

AVOCENT CORP
Form DEF 14A
April 29, 2009

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

SCHEDULE 14A

Edgar Filing: AVOCENT CORP - Form DEF 14A

Proxy Statement Pursuant to Section 14(a) of
the Securities Exchange Act of 1934 (Amendment No.)

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Pursuant to §240.14a-12

Avocent Corporation
(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- No fee required.
 - Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.
 - (1) Title of each class of securities to which transaction applies:
 - (2) Aggregate number of securities to which transaction applies:
 - (3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):
 - (4) Proposed maximum aggregate value of transaction:
 - (5) Total fee paid:
 - Fee paid previously with preliminary materials.
 - Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.
 - (1) Amount Previously Paid:
 - (2) Form, Schedule or Registration Statement No.:
 - (3) Filing Party:
 - (4) Date Filed:
-

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

The 2009 Annual Meeting of Stockholders (the Annual Meeting) of Avocent Corporation, a Delaware corporation, will be held at our corporate headquarters and principal executive offices located at 4991 Corporate Drive, Huntsville, Alabama 35805, on Thursday, June 11, 2009, at 10:00 a.m. Central time, for the following purposes:

1. To elect Francis A. Dramis, Jr. as a Class III director to serve until the annual meeting of our stockholders in 2012;
2. To ratify the appointment of PricewaterhouseCoopers LLP as our independent auditors for the current fiscal year ending December 31, 2009;
3. To approve the amendment and restatement of the Avocent Corporation 2005 Equity Incentive Plan; and
4. To transact such other business as may properly come before the meeting, or any postponement or adjournment of the Annual Meeting.

Only stockholders of record at the close of business on April 23, 2009, are entitled to notice of, to attend, and to vote at, the 2009 Annual Meeting of Stockholders and any adjournment or postponement of this Annual Meeting. A list of these stockholders is kept at the office of our transfer agent, American Stock Transfer & Trust Company. All stockholders of record are cordially invited to attend the Annual Meeting, and a live webcast of the meeting will be available on Thursday, June 11, 2009, at 10:00 a.m. Central time on our website, www.Avocent.com. However, to assure your representation at the meeting, you are urged to mark, sign, and return the enclosed proxy card as promptly as possible in the postage prepaid envelope enclosed for that purpose. You may also be able to submit your proxy over the Internet or by telephone. For specific instructions, please refer to the information provided with your proxy card.

Any stockholder of record attending the meeting may vote in person even if he or she has returned a proxy.

By Order of the Board of Directors,

Samuel F. Saracino
Secretary

Edgar Filing: AVOCENT CORP - Form DEF 14A

Huntsville, Alabama

April 28, 2009

**YOUR VOTE IS VERY IMPORTANT. WHETHER OR NOT YOU PLAN TO ATTEND THE
MEETING, PLEASE SIGN, DATE, AND RETURN THE ENCLOSED PROXY AS
PROMPTLY AS POSSIBLE IN THE ENCLOSED, POSTAGE-PREPAID ENVELOPE.**

4991 Corporate Drive

Huntsville, Alabama 35805

PROXY STATEMENT

Annual Meeting of Stockholders

To be held on June 11, 2009

INFORMATION CONCERNING SOLICITATION AND VOTING

Date, Time, and Place

This Proxy Statement is furnished to the stockholders of Avocent Corporation, a Delaware corporation, in connection with the solicitation of proxies by our Board of Directors for use at the 2009 Annual Meeting of Stockholders (the Annual Meeting) to be held at our corporate headquarters and principal executive offices located at 4991 Corporate Drive, Huntsville, Alabama 35805, on Thursday, June 11, 2009, at 10:00 a.m. Central time, and any and all postponements or adjournments of this Annual Meeting, for the purposes set forth in this Proxy Statement and the accompanying Notice of Annual Meeting of Stockholders.

A live webcast of the Annual Meeting will be available at 10:00 a.m. Central time on Thursday, June 11, 2009, at www.Avocent.com. A replay of that webcast will be available on our website through August 11, 2009.

