

SEMITOOOL INC  
Form SC TO-T/A  
November 24, 2009

# **SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

## **SCHEDULE TO**

**(Amendment No. 1)**

**(Rule 14d-100)**

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

**of the Securities Exchange Act of 1934**

**Semitool, Inc.**

**(Name of Subject Company (Issuer))**

**Jupiter Acquisition Sub, Inc. (Offeror)**

**Applied Materials, Inc. (Parent of Offeror)**

**(Names of Filing Persons)**

**COMMON STOCK, NO PAR VALUE PER SHARE**

**(Title of Class of Securities)**

**816909105**

(CUSIP Number of Class of Securities)

**Joseph J. Sweeney, Esq.**

**Senior Vice President, General Counsel**

**and Corporate Secretary**

**Applied Materials, Inc.**

**3050 Bowers Avenue**

**P.O. Box 58039**

**Santa Clara, California 95052-8039**

**(408) 727-5555**

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

and communications on behalf of filing persons)

*With a copy to:*

**Keith A. Flaum, Esq.**

**Lorenzo Borgogni, Esq.**

**Dewey & LeBoeuf LLP**

**1950 University Avenue, Suite 500**

**East Palo Alto, CA 92612**

**(650) 845-7000**

**CALCULATION OF FILING FEE**

Transaction Valuation\*: \$373,489,952

Amount of Filing Fee\*\*: \$20,841

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- \* Estimated solely for the purpose of calculating the registration fee in accordance with the Securities Exchange Act of 1934, as amended (the Exchange Act ), based on the product of (i) \$11.00 (i.e. the tender offer price) and (ii) 33,953,632, the estimated maximum number of shares of Semitool common stock to be acquired in the tender offer (which number is composed of 32,751,356 shares of Semitool common stock outstanding as of November 16, 2009, 1,192,226 shares of Semitool common stock issuable upon the exercise of outstanding options having an exercise price of less than \$11.00 and 10,050 shares of Semitool common stock subject to restricted stock units).
- \*\* The amount of the filing fee calculated in accordance with the Exchange Act, equals \$55.80 for each \$1,000,000 of value. The filing fee was calculated in accordance with Rule 0-11(d) under the Exchange Act and Fee Rate Advisory #3 for fiscal year 2010, issued October 30, 2009.
  
- 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: \$ 20,841  
Filing Party: Applied Materials, Inc. and Jupiter Acquisition Sub, Inc.

Form or registration no.: Schedule TO-T  
Date Filed: November 19, 2009

.. 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: ..

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## INTRODUCTORY STATEMENT

This Amendment No. 1 (this Amendment) amends and supplements the Tender Offer Statement on Schedule TO (which, together with any amendments and supplements thereto, collectively constitute the Schedule TO) that was originally filed with the Securities and Exchange Commission (the SEC) on November 19, 2009 by (i) Jupiter Acquisition Sub, Inc., a Montana corporation (Acquisition Sub) and a wholly-owned subsidiary of Applied Materials, Inc., a Delaware corporation (Applied), and (ii) Applied. The Schedule TO relates to the purchase of all of the outstanding shares of common stock, no par value per share, of Semitool, Inc., at a purchase price of \$11.00 per share, net to the seller in cash, without interest thereon and less any required withholding tax, upon the terms and subject to the conditions set forth in the Offer to Purchase, dated November 19, 2009 (the Offer to Purchase), and in the related Letter of Transmittal (which, together with the Offer to Purchase and any amendments or supplements thereto, collectively constitute the Offer), copies of which were filed with the Schedule TO as Exhibits (a)(1) and (a)(2) thereto, respectively. This Amendment is being filed on behalf of Acquisition Sub and Applied. The information set forth in the Offer to Purchase and the related Letter of Transmittal is hereby expressly incorporated by reference in answer to Items 1 through 9 and 11 of this Amendment, and is amended and supplemented by the information specifically provided herein.

Capitalized terms used and not defined in this Amendment have the meanings assigned to such terms in the Offer to Purchase.

## ITEM 11. ADDITIONAL INFORMATION.

Item 11 of the Schedule TO is amended and supplemented by amending and supplementing the information set forth in Section 14 (Certain Legal Matters) of the Offer to Purchase as follows:

*The following paragraph replaces the first paragraph under the caption Foreign Approvals on page 50:*

Under German merger control law, the purchase of shares of Semitool common stock in the Offer may not be completed until the expiration of a one month waiting period following the Federal Cartel Office's (the FCO) receipt of a complete filing by Applied and no decision of the FCO to enter into an in-depth investigation (Hauptprüfverfahren) has been passed or a clearance has been obtained. Applied filed a merger control notification with the FCO on November 18, 2009. Accordingly, the required waiting period with respect to the Offer and the Merger is expected to expire at 5:59 p.m., New York City time, on December 18, 2009 unless clearance has been obtained earlier or the FCO has entered into an in-depth investigation prior to that time. If the latter is the case, the waiting period with respect to the Offer and the Merger will be extended until the expiration of four months following the FCO's receipt of the complete notification, unless clearance has been obtained. After expiration of the four month waiting period, the waiting period can be extended only with the consent of Applied and Semitool.

