DREYERS GRAND ICE CREAM HOLDINGS INC
Form SC TO-T/A
November 07, 2005

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

SCHEDULE TO/A

Tender Offer Statement under Section 14(d)(1) or 13(e)(1)
of the Securities Exchange Act of 1934
(Amendment No. 1)

Dreyer s Grand Ice Cream Holdings, Inc.
(Name of Subject Company (issuer))

Nestlé S.A.
Nestlé Holdings, Inc.
Nestlé Ice Holdings, Inc.
(Names of Filing Persons (identifying status as offeror, issuer or other person))

Class A Callable Puttable Common Stock, par value $0.01 per Share
(Title of Class of Securities)

261877104
(CUSIP Number of Class of Securities)

Kristin Adrian, Esq.
Senior Vice President, General Counsel and Secretary
Nestlé Holdings, Inc.
c/o Nestlé USA, Inc.
800 North Brand Boulevard
Glendale, California 91203
(818) 549-6000
(Name, address, and telephone numbers of person authorized to receive notices and communications on behalf of filing persons)

With a copy to:
Joe C. Sorenson, Esq.
Edward H. Batts, Esq.
DLA Piper Rudnick Gray Cary US LLP
2000 University Avenue
East Palo Alto, California 94303
(650) 833-2000

Calculation of Filing Fee:

Transaction valuation(1)	Amount of filing fee(2)
$ 2,635,291,251	$ 310,173.78

(1) The transaction valuation is estimated solely for purposes of calculating the filing fee pursuant to Rule 0-11(d). The calculation assumes the purchase of all outstanding shares of Dreyer s Grand Ice Cream Holdings, Inc. Class A Callable Puttable Common Stock, par value $0.01 (the **Shares**), not beneficially owned by Nestlé S.A. or its subsidiaries (**Nestlé**) at a purchase price of $83.00 Share, in cash. As of September 1, 2005, there were 31,750,497 outstanding Shares on a fully diluted basis (treating as outstanding, options subject to issuance at $83.00 or less) not beneficially owned by Nestlé.

(2) The amount of the filing fee is calculated in accordance with Regulation 240.0-11 of the Securities Exchange Act of 1934, as amended, and Fee Rate Advisory No. 6 issued by the Securities and Exchange Commission on

December 9, 2004. Such fee is equal to 0.01177 percent of the value of the transaction.

o 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:
Form or Registration No.:
Filing Party:
Date Filed:

þ 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:

- þ third-party tender offer subject to Rule 14d-1.
- o issuer tender offer subject to Rule 13e-4.
- þ going-private transaction subject to Rule 13e-3.
- o 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: o

This filing relates to certain provisions set forth in the Restated Certificate of Incorporation (the **Restated Certificate**) of Dreyer s Grand Ice Cream Holdings, Inc. (**Dreyer s**) under which the holders of Class A Callable Puttable Common Stock (the **Class A Shares**) of Dreyer s have the right to require Dreyer s to purchase the Class A Shares during certain periods specified in the Restated Certificate. The tender offer which is contemplated by this filing has not commenced. The first period during which the right of the holders of Class A Shares to require Dreyer s to purchase such shares will commence on December 1, 2005. Upon the commencement of the tender offer, final offering materials will be filed under an amendment to this Schedule TO and will be sent to the holders of Class A Shares to inform them of the provisions set forth in the Restated Certificate.

Item 1. Summary Term Sheet

Reference is made to the information set forth under *Summary Term Sheet* and *Questions and Answers About the Put Right* in the Notice of Put Right, which is filed herewith as Exhibit (a)(1)(i) and incorporated herein by reference.

Item 2. Subject Company Information

(a) Reference is made to the information set forth under *Certain Information Concerning Dreyer s* in the Notice of Put Right, which is incorporated herein by reference.

(b) Reference is made to the information set forth under *Background of Dreyer s* in the Notice of Put Right, which is incorporated herein by reference.

(c) Reference is made to the information set forth under *Certain Information Concerning Dreyer s Price Range of Class A Shares; Dividends* in the Notice of Put Right, which is incorporated herein by reference.

Item 3. Identity and Background of Filing Person

(a) Reference is made to the information set forth under *Certain Information Concerning the Nestlé Entities* in the Notice of Put Right, which is incorporated herein by reference.

(b) Reference is made to the information set forth under *Certain Information Concerning the Nestlé Entities* and *Schedule A (Information Concerning the Executive Officers and Directors of Nestlé)* in the Notice of Put Right, which is incorporated herein by reference.

