

TITANIUM METALS CORP
Form SC 14D9/A
December 26, 2012

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14D-9

SOLICITATION/RECOMMENDATION STATEMENT UNDER
SECTION 14(d)(4) OF THE SECURITIES EXCHANGE ACT OF 1934

(AMENDMENT NO. 7)

Titanium Metals Corporation

(Name of Subject Company)

Titanium Metals Corporation

(Name of Person(s) Filing Statement)

Common Stock, par value \$.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

Titanium Metals Corporation

5430 LBJ Freeway, Suite 1700

Dallas, Texas 75240

(972) 233-1700

(Name, address, and telephone number of person authorized to receive notices and communications on behalf of the person(s) filing statement)

Copies To:

**Ruth Beyer, Esq.
Jason Brauser, Esq.
Stoel Rives LLP
900 SW Fifth Ave, Suite 2600
Portland, Oregon 97204
(503) 224-3380**

**Doron Lipshitz, Esq.
David Schultz, Esq.
O Melveny & Myers LLP
7 Times Square
New York, New York 10036
(212) 326-2000**

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

This Amendment No. 7 (this **Amendment**) further amends and supplements the Solicitation / Recommendation Statement on Schedule 14D-9 (as amended or supplemented from time to time, the **Statement**) originally filed on November 20, 2012 with the U.S. Securities and Exchange Commission (the **SEC**) by Titanium Metals Corporation, a Delaware corporation (the **Company**, **TIMET**, **we**, **our** or **us**), as amended and supplemented by Amendment No. 1 filed on November 23, 2012, Amendment No. 2 filed on November 28, 2012, Amendment No. 3 filed on December 5, 2012, Amendment No. 4 filed on December 11, 2012, Amendment No. 5 filed on December 17, 2012 and Amendment No. 6 filed on December 20, 2012. The Statement relates to the cash tender offer by ELIT Acquisition Sub Corp., a Delaware corporation (**Purchaser**), which is a wholly owned subsidiary of Precision Castparts Corp., an Oregon corporation (**Parent**), to purchase all of the outstanding shares of Common Stock at a purchase price of \$16.50 per share, payable net to the seller in cash, without interest and subject to any withholding of taxes required by applicable law (the **Offer Price**). The tender offer is disclosed in the Tender Offer Statement on Schedule TO (together with the exhibits thereto, as it may be amended or supplemented, the **Schedule TO**), filed by Purchaser and Parent with the U.S. Securities and Exchange Commission (the **SEC**) on November 20, 2012, as amended and supplemented by Amendment No. 1 filed on November 23, 2012, Amendment No. 2 filed on November 28, 2012, Amendment No. 3 filed on December 5, 2012, Amendment No. 4 filed on December 11, 2012, Amendment No. 5 filed on December 17, 2012 and Amendment No. 6 filed on December 20, 2012, and is upon the terms and subject to the conditions set forth in the Offer to Purchase, dated November 20, 2012 (as amended or supplemented, the **Offer to Purchase**), and in the related Letter of Transmittal (as it may be amended or supplemented, the **Letter of Transmittal**) and, together with the Offer to Purchase, the **Offer**).

Except as otherwise set forth below, the information set forth in the Statement remains unchanged and is incorporated herein by reference as relevant to the items in this Amendment. Capitalized terms used but not defined herein have the meanings ascribed to them in the Statement.

ITEM 2. IDENTITY AND BACKGROUND OF FILING PERSON.

Item 2, Identity and Background of Filing Person, is hereby amended and supplemented by inserting the following paragraphs immediately following the penultimate paragraph of such section:

The Offer, as extended, expired at 5:00 p.m., New York City time, on December 20, 2012. Purchaser accepted for payment a total of 150,520,615 Shares that, based on the information provided by the depository for the Offer, were validly tendered and not withdrawn in the Offer, representing approximately 86.0% of the Company's outstanding Shares (which includes Shares subject to guaranteed delivery procedures).

