

FIVE STAR QUALITY CARE, INC.
Form SC TO-T/A
October 27, 2016

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SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE TO

(AMENDMENT NO. 1)

TENDER OFFER STATEMENT UNDER SECTION 14(d)(1) OR 13(e)(1) OF THE SECURITIES EXCHANGE ACT OF 1934

Five Star Quality Care, Inc.

(Name of Subject Company (Issuer))

ABP Acquisition LLC

(Names of Filing Persons (Offerors))

ABP Trust

Adam D. Portnoy

Barry M. Portnoy

(Names of Filing Persons (other persons))

Common Stock, par value \$.01 per share

(Titles of classes of securities)

33832D106

(CUSIP number of class of securities)

Adam D. Portnoy

ABP Acquisition LLC

Two Newton Place, 255 Washington Street, Suite 300

Newton, Massachusetts 02458-1634

(617) 928-1300

(Name, address and telephone number of person authorized
to receive notices and communications on behalf of the filing person)

Copies to:

Margaret R. Cohen, Esq.

Skadden, Arps, Slate, Meagher & Flom LLP

500 Boylston Street

Boston, Massachusetts 02116

(617) 573-4800

CALCULATION OF FILING FEE

Transaction Valuation*	Amount of Filing Fee**
\$54,000,000.00	\$6,258.60

* Estimated for purposes of calculating the filing fee only. This amount assumes the purchase of up to 18,000,000 shares of common stock, par value \$.01 per share, of Five Star Quality Care, Inc., at a purchase price of \$3.00 per share.

** The amount of the filing fee, calculated in accordance with Rule 0-11 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), equals 0.0001159 of the transaction valuation.

☐ 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: \$3,477.00 Filing Party: ABP Acquisition LLC
Form or Registration No. Schedule TO-T Date Filed: October 6, 2016

☐ 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:

- ☐ 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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This Amendment No. 1 to the Tender Offer Statement on Schedule TO (this "Amendment No. 1") amends and supplements the Tender Offer Statement on Schedule TO filed with the U.S. Securities and Exchange Commission (the "Commission") on October 6, 2016 (the "Schedule TO") by ABP Acquisition LLC, a Maryland limited liability company ("Purchaser"), and the other bidders thereto. This Amendment No. 1 amends and supplements the Schedule TO to, among other things, increase the number of securities sought in such offer to 18,000,000 of the issued and outstanding shares of common stock, par value \$.01 per share ("Shares"), of Five Star Quality Care, Inc., a Maryland corporation ("FVE"), at the current offering price of \$3.00 per Share, net to the seller in cash, without interest and less any required withholding taxes, upon the terms and subject to the conditions set forth in the Offer to Purchase, dated October 6, 2016 (the "Offer to Purchase"), a copy of which was attached as Exhibit (a)(1)(A) to the Schedule TO, the related Letter of Transmittal for Shares (the "Letter of Transmittal"), a copy of which was attached as Exhibit (a)(1)(B) to the Schedule TO, and the Amendment and Supplement to the Offer to Purchase and the Revised Letter of Transmittal for Shares (together, the "Supplement"), copies of which are filed with this Amendment No. 1 as Exhibits (a)(1)(H) and (a)(1)(I), respectively.

The information contained in the Offer to Purchase and the Letter of Transmittal is incorporated herein by reference in response to all of the applicable items of this Amendment No. 1 and the Schedule TO, except that such information is hereby amended and supplemented as follows:

Item 1. Summary Term Sheet

The information set forth in the "Summary Term Sheet" of the Supplement is incorporated herein by reference.

Item 2. Subject Company Information

(c) The information set forth in Section 6, entitled "Price Range of the Shares," of the Supplement is incorporated herein by reference.

Item 3. Identify and Background of Filing Person

(c) The information set forth in Section 6, entitled "Price Range of the Shares," of the Supplement is incorporated herein by reference.

Item 4. Terms of the Transaction

(a), (b), (c) The information set forth in Section 9, entitled "Certain Information Concerning Purchaser," of the Supplement is incorporated herein by reference.

Item 5. Past Contacts, Transactions, Negotiations and Agreements

(a), (b) The information set forth in the "Introduction," Section 9, entitled "Certain Information Concerning Purchaser," Section 10, entitled "Background of the Offer," and Section 12, entitled "Relationships, Agreements and Transactions with FVE or Its Affiliates; Plans For FVE," of the Supplement is incorporated herein by reference.

