AVOCENT CORP
Form SC 14D9
October 15, 2009

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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

Avocent Corporation
(Name of Subject Company)

Avocent Corporation
(Name of Person(s) Filing Statement)

Common Stock, par value $0.001 per share
(Title of Class of Securities)

053893103
(CUSIP Number of Class of Securities)

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Executive Vice President of Legal and
Corporate Affairs, General Counsel,
and Secretary
Avocent Corporation
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(Name, address and telephone number of person
authorized to receive notices and communications on
behalf of the person(s) filing statement)

With copies to:

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

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Item 1. Subject Company Information.

Name and Address. The name of the subject company is Avocent Corporation, a Delaware corporation (**Avocent** or the **Company**). The address of the Company s principal executive office is 4991 Corporate Drive, Huntsville, Alabama 35805 and the telephone number of the Company s principal executive office is (256) 430-4000.

Securities. This Solicitation/Recommendation Statement on Schedule 14D-9 (this **Schedule** or **Statement**) relates to the common stock, $0.001 par value per share, of the Company (the **Shares** or the **Common Stock**). As of the close of business on October 1, 2009, there were (i) 44,305,575 Shares issued and outstanding, (ii) 2,655,365 Shares issuable upon or otherwise deliverable in connection with the exercise of outstanding stock options (of which 695,580 Shares had an exercise price which is less than the Offer Price (as defined below)), (iii) 1,657,677 Shares subject to restricted stock units and (iv) 861,795 Shares subject to performance shares (of which 729,096 were unearned).

Item 2. Identity and Background of Filing Person.

Name and Address. The Company is the person filing this Statement. The information about the Company s business address and business telephone number in Item 1, under the heading Name and Address, is incorporated herein by reference. The Company s website address is www.avocent.com. The information on the Company s website should not be considered a part of this Statement.

Tender Offer and Merger. This Statement relates to the tender offer by Globe Acquisition Corporation, a Delaware corporation (**Purchaser**) and a wholly-owned subsidiary of Emerson Electric Co., a Missouri corporation (**Parent** or **Emerson**), disclosed in the Tender Offer Statement on Schedule TO (together with the exhibits thereto, as amended, the **Schedule TO**), filed by Purchaser and Parent with the Securities and Exchange Commission (the **SEC**) on October 15, 2009, and pursuant to which Purchaser is offering to purchase all outstanding Shares at a price of $25.00 per Share (the **Offer Price**), in cash, without interest, less certain applicable taxes, upon the terms and subject to the conditions set forth in the Offer to Purchase, dated October 15, 2009 (the **Offer to Purchase**), and the related Letter of Transmittal (which, together with the Offer to Purchase, as each may be amended or supplemented from time to time, constitute the **Offer**). The Offer to Purchase and Letter of Transmittal are being mailed with this Statement and are filed as Exhibits (a)(1) and (a)(2) hereto, respectively, and are incorporated herein by reference.

The Offer is being made pursuant to an Agreement and Plan of Merger, dated as of October 5, 2009 (as such agreement may be amended from time to time, the **Merger Agreement**), among Parent, Purchaser and the Company. The Merger Agreement provides, among other things, that as soon as possible following the successful consummation of the Offer and subject to the satisfaction of the conditions set forth in the Merger Agreement and in accordance with the relevant portions of the Delaware General Corporation Law (the **DGCL**), Purchaser will be merged with and into the Company (the **Merger**). Following the consummation of the Merger, the Company will continue as the surviving corporation and a wholly-owned subsidiary of Parent. As of the effective time of the Merger (the **Effective Time**), each Share that is not validly tendered pursuant to the Offer will be converted into the right to receive cash in an amount equal to the Offer Price (other than Shares that are held by the Company, Parent, Parent s subsidiaries or Purchaser or Shares held by stockholders, if any, who properly exercise their appraisal rights under the DGCL), without interest thereon and less certain applicable taxes. A copy of the Merger Agreement is filed as Exhibit (e)(1) hereto and is incorporated herein by reference. The Merger Agreement is summarized in Section 13 of the Offer to Purchase.

The Merger Agreement governs the contractual rights among the Company, Parent and Purchaser in relation to the Offer and the Merger. The Merger Agreement has been included as an exhibit to this Schedule 14D-9 to provide the Company s stockholders with information regarding the terms of the Merger Agreement and is not intended to modify or supplement any factual disclosures about the Company or Parent in the Company s or Parent s public reports filed with the SEC. In particular, the summary of the Merger Agreement contained in the Offer to Purchase and the assertions embodied in the representations and warranties contained in the Merger Agreement are qualified by information in confidential disclosure schedules provided by the Company in connection with the signing of the Merger Agreement. These disclosure schedules contain information that modifies, qualifies and creates exceptions to the representations and warranties set forth in the Merger Agreement. Moreover, certain representations and warranties in the Merger Agreement were used for the purpose of allocating risk between the Company, Parent and Purchaser, rather than establishing matters of fact. Accordingly, the representations and warranties in the Merger Agreement may not constitute the actual state of facts about the Company, Parent or Purchaser.

According to the Offer to Purchase, the Purchaser s and Parent s principal executive offices are located at 8000 West Florissant Avenue, St. Louis, Missouri 63136, and the telephone number of their principal executive offices is (314) 553-2000.