Edgar Filing: AVOCENT CORP - Form DEF 14A

These proxy solicitation materials were first mailed on or about May 5, 2009, to all stockholders entitled to vote at the Annual Meeting. In order to be counted, proxies submitted by telephone or the Internet must be received by 11:59 p.m., Central Time on June 10, 2009. Proxies submitted by mail must be received prior to the start of the Annual Meeting.

Purposes of the Annual Meeting

The purposes of the Annual Meeting are to:

- Elect Francis A. Dramis, Jr. as a Class III director to serve until the annual meeting of our stockholders in 2012;
- Ratify the appointment of PricewaterhouseCoopers LLP as our independent auditors for the current fiscal year ending December 31, 2009;
- Approve the amendment and restatement of the Avocent Corporation 2005 Equity Incentive Plan; and
- Transact such other business as may properly come before the Annual Meeting, or any postponement or adjournment of the Annual Meeting.

Revocability of Proxies

Any proxy given pursuant to this solicitation may be revoked by the person giving it at any time before its use by delivering to our corporate secretary or our transfer agent, American Stock Transfer & Trust Company, a written notice of revocation or a duly executed proxy bearing a later date or by attending the Annual Meeting and voting in person.

Record Date and Share Ownership

Stockholders of record at the close of business on April 23, 2009, the record date, are entitled to receive notice of, and to vote at, the Annual Meeting. On April 10, 2009, 44,267,582 shares of our common stock, and no shares of our preferred stock, were issued and outstanding, held of record by approximately 445 stockholders. For information regarding security ownership by principal stockholders and management, see the section below entitled, Security Ownership by Principal Stockholders and Management.

Voting and Solicitation; Quorum

Each share held as of the record date is entitled to one vote. A quorum for the transaction of business at the Annual Meeting requires the presence, in person or by proxy, of a majority of the votes entitled to vote.

The votes required to pass the proposals are as follows:

- For proposal 1, the election of directors, the nominee receiving the highest number of votes of the shares present in person or represented by proxy at the Annual Meeting and entitled to vote on the election of directors will be elected as directors. As a result, if you withhold your vote for a nominee, your vote will not affect the outcome of the election.
- For proposals 2 and 3, the affirmative vote of the majority of shares present in person or represented by proxy at the Annual Meeting and entitled to vote on the proposal is required in order to approve the item.

Abstentions and broker non-votes will be counted for the purpose of determining the presence or absence of a quorum for the transaction of business. However, broker non-votes will not be counted for the purpose of determining the number of shares entitled to vote with respect to a proposal on which the broker has expressly not voted. Thus, broker non-votes will not affect the outcome of the voting on a proposal that requires the affirmative vote of a majority of the shares present and entitled to vote. Abstentions will have the effect of a vote against the proposal that requires the affirmative vote of a majority of the shares present and entitled to vote.

Edgar Filing: AVOCENT CORP - Form DEF 14A

The solicitation of proxies will be conducted by mail, and we will bear all attendant costs. These costs will include the expense of preparing and mailing proxy solicitation materials for the Annual Meeting and reimbursements paid to brokerage firms and other persons representing beneficial owners of shares for their expenses in forwarding solicitation materials regarding the Annual Meeting to such beneficial owners. Certain of our directors, officers, and regular employees, without additional compensation, may also solicit proxies, personally or by telephone, email, or facsimile.

Stockholder Proposals for the Next Annual Meeting

Any stockholder proposal to be presented at our next annual meeting of stockholders must be received at our offices no later than January 5, 2010, in order to be considered for inclusion in our proxy materials for such meeting. Any such proposals must be submitted in writing, addressed to the attention of our corporate secretary at our principal executive offices, and must otherwise comply with our Bylaws and the requirements of Rule 14a-8 of the Securities Exchange Act of 1934, as amended.