(c) Reference is made to the information set forth under *Certain Information Concerning the Nestlé Entities* and *Schedule A (Information Concerning the Executive Officers and Directors of Nestlé)* in the Notice of Put Right, which is incorporated herein by reference.

Item 4. Terms of the Transaction

(a) Reference is made to the information set forth under *Summary Term Sheet, Background of Dreyer s, The Put Right, Miscellaneous Provisions Related to the Put Right, the Call Right and a Triggering Event, Treatment of Special Categories of Dreyer s Securities* and *Special Factors* in the Notice of Put Right, which is incorporated herein by reference.

Item 5. Past Contacts, Transactions, Negotiations and Agreements

(a) Reference is made to the information set forth under *Special Factors Going Private Rules, Background of Nestlé s Investment in Dreyer s* and *Purposes of the Put Right and Nestlé s Plans for Dreyer s* and *Schedule A (Information Concerning the Executive Officers and Directors of Nestlé)* in the Notice of Put Right, which is incorporated herein by reference.

(b) Reference is made to the information set forth under *Special Factors Going Private Rules, Background of Nestlé s Investment in Dreyer s* and *Purposes of the Put Right and Nestlé s Plans for Dreyer s* and *Schedule A (Information Concerning the Executive Officers and Directors of Nestlé)* in the Notice of Put Right, which is incorporated herein by reference.

Item 6. Purposes of the Transaction and Plans or Proposals

(a) and (c) (1) (7) Reference is made to the information set forth under *Background of Dreyer s, Special Factors Going Private Rules, Background of Nestlé s Investment in Dreyer s, Purposes of the Put Right and Nestlé s Plans for Dreyer s* and *Certain Effects of the Exercise of the Put Right* and *Certain Legal Matters Short Form Merger* A*ppraisal Rights* in the Notice of Put Right, which is incorporated herein by reference.

Item 7. Source and Amount of Funds or Other Consideration

(a) and (b) Reference is made to the information set forth under *Source and Amount of Funds* in the Notice of Put Right, which is incorporated herein by reference.

Item 8. Interest in Securities of the Subject Company

(a) and (b) Reference is made to the information set forth under *Special Factors Background of Nestlé s Investment in Dreyer s* in the Notice of Put Right, which is incorporated herein by reference.

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

(a) Reference is made to the information set forth under *Fees and Expenses; Persons Used* in the Notice of Put Right, which is incorporated by reference.

(b) Reference is made to the information set forth under *Fees and Expenses; Persons Used* in the Notice of Put Right, which is incorporated by reference.

Item 10. Financial Statements

(a) The financial statements of Nestlé are not material to the purchase of Class A Shares under the Put Right.

(b) The pro forma financial statements of Nestlé are not material to the purchase of Class A Shares under the Put Right.

Item 11. Additional Information

(a)(1) None.

(a)(2) Reference is made to the information under *The Put Right, Procedures for Exercising the Put Right, Treatment of Special Categories of Dreyer s Securities, Fees and Expenses; Persons Used* and *Certain Legal Matters* in the Notice of Put Right, which is incorporated herein by reference.

(a)(3) Reference is made to the information set forth under *Certain Legal Matters Antitrust Compliance* and *State Takeover Laws* in the Notice of Put Right, which is incorporated herein by reference.

(a)(4) None.

(a)(5) None.

(b) Reference is made to the Letter of Transmittal, which is incorporated herein by reference.

Item 12. Exhibits

(a)(1)(i) Notice of Put Right dated , 2005.

(a)(1)(ii) Letter of Transmittal.

(a)(1)(iii) Notice of Guaranteed Delivery.

(a)(1)(iv) Substitute W-9 Guidelines.

(a)(1)(v) Form of Summary Advertisement.

(b) None.

(c)(i) Opinion of Merrill Lynch & Co. dated November 3, 2005.

(c)(ii) Presentation to the Board of Directors of Dryer s Grand Ice Cream Holdings, Inc. Regarding Fairness of the Put Price of Class A Shares by Merrill Lynch & Co. on November 3, 2005.

(d)(i) Governance Agreement dated as of June 26, 2003 by and among Nestlé Holdings, Inc., Nestlé, S.A. and Dreyer s Grand Ice Cream Holdings, Inc., and Amendment No. 1 thereto.

(d)(ii) Restated Certificate of Incorporation of Dreyer s Grand Ice Cream Holdings, Inc.