Item 6. Purposes of the Transaction and Plans or Proposals

(a), (c)(1)-(7) The information set forth in the "Introduction," Section 7, entitled "Effect of the Offer on the Market for the Shares," and Section 12, entitled "Relationships, Agreements and Transactions with FVE or Its Affiliates; Plans For FVE," of the Supplement is incorporated herein by reference.

Item 7. Source and Amount of Funds or Other Consideration

(a), (b), (d) The information set forth in Section 14, entitled "Source and Amount of Funds," of the Supplement is incorporated herein by reference.

Item 8. Interest in Securities of the Subject Company

The information set forth in the "Introduction" and Section 9, entitled "Certain Information Concerning Purchaser," of the Supplement is incorporated herein by reference.

Item 9. Persons/Assets Retained, Employed, Compensated or Used

(a) The information set forth in Section 10, entitled "Background of the Offer," of the Supplement is incorporated herein by reference.

Item 11. Additional Information

(a)(1) The information set forth in Section 9, entitled "Certain Information Concerning Purchaser," Section 10, entitled "Background of the Offer," and Section 12, entitled "Relationships, Agreements and Transactions with FVE or Its Affiliates; Plans For FVE," of the Supplement is incorporated herein by reference.

(b) The information set forth in Section 12, entitled "Relationships, Agreements and Transactions With FVE or Its Affiliates; Plans For FVE," of the Supplement is incorporated herein by reference.

(c) The information set forth in the Supplement is incorporated herein by reference.

Item 12. Exhibits

Item 12 of the Schedule TO is hereby amended and supplemented to add the following exhibits:

- (a)(1)(H) Amendment and Supplement to the Offer to Purchase, dated as of October 27, 2016.
- (a)(1)(I) Revised Letter of Transmittal for Shares.
- (a)(1)(J) Revised Letter to Brokers, Dealers, Banks, Trust Companies and other Nominees.
- (a)(1)(K) Revised Letter to Clients for use by Brokers, Dealers, Banks, Trust Companies and other Nominees.
- (a)(1)(L) [Intentionally Omitted.]
- (a)(1)(M) Letter Agreement regarding execution and expense reimbursement of Credit Facility Letter Waiver and Consent, dated as of October 21, 2016, by and among Five Star Quality Care, Inc., ABP Trust, ABP Acquisition LLC, Barry M. Portnoy and Adam D. Portnoy.

SIGNATURES

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.

Date: October 27, 2016

ABP Acquisition LLC

By: /s/ ADAM D. PORTNOY

Name: Adam D. Portnoy
Title: President

ABP Trust

By: /s/ ADAM D. PORTNOY

Name: Adam D. Portnoy
Title: President

Adam D. Portnoy

/s/ ADAM D. PORTNOY

Barry M. Portnoy

/s/ BARRY M. PORTNOY

INDEX TO EXHIBITS

- (a)(1)(A) Offer to Purchase, dated as of October 6, 2016.*
- (a)(1)(B) Letter of Transmittal for Shares.*
- (a)(1)(C) Letter to Brokers, Dealers, Banks, Trust Companies and other Nominees.*
- (a)(1)(D) Letter to Clients for use by Brokers, Dealers, Banks, Trust Companies and other Nominees.*
- (a)(1)(E) Press Release issued by ABP Acquisition LLC on October 3, 2016 (incorporated by reference to the Schedule TO-C filed by ABP Acquisition LLC on October 3, 2016).
- (a)(1)(F) Consent, Standstill, Registration Rights and Lock-Up Agreement, dated as of October 2, 2016, by and among Five Star Quality Care, Inc., ABP Trust, ABP Acquisition LLC, Barry M. Portnoy and Adam D. Portnoy.*
- (a)(1)(G) Consent Agreement, dated as of October 2, 2016, by and among Senior Housing Properties Trust, ABP Trust, ABP Acquisition LLC, Barry M. Portnoy and Adam D. Portnoy.*
- (a)(1)(H) Amendment and Supplement to the Offer to Purchase, dated as of October 27, 2016.
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*

Previously filed by ABP Acquisition LLC in its Tender Offer Statement on Schedule TO with the Commission on October 6, 2016.

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