Our Bylaws establish an advance notice procedure with regard to certain matters, including stockholder proposals not included in our Proxy Statement, to be brought before an annual meeting of stockholders. In general, nominations for the election of directors or proposals for other business may be made by the Board of Directors or by any stockholder of record at the time of giving notice and on the record date and who has delivered proper written notice to our corporate secretary not later than the 45th day nor earlier than the 75th day before the one-year anniversary of the date on which we first mailed our proxy materials or a notice of availability of proxy materials (whichever is earlier) for the preceding year's annual meeting. If no annual meeting was held in the previous year or if the date of the annual meeting is advanced by more than 30 days prior to or delayed by more than 60 days after the one-year anniversary of the date of the previous year's annual meeting, then notice by the stockholder to be timely must be so received by our secretary not earlier than the close of business on the 120th day prior to such annual meeting and not later than the close of business on the later of (i) the 90th day prior to such annual meeting, or (ii) the tenth day following the day on which public announcement of the date of such annual meeting is first made. All notices of proposals by stockholders, whether or not included in our proxy materials, should be sent to our corporate secretary at our principal executive offices.

Householding of Proxy Materials

We have adopted a procedure approved by the U.S. Securities and Exchange Commission called householding. Under this procedure, stockholders of record who have the same address and last name and do not participate in electronic delivery of proxy materials will receive only one set of our proxy materials unless one or more of these stockholders notifies us that they wish to continue receiving individual copies. We believe this will provide greater convenience for our stockholders, as well as cost savings for us, by reducing the number of duplicate documents that are sent to your home.

Stockholders who participate in householding will continue to receive separate proxy cards. Householding will not in any way affect your rights as a stockholder.

If you are eligible for householding and currently receive multiple copies of our proxy materials with other stockholders of record with whom you share an address or if you hold stock in more than one account, and in either case you wish to receive only a single copy of these documents for your household, please contact our corporate secretary at 11335 NE 122nd Way, Suite 140, Kirkland, Washington 98034, Attention: Corporate Secretary, or by telephone at (425) 861-5858.

If you participate in householding and wish to receive a separate copy of our Annual Report on Form 10-K or this Proxy Statement, or if you do not wish to participate in householding and prefer to receive separate copies of these documents in the future, please contact our corporate secretary at the address or telephone number indicated above and we will promptly deliver to you separate copies of these documents.

Beneficial stockholders can request information about householding from their banks, brokers, or other holders of record.

PROPOSAL ONE

ELECTION OF CLASS III DIRECTOR

Our Certificate of Incorporation provides that our Board of Directors is to be divided into three classes of directors, designated as Class I, Class II, and Class III. Our Board of Directors currently consists of eight members, with three members in each of Classes I and II and two members in Class III. Upon the expiration of the term of a class of directors, nominees for that class are elected to serve for a term of three years and until their respective successors have been elected and qualified. The current terms of the two Class III directors, Francis A. Dramis, Jr. and Stephen F. Thornton, expire upon the election and qualification of the directors to be elected at the Annual Meeting. Following the recommendation of our Nominating and Governance Committee, our Board of Directors has nominated Mr. Dramis for re-election to the Board of Directors at the Annual

Meeting, to serve until the annual meeting of stockholders to be held in 2012. Mr. Thornton was not re-nominated, and the Board of Directors reduced the number of directors to seven effective upon the expiration of Mr. Thornton's term of office on the date of the 2009 Annual Meeting of Stockholders. The terms of the Class I and Class II directors expire at the annual meetings of stockholders to be held in 2010 and 2011, respectively. Effective as of the 2009 Annual Meeting of Stockholders, our Board of Directors will consist of seven members, with three members in Class I, three members in Class II, and one member in Class III.

Unless otherwise directed, the persons named in the proxy intend to vote all proxies FOR the election of Mr. Dramis to the Board of Directors. Mr. Dramis has consented to serve as our director if elected. If, at the time of the Annual Meeting, Mr. Dramis is unable or declines to serve as a director, the discretionary authority provided in the enclosed proxy will be exercised to vote for a substitute candidate designated by the Board of Directors. The Board of Directors has no reason to believe that Mr. Dramis will be unable, or will decline, to serve as a director.

