

APPLICA INC
Form SC TO-T/A
December 18, 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. 1)**

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*

\$167,454,300.00

Amount of Filing Fee**

\$ 17,917.61

*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 \$6.50 per Share (as defined herein).

**Previously Paid

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.

Amount Previously Paid: \$17,917.61

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Filing Party: Apex Acquisition Corporation/NACCO
Industries, Inc.

Form or Registration No.: Schedule TO-T

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. 1 (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 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 \$6.50 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 and in the related Letter of Transmittal (which, together with the Offer To Purchase and any amendments or supplements thereto constitute the Offer). Except as specifically provided herein, this Amendment does not modify any of the information previously reported on Schedule TO.

Capitalized terms used but not defined herein have the meanings specified in the Offer To Purchase and the Schedule TO.

The item numbers and responses thereto below are in accordance with the requirements of Schedule TO.

Item 11. Additional Information.

Item 11 of the Schedule TO, which incorporates the information contained in the Offer To Purchase, is hereby amended by adding to the end of Section 15 Certain Legal Matters; Regulatory Approvals of the Offer To Purchase the following:

On December 18, 2006, NACCO and Purchaser filed a complaint in the United States District Court, Northern District of Ohio, Eastern Division (the Federal Complaint) against the Company, Harbert Management Corporation, HMC Investors, L.L.C., Harbinger Capital Partners Offshore Manager, L.L.C., Harbinger Capital Partners Master Fund I, Ltd., HMC-New York, Inc., Harbinger Capital Partners Special Situations GP, LLC, Harbinger Capital Partners Special Situations Fund, L.P., APN Holding Company, Inc, APN Mergersub, Inc., David Maura, Philip Falcone, Raymond J. Harbert and Michael D. Luce. The Federal Complaint alleges violations of the Securities Exchange Act of 1934 (the Exchange Act) Section 13(d), SEC Rule 13d-1 and violations of Exchange Act Section 14(a) and SEC Rule 14a-9. The Federal Complaint seeks declaratory and injunctive relief, including, but not limited to, declaring that Harbinger's Schedules 13G and 13D, and the amendments thereto, violate the Exchange Act, enjoining the Harbinger Defendants from proceeding with their proposed acquisition of Applica common stock and proposed merger, ordering the Company to correct material misstatements and omissions in the Applica 12-4-06 Proxy Statement, enjoining the Company from proceeding with the proposed merger with affiliates of Harbinger and granting such other relief as the Court may deem necessary to level the playing field in the contest for control of the Company.

Item 12. Exhibits.

Item 12 of the Schedule TO is hereby amended and supplemented to add the following exhibit:
(a)(5)(i) Complaint filed on December 18, 2006 in the United States District Court for the Northern District of Ohio, Eastern Division.

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 18, 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.

* Previously filed.