

VIACELL INC
Form SC TO-T/A
November 07, 2007

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE TO

Tender Offer Statement under Section 14(d)(1) or 13(e)(1)

of the Securities Exchange Act of 1934

(Amendment No. 2)

VIACELL, INC.

(Name of Subject Company (Issuer))

PERKINELMER, INC.

VICTOR ACQUISITION CORP.

(Name of Filing Person (Offerors))

Common Stock, par value \$0.01 per share

(Title of Class of Securities)

92554J105

(CUSIP Number of Class of Securities)

Katherine A. O Hara

Senior Vice President, General Counsel & Secretary

940 Winter Street 02451

Waltham, Massachusetts

(781) 663-6900

(Name, address and telephone number of person authorized to receive

notices and communications on behalf of Filing Persons)

with a copy to:

Hal J. Leibowitz

Wilmer Cutler Pickering Hale and Dorr LLP

60 State Street

Boston, Massachusetts 02109

(617) 526-6000

CALCULATION OF FILING FEE

Transaction Valuation*
\$324,461,150

Amount of Filing Fee**
\$9,960.96

* Estimated for purposes of calculating the amount of the filing fee only, in accordance with Rule 0-11(d) under the U.S. Securities Exchange Act of 1934, as amended (the Exchange Act). The transaction valuation was calculated by multiplying the offer price of \$7.25 per share by 44,753,262, the number of shares of common stock, par value \$0.01 per share (Shares), of ViaCell, Inc. (ViaCell) outstanding on a fully diluted basis as of September 27, 2007, which Shares consist of (a) 39,079,100 Shares issued and outstanding as represented by ViaCell in the Agreement and Plan of Merger among PerkinElmer, Inc. (PerkinElmer), Victor Acquisition Corp. (the Offeror) and ViaCell (the Merger Agreement), (b) 4,370,829 Shares subject to issuance upon exercise of outstanding options, as represented by ViaCell in the Merger Agreement, (c) 1,293,333 Shares reserved for future issuance pursuant to outstanding warrants, as

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represented by ViaCell in the Merger Agreement and (d) 10,000 Shares subject to issuance upon exercise of options that ViaCell is permitted to grant pursuant to the Merger Agreement.

** The amount of the filing fee, calculated in accordance with Section 13(e) of the Exchange Act, equals \$30.70 per million dollars of the transaction valuation.

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: **\$9,960.96.**
Form or Registration No.: **Schedule TO.**

Filing Party: **PerkinElmer, Inc. and Victor Acquisition Corp.**
Date Filed: **October 12, 2007.**

.. 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: ..

This Amendment No. 2 (Amendment No. 2) amends and supplements the Tender Offer Statement on Schedule TO originally filed with the U.S. Securities and Exchange Commission on October 12, 2007, by PerkinElmer, Inc., a Massachusetts corporation (PerkinElmer), and Victor Acquisition Corp., a Delaware corporation and an indirect wholly owned subsidiary of PerkinElmer (Offeror), as amended by Amendment No. 1 filed on October 25, 2007 (as amended, the Schedule TO), relating to the offer by Offeror to purchase all of the outstanding shares of common stock, par value \$0.01 per share (the Shares), of ViaCell, Inc., a Delaware corporation (ViaCell), for \$7.25 per Share, net to the seller in cash, without interest and subject to any required withholdings of taxes, upon the terms and subject to the conditions set forth in the Offer to Purchase, dated October 12, 2007 (the Offer to Purchase), and in the related Letter of Transmittal (which, together with any amendments or supplements to the Offer to Purchase and the Letter of Transmittal, collectively constitute the Offer). The Offer is made pursuant to the Agreement and Plan of Merger, dated as of October 1, 2007 (the Merger Agreement), among PerkinElmer, Offeror and ViaCell.

All capitalized terms used in this Amendment No. 2 without definition have the meanings ascribed to them in the Schedule TO or the Offer to Purchase.

The information in the Offer to Purchase and the related Letter of Transmittal is incorporated in this Amendment No. 2 by reference to all of the applicable items in the Schedule TO, except that such information is amended and supplemented to the extent specifically provided in this Amendment No. 2.

Items 1, 7 and 11.

Items 1, 7 and 11 of the Schedule TO are hereby amended and supplemented by adding the following text thereto:

As disclosed in the Offer to Purchase dated October 12, 2007, although PerkinElmer has available the necessary funds to complete the Offer and the Merger from existing cash on hand, short-term investments and other cash equivalents, and borrowings under its existing credit facility, PerkinElmer is evaluating additional borrowings to provide a portion of the funds needed to complete the Offer and the Merger.