Set forth below is certain information furnished to us by the director nominee and by each of the incumbent directors.

Class I Directors

William H. McAleer, 58, has been one of our directors since July 2000. Since 1997, Mr. McAleer has been a Managing Director of Voyager Capital, a venture firm that provides funding to private information technology companies.

David P. Vieau, 59, has been one of our directors since April 2001. Since March 2002, Mr. Vieau has been the President and Chief Executive Officer of A123Systems, Inc., a privately-held company that develops advanced power technologies for power tools, transportation, and stationary power.

Doyle C. Weeks, 63, has been one of our directors since July 2000. Mr. Weeks has been our President and Chief Operating Officer since February 2005. Prior to that, he was our Executive Vice President of Group Operations and Business Development from July 2000 to January 2005.

Class II Directors

Michael J. Borman, 54, has been one of our directors and our Chief Executive Officer since July 2008. Prior to joining Avocent, Mr. Borman held several positions at IBM, including Vice President, Worldwide Sales, IBM Software, from January 2005 to July 2008, General Manager, i Series, from August 2004 to December 2004, and General Manager, Global Business Partners, from January 2003 to August 2004.

Harold D. Harry Copperman, 62, has been one of our directors since November 2002. Mr. Copperman is currently President and Chief Executive Officer of HDC Ventures, Inc., a management and investment group focusing on enterprise systems, software, and services, a position he has held since March 2002. Mr. Copperman is also a director of AXS-One Inc., a provider of records compliance management solutions, and ID Systems, Inc., a provider of RFID wireless solutions for tracking high-value assets.

Edwin L. Ed Harper, 64, has been one of our directors since July 2000. He was elected as our Lead Independent Director in April 2003 and as the Chairman of our Board of Directors in January 2008. He also served as our Interim Chief Executive Officer from April 2008 to July 2008. During a portion of 2007, Mr. Harper served as Interim Chief Executive Officer of Ditech Networks, Inc., a telecommunications equipment supplier. Since February 2005, Mr. Harper has served as Chief Executive Officer and Chairman of WhiteCell Software, Inc., a privately-held network security company. From March 2001 to January 2005, Mr. Harper was a consultant and private investor. Mr. Harper is also a director of Ditech Networks, Inc.

Class III Directors

Francis A. Fran Dramis, Jr., 61, has been one of our directors since November 2002. Mr. Dramis is

currently Chief Executive Officer of F. Dramis, LLC, a technology consulting company, a position he has held since February 2007. Prior to that, Mr. Dramis was Chief Information - E-Commerce & Security Officer for BellSouth Corporation, a telecommunications company based in Atlanta, Georgia. Mr. Dramis held a variety of positions at BellSouth, which he joined in December 1998. Mr. Dramis is also a director of Ditech Networks, Inc., a telecommunications equipment supplier, and Netezza Corporation, a provider of data warehouse and analytic appliances.

Stephen F. Thornton, 69, has been a member of our Board of Directors since July 2000, and was Chairman of our Board of Directors from July 2000 to April 2003. Mr. Thornton was our President and Chief Executive Officer from July 2000 to March 2002.

Vote Required and Board of Directors Recommendation

The nominee receiving the greatest number of votes of the shares present and entitled to vote at the annual meeting will be elected as director.

The Board of Directors recommends that stockholders vote FOR the election of Mr. Dramis to the Board of Directors.

