

SECURITIES AND EXCHANGE COMMISSION

FORM SC TO-T/A

Third party tender offer statement [amend]

Filing Date: **2013-01-23**
SEC Accession No. [0001193125-13-020841](#)

(HTML Version on secdatabase.com)

SUBJECT COMPANY

Caribou Coffee Company, Inc.

CIK: **1332602** | IRS No.: **411731219** | State of Incorporation: **MN** | Fiscal Year End: **0101**
Type: **SC TO-T/A** | Act: **34** | File No.: **005-81557** | Film No.: **13543317**
SIC: **5810** Eating & drinking places

Mailing Address	Business Address
3900 LAKEBREEZE AVENUE BROOKLYN CENTER MN 55429	3900 LAKEBREEZE AVENUE BROOKLYN CENTER MN 55429 763-592-2200

FILED BY

Jab Beech Inc.

CIK: **1564816** | IRS No.: **371701311** | State of Incorporation: **DE** | Fiscal Year End: **1231**
Type: **SC TO-T/A**

Mailing Address	Business Address
C/O SALOMON & COMPANY P.C. 336 ATLANTIC AVENUE EAST ROCKAWAY NY 11518	2200 PENNSYLVANIA AVENUE, NW WASHINGTON DC 20052 516-537-1040

**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
(Amendment No. 11)**

Caribou Coffee Company, Inc.

(Name of Subject Company (Issuer))

JAB Beech Inc.

Pine Merger Sub, Inc.

(Names of Filing Persons (Offerors))

Common Stock, par value \$0.