Item 3. Past Contracts, Transactions, Negotiations and Agreements.

Certain contracts, agreements, arrangements or understandings between the Company or its affiliates and certain of its executive officers or directors are, except as described below, described in the Information Statement pursuant to Section 14(f) of the Securities Exchange Act of 1934, as amended (the **Exchange Act**) and Rule 14f-1 thereunder (the **Information Statement**) that is attached hereto as Annex I and is incorporated herein by reference. Except as set forth in this Item 3, Item 4 below or Annex I attached hereto, or as otherwise incorporated herein by reference, to the knowledge of the Company, there are no material agreements, arrangements or understandings, and no potential or actual conflicts of interest, between the Company or its affiliates and (i) the Company s executive officers, directors or affiliates or (ii) Purchaser, Parent or their respective executive officers, directors or affiliates.

(a) *Arrangements with Executive Officers and Directors of the Company.*

Interests of Certain Persons. Certain members of management and the Company s Board of Directors (the **Board** or the **Board of Directors**) may be deemed to have interests in the transactions contemplated by the Merger Agreement that are different from or in addition to the interests of Company stockholders, generally. These interests may create potential conflicts of interest. The Board was aware of these interests and considered them, among other matters, in approving the Merger Agreement and the transactions contemplated thereby. As described below, consummation of the Offer will constitute a change in control of the Company for the purposes of determining the entitlements due to executive officers and directors of the Company relating to certain severance and other benefits.

Cash Consideration Payable Pursuant to the Offer

Cash Consideration for Shares. If the Company s directors and executive officers were to tender any Shares they own for purchase pursuant to the Offer, they would receive the same cash consideration on the same terms and conditions as the other stockholders of the Company. As of October 1, 2009, the Company s directors and executive officers owned 285,573 Shares in the aggregate (excluding Stock Options (as defined below), RSUs (as defined below) and Performance Shares (as defined below)). If the directors and executive officers were to tender all of their Shares for purchase pursuant to the Offer and those Shares were accepted for purchase and purchased by

Purchaser, the directors and executive officers would receive an aggregate of approximately $7,139,325 in cash (less certain applicable taxes).

Cash Consideration for Options: As of October 1, 2009, the Company s directors and executive officers held options to purchase 883,558 Shares in the aggregate, all of which were vested and exercisable as of that date, with exercise prices ranging from $14.55 to $52.44 and an aggregate weighted average exercise price of $38.60 per Share. Pursuant to, and as further described in, the Merger Agreement, each outstanding option to purchase Common Stock granted under any employee stock option or compensation plan or arrangement of the Company (each, a **Stock Option**), whether or not vested or exercisable, will be cancelled on the date on which shares of Common Stock are first accepted for payment under the Offer (the **Acceptance Date**) and converted automatically into the right to receive at or promptly after the Acceptance Date, for each Stock Option, an amount in cash (subject to, and net of, certain applicable taxes) equal to the product obtained by multiplying (x) the number of Shares such holder could have purchased (assuming full vesting of all Stock Options) had such holder exercised such Stock Option in full immediately prior to the Acceptance Date, and (y) the excess, if any, of the Offer Price over the applicable exercise price of such Stock Option. As a result, based on the number of Stock Options to purchase Shares held on October 1, 2009, the executive officers and directors would be entitled to receive a payment of approximately $525,808 in the aggregate for all Stock Options held by such executive officers and directors (less certain applicable taxes).

Cash Consideration for Restricted Stock Units: As of October 1, 2009, the Company s directors and executive officers held outstanding Company restricted stock units (**RSUs**) covering 416,542 Shares in the aggregate. Pursuant to, and as further described in, the Merger Agreement, each outstanding RSU held by an employee or consultant of the Company or its subsidiaries (other than a non-employee director of the Company) immediately prior to the Acceptance Date will be converted into a restricted stock unit (an **Adjusted RSU**) to acquire, on the same terms and conditions as were applicable to such RSU immediately prior to the Acceptance Date, the number of shares of common stock of Parent (**Parent Common Stock**) determined by multiplying the number of Shares subject to such RSU awards immediately prior to the Acceptance Date by a fraction, the numerator of which is the Offer Price and the denominator of which is the closing price of Parent Common Stock on the New York Stock Exchange on the Acceptance Date (with the resulting number of shares rounded down to the nearest whole share). The holder of an Adjusted RSU will be entitled to full vesting acceleration of such Adjusted RSU in the event his or her employment is terminated by the Company or Parent other than for cause (as defined in the Merger Agreement) on or following the Acceptance Date. This provision regarding potential acceleration of vesting is in addition to any other acceleration of vesting provisions that might apply to a particular RSU.

Each outstanding RSU held by a non-employee member of the Board (a **Director RSU**) on the Acceptance Date, whether or not vested, will be fully vested and cancelled on the Acceptance Date and converted automatically into the right to receive, at or promptly after the Acceptance Date, an amount in cash (subject to, and net of, certain applicable taxes) equal to the product obtained by multiplying the number of Shares represented by such Director RSUs by the Offer Price. As a result, based on the number of Director RSUs held by directors on October 1, 2009, the directors would be entitled to receive a payment of $1,632,375 in the aggregate (less certain applicable taxes).

