

GRAFTECH INTERNATIONAL LTD
Form SC TO-T/A
August 11, 2015

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. 5)

GRAFTECH INTERNATIONAL LTD.
(Name of Subject Company (Issuer))
BCP IV GRAFTECH HOLDINGS LP
ATHENA ACQUISITION SUBSIDIARY INC.
its wholly-owned direct subsidiary
(Names of Filing Persons (Offerors))
BROOKFIELD CAPITAL PARTNERS LTD.
BROOKFIELD CAPITAL PARTNERS IV L.P.
(Names of Filing Persons (other person(s)))
Common Stock, Par Value \$0.01 Per Share
(Title of Class of Securities)

384313102

(Cusip Number of Class of Securities)

David Nowak

Managing Partner

Brookfield Place, 181 Bay Street, Suite 300

Toronto, Ontario MJ5 2T3

(416) 363-9491

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

With copies to:

Michael J. Aiello, Esq.

Jackie Cohen, Esq.

Weil, Gotshal & Manges LLP

767 Fifth Avenue

New York, NY 10153

(212) 310-8000

CALCULATION OF FILING FEE

Transaction Valuation*

\$704,729,817.53

Amount of Filing Fee**

\$81,889.60

- * Estimated solely for purposes of calculating the filing fee. This calculation is based on the offer to purchase all of the issued and outstanding shares of common stock, par value \$0.01 per share, of GrafTech International Ltd. (the Company), at a purchase price of \$5.05 per share in cash, without interest thereon and subject to any required tax withholding. The underlying value of the transaction was calculated based on the sum of: (i) 137,240,008 issued and outstanding shares of common stock of the Company, multiplied by \$5.05 per share; (ii) 524,283 shares of

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common stock of the Company underlying outstanding options with an exercise price that is less than \$5.05 per share, multiplied by \$0.81 per share (which is equal to the difference between \$5.05 and \$4.24, the exercise price of such options); and (iii) 2,226,358 shares of common stock of the Company underlying outstanding restricted stock units, multiplied by \$5.05 per share. The foregoing numbers of shares of common stock, options and restricted stock units have been provided by the issuer to the offeror and are as of the close of business on May 22, 2015, the most recent practicable date. The filing fee was determined by multiplying 0.000116200 by the proposed maximum aggregate value of the transaction of \$704,729,817.53.

** The filing fee was calculated in accordance with Rule 0-11 under the Securities Exchange Act of 1934, as amended, and Fee Rate Advisory No. 1 for Fiscal Year 2015, issued August 29, 2014, by multiplying the transaction value by 0.000116200.

x Check 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: \$81,889.60

Filing Party: BCP IV GrafTech
Holdings LP and Athena
Acquisition Subsidiary Inc.
Date Filed: May 26, 2014

Form or Registration No.: Schedule TO

.. 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
- x 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. ..

If applicable, check the appropriate box(es) below to designate the appropriate rule provision(s) relied upon:

- .. Rule 13e-4(i) (Cross-Border Issuer Tender Offer)
- .. Rule 14d-1(d) (Cross-Border Third-Party Tender Offer)

This Amendment No. 5 (this Amendment) amends and supplements the Tender Offer Statement on Schedule TO originally filed by BCP IV GrafTech Holdings LP, a Delaware limited partnership (Purchaser), and Athena Acquisition Subsidiary Inc., a Delaware corporation (Acquisition Sub) with the Securities and Exchange Commission on May 26, 2015 and subsequently amended by Amendment No. 4 to the Tender Offer Statement on Schedule TO, filed on July 29, 2015, Amendment No. 3 to the Tender Offer Statement on Schedule TO, filed on July 7, 2015, Amendment No. 2 to the Tender Offer Statement on Schedule TO, filed on July 6, 2015, and Amendment No. 1 to the Tender Offer Statement on Schedule TO, filed on June 18, 2015 (together with any subsequent amendments and supplements thereto, the Schedule TO). The Schedule TO relates to the offer by Purchaser to purchase all of the issued and outstanding shares of common stock, par value \$0.01 per share (the Shares), of GrafTech International Ltd., a Delaware corporation (the Company), at a purchase price of \$5.05 per Share in cash, without interest thereon and subject to any required tax withholding, upon the terms and subject to the conditions set forth in the Offer to Purchase, dated May 26, 2015 (as amended, the Offer to Purchase), a copy of which is attached as Exhibit (a)(1)(A) to the Schedule TO, and in the related Letter of Transmittal (the Letter of Transmittal), a copy of which is attached as Exhibit (a)(1)(B) to the Schedule TO, which, together with any amendments or supplements thereto, collectively constitute the Offer.