PROPOSAL TWO

TO RATIFY THE APPOINTMENT OF PRICEWATERHOUSECOOPERS LLP AS

OUR INDEPENDENT AUDITORS FOR THE YEAR ENDED DECEMBER 31, 2009

Our Audit Committee has appointed the firm of PricewaterhouseCoopers LLP to conduct an audit in accordance with generally accepted auditing standards of our financial statements for the fiscal year ending December 31, 2009. A representative of that firm is expected to be present at the annual meeting to respond to appropriate questions and will be given an opportunity to make a statement if he or she so desires. The Audit Committee has discussed with PricewaterhouseCoopers its independence from us and our management, and this discussion included consideration of the matters in the written disclosures required by the Independence Standards Board and the potential impact that non-audit services provided to us by PricewaterhouseCoopers could have on its independence. This appointment is being submitted for ratification at the meeting. If not ratified, the Audit Committee will reconsider this appointment, although the Audit Committee will not be required to appoint different independent auditors. PricewaterhouseCoopers has served as our independent auditors since July 2000.

Fees Billed to Us by PricewaterhouseCoopers during Fiscal 2008

Audit Fees

Edgar Filing: AVOCENT CORP - Form DEF 14A

Fees and related expenses for the 2008 and 2007 fiscal year audits by PricewaterhouseCoopers of our annual financial statements and its review of the financial statements included in our quarterly reports on Form 10-Q totaled \$1,422,061 and \$1,510,204, respectively.

Audit-Related Fees

For the years 2008 and 2007, PricewaterhouseCoopers billed us \$215,597 and \$7,085, respectively, for its services related to acquisitions, consultations on accounting issues, and other audit-related matters.

Tax Fees

For both the years 2008 and 2007, PricewaterhouseCoopers billed us \$0 for professional services related to preparation of our tax returns and \$45,000 and \$331,074, respectively, for tax consulting.

All Other Fees

For the years 2008 and 2007, PricewaterhouseCoopers billed us \$51,551 and \$76,252, respectively, for other services.

Policy on Audit Committee Pre-Approval of Fees

In its pre-approval policy, the Audit Committee has authorized our Chief Executive Officer or our Chief Financial Officer to engage the services of PricewaterhouseCoopers with respect to the following services:

- audit related services that are outside the scope of our annual audit and generally are (i) required on a project, recurring, or one-time basis, (ii) requested by one of our business partners (e.g., a review or audit of royalty payments), or (iii) needed by us to assess the impact of a proposed accounting standard;
- audits of the annual statutory financial statements required by the non-US governmental agencies for our overseas subsidiaries;
- accounting services related to potential or actual acquisitions or investment transactions that if consummated would be reflected in our financial results or tax returns (this does not include any due diligence engagements, which must be pre-approved by the Audit Committee separately); and
- other accounting and tax services that are expected to result in fees of less than \$25,000 per project, such as routine consultations on accounting and/or tax treatments for contemplated transactions.

Notwithstanding this delegation of pre-approval authority, the Audit Committee is informed of all audit and non-related services performed by PricewaterhouseCoopers. The foregoing pre-approval authority relates only to engagements where the fees for services in connection with any such engagement are expected to be less than \$25,000. The Audit Committee has also delegated to its chairman the authority to pre-approve or disapprove any of the engagements as well as any engagements not listed above where the fees for services are expected to be between \$25,000 and \$100,000 per project. Any such decisions by the chairman must be presented to the Audit Committee at the next scheduled meeting. Any engagements where the fees for services are expected to exceed \$100,000 per project must be pre-approved by a vote of the Audit Committee. The Audit Committee has considered the non-audit services provided to us by PricewaterhouseCoopers and has determined that the provision of such services is compatible with PricewaterhouseCoopers' independence.

Vote Required and Board of Directors Recommendation

Edgar Filing: AVOCENT CORP - Form DEF 14A

The affirmative vote of the holders of a majority of the shares of our common stock present or represented and voting at the Annual Meeting will be required to approve this proposal.

The Audit Committee has approved the appointment of PricewaterhouseCoopers LLP as our independent auditors for the fiscal year ending December 31, 2009, and the Board of Directors recommends that stockholders vote FOR ratification of this appointment.