Cash Consideration for Performance Shares: As of October 1, 2009, the Company s executive officers held outstanding Company performance share awards (the **Performance Shares**) covering 549,735 Shares in the aggregate. Pursuant to, and as further described in, the Merger Agreement, each outstanding Performance Share granted under any equity or compensation plan or arrangement of the Company, whether or not vested, will in each case be fully earned at maximum levels and fully vested, and cancelled on the Acceptance Date and converted automatically into the right to receive, at or promptly after the Acceptance Date, an amount in cash (subject to, and net of, certain applicable taxes) equal to the product obtained by multiplying the

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aggregate number of Shares represented by such Performance Shares by the Offer Price. As a result, based on the number of Performance Shares held by executive officers on October 1, 2009, the executive officers would be entitled to receive a payment of $13,743,375 in the aggregate (less certain applicable taxes).

Employment Agreements

The Company has entered into employment agreements with each of the following executive officers, which were amended and restated as of December 30, 2008 (the **Employment Agreements**):

Michael Borman, Chief Executive Officer;

Doyle Weeks, President and Chief Operating Officer;

Stephen Daly, Executive Vice President and General Manager of the LANDesk Business Unit;

Benjamin Grimes, Executive Vice President of Corporate Strategy and Chief Technology Officer;

Samuel Saracino, Executive Vice President of Legal and Corporate Affairs, General Counsel and Secretary;

Edward Blankenship, Senior Vice President of Finance, Chief Financial Officer and Assistant Secretary; and

Eugene Mulligan, Senior Vice President of Global Operations.

Under their respective Employment Agreements, each executive officer receives an annual base salary, subject to annual increases at the discretion of the Compensation Committee of the Board (the **Committee**). Each executive officer is also entitled to receive an annual bonus at the discretion of the Committee based on the Company s performance and the performance of the executive officer, and to participate in equity plans and all other benefit programs generally available to the Company s executive officers. Under the terms of the Employment Agreements, the Company has agreed to indemnify each executive officer for certain liabilities arising from actions taken by the executive officer within the scope of employment.

Under the terms of the Employment Agreements, our executive officers have also agreed that during the term of their employment and for a term of 12 months thereafter (24 months in the case of Mr. Borman, and 18 months in the case of Mr. Weeks), they will not compete against the Company without the Company s prior written consent. The Employment Agreements prohibit an executive officer from engaging in any capacity in any business activity worldwide that is substantially similar to, or in direct competition with, any of the business activities of or services provided by the Company at the time of the executive officer s termination.

Under the terms of the Employment Agreements, an executive officer s employment may be terminated for any reason, with the benefits due to the executive officer dependent on the circumstances of the termination, as discussed below.

Voluntary Termination. An executive officer may voluntarily terminate (resign) employment. Except as set forth below in Termination Following a Change in Control, in the case of a voluntary termination, an executive officer will receive only accrued salary, earned bonus, vested deferred compensation, and other benefits earned through the date of termination to the full extent of the executive officer s rights under the Company s benefit plans.

Death. The estate of an executive officer will receive accrued salary, earned bonus, vested deferred compensation, and other benefits earned through the date of the executive officer s death. In addition, the estate is entitled to full vesting acceleration of any then-outstanding equity awards

granted to the executive officer. The estate of Mr. Borman is not entitled to this acceleration benefit, and instead, his estate is entitled to receive a payment equal to the prorated portion of his targeted bonus for the year in the event of his termination of employment as a result of his death. The estate of an executive officer may be entitled to additional benefits, as more fully described below under Termination Following a Change in Control.

Termination upon Disability. The Company may terminate an executive officer s employment for disability , as set forth in the Employment Agreements. In the case of termination upon disability, the executive officer will be entitled to receive accrued salary, earned bonus, vested deferred compensation, and other benefits earned through the date of termination, to the full extent of the executive officer s rights under the Company s benefit plans, and in addition, subject to signing a release of claims in favor of the Company, also will be entitled to receive the following:

Severance compensation equal to the executive officer s average annual bonus during the two years immediately preceding termination (in Mr. Borman s case, if he is terminated by reason of disability before the determination of his annual bonus for 2009, this entitlement will instead be to receive his targeted bonus for 2009 in lieu of his average annual bonus over the prior two years), payable in a lump sum;

For all executive officers other than Mr. Borman, acceleration of the vesting of any then-outstanding equity awards granted to the executive officer; and

Company-paid continuation of medical, dental and vision coverage under the Company s group health plans pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended (**COBRA**) for a period of 18 months from the date of termination, provided the executive officer timely elects such continuation coverage.

Termination for Cause. The Company may terminate an executive officer s employment for cause (as such term is defined in the Employment Agreements). In the case of a termination for cause, the executive officer will receive accrued salary, earned bonus, vested deferred compensation, and other benefits earned through the date of termination, but no other benefits or severance compensation.

