

Amplify Snack Brands, INC
Form SC 14D9/A
January 03, 2018

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

SCHEDULE 14D-9

(Rule 14d-101)

Solicitation/Recommendation Statement

Under Section 14(d)(4) of the Securities Exchange Act of 1934

Amendment No. 1

Amplify Snack Brands, Inc.

(Name of Subject Company)

Amplify Snack Brands, Inc.

(Name of Person(s) Filing Statement)

Common Stock, par value \$0.0001 per share

(Title of Class of Securities)

03211L102

(CUSIP Number of Class of Securities)

Thomas C. Ennis

President and Chief Executive Officer

500 West 5th Street, Suite 900

Austin, Texas 78701

(512) 600-9893

**(Name, Address and Telephone Number of Person Authorized to Receive Notice and Communications
on Behalf of the Person(s) Filing Statement)**

With copies to:

Bradley C. Weber, Esq.

James A. Matarese, Esq.

Andrew H. Goodman, Esq.

Goodwin Procter LLP

135 Commonwealth Drive

Menlo Park, California 94025

(650) 752-3100

Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

This Amendment No. 1 (this *Amendment*) amends and supplements the Solicitation/Recommendation Statement on Schedule 14D-9 filed with the U.S. Securities and Exchange Commission (the *SEC*) on January 2, 2018 (together with the exhibits thereto and as amended or supplemented from time to time, the *Schedule 14D-9*) by Amplify Snack Brands, Inc., a Delaware corporation (the *Company*). The Schedule 14D 9 relates to the cash tender offer by Alphabet Merger Sub Inc., a Delaware corporation (*Purchaser*), a subsidiary of The Hershey Company, a Delaware corporation (*Hershey*), to purchase all of the issued and outstanding shares of the Company s common stock, par value \$0.0001 per share (the *Shares*) at a price per Share equal to \$12.00, net to the seller in cash, without any interest, but subject to and reduced by any required withholding of taxes. The tender offer is disclosed in the Tender Offer Statement on Schedule TO filed by Hershey and Purchaser with the SEC on January 2, 2018, and is made upon the terms and subject to the conditions set forth in the Offer to Purchase dated January 2, 2018, and in the related Letter of Transmittal, which were filed as Exhibits (a)(1)(A) and (a)(1)(B) to the Schedule 14D-9, respectively.

Capitalized terms used, but not otherwise defined, in this Amendment shall have the meanings ascribed to them in the Schedule 14D-9. The information in the Schedule 14D-9 is incorporated into this Amendment by reference to all applicable items in the Schedule 14D-9, except that such information is hereby amended and supplemented to the extent specifically provided herein.

Item 8. *Additional Information.*

Item 8 of the Schedule 14D-9 is hereby amended and supplemented by adding the following paragraph at the end of the subsection entitled *Regulatory Approvals. U.S. Antitrust Laws*, which begins on page 43 of the Schedule 14D-9:

On January 2, 2018, each of Hershey and the Company filed a Premerger Notification and Report Form with the FTC and the Antitrust Division in connection with the purchase of Shares in the Offer. Accordingly, the required waiting period with respect to the Offer is expected to expire in the ordinary course at 11:59 p.m., Eastern Time on January 17, 2018.

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.

Dated: January 3, 2018

Amplify Snack Brands, Inc.

By: /s/ Thomas C. Ennis

Name: Thomas C. Ennis

Title: President and Chief Executive
Officer