PROPOSAL THREE

**APPROVAL OF THE AMENDED AND RESTATED
AVOCENT CORPORATION 2005 EQUITY INCENTIVE PLAN**

Summary of Proposal

Our 2005 Equity Incentive Plan (the 2005 Plan) was adopted by our Board of Directors and

approved by the stockholders in 2005. The purposes of the 2005 Plan are to attract and retain the best available personnel for positions of substantial responsibility, to provide additional incentive to our directors, employees, and consultants, and to promote the success of our business. To meet these purposes, we are seeking approval of the amended and restated 2005 Plan in order to:

- Increase the shares available for awards under the 2005 Plan by 4,300,000;
- Revise the full value provision in the 2005 Plan from 2:1 to 1.5:1; and
- Ensure compliance of the 2005 Plan with Internal Revenue Code Section 162(m).

As of April 10, 2009, a total of 1,198,097 shares of our common stock is presently available for awards under the 2005 Plan, but because we must use these shares at the rate of two-for-one for our grants of restricted stock units and performance share awards, we effectively have the ability to award only 599,049 restricted stock units or performance shares. As of April 10, 2009, option awards for 130,493 shares had been exercised under the 2005 Plan, and there were option awards outstanding to purchase an aggregate of 244,180 shares at a weighted average exercise price of \$27.54 per share. In addition, there were 1,837,451 shares outstanding pursuant to awards of restricted stock units.

The Board of Directors believes that the number of shares remaining available for awards under the 2005 Plan is insufficient to satisfy the purposes of the 2005 Plan unless additional shares are authorized. Accordingly, on April 14, 2009, our Board of Directors approved, subject to the approval of stockholders at the Annual Meeting, two amendments to the 2005 Plan. The first amendment would increase by 4,300,000 the number of shares that may be awarded under the 2005 Plan, bringing the total number of shares approved for issuance under the 2005 Plan to 9,050,000 shares from the 4,750,000 shares previously approved. The second amendment would revise the rate at which awards other than awards of stock options or stock appreciation rights reduce the pool of available shares under the 2005 Plan, reducing this rate from 2:1 to 1.5:1. Our 2008 Inducement Equity Incentive Plan also currently provides for a 2:1 utilization rate for awards other than awards of stock options or stock appreciation rights. Lastly, we are seeking approval of the material terms of the 2005 Plan, as amended and restated, in order to enable us to grant certain awards under the 2005 Plan that may qualify as performance-based compensation for purposes of Section 162(m) of the Internal Revenue Code of 1986, as amended (the Code).

Amended and Restated 2005 Plan Approval

We strongly believe that the amendment to our 2005 Plan for the reservation of additional shares is essential to our continued success. Our Board of Directors and management believe that equity awards motivate high levels of performance, align the interests of service providers and stockholders by giving employees the perspective of an owner with an equity stake, and provide an effective means of recognizing service provider contributions to our success. Our Board and management believe that equity awards are of great value in recruiting and retaining personnel who help us meet our goals, as well as rewarding and encouraging current service providers. With our growth and our acquisitions, we have many new employees, and our Board and management desire to provide equity incentives for our employees, thus aligning their interests with our stockholders. Our Board and management believe that the ability to grant equity awards will be important to our future success.

Edgar Filing: AVOCENT CORP - Form DEF 14A

As amended and restated by our Board of Directors, the terms of our 2005 Plan specify that the pool of shares available for issuance under the 2005 Plan are reduced at a one and one-half-for-one rate for every award other than an award of stock options or stock appreciation rights. While this rule does not apply to stock option awards, our Compensation Committee and Board of Directors have concluded (after a comprehensive review of our incentive compensation programs with independent compensation consultants) that future awards will likely consist of restricted stock, restricted stock units, and performance shares rather than stock options. Our current pool of shares available is only 1,198,097. As a result, our Board and

management we believe we need to increase the number of available shares to meet our future needs. If the amended and restated 2005 Plan is approved, we will have approximately 5,498,097 shares of our common stock available for awards, but effectively, we will only be able to make approximately 3,665,398 awards of restricted stock, performance shares, or restricted stock units under the 2005 Plan.