Termination Other Than for Cause. If the Company terminates an executive officer s employment other than for cause (which includes a resignation by the executive officer as a result of a constructive termination (as such terms are defined in the executive officer s Employment Agreement)), the executive officer will be entitled to receive accrued salary, earned bonus, vested deferred compensation, and other benefits earned through the date of termination and in addition, subject to signing a release of claims in favor of the Company, also will be entitled to receive the following:

severance compensation equal to the executive officer s base salary at the rate payable at the time of termination for a period of 12 months following the date of termination (24 months in the case of Mr. Borman and 18 months in the case of Mr. Weeks) and an amount equal to the executive officer s average annual bonus during the two years immediately preceding his termination (in Mr. Borman s case, if the termination occurs before the determination of his annual bonus for 2009, this entitlement will instead be to receive his targeted bonus for 2009 in lieu of his average annual bonus over the prior two years), payable in a lump sum, in cash;

for Mr. Borman only, temporary housing expenses for a period of 30 days following such termination;

acceleration of the vesting of any then-outstanding equity awards granted to the executive officer (other than, in the case of Mr. Borman, unearned Performance Shares); and

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Company-paid continuation of medical, dental and vision coverage under the Company s group health plans pursuant to COBRA for a period of 18 months from the date of termination, provided the executive officer timely elects such continuation coverage.

Termination Following a Change in Control

If a change in control (as defined in the Employment Agreements) of Avocent occurs and (i) the executive officer terminates his employment within six months for any reason (including death), or (ii) the Company terminates the executive officer s employment within 18 months for any reason other than a termination (a) for cause, (b) by reason of the executive officer s death (if it occurs more than six months after the change in control) or (c) by reason of the executive officer s disability, the executive officer will be entitled to receive accrued salary, earned bonus, vested deferred compensation, and other benefits earned through the date of termination and in addition, subject to signing a release of claims in favor of the Company, also will be entitled to receive the following:

severance compensation equal to the executive officer s base salary at the rate payable at the time of termination for a period of 12 months following the date of termination (24 months in the case of Mr. Borman and 18 months in the case of Mr. Weeks), plus an amount equal to the executive officer s average annual bonus during the two years immediately preceding his termination (in Mr. Borman s case, if the termination occurs before the determination of his annual bonus for 2009, this entitlement will instead be to receive his targeted bonus for 2009 in lieu of his average annual bonus over the prior two years), payable in a lump sum, in cash;

for Mr. Borman only, temporary housing expenses for a period of 30 days following such termination;

acceleration of the vesting of any then-outstanding equity awards granted to the executive officer;

Company-paid continuation of medical, dental and vision coverage under the Company s group health plans pursuant to COBRA for a period of 18 months from the date of termination, provided the executive officer timely elects such continuation coverage; and

for all executive officers other than Mr. Borman, indemnification for taxes, if any, imposed on them as a result of Section 4999 of the Internal Revenue Code of 1986, as amended (the **Code**) if payments due to them in the event of a termination following a change in control constitute excess parachute payments as defined in Code Section 280G.

The consummation of the Offer will constitute a change in control under each of the Employment Agreements as the Purchaser will have acquired 25% or more of the total voting power of the Company.

All severance compensation payable under the Employment Agreements is conditioned upon the executive signing a release of claims against the Company that becomes effective no later than 60 days following the employment termination date.

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(b) *Potential Payments upon Termination In Connection with a Change of Control.*

The following table sets forth the approximate payments and/or benefits that would be owed to each of the Company s executive officers upon the Acceptance Date, or upon a qualifying termination of employment in connection with the Offer (either a voluntary resignation by the executive officer or a termination by the Company other than (1) for cause or (2) disability), assuming that the Offer is completed at the Offer Price of $25.00 per share of Common Stock and the termination of employment took place on November 1, 2009.

Name	Benefit Type	Payment Upon the Acceptance Date	Payment in the Case of Termination of Employment in Connection with the Offer
Michael Borman	Severance(1)		$ 1,800,000
	Estimated Value of Continued Employee Benefits(2)		$ 23,580
	Estimated Value of Temporary Housing Expenses		$ 15,000
	Value of Equity Award Acceleration	$ 5,273,438(3)	$ 3,250,000(4)
	Total Value:	$ 5,273,438	$ 5,088,580
Doyle Weeks	Severance(1)		$ 816,490
	Estimated Value of Continued Employee Benefits		$ 23,580
	Value of Equity Award Acceleration	$ 2,168,006(3)	$ 1,399,075(4)
	Estimated Excise Tax Gross-Up Payment(5)		
	Total Value:	$ 2,168,006	$ 2,239,145
Stephen Daly	Severance(1)		$ 402,254
	Estimated Value of Continued Employee Benefits		$ 23,580
	Value of Equity Award Acceleration	$ 1,416,663(3)	$ 934,025(4)
	Estimated Excise Tax Gross-Up Payment(5)		$ 797,979
	Total Value:	$ 1,416,663	$ 2,157,838
Benjamin Grimes	Severance(1)		$ 365,588
	Estimated Value of Continued Employee Benefits		$ 23,580
	Value of Equity Award Acceleration	$ 1,240,638(3)	$ 791,625(4)
	Estimated Excise Tax Gross-Up Payment(5)		$ 706,214
	Total Value:	$ 1,240,638	$ 1,887,007
Samuel Saracino	Severance(1)		$ 383,259
			$ 23,580