Following the Offer Expiration Date, and in accordance with the terms of the Merger Agreement, Purchaser commenced a subsequent offering period of the Offer to acquire all remaining untendered Shares in accordance with Rule 14d-11 under the Securities Exchange Act of 1934, as amended. The subsequent offering period will expire at 5:00 p.m., New York City time, on January 4, 2013, unless extended. All Shares properly tendered during the subsequent offering period will be accepted and promptly paid for, and tendering stockholders will receive the same \$16.50 per Share price, without interest and subject to applicable withholding taxes, that was paid in the Offer.

The press release announcing the subsequent offering period of the Offer is attached as Exhibit (a)(5)(R) of the Schedule TO.

ITEM 9. EXHIBITS.

Item 9, Exhibits, is hereby amended and supplemented by inserting the following exhibit thereto:

Exhibit

| No. | Description |
|------------|---|
| (a)(5)(P) | Press Release issued by Precision Castparts Corp., dated December 21, 2012 (incorporated by reference to Exhibit (a)(5)(R) to the Schedule TO). |

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.

December 21, 2012

TITANIUM METALS CORPORATION

By: /s/ Shawn R. Hagel
Shawn R. Hagel
Executive Vice President, Chief Financial Officer and

Assistant Secretary

Exhibit Index

| Exhibit | Document |
|----------------|--|
| No. | Document |
| (a)(1)(A) | Offer to Purchase, dated November 20, 2012 (incorporated by reference to Exhibit (a)(1)(A) to the Schedule TO). |
| (a)(1)(B) | Letter of Transmittal (incorporated by reference to Exhibit (a)(1)(B) to the Schedule TO). |
| (a)(1)(C) | Notice of Guaranteed Delivery (incorporated by reference to Exhibit (a)(1)(C) of the Schedule TO). |
| (a)(1)(D) | Information Statement Pursuant to Section 14(f) of the Securities Exchange Act of 1934 and Rule 14f-1 thereunder (incorporated by reference to Annex A to this Statement).* |
| (a)(1)(E) | Summary Advertisement as published in the New York Times on November 20, 2012 (incorporated by reference to Exhibit (a)(1)(F) of the Schedule TO). |
| (a)(1)(F) | Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees (incorporated by reference to Exhibit (a)(1)(D) of the Schedule TO). |
| (a)(1)(G) | Letter to Clients for use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees (incorporated by reference to Exhibit (a)(1)(E) of the Schedule TO). |
| (a)(1)(H) | Press Release issued by Precision Castparts Corp., dated November 20, 2012 (incorporated by reference to Exhibit (a)(5)(B) of the Schedule TO). |
| (a)(2) | Opinion of Morgan Stanley & Co. LLC to the Special Committee of the Board of Directors of Titanium Metals Corporation, dated November 9, 2012 (incorporated by reference to Annex B to this Statement).* |
| (a)(5)(A) | Press Release issued by Titanium Metals Corporation, dated November 9, 2012 (incorporated by reference to Exhibit 99.1 to the Current Report on Form 8-K/A filed by Titanium Metals Corporation with the Securities Exchange Commission on November 14, 2012). |
| (a)(5)(B) | Press Release issued by Precision Castparts Corp., dated November 9, 2012 (incorporated by reference to Exhibit 99.1 to the Current Report on Form 8-K filed by Titanium Metals Corporation with the Securities Exchange Commission on November 13, 2012). |
| (a)(5)(C) | Press Release issued by Titanium Metals Corporation, dated November 20, 2012.* |
| (a)(5)(D) | Class Action Complaint captioned Ira J. Gaines et al. v. Titanium Metals Corp. et al., Case No. 8029 filed on November 13, 2012 in the Court of Chancery of the State of Delaware (incorporated by reference to Exhibit (a)(5)(C) to the Schedule TO). |
| (a)(5)(E) | Petition filed by Kenneth Blew on November 12, 2012, in the County Court of Dallas County, Texas (incorporated by reference to Exhibit (a)(5)(D) to the Schedule TO). |
| (a)(5)(F) | Petition filed by Kristy Jane Flynn on November 14, 2012, in the County Court of Dallas County, Texas (incorporated by reference to Exhibit (a)(5)(E) to the Schedule TO). |
| (a)(5)(G) | Class Action Complaint captioned Edith Strom v. Titanium Metals Corp. et al., Case No. 8040 filed on November 19, 2012 in the Court of Chancery of the State of Delaware (incorporated by reference to Exhibit (a)(5)(F) to the Schedule TO). |
| (a)(5)(H) | Class Action Complaint captioned Doug Gardner v. Titanium Metals Corp. et al., Case No. CC-12-06941-D filed on November 16, 2012 in the County Court of Dallas County, Texas (incorporated by reference to Exhibit (a)(5)(G) to the Schedule TO). |
| (a)(5)(I) | Complaint filed by William Rackliffe, on behalf of themselves and all others similarly situated, on November 19, 2012, in the Court of Chancery of the State of Delaware (incorporated by reference to Exhibit (a)(5)(H) to the Schedule TO). |