As of April 10, 2009, there were approximately 1,800 employees (including officers) and six non-employee members of our Board of Directors eligible to participate in the 2005 Plan.

Vote Required and Board of Directors Recommendation

The affirmative vote of the holders of a majority of the shares of our common stock present or represented and voting at the annual meeting will be required to approve this proposal.

THE BOARD OF DIRECTORS RECOMMENDS THAT STOCKHOLDERS VOTE FOR THE APPROVAL OF THE AMENDED AND RESTATED 2005 PLAN.

Our executive officers and members of our Board have an interest in this proposal as they may receive awards under the amended and restated 2005 Plan. Future benefits under the amended and restated 2005 Plan are not determinable at this time.

Amended and Restated 2005 Plan Summary

The following paragraphs provide a summary of the principal features of the 2005 Plan as amended and restated (the Amended Plan) and its operation. The Amended Plan is set forth in its entirety as Appendix A to this Proxy Statement. The following summary is qualified in its entirety by reference to the Amended Plan.

Eligibility. Options, restricted stock, restricted stock units, stock appreciation rights, performance shares, performance units, deferred stock units, and dividend equivalents may be granted under the Amended Plan. Options granted under the Amended Plan may be either incentive stock options, as defined in Section 422 of the Code, or nonstatutory stock options. Nonstatutory stock options, restricted stock, restricted stock units, performance shares, performance units, stock appreciation rights, deferred stock units, and dividend equivalents may be granted under the Amended Plan to our directors, employees, or consultants. Incentive stock options may be granted only to our employees. The Administrator of the Amended Plan (as defined below), in its discretion, selects the person(s) to whom options, restricted stock, restricted stock units, stock appreciation rights, performance shares, performance units, deferred stock units, and dividend equivalents (collectively, Awards) may be granted, the time or times at which Awards are granted, and the number of shares subject to each such Award.

Code Section 162(m) Annual Limitations. The Amended Plan provides that no person(s) may be granted, in any fiscal year, options or stock appreciation rights to purchase more than 400,000 shares of common stock; provided, however, the limit will be 1,200,000 shares for a person's first fiscal year of service with us. No more than 200,000 shares of restricted stock, restricted stock units, or performance shares (which may

Edgar Filing: AVOCENT CORP - Form DEF 14A

include related dividend equivalent grants) may be granted to a person in any fiscal year; provided, however, the limit will be 600,000 shares for a person's first fiscal year of service with us. In addition, no person(s) may receive performance units, in any fiscal year, having an initial value greater than \$1,000,000; provided, however, that the limit will be \$3,000,000 for such person's first fiscal year of service with us.

Shares Available For Issuance. Upon approval of the Amended Plan by stockholders, a total of 5,498,097 shares of common stock will be available for Awards under the Amended Plan, plus any shares subject to any outstanding options under our current stock options plans that subsequently expire unexercised. As noted above, any shares subject to awards other than awards of stock options or stock appreciation rights will be counted against the authorized share reserve as one and one-half shares for every one share subject to the Award, and if any such shares are returned to the Amended Plan, such shares will be

counted as one and one-half shares. If an Award expires or becomes unexercisable without having been exercised in full (or, with respect to restricted stock, performance shares, or restricted stock units, is forfeited to or repurchased by us), the unpurchased shares (or, for Awards other than options and stock appreciation rights, the forfeited or repurchased shares) will become available for future Awards. With respect to stock appreciation rights, shares issued pursuant to a stock appreciation right, as well as the shares withheld to pay the exercise price, will not be available under the Amended Plan for future Awards, and from and after the effective date of the Amended Plan, shares reserved for issuance upon grant of stock appreciation rights shall not become available for issuance under the Amended Plan to the extent the number of reserved shares exceeds the number of shares actually issued upon exercise of the stock appreciation rights. Shares of restricted stock, performance shares, or restricted stock units that are repurchased by us at the fair market value on the date of the original Award, or are forfeited to us, will become available for future grant under the Amended Plan. Shares used to pay the exercise price of an option will not become available for future Awards, and shares used to satisfy tax withholding obligations will also not become available for future Awards under the Amended Plan. To the extent an Award under the Amended Plan is paid out in cash rather than stock, such cash payment will not reduce the number of shares available for issuance under the Amended Plan. Any payout of dividend equivalents or performance units, because they are payable only in cash, will not reduce the number of shares available for issuance under the Amended Plan. Conversely, any forfeiture of dividend equivalents or performance units will not increase the number of shares available for issuance under the Amended Plan.