PerkinElmer is currently in discussion with a potential lending group with respect to an unsecured interim credit facility, pursuant to which PerkinElmer would draw most or all of the funds needed to complete the Offer and the Merger. PerkinElmer expects that such an interim credit facility would mature on March 31, 2008, at which point all amounts outstanding would be due in full. As a result, PerkinElmer would intend to refinance the indebtedness under any interim credit facility, and is already exploring various options for doing so. PerkinElmer expects that the agreement for this interim credit facility would contain affirmative, negative and financial covenants and events of default customary for financings of this type, and consistent with those contained in the Credit Agreement for PerkinElmer's existing credit facility.

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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: November 7, 2007

PERKINELMER, INC.

By: /s/ Katherine A. O Hara
Name: Katherine A. O Hara

Title: Senior Vice President, General Counsel and
Secretary

VICTOR ACQUISITION CORP.

By: /s/ John L. Healy
Name: John L. Healy

Title: Secretary

EXHIBIT INDEX

Exhibit No.

- * (a)(1)(A) Offer to Purchase, dated October 11, 2007.
- * (a)(1)(B) Form of Letter of Transmittal.
- * (a)(1)(C) Form of Notice of Guaranteed Delivery.
- * (a)(1)(D) Form of Letter from Merrill Lynch, Pierce, Fenner & Smith Incorporated to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.
- * (a)(1)(E) Form of Letter from Brokers, Dealers, Commercial Banks, Trust Companies and Nominees to Clients.
- * (a)(1)(F) Form of Guidelines for Certification of Taxpayer Identification Number (TIN) on Substitute Form W-9.
- * (a)(5)(A) Joint Press Release Issued by PerkinElmer and ViaCell, dated October 1, 2007, announcing the execution of the Agreement and Plan of Merger among PerkinElmer, Offeror and ViaCell (incorporated in this Schedule TO by reference to the Schedule TO-C filed by PerkinElmer on October 1, 2007).
- * (a)(5)(B) Transcript of the Investor Call on October 1, 2007 regarding announcement of the Agreement and Plan of Merger among PerkinElmer, Offeror and ViaCell (incorporated in this Schedule TO by reference to the Schedule TO-C filed by PerkinElmer on October 2, 2007).
- * (a)(5)(C) Slides used in the Investor Call on October 1, 2007 (incorporated in this Schedule TO by reference to the Schedule TO-C filed by PerkinElmer on October 2, 2007).
- * (a)(5)(D) Slides distributed on October 2, 2007 (incorporated in this Schedule TO by reference to the Schedule TO-C filed by PerkinElmer on October 2, 2007).
- * (a)(5)(E) PerkinElmer Announces Plans to Acquire ViaCell Question and Answer Document dated October 5, 2007 (incorporated in this Schedule TO by reference to the Schedule TO-C filed by PerkinElmer on October 5, 2007).
- * (a)(5)(F) Form of Summary Advertisement Published in the *Wall Street Journal* on October 11, 2007.
- * (a)(5)(G) Joint Press Release Issued by PerkinElmer and ViaCell, dated October 11, 2007, announcing the commencement of the Offer.
- * (a)(5)(H) Press Release Issued by PerkinElmer, dated October 25, 2007, announcing expiration of the waiting period under the HSR Act.
- * (b)(1) Credit Agreement, dated as of August 13, 2007, among PerkinElmer, Inc. and Wallac Oy as Borrowers, Bank of America, N.A., as Administrative Agent, Swing Line Lender and L/C Issuer, Citigroup Global Markets Inc. and HSBC Bank USA, National Association, as Co-Syndication Agents, ABN AMRO Bank N.V. and Deutsche Bank Securities Inc., as Co-Documentation Agents, Banc of America Securities LLC and Citigroup Global Markets Inc., as Joint Lead Arrangers and Joint Book Managers, and the Other Lenders party thereto (incorporated in this Schedule TO by reference to the Current Report on Form 8-K filed by PerkinElmer on August 17, 2007).
- * (d)(1) Agreement and Plan of Merger, dated as of October 1, 2007, among PerkinElmer, Offeror and ViaCell (incorporated in this Schedule TO by reference to the Current Report on Form 8-K filed by PerkinElmer on October 2, 2007).

* Previously filed.