditions to the Offer are hereby amended to: delete or amend a number of conditions, including the following (and as more specifically set forth below): (i) the condition requiring that the Company Board recommend that the holders of Shares accept the Offer and tender their Shares in the Offer has been amended, (ii) the condition requiring that no alternative tender offer or other extraordinary transaction by a third party be pending or announced has been deleted, (iii) the condition requiring that there shall not have occurred or be threatened a change in the general economic, financial currency exchange or market conditions has been deleted, and (iv) the condition requiring that there shall not have occurred or be threatened a change in the business, properties, etc. of the Company reasonably expected to have an Adverse Effect or Diminution in Value has been amended in a manner consistent with the corresponding closing condition from the Harbinger Agreement.

The Offer To Purchase is further amended as follows:

1. The first sentence of The Offer Section 10. Source and Amount of Funds is hereby amended and restated in its entirety to read as follows:

The total amount of funds required by Purchaser to complete the Offer and consummate the Merger, and expected to be incurred by Purchaser, is estimated to be approximately \$187,500,742.50 plus any related transaction fees and expenses.

2. The following is hereby added at the end of The Offer Section 11. Contacts and Transactions with the Company; Background of the Offer :

According to published reports and the Company's public filings, on December 22, 2006, the Company and Harbinger amended the Harbinger Agreement to provide for the Company's shareholders to receive \$7.00 per Share if the merger contemplated by the Harbinger Agreement closes. According to the Applica 12-4-06 Proxy Statement, as

amended, the scheduled date for Applica shareholders to vote on the merger contemplated by the Harbinger Agreement is December 28, 2006. Also on December 22, 2006, the Company filed an amended Solicitation/Recommendation Statement on Schedule 14D-9 with the SEC in connection with the Offer recommending that the Company's shareholders reject the Offer and not tender their Shares in the Offer. The Schedule 14D-9 contains other important information, and Purchaser recommends that holders of Shares review it carefully. None of NACCO, Purchaser or any of their respective affiliates or representatives takes any responsibility for the disclosure included in or incorporated by reference into the Schedule 14D-9, as amended.

On December 26, 2006, Purchaser and NACCO increased the Offer Price to \$7.50 per Share, net to the seller in cash, without interest and modified the conditions to the Offer.

3. The condition identified as (ii) in The Offer Section 14. Conditions to the Offer is hereby amended and restated in its entirety to read as follows:

the Company Board shall have either recommended that the holders of shares accept the Offer and tender their shares in the Offer, taken a neutral position with respect to the Offer or not recommended against the Offer; ;

4. The condition identified as (iv) in The Offer Section 14. Conditions to the Offer is hereby amended and restated in its entirety to read as follows:

no event, circumstance, change or effect shall have occurred since October 19, 2006 that, individually or in the aggregate, with all other events, circumstances, changes and effects, is or could reasonably be expected to be materially adverse to the business, financial condition, assets, liabilities or results of operations of the Company and its Subsidiaries, taken as a whole; provided, however, that the foregoing shall not include any event, circumstance, change or effect resulting from (A) changes in general economic conditions or (B) general changes in the industry of designing, marketing and distributing small electronic kitchen and household appliances in which the Company and its Subsidiaries operate that do not have a disproportionate effect (relative to overall industry performance) on the Company and its Subsidiaries, taken as a whole;

5. The condition identified as (ix) in The Offer Section 14. Conditions to the Offer is hereby amended to add or at the end thereof.
6. The condition identified as (x) in The Offer Section 14. Conditions to the Offer is hereby deleted and replaced with (x) Intentionally Deleted.
7. The condition identified as (xi) in The Offer Section 14. Conditions to the Offer is hereby deleted and replaced with (xi) Intentionally Deleted.
8. The description of Robert M. Gates as a member of the Board of Directors of NACCO in Schedule A: Directors and Executive Officers of NACCO and Purchaser is hereby deleted in its entirety as a result of Mr. Gates resignation from the Board of Directors of NACCO.

Item 12. Exhibits.

Item 12 of the Schedule TO is hereby amended and supplemented to add the following exhibits:

- (a)(5)(iii) Press release issued by NACCO, dated December 26, 2006

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.

Date: December 26, 2006

Apex Acquisition Corporation

By: /s/ Charles A Bittenbender

Name: Charles A. Bittenbender

Title: Secretary

NACCO Industries, Inc.

By: /s/ Charles A Bittenbender

Name: Charles A. Bittenbender

Title: Vice President, General Counsel, and Secretary

EXHIBIT INDEX

Exhibit	Description
(a)(1)(A)	Offer To Purchase, dated December 15, 2006*
(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)	Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9*
(a)(1)(G)	Press release issued by NACCO, dated December 15, 2006*
(a)(1)(I)	Summary advertisement, published December 15, 2006*
(a)(5)(i)	Complaint filed on December 18, 2006 in the United States District Court for the Northern District of Ohio, Eastern Division*
(a)(5)(ii)	Press release issued by NACCO, dated December 21, 2006*
(a)(5)(iii)	Press release issued by NACCO, dated December 26, 2006

* Previously filed.