All information contained in the Offer to Purchase and the accompanying Letter of Transmittal, including all schedules thereto, is hereby incorporated herein by reference in response to Items 1 through 9 and Item 11 in the Schedule TO.

This Amendment is being filed to amend and supplement Items 5, 11 and 12 as reflected below.

Item 5. Past Contacts, Transactions, Negotiations and Agreements.

1. The subsection titled Investment Agreement of Special Factors Section 6 The Merger Agreement; Other Agreements is hereby amended and supplemented by adding the following sentence:

On August 11, 2015, the Company and Purchaser closed the transactions contemplated by the Investment Agreement and the Company issued and sold to Purchaser 136,616 shares of Series A Preferred Shares and 13,384 Series B Preferred Stock in accordance with the terms of the Investment Agreement.

2. The subsection titled Series A Preferred Stock Certificate of Designation; Series B Preferred Stock Certificate of Designation of Special Factors Section 6 The Merger Agreement; Other Agreements is hereby amended and supplemented by adding the following sentence:

On August 11, 2015, the Company and Purchaser closed the transactions contemplated by the Investment Agreement and the Company's Board of Directors adopted the Certificates of Designation in substantially the form contained in the Investment Agreement.

3. The subsection titled Stockholder Rights Agreement of Special Factors Section 6 The Merger Agreement; Other Agreements is hereby amended and supplemented by adding the following sentence:

On August 11, 2015, the Company and Purchaser closed the transactions contemplated by the Investment Agreement and the Company and Purchaser executed the Stockholder Rights Agreement substantially in the form contained in the Investment Agreement.

4. The subsection titled Registration Rights Agreement of Special Factors Section 6 The Merger Agreement; Other Agreements is hereby amended and supplemented by adding the following sentence:

On August 11, 2015, the Company and Purchaser closed the transactions contemplated by the Investment Agreement and the Company and Purchaser executed the Registration Rights Agreement substantially in the form contained in the Investment Agreement.

Item 11. Additional Information.

1. The subsection titled "Committee on Foreign Investment in the United States" of The Tender Offer "Section 12 Certain Legal Matters; Regulatory Approvals" is hereby amended and supplemented by adding the following sentence:

On August 10, 2015, the Company and Purchaser received notice from CFIUS that it had completed its investigation and CFIUS had concluded that there are no unresolved national security concerns relating to the transaction contemplated by the Investment Agreement. Since CFIUS determined that the transaction contemplated by the Investment Agreement is subject to Exon-Florio and concluded that there are no unresolved national security concerns in connection with the Investment Agreement, satisfaction of the CFIUS Clearance Condition is not required for consummation of the Offer or the Merger.

Item 12.

Item 12 of the Schedule TO is hereby amended and supplemented as follows:

Index No.

(a)(5)(L)	Press Release issued by BCP IV GrafTech Holdings LP and Athena Acquisition Subsidiary Inc. on August 11, 2015.
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SIGNATURES

After due inquiry and to the best knowledge and belief of the undersigned, each of the undersigned certifies that the information set forth in this statement is true, complete and correct.

Date: August 11, 2015

BCP IV GRAFTECH HOLDINGS LP

By: BPE IV (Non-Cdn) GP LP,
its general partner

By: Brookfield Capital Partners Ltd.,
its general partner

By: /s/ David Nowak
David Nowak
Managing Partner

By: /s/ J. Peter Gordon
J. Peter Gordon
Managing Partner

ATHENA ACQUISITION SUBSIDIARY INC.

By: /s/ David Neiman

Name: David Neiman
Title: Senior Vice President

BROOKFIELD CAPITAL PARTNERS LTD.

By: /s/ David Nowak
Name: David Nowak
Title: Managing Partner

By: /s/ Peter Gordon
Name: Peter Gordon
Title: Managing Partner

BROOKFIELD CAPITAL PARTNERS IV L.P.