(d)(iii) Amended and Restated Sublicense Agreement for Other Pillsbury Proprietary Information, dated as of September 1, 2002, by and between Nestlé USA-Prepared Foods Division, Inc. and Nestlé Ice Cream Company, LLC.

(d)(iv) Amended and Restated Sublicense Agreement for Pillsbury Trademarks and Technology, dated as of September 1, 2002, by and among Société des Produits Nestlé S.A., Nestec Ltd. and Nestlé Ice Cream Company, LLC.

(d)(v) Amended and Restated Other Nestlé USA Proprietary Information License Agreement, dated September 1, 2002, by and between Nestlé USA Prepared Foods Division, Inc. and Nestlé Ice Cream Company, LLC.

(d)(vi) Amended and Restated Trademark/ Technology License Agreement, dated September 1, 2002, by and among Nestlé S.A., Nestec Ltd., Société des Produits Nestlé S.A., and Nestlé Ice Cream Company, LLC.

(d)(vii) Nestlé S.A. Dreyer s Grand Ice Cream Holdings, Inc. Bridge Loan Facility for up to USD 400 million dated June 11, 2003, as amended on October 22, 2003, March 23, 2004, June 26, 2004, December 6, 2004 and May 23, 2005 (which increased the amount of the facility to USD 700 million).

(d)(viii) Demand Loan Facility dated May 24, 2004, by and between Nestlé Capital Corporation and Dreyer s Grand Ice Cream Holdings, Inc. for up to USD 50 million, with Assignment by Nestlé S.A. to Nestlé Capital Corporation of a portion of its rights and obligations under the Bridge Loan Facility dated June 11, 2003, as amended.

(e) None.

(f) None.

(g) None.

(h) None.

99.1 Joint Filing Agreement

99.2 Power of Attorney

Item 13. Information Required by Schedule 13E-3

Item 2. Subject Company Information

(d) Reference is made to the information set forth under *Certain Information Concerning Dreyer s Price Range of Class A Shares; Dividends* in the Notice of Put Right, which is incorporated herein by reference.

(e) Not applicable.

(f) Not applicable.

Item 4. Terms of the Transaction

(c) None.

(d) Reference is made to the information set forth under *Special Factors Going Private Rules* and *Certain Legal Matters Short Form Merger Appraisal Rights* in the Notice of Put Right, which is incorporated herein by reference.

(e) None.

(f) Not applicable.

Item 5. Past Contacts, Transactions, Negotiations and Agreements

(c) Reference is made to the information set forth under *Background of Dreyer s and Special Factors Background of Nestlé s Investment in Dreyer s* in the Notice of Put Right, which is incorporated herein by reference.

(e) Reference is made to the information set forth under *Background of Dreyer s, The Put Right* and *Special Factors Background of Nestlé s Investment in Dreyer s* in the Notice of Put Right, which is incorporated herein by reference.

Item 6. Purposes of the Transaction and Plans or Proposals

(b) Reference is made to the information set forth under *Special Factors Purposes of the Put Right and Nestlé s Plans for Dreyer s* and *Certain Effects of the Exercise of the Put Right* in the Notice of Put Right, which is incorporated herein by reference.

(c)(8) Reference is made to the information set forth under *Special Factors Certain Effects of the Exercise of the Put Right* in the Notice of Put Right, which is incorporated herein by reference.

Item 7. Purposes, Alternatives, Reasons and Effects

(a), (b) and (c) Reference is made to the information set forth under *Background of Dreyer s, The Put Right, Special Factors Background of Nestlé s Investment in Dreyer s, Purposes of the Put Right and Nestlé s Plans for Dreyer s, Certain Effects of the Exercise of the Put Right* and *Nestlé s and Dreyer s Positions Regarding the Fairness of the Put Right* in the Notice of Put Right, which is incorporated herein by reference.

(d) Reference is made to the information set forth under *Special Factors Going Private Rules* and *Certain Effects of the Exercise of the Put Right* and *Certain Legal Matters Short Form Merger Appraisal Rights* in the Notice of Put Right, which is incorporated herein by reference.

Item 8. Fairness of the Transaction

(a), (b), (c), (d), (e) and (f) Reference is made to the information set forth under *Background of Dreyer s,* and *Special Factors Background of Nestlé s Investment in Dreyer s, Nestlé s and Dreyer s Positions Regarding the Fairness of the Put Right* and *Fairness Opinion Regarding the Purchase Price* in the Notice of Put Right, which is incorporated herein by reference.