Administration. The Amended Plan may generally be administered by the Board or a committee appointed by the Board (as applicable, the Administrator). In the case of Awards intended to qualify as performance-based compensation within the meaning of Section 162(m) of the Code, the committee will consist of two or more outside directors within the meaning of Section 162(m).

Terms and Conditions of Options. Each option will be evidenced by a stock option agreement between us and the optionee, and is subject to the following additional terms and conditions:

Exercise Price. The Administrator determines the exercise price of options at the time the options are granted. The exercise price of a stock option may not be less than 100% of the fair market value of our common stock on the date such option is granted; provided, however, the exercise price of an incentive stock option granted to a 10% stockholder may not be less than 110% of the fair market value of our common stock on the date such option is granted. The fair market value of our common stock is generally determined with reference to the closing sale price for our common stock (or the closing bid if no sales were reported) on the date the option is granted.

Exercise of Option; Form of Consideration. The Administrator determines when options become exercisable and may, in its discretion, accelerate the vesting of any outstanding option. The Amended Plan permits payment to be made by cash, check, other shares of our common stock (with some restrictions), a broker-assisted same day sale, any other form of consideration permitted by applicable law, or any combination thereof.

Term of Option. The term of an option may be no more than ten (10) years from the date of grant; provided that in the case of an incentive stock option granted to a 10% stockholder, the term of the option may be no more than five (5) years from the date of grant. No option may be exercised after the expiration of its term.

Termination of Employment. If the optionee's service with us terminates for any reason other than death or disability or unless the Administrator otherwise approves, the options may be exercised as provided in the applicable option agreement. In the absence of a specified time in the agreement, the options may be exercised for up to three months after such termination (but in no event later than the expiration of the term of the option) and may be exercised only to the extent the option was exercisable on the termination date.

Death or Disability. If an optionee ceases to be a service provider for us as a result of his or her death or disability, then options held by such optionee may be exercised as provided in the applicable option agreement. In the absence of a specified time in the agreement, the options may be exercised for twelve months after such cessation of service (but in no event later than the expiration of the term of the option) and only to the extent the option was exercisable on the date of death or disability.

Stock Appreciation Rights. Stock appreciation rights are Awards that grant the participant the right to receive an amount equal to (i) the number of shares exercised, times (ii) the amount by which our stock price exceeds the exercise price. An individual will be able to profit from a stock appreciation right only if the fair market value of the stock increases above the exercise price. Our obligation arising upon the exercise of a stock appreciation right may be paid in shares or in cash, or any combination thereof, as the Administrator may determine and as set forth in the stock appreciation right agreement. The Administrator determines the terms of stock appreciation rights. However, a stock appreciation right may not be granted with an exercise price below 100% of the fair market value of the underlying stock on the date of the grant. Moreover, a stock appreciation right will expire no later than ten (10) years after the date of grant.

Restricted Stock. Restricted stock Awards are shares of our common stock that vest in accordance with terms and conditions established by the Administrator, and the Administrator may, in its sole discretion, accelerate the vesting of any restricted stock Awards. The Administrator will determine the number of shares of restricted stock granted to any service provider. The Administrator may impose whatever conditions to vesting it determines to be appropriate, which will typically be based principally or solely on continued service but may include a performance-based component. Shares of restricted stock that do not vest are subject to our right of repurchase or forfeiture. Unless the Administrator determines otherwise, shares of restricted stock will be held by us as escrow agent until any restrictions on the shares have lapsed.