*The following text is added after the fifth full paragraph on page 50:*

### *Litigation*

On or about November 19, 2009, a purported class action lawsuit related to the Offer and the Merger was filed in the Montana Eleventh Judicial District Court, County of Flathead, captioned *Stationary Engineers Local 39 Pension Trust Fund vs. Semitool, Inc., et al.* (Cause No. DV-09-1461(B)). The action, brought by Stationary Engineers Local 39 Pension Trust Fund, a purported shareholder of Semitool, seeks certification of a class of all holders of Semitool common stock (except the defendants and their affiliates) and names Semitool, each of Semitool's directors, Applied and Acquisition Sub as defendants. The lawsuit alleges, among other things, that the Offer and the Merger are the result of an unfair process, that the \$11.00 per share price is unfair, and that Semitool's directors breached their fiduciary duties by, among other things: (i) failing to maximize shareholder value; (ii) securing benefits for certain defendants at the expense or to the detriment of Semitool's public shareholders; (iii) discouraging and/or inhibiting alternative offers to purchase control of Semitool or its assets; and (iv) failing to disclose material non-public information. In addition, the lawsuit alleges that Applied aided and abetted such alleged breaches of fiduciary duties by Semitool's directors. Based on these allegations, the lawsuit seeks, among other relief, injunctive relief enjoining the defendants from consummating the Offer and the Merger and damages. It also purports to seek recovery of the costs of the action, including reasonable attorneys and experts' fees.

On November 23, 2009, plaintiff filed a motion for expedited proceedings requesting, among other things, that the Court schedule a hearing on plaintiff's proposed motion for a preliminary injunction no later than December 15, 2009. While it has not yet been served in the action, Applied believes the claims alleged against it in the complaint to be without merit and intends to defend against them vigorously. In addition, Semitool has informed us that it also believes the allegations against it to be without merit, and that it intends to defend against the claims vigorously. The foregoing description of this lawsuit is qualified in its entirety by reference to the complaint related thereto, a copy of which is filed as Exhibit (a)(10) to the Schedule TO and is incorporated herein by reference.

## ITEM 12. EXHIBITS.

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Item 12 of the Schedule TO is hereby amended and supplemented by adding thereto the following exhibit:

- (a)(10) Complaint captioned *Stationary Engineers Local 39 Pension Trust Fund vs. Semitool, Inc., et al.* (Cause No. DV-09-1461(B)) filed on November 19, 2009, in the Montana Eleventh Judicial District Court, County of Flathead.

**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.

JUPITER ACQUISITION SUB, INC.

By: /s/ THOMAS T. EDMAN  
Name: **Thomas T. Edman**  
Title: **President**

APPLIED MATERIALS, INC.

By: /s/ JOSEPH J. SWEENEY  
Name: **Joseph J. Sweeney**  
Title: **Senior Vice President, General Counsel**

**and Corporate Secretary**

Dated: November 24, 2009

**EXHIBIT INDEX**

<b>Exhibit No.</b>	<b>Description</b>
(a)(1)	Offer to Purchase, dated November 19, 2009.*
(a)(2)	Form of Letter of Transmittal.*
(a)(3)	Form of Notice of Guaranteed Delivery.*
(a)(4)	Form of Letter from the Information Agent to Brokers, Dealers, Banks, Trust Companies and Other Nominees.*
(a)(5)	Form of Letter to Clients for use by Brokers, Dealers, Banks, Trust Companies and Other Nominees.*
(a)(6)	Instructions for Certification of Taxpayer Identification Number on Substitute Form W-9.*
(a)(7)	Joint Press Release issued by Applied Materials, Inc. and Semitool, Inc. on November 17, 2009 (incorporated by reference to the Form 8-K filed by Applied Materials, Inc. with the Securities and Exchange Commission on November 17, 2009).
(a)(8)	Summary Newspaper Advertisement published in The Wall Street Journal on November 19, 2009.*
(a)(9)	Press Release issued by Applied Materials, Inc. on November 19, 2009.*
(a)(10)	Complaint captioned <i>Stationary Engineers Local 39 Pension Trust Fund vs. Semitool, Inc., et al.</i> (Cause No. DV-09-1461(B)) filed on November 19, 2009, in the Montana Eleventh Judicial District Court, County of Flathead.
(b)	Not applicable.
(d)(1)	Agreement and Plan of Merger, dated as of November 16, 2009, by and among Applied Materials, Inc., Jupiter Acquisition Sub, Inc. and Semitool, Inc.*
(d)(2)	Noncompetition Agreement, dated as of November 16, 2009, by Larry E. Murphy in favor of and for the benefit of Applied Materials, Inc.*
(d)(3)	Noncompetition Agreement dated as of November 16, 2009, by Raymon F. Thompson in favor of and for the benefit of Applied Materials, Inc.*
(d)(4)	Form of Tender and Support Agreement, dated as of November 16, 2009, by and among Applied Materials, Inc., Jupiter Acquisition Sub, Inc. and each of the following: Raymon F. Thompson and Ladiene A. Thompson (and/or related trusts); Howard A. Bateman; Donald P. Bauman; Timothy C. Dodkin; Daniel J. Eigeman; Charles P. Grenier; Steven C. Stahlberg; Steven R. Thompson; Larry E. Murphy; Larry A. Viano; James L. Right; Paul M. Sibley; Klaus Pfeifer and Richard C. Hegger.*
(d)(5)	Consulting Agreement, dated as of November 16, 2009, between Applied Materials, Inc. and Raymon F. Thompson.*
(d)(6)	Offer Letter, dated as of November 16, 2009, between Applied Materials, Inc. and Larry E. Murphy.*
(g)	Not applicable.
(h)	Not applicable.

\* Previously filed with the Schedule TO.