Item 9. Reports, Opinions, Appraisals and Negotiations

(a), (b) and (c) Reference is made to the information set forth under *Special Factors Nestlé s and Dreyer s Positions Regarding the Fairness of the Put Right* and *Fairness Opinion Regarding the Purchase Price* in the Notice of Put Right, which is incorporated herein by reference.

Item 10. Source and Amount of Funds or Other Consideration

(c) Reference is made to the information set forth under *Fees and Expenses; Persons Used* in the Notice of Put Right, which is incorporated herein by reference.

Item 12. The Solicitation or Recommendation

(d) Reference is made to the information set forth under *Certain Information Concerning Dreyer s* in the Notice of Put Right, which is incorporated herein by reference.

(e) The filing persons are not aware of any officer, director or affiliate of Dreyer s or any person listed on *Schedule A (Information Concerning the Executive Officers and Directors of Nestlé)* to the Notice of Put Right who has made a recommendation either in support of or against the exercise of the Put Right.

Item 14. Persons/Assets Retained, Employed, Compensated or Used

(b) None.

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.

Nestlé Ice Holdings, Inc.

Dated: November 4, 2005

By: /s/ Kristin Adrian

Name: Kristin Adrian
Title: Assistant Secretary

Nestlé Holdings, Inc.

Dated: November 4, 2005

By: /s/ Kristin Adrian

Name: Kristin Adrian
Title: Senior Vice President,
General Counsel & Secretary

Nestlé S.A.

Dated: November 4, 2005

By: /s/ Kristin Adrian

Kristin Adrian, attorney-in-fact for
Name: H.P. Frick
Title: Senior Vice President and
General Counsel of Nestlé S.A.

Index to Exhibits

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99.1 Joint Filing Agreement **(10)**
99.2 Power of Attorney **(10)**

(1) Incorporated by reference to Appendix C of the Notice of Put Right which constitutes Exhibit (a)(1)(i) to this filing.
(2) Incorporated by reference to Exhibit 4.1 to Dreyer s Grand Ice Cream Holdings, Inc. s Current Report on Form 8-K filed on June 27, 2003 and Exhibit 4.2 to Dreyer s Grand Ice Cream Holdings, Inc. s Annual Report on Form 10-K for the year ended December 27, 2003 filed on March 11, 2004.
(3) Incorporated by reference to Exhibit 3.1 to Dreyer s Grand Ice Cream Holdings, Inc. s Quarterly Report on Form 10-Q for the quarter ended June 28, 2003 filed on August 18, 2003.
(4) Incorporated by reference to Exhibit 10.6 to Amendment No. 4 to Form S-4 Registration Statement (File No. 333-101052) filed on February 14, 2003.

(5) Incorporated by reference to Exhibit 10.7 to Amendment No. 4 to Form S-4 Registration Statement (File No. 333-101052) filed on February 14, 2003.
(6) Incorporated by reference to Exhibit 10.8 to Amendment No. 4 to Form S-4 Registration Statement (File No. 333-101052) filed on February 14, 2003.
(7) Incorporated by reference to Exhibit 10.9 to Amendment No. 4 to Form S-4 Registration Statement (File No. 333-101052) filed on February 14, 2003.
(8) Incorporated by reference to Exhibit 10.29 to Dreyer s Grand Ice Cream Holdings, Inc. s Quarterly Report on Form 10-Q for the quarter ended June 28, 2003 filed on August 18, 2003; Exhibit 10.45 to Dreyer s Grand Ice Cream Holdings, Inc. s Quarterly Report on Form 10-Q for the quarter ended September 27, 2003 filed on November 17, 2003; Exhibit 10.46 to Dreyer s Grand Ice Cream Holdings, Inc. s Quarterly Report on Form 10-Q for the quarter ended March 27, 2004 filed on May 6, 2004; Exhibit 10.52 to Dreyer s Grand Ice Cream Holdings, Inc. s Quarterly Report on Form 10-Q for the quarter ended June 26, 2004 filed on August 5, 2004 and Exhibits 10.53 and 10.54 to Dreyer s Grand Ice Cream Holdings, Inc. s Quarterly Report on Form 10-Q for the quarter ended June 25, 2005 filed on August 4, 2005.
(9) Incorporated by reference to Exhibit 10.49 to Dreyer s Grand Ice Cream Holdings, Inc. s Quarterly Report on Form 10-Q for the quarter ended June 26, 2004 filed on August 5, 2004.
(10) Incorporated by reference to identically numbered exhibits to the Schedule TO filed by Nestlé S.A., Nestlé Holdings, Inc., and Nestlé Ice Holdings, Inc. on September 7, 2005.