- (a)(5)(J) 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 (incorporated by reference to Exhibit (a)(5)(I) to the Schedule TO).
- (a)(5)(K) 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 (incorporated by reference to Exhibit (a)(5)(J) to the Schedule TO).
- (a)(5)(L) 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 (incorporated by reference to Exhibit (a)(5)(K) to the Schedule TO).
- (a)(5)(M) 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 (incorporated by reference to Exhibit (a)(5)(L) to the Schedule TO).
- (a)(5)(N) 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 (incorporated by reference to Exhibit (a)(5)(M) to the Schedule TO).
- (a)(5)(O) Press Release issued by Precision Castparts Corp., dated December 20, 2012 (incorporated by reference to Exhibit (a)(5)(Q) to the Schedule TO).
- (a)(5)(P) Press Release issued by Precision Castparts Corp., dated December 21, 2012 (incorporated by reference to Exhibit (a)(5)(R) to the Schedule TO).
- (e)(1) Agreement and Plan of Merger among Precision Castparts Corp., ELIT Acquisition Sub Corp. and Titanium Metals Corporation, dated November 9, 2012 (incorporated by reference to Exhibit 2.1 attached to the Current Report on Form 8-K/A filed by Titanium Metals Corporation with the Securities and Exchange Commission on November 14, 2012).
- (e)(2) Support Agreement, dated as of November 9, 2012, by and among Precision Castparts Corp., ELIT Acquisition Sub Corp. and certain stockholders of Titanium Metals Corporation (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K/A filed by Titanium Metals Corporation with the Securities Exchange Commission on November 14, 2012).
- (e)(3) 401(k) Support Agreement, dated as of November 9, 2012, by and among Precision Castparts Corp., ELIT Acquisition Sub Corp. and Contran Corporation (incorporated by reference to Exhibit (d)(C) of the Schedule TO).
- (e)(4) The Combined Master Retirement Trust Support Letter, dated as of November 14, 2012 (incorporated by reference to Exhibit (d)(D) of the Schedule TO).
- (e)(5) Confidentiality Agreement, dated as of October 18, 2012, by and between Titanium Metals Corporation and Precision Castparts Corp. (incorporated by reference to Exhibit (d)(E) to the Schedule TO).
- (e)(6) Acknowledgement and Agreement dated November 19, 2012, by and among Precision Castparts Corp., ELIT Acquisition Sub Corp. and Titanium Metals Corporation (incorporated by reference to Exhibit (d)(F) to the Schedule TO).
- (e)(7) Confidentiality Agreement, dated as of October 15, 2012, by and between Contran Corporation and Precision Castparts Corp. (incorporated by reference to Exhibit (d)(G) to the Schedule TO).
- (e)(8) Acknowledgement Agreement and Waiver, dated November 22, 2012, by and among Precision Castparts Corp., ELIT Acquisition Sub Corp. and Titanium Metals Corporation (incorporated by reference to Exhibit (d)(H) to the Schedule TO).

* Previously filed.