	Estimated Value of Continued Employee Benefits				
	Value of Equity Award Acceleration	$	1,226,606(3)	$	816,650(4)
	Estimated Excise Tax Gross-Up Payment(5)				
	Total Value:	$	1,226,606	$	1,223,489
Edward Blankenship	Severance(1)			$	375,974
	Estimated Value of Continued Employee Benefits			$	23,580
	Value of Equity Award Acceleration	$	1,372,688(3)	$	893,125(4)
	Estimated Excise Tax Gross-Up Payment(5)			$	707,130
	Total Value:	$	1,372,688	$	1,999,809
Eugene Mulligan	Severance(1)			$	350,878
	Estimated Value of Continued Employee Benefits			$	23,580
	Value of Equity Award Acceleration	$	1,045,325(3)	$	696,675(4)
	Estimated Excise Tax Gross-Up Payment(5)				
	Total Value:	$	1,045,325	$	1,071,133

(1) Represents cash payments to which the applicable executive officer is entitled pursuant to his Employment Agreement, including amounts attributable to both base salary and bonus compensation, as outlined and described above.

(2) Includes the portion of the Company s medical, dental and vision insurance that would be paid on behalf of the applicable executive officer pursuant to his Employment Agreement, as outlined and described above.

(3) Represents the value of Performance Shares that would accelerate pursuant to the Merger Agreement upon the expiration of the Offer. The value of the acceleration of such Performance Shares was calculated based on the Offer Price multiplied by the number of Performance Shares, at their maximum targets, whether or not vested or earned. All Stock Options held by the executive officers will be fully vested prior to the Acceptance Date, so no additional value was attributed to the Stock Options for purposes of the above

table, although the executive officers will be entitled to receive payment for the cancellation of their vested Stock Options, as outlined and described above.

(4) Represents the value of RSUs that would accelerate pursuant to the executive officer s Employment Agreement upon a qualifying termination of employment in connection with the Offer, as outlined and described above. The value of the acceleration of such RSUs was calculated based on the Offer Price multiplied by the number of unvested RSUs.

(5) Represents additional estimated payments to which the executive officer will or may be entitled pursuant to his Employment Agreement to compensate for excise taxes that could be due pursuant to Code Section 280G as a result of the executive officer s change in control benefits constituting excess parachute payments, as defined in Code Section 280G, upon the expiration of the Offer or upon a qualifying termination of employment in connection with the Offer, as outlined and described above.

Indemnification and Insurance. Section 145 of the DGCL permits a corporation to include in its charter documents, and in agreements between the corporation and its directors and officers, provisions expanding the scope of indemnification beyond that specifically provided by current law. The Company s certificate of incorporation provides for the indemnification of the Company s directors to the fullest extent permissible under the DGCL. Consequently, no director will be personally liable to the Company or its stockholders for monetary damages for any breach of fiduciary duties as a director, except liability for:

any breach of the director s duty of loyalty to the Company or its stockholders;

any act or omission not in good faith or which involves intentional misconduct or a knowing violation of law;

unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the DGCL; or

any transaction from which the director derived an improper personal benefit.

In addition, the Company s certificate of incorporation provides that the Company is required to indemnify its directors and the Company s bylaws provide that the Company is required to indemnify its directors, officers, employees and agents, in each case to the fullest extent permitted by the DGCL. The Company s bylaws also provide that the Company shall advance expenses incurred by a director, officer, employee or agent in advance of the final disposition of any action or proceeding, and permit the Company to secure insurance on behalf of any officer, director, employee or other agent for any liability arising out of his or her actions in that capacity regardless of whether the Company would otherwise be permitted to indemnify him or her under the provisions of the DGCL.

The Company has entered into agreements to indemnify its directors, officers and other employees as determined by the Board of Directors. With certain exceptions, these agreements provide for indemnification for related expenses including, among other things, attorneys fees, judgments, fines and settlement amounts incurred by any of these individuals in any action or proceeding. This description of the indemnification agreements entered into between the Company and its directors, officers and employees is qualified in its entirety by reference to the form of indemnification agreement filed as Exhibit (e)(7) hereto, which is incorporated herein by reference. The Company also maintains directors and officers liability insurance that insures the Company s directors and officers against certain losses and insures the Company with respect to its obligations to indemnify its directors and officers.

For a period of six years after the Acceptance Date, Parent has agreed to cause the surviving corporation in the Merger (the **Surviving Corporation**) to indemnify and hold harmless the present and former officers and directors of the Company in respect of acts or omissions occurring at or prior to the Effective Time to the fullest extent permitted

under applicable law or as provided under the Company s certificate of incorporation and bylaws, subject to any limitations imposed under applicable law. For a period of six years, Parent has also agreed to maintain provisions of the Surviving Corporation s certificate of incorporation and bylaws regarding elimination of liability of directors, indemnification of officers, directors and employees and advancement of expenses that are

no less advantageous to the intended beneficiaries than the corresponding provisions in the Company s certificate of incorporation and bylaws on the date of the Merger Agreement.