Brookfield Capital Partners IV GP,
By: Ltd.,
its general partner

By: /s/ David Nowak
David Nowak
Managing Partner

By: /s/ J. Peter Gordon
J. Peter Gordon
Managing Partner

EXHIBIT INDEX

Exhibit No.	Description
(a)(1)(A)	Offer to Purchase dated May 26, 2015.*
(a)(1)(B)	Letter of Transmittal (including IRS Form W-9).*
(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)	Summary Advertisement as published in the Wall Street Journal on May 26, 2015.*
(b)	Not applicable.
(d)(1)	Agreement and Plan of Merger, dated as of May 17, 2015, by and among BCP IV GrafTech Holdings LP, Athena Acquisition Subsidiary Inc. and GrafTech International Ltd. (incorporated by reference to Exhibit 2.1 to the Current Report on Form 8-K filed by GrafTech International Ltd. with the Securities and Exchange Commission on May 18, 2015).
(d)(2)	Tender and Support Agreement, dated as of May 17, 2015, by and among BCP IV GrafTech Holdings LP, Athena Acquisition Subsidiary Inc. and Nathan Milikowsky and certain of his affiliates (incorporated by reference to Exhibit 10.2 to the Current Report on Form 8-K filed by GrafTech International Ltd. with the Securities and Exchange Commission on May 18, 2015).
(d)(3)	Confidentiality Agreement, dated as of March 20, 2015, by and between Brookfield Capital Partners LLC and GrafTech International Ltd.*
(d)(4)	Investment Agreement, dated as of May 4, 2015, by and between GrafTech International Ltd. and BCP IV Holdings LP (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K filed by GrafTech International Ltd. with the Securities and Exchange Commission on May 4, 2015).
(d)(5)	Limited Guarantee, dated as of May 4, 2015, by and between Brookfield Capital Partners IV L.P. and GrafTech International Ltd. (incorporated by reference to Exhibit 10.2 to the Current Report on Form 8-K filed by GrafTech International Ltd. with the Securities and Exchange Commission on May 4, 2015).
(d)(6)	Limited Guarantee, dated as of May 17, 2015, by and between Brookfield Capital Partners IV L.P. and GrafTech International Ltd. (incorporated by reference to Exhibit 10.1 to the Current Report on Form 8-K filed by GrafTech International Ltd. with the Securities and Exchange Commission on May 17, 2015).
(d)(7)	First Amendment, dated as of July 6, 2015, to Agreement and Plan of Merger, dated as of May 17, 2015, by and among BCP IV GrafTech Holdings LP, Athena Acquisition Subsidiary Inc. and GrafTech International Ltd. (incorporated by reference to Exhibit 2.1 to the Current Report on Form 8-K filed by the Company on July 6, 2015).
(g)	Not applicable.
(h)	Not applicable.
(a)(5)(A)	Complaint filed by Travis J. Kelleher, individually and on behalf of all others similarly situated, on May 22, 2015, in the Court of Common Pleas of the State of Ohio, Cuyahoga County.**

- (a)(5)(B) Amended Complaint filed by Travis J. Kelleher, individually and on behalf of all others similarly situated, on June 12, 2015, in the Court of Common Pleas of the State of Ohio, Cuyahoga County.**
- (a)(5)(C) Complaint filed by David Widlewski, individually and on behalf of all others similarly situated, on June 2, 2015, in the Court of Chancery of the State of Delaware.**
- (a)(5)(D) Complaint filed by Walter Watson, individually and on behalf of all others similarly situated, on June 4, 2015, in the Court of Chancery of the State of Delaware.**
- (a)(5)(E) Complaint filed by Cyhyoung Park, individually and on behalf of all others similarly situated, on June 9, 2015, in the Court of Chancery of the State of Delaware.**
- (a)(5)(F) Complaint filed by Charles Daeda, individually and on behalf of all others similarly situated, on June 15, 2015, in the Court of Chancery of the State of Delaware.**
- (a)(5)(G) Complaint filed by Abraham Grinberger, individually and on behalf of all others similarly situated, on June 16, 2015, in the Court of Chancery of the State of Delaware.**
- (a)(5)(H) Press Release issued by BCP IV GrafTech Holdings LP and Athena Acquisition Subsidiary Inc. on July 6, 2015, announcing the extension of the Offer. ***
- (a)(5)(I) Complaint filed by Bruce Wells, individually and on behalf of all others similarly situated, on June 17, 2015, in the Court of Chancery of the State of Delaware. ***
- (a)(5)(J) Complaint filed by Mark O Neil and Adoracion Guerrero, individually and on behalf of all others similarly situated, on June 29, 2015, in the Court of Common Pleas of the State of Ohio, Cuyahoga County. ***
- (a)(5)(K) Press Release issued by BCP IV GrafTech Holdings LP and Athena Acquisition Subsidiary Inc. on July 29, 2015, announcing the extension of the Offer. ****
- (a)(5)(L) Press Release issued by BCP IV GrafTech Holdings LP and Athena Acquisition Subsidiary Inc. on August 11, 2015.

* Previously filed with the Tender Offer Statement on Schedule TO with the Securities and Exchange Commission on May 26, 2015.

** Previously filed with Amendment No.1 to the Schedule TO with the Securities and Exchange Commission on June 18, 2015.

*** Previously filed with Amendment No.2 to the Schedule TO with the Securities and Exchange Commission on July 6, 2015.

**** Previously filed with Amendment No.4 to the Schedule TO with the Securities and Exchange Commission on July 29, 2015.