

Amplify Snack Brands, INC  
Form SC TO-C  
December 19, 2017

**As filed with the Securities and Exchange Commission on December 18, 2017**

**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**

**Amplify Snack Brands, Inc.**  
**(Name of Subject Company (Issuer))**

**Alphabet Merger Sub Inc.**  
**(Offeror)**

**A wholly owned subsidiary of**  
**The Hershey Company**  
**(Parent of Offeror)**

**Common Stock, par value \$0.0001 per share**  
**(Title of Class of Securities)**

**03211L102**

**(CUSIP Number of Class of Securities)**

**Leslie M. Turner**

**Senior Vice President, General Counsel and Secretary**

**The Hershey Company**

**100 Crystal A Drive**

**Hershey, PA 17033**

**Tel: (717) 534-4200**

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

*Copy to:*

**Martha E. McGarry**

**Thomas W. Greenberg**

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**Four Times Square**

**New York, New York 10036**

**(212) 735-3000**

**CALCULATION OF FILING FEE**

**Transaction Valuation\***

N/A

**Amount of Filing Fee**

N/A

\* A filing fee is not required in connection with this filing as it relates solely to preliminary communications made before the commencement of the tender offer

Check the box if any part of the fee is offset as provided by Rule 0-11(a)(2) of the Securities Exchange Act of 1934 and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by

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registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: None

Form or Registration No.: Not applicable

Filing Party: Not applicable

Date Filed: Not applicable

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:

This filing relates solely to preliminary communications made before the commencement of a tender offer by Alphabet Merger Sub Inc. ( Acquisition Sub ), a wholly owned subsidiary of The Hershey Company ( Hershey ), to acquire all of the outstanding shares of common stock of Amplify Snack Brands, Inc. (the Company ), at a price of \$12.00 per share, net to the seller in cash, without interest, pursuant to an Agreement and Plan of Merger, dated December 17, 2017, among Hershey, the Company and Acquisition Sub.

### **Important Information**

In connection with the proposed acquisition, Hershey and Acquisition Sub will commence a tender offer for the outstanding shares of common stock. The tender offer has not yet commenced. This document is for informational purposes only and is neither an offer to purchase nor a solicitation of an offer to sell shares of common stock of the Company, nor is it a substitute for the tender offer materials that Hershey and Acquisition Sub will file with the Securities and Exchange Commission (the SEC ) upon commencement of the tender offer. At the time the tender offer is commenced, Hershey and Acquisition Sub will file tender offer materials on Schedule TO with the SEC, and the Company will file a Solicitation/Recommendation Statement on Schedule 14D-9 with the SEC with respect to the offer. THE TENDER OFFER MATERIALS (INCLUDING AN OFFER TO PURCHASE, A RELATED LETTER OF TRANSMITTAL AND CERTAIN OTHER TENDER OFFER DOCUMENTS) AND THE SOLICITATION/RECOMMENDATION STATEMENT WILL CONTAIN IMPORTANT INFORMATION THAT SHOULD BE READ CAREFULLY AND CONSIDERED BY THE COMPANY S STOCKHOLDERS BEFORE ANY DECISION IS MADE WITH RESPECT TO THE TENDER OFFER. Both the tender offer statement and the solicitation/recommendation statement will be made available to the Company s stockholders free of charge. A free copy of the tender offer statement and the solicitation/recommendation statement will also be made available to all stockholders of the Company by contacting the Company by phone at 646-277-1228. In addition, the tender offer statement and the solicitation/recommendation statement (and all other documents filed with the SEC) will be available at no charge on the SEC s website: [www.sec.gov](http://www.sec.gov), upon filing with the SEC. THE COMPANY S STOCKHOLDERS ARE ADVISED TO READ THE SCHEDULE TO AND THE SCHEDULE 14D-9, AS EACH MAY BE AMENDED OR SUPPLEMENTED FROM TIME TO TIME, AND ANY OTHER RELEVANT DOCUMENTS FILED WITH THE SEC WHEN THEY BECOME AVAILABLE BEFORE THEY MAKE ANY DECISION WITH RESPECT TO THE TENDER OFFER, BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT THE PROPOSED TRANSACTION AND THE PARTIES THERETO.

### **Safe Harbor Statement**

This document contains forward-looking statements. Many of these forward-looking statements can be identified by the use of words such as intend, believe, expect, anticipate, should, planned, projected, estimated, and among others. These statements are made based upon current expectations that are subject to risk and uncertainty. Because actual results may differ materially from those contained in the forward-looking statements, you should not place undue reliance on the forward-looking statements when deciding whether to buy, sell or hold Hershey s securities. Factors that could cause results to differ materially include, but are not limited to: the ability to timely satisfy the conditions to the closing of the tender offer; Hershey s ability to realize the benefits of the transaction; issues or concerns related to the quality and safety of Hershey s products, ingredients or packaging; changes in raw material and other costs, along with the availability of adequate supplies of raw materials; selling price increases, including volume declines associated with pricing elasticity; market demand for Hershey s new and existing products; increased marketplace competition; disruption to Hershey s manufacturing operations or supply chain; failure to successfully execute and integrate acquisitions, divestitures and joint ventures; changes in governmental laws and regulations, including taxes; political, economic, and/or financial market conditions; risks and uncertainties related to Hershey s international operations; disruptions, failures or security breaches of Hershey s information technology infrastructure; Hershey s ability to hire, engage and retain a talented global workforce; Hershey s ability to realize expected cost savings and operating efficiencies associated with strategic initiatives or restructuring programs; complications with the design or implementation of Hershey s new enterprise resource planning system; and such other

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matters as discussed in our Annual Report on Form 10-K for the year ended December 31, 2016 and Hershey's Quarterly Report on Form 10-Q for the quarter ended July 2, 2017. All information in this document is as of December 18, 2017. Hershey undertakes no duty to update any forward-looking statement to conform the statement to actual results or changes in Hershey's expectations.

**EXHIBIT INDEX**

| <b>Exhibit No.</b> | <b>Description</b>                                           |
|--------------------|--------------------------------------------------------------|
| 99.1               | <u>Letter sent to Hershey employees on December 18, 2017</u> |
| 99.2               | <u>Conference call transcript dated December 18, 2017</u>    |