Prior to the Effective Time, the Company shall, subject to the consent of Parent (such consent not to be unreasonably withheld), be permitted to purchase a six-year tail or runoff policy under the Company s current directors and officers insurance policies and fiduciary liability insurance policies, provided that the aggregate cost for such policy does not exceed 250% of the current annual premiums paid by the Company for directors and officers and fiduciary liability insurance policies. If the Company does not purchase such tail or runoff policy, Parent shall cause the Surviving Corporation to either (i) continue to maintain in effect for six years after the Effective Time the directors and officers and fiduciary liability insurance policies of the Company with terms, conditions, retentions and limits of liability at least as favorable as those in effect under the Company s policies on the date of the Merger Agreement or (ii) purchase comparable directors and officers liability insurance for such six-year period with terms, conditions, retentions and limits of liability at least as favorable as those in effect under the Company s policies on the date of the Merger Agreement, provided that if the aggregate cost exceeds 250% of the current annual premiums paid by the Company for directors and officers insurance, the Surviving Corporation will be obligated to obtain directors and officers insurance with the best available coverage with respect to matters occurring at or prior to the Effective Time for an aggregate cost of 250% of the current annual premium.

Representation on the Company s Board of Directors. The Merger Agreement provides that, effective upon the Acceptance Date, Parent will be entitled to designate a number of directors, rounded up to the next whole number, on the Board equal to the product of the total number of directors on the Board (giving effect to the directors elected pursuant to this sentence) and the percentage that the number of Shares beneficially owned by Parent and/or Purchaser following such purchase bears to the total number of Shares outstanding, and the Company will cause Parent s designees to be elected or appointed as directors of the Company, including by increasing the size of the Board and seeking and accepting the resignations of incumbent directors. Notwithstanding the foregoing, at least two of the Company s current directors who are not employees of the Company shall remain members of the Board until the Effective Time in accordance with the terms of the Merger Agreement.

(c) *Arrangements with Parent or Purchaser.*

Merger Agreement. The summary of the Merger Agreement contained in Section 13 of the Offer to Purchase filed as Exhibit (a)(1) to the Schedule TO and the description of the conditions of the Offer contained in Section 15 of the Offer to Purchase are incorporated herein by reference. Such summary and description are qualified in their entirety by reference to the Merger Agreement, which is filed as Exhibit (e)(1) hereto and incorporated herein by reference to provide information regarding its terms.

Confidentiality Agreement. Parent and the Company entered into a confidentiality agreement, dated as of June 16, 2009 (the **Confidentiality Agreement**), in connection with a possible negotiated transaction between the parties. Under the Confidentiality Agreement, the parties agreed, subject to certain customary exceptions, to keep all non-public information furnished by the disclosing party to the receiving party or its representatives solely for the purpose of evaluating a potential transaction between the parties and not to solicit the other party s employees until June 16, 2010, and Parent agreed to abide by certain standstill restrictions involving the Company s securities until the earlier of June 16, 2011 or upon the occurrence of a Significant Event (as defined in the Confidentiality Agreement). This summary of the Confidentiality Agreement does not purport to be complete and is qualified in its entirety by reference to the Confidentiality Agreement, which is filed as Exhibit (e)(2) hereto and is incorporated herein by reference.

Exclusivity Agreement. Parent and the Company entered into an exclusivity letter agreement, dated as of September 17, 2009 (the **Exclusivity Agreement**), in connection with a possible

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negotiated transaction involving Parent and the Company. Under the Exclusivity Agreement, the Company agreed not to, directly or indirectly, solicit, initiate or knowingly encourage any offer or proposal for, or any indication of interest in, a business combination transaction between the Company and any party other than Parent until October 10, 2009. This summary of the Exclusivity Agreement does not purport to be complete and is qualified in its entirety by reference to the Exclusivity Agreement, which is filed as Exhibit (e)(3) hereto and incorporated herein by reference.

Item 4. The Solicitation or Recommendation

(a) *Solicitation/Recommendation.*

After careful consideration, including a thorough review of the Offer with Avocent s legal and financial advisors, at a meeting held on October 5, 2009, the Board unanimously (i) determined that the Merger Agreement and the transactions contemplated thereby, including the Offer and the Merger, are advisable and in the best interests of and are fair to the Company and the Company s stockholders and (ii) approved and authorized the Merger Agreement and the transactions contemplated thereby, including the Offer and the Merger.

Accordingly, and for the other reasons described in more detail below, the Board of Directors unanimously recommends that the Company s stockholders accept the Offer and tender their Shares pursuant to the Offer.

A letter to stockholders communicating the Board of Directors recommendation and the joint press release issued by the Company and Parent announcing the execution of the Merger Agreement are filed as Exhibits (a)(4) and (a)(5) hereto, respectively, and are incorporated herein by reference.

(b) *Background.*

As part of the ongoing evaluation of our business, our Board of Directors and members of our senior management regularly review and assess opportunities to achieve long-term strategic goals, including potential opportunities for business combinations, acquisitions, dispositions, internal restructurings and other strategic alternatives.

In late January 2008, David N. Farr, Chairman, Chief Executive Officer and President of Emerson, contacted Edwin L. Harper, our then-newly appointed Chairman, to congratulate Mr. Harper on his appointment and discuss ways in which Emerson and Avocent could possibly work together. During this conversation, Mr. Farr and Mr. Harper acknowledged the complementary strategies of the two companies in IT infrastructure management and generally agreed that the two companies should continue to explore ways to work together. Following their telephone call, Mr. Farr sent Mr. Harper some information illustrating Emerson s strategy in the data center infrastructure market. At that time, Messrs. Farr and Harper focused on identifying opportunities for the two companies to work more closely together, but Emerson did not make any proposals to acquire Avocent and Avocent did not solicit any such proposals.

Early in the second quarter of 2008, we were approached by a large financial sponsor, which we refer to as Sponsor A, interested in a strategic transaction involving the acquisition of Avocent combined with a subsequent sale of one of our divisions to a large software company, which we refer to as Company A. On June 13, 2008, Mr. Harper, Samuel F. Saracino, our General Counsel, and Edward H. Blankenship, our Chief Financial Officer, met in Chicago with representatives of Sponsor A and representatives of Company A. The purpose of the meeting was to allow our management team to gain a better understanding of the transaction proposed by Sponsor A and Company A.

Mr. Harper subsequently informed Avocent s Board of Directors of Sponsor A and Company A s verbal proposal at a meeting on June 19, 2008. At this same time, Mr. Harper also reminded the Board of his earlier conversations with Mr. Farr regarding Emerson s interest in working more

closely with Avocent. At the meeting, the Board also discussed (i) the Company s pending search for a new chief executive, (ii) the comprehensive strategy update recently prepared by a strategic consulting firm hired by the Company, (iii) the initiation of a significant restructuring of the Company s operations, and (iv) the status of two pending significant acquisitions. Based on these items and the transitional nature of our then-current business plans and strategy, our Board determined that it was not an appropriate time to explore a sale of the Company or to embark on any new significant strategic initiatives. Accordingly, at the direction of our Board, Mr. Harper conveyed the Company s lack of interest in a sale transaction to Sponsor A and Company A and discontinued further discussions with Emerson.

On June 25, 2008, Sponsor A and Company A sent our Board a letter acknowledging the Company s rejection of their proposal, but reiterating their interest in a transaction with the Company. In the letter, Sponsor A and Company A offered to acquire the Company for a price ranging from $24.00 to $27.00 per share in cash subject to certain conditions, including satisfactory completion of due diligence. The proposal was premised on a portion of the purchase price coming from the sale of one of the Company s divisions to Company A and further stated that Sponsor A expected to raise a modest amount of leverage from a third party debt provider in connection with the proposed transaction. Given Sponsor A and Company A s continuing interest in a transaction and receipt of a written proposal, we sought advice from a nationally recognized financial advisor in connection with Sponsor A and Company A s proposal and possible unsolicited approaches that we might receive from Sponsor A and Company A.

In June and July 2008, following receipt of Sponsor A and Company A s proposal letter, our management team continued to analyze and discuss our business plans and strategy. In addition, our Board of Directors held several meetings during this time, at which it further considered our business plans and strategy. Following these meetings, in July 2008 Mr. Harper sent a letter to Sponsor A and Company A explaining that our Board of Directors had met and further considered their proposal, but had unanimously determined that it was not in the best interests of the Company or its stockholders to pursue the proposed transaction.

On July 14, 2008, we announced the appointment of Michael J. Borman as our new Chief Executive Officer and a member of our Board of Directors. Mr. Harper remained Chairman of our Board.

After joining the Company, Mr. Borman began to analyze and update the Company s long-term strategic plan. In connection with the development of this plan, Mr. Borman identified and assessed several potential strategic alternatives, including a possible business combination with a strategic or financial buyer, the acquisition by the Company of one or more large industry participants, a strategy involving a series of smaller acquisitions by the Company, dispositions of certain business lines and a stand-alone plan that would involve a significant restructuring of our existing businesses and operations. We hired a strategic business consultant in January 2009 to assist Mr. Borman with this process.

In early 2009, a representative of Sponsor A made an introductory call to Mr. Borman. As a result of the call, on March 25, 2009, Messrs. Borman, Blankenship and Saracino met with the representative of Sponsor A. At the meeting, the representative of Sponsor A expressed interest in acquiring the Company s Management Systems business unit, but made no offer to acquire that unit or the Company. The parties did not discuss Company A s potential involvement in the transaction. After these discussions, we determined not to pursue further discussions with Sponsor A because we were not interested in exploring a sale of our Management Systems business unit apart from the rest of the Company and we did not believe it was likely that Sponsor A would have sufficient resources on its own to acquire the entire Company.

As part of his assessment of the Company s long-term strategic plan, Mr. Borman began to evaluate the viability of a transaction with a financial sponsor, including the adoption of an acquisition strategy funded in part by a financial sponsor. To this end, in early 2009 Mr. Borman

contacted a large financial sponsor, which we refer to as Sponsor B, that was active in the technology industry to determine Sponsor B s interest in partnering with the Company in a transaction to facilitate the adoption of an acquisition strategy. In March and April 2009, certain members of our management team corresponded and met with representatives of Sponsor B and exchanged data, including information regarding our strategic plan, with a focus on the anticipated direction of our technology. On May 5, 2009, Sponsor B made a presentation to representatives of the Company regarding a potential buyout transaction.

On May 7 and 8, 2009, at a regularly-scheduled meeting of our Board of Directors, the Board had extensive discussions with our management team regarding the Company s business plans. As part of these discussions, the Board discussed the conversations that had taken place with Sponsor B. In addition, at this meeting Mr. Harper reminded the Board of Emerson s previous interest in exploring strategic business opportunities to work with the Company. At the conclusion of this meeting, the Board of Directors authorized Mr. Harper to contact Mr. Farr to determine if Emerson continued to have any interest in exploring strategic opportunities with the Company, and authorized Mr. Borman to continue discussions with Sponsor B regarding ways in which Sponsor B could assist the Company with the execution of its business plan and long-term strategy.

On May 27, 2009, Mr. Harper contacted Mr. Farr and suggested that they restart the conversations they had ended nearly a year prior regarding strategic opportunities for Emerson and Avocent to work together. Mr. Farr agreed to meet with Mr. Harper. In anticipation of their upcoming meeting, Mr. Saracino sent a proposed confidentiality agreement, containing a standstill provision, to Emerson. The parties executed the Confidentiality Agreement on June 16, 2009.

In June 2009, our management team held strategy sessions in Sunrise and Delray Beach, Florida. In conjunction with these meetings, certain members of our management team met with representatives of Sponsor B. During the course of this meeting, representatives of Sponsor B confirmed that their interest in Avocent had evolved from that of financing the Company s acquisition strategy to viewing Avocent as a desirable acquisition target.

The next day, and distinct from, our meeting with Sponsor B, Mr. Farr and certain other Emerson executives traveled to Delray Beach to meet with our management team regarding the Company s strategic plans and direction. During this meeting, our corporate strategy team presented an overview of management s vision and strategy.

The following week, on June 29, 2009, two members of our corporate strategy team, along with the strategic business consultant hired in January 2009, met with representatives of Emerson at an Emerson facility in Columbus, Ohio. The purpose of the meeting was to explore further the information that our management team had presented to the Emerson team in Delray Beach. The group discussed our strategic plans, particularly our strategy around our software products, in both our Management Systems and LANDesk business units.

During July 2009, our strategic business consultant had a conversation with a representative of Emerson about hardware revenue opportunities of our Management Systems business unit, LANDesk discovery tools and our planned move to the Avocent Management Platform. Other Emerson representatives sought to better understand our product costs and the power supplies used in our products. At a higher level, Mr. Borman and Mr. Harper, on separate occasions, discussed the progress of the information exchange with Mr. Farr. Mr. Farr indicated to Mr. Harper that Emerson needed a few weeks to evaluate the data received thus far and to determine how Avocent might fit into the Emerson strategy.

During this time, consistent with our Board s instruction, our management team continued to explore the possibility of partnering with a financial sponsor to pursue an acquisition strategy. In late June 2009, a large national investment bank with which we had shared information regarding our strategic plans introduced members of our management team to representatives of a large financial sponsor active in the technology industry, which we refer to as Sponsor C.

On July 2,

2009, members of our management team met with representatives of Sponsor C, which at that time was considering an acquisition of Company A, in order to assess the possibility of acquiring certain assets from Sponsor C immediately following that acquisition of Company A. Later in July 2009, Sponsor C indicated that, rather than assist us in executing an acquisition strategy, it would prefer to assist our management in a buyout of the Company.

In mid-July 2009, Mr. Harper called Mr. Farr to inform him that our Board of Directors had a regular meeting scheduled for early August and that Mr. Harper wanted to take that opportunity to convey Emerson s interest in a possible strategic transaction.

From June through early August 2009, our management team, analyzing another possible strategic alternative, began to consider the possibility of making a significant acquisition to dramatically change the Company s strategic direction. Specifically, Mr. Borman and Mr. Blankenship contacted, and had several follow-up telephone conversations with, management of a privately-held software company to assess its interest level and the feasibility of a potential acquisition by Avocent. In addition, members of our management team had meetings with representatives from large national investment banks regarding possible acquisition candidates.

On August 5, 2009, Mr. Farr telephoned Mr. Harper to express Emerson s interest in acquiring the Company. Later that day, we received a written indication of interest from Emerson proposing that Emerson acquire all of the outstanding shares of our common stock for $21.50 per share (representing a 36% premium to the August 4, 2009 closing price and a 46% premium to the three-month average price) in cash, subject to due diligence, discussions with appropriate management personnel and completion of site visits.

Mr. Farr noted in his letter that Emerson s proposal was not subject to any financing condition and that Emerson had retained Greenhill & Co., LLC as its financial advisor and
Davis Polk & Wardwell LLP as its legal advisor.

During the regularly-scheduled meeting of our Board of Directors held on August 5 and 6, 2009, members of our senior management team presented to our Board of Directors, among other things, management s preliminary financial plan for 2010, 2011 and 2012. The Board also reviewed the Emerson indication of interest and discussed the potential interest of various financial sponsors in a strategic transaction with the Company. After careful consideration, the Board requested that management assemble certain additional information in order to better evaluate the Company s strategic alternatives. In addition, the Board authorized Mr. Harper to communicate to Emerson that the Company required additional time to assemble and evaluate such information before making a definitive determination about whether to pursue a transaction with Emerson. On August 8, 2009, Mr. Harper sent a letter to Mr. Farr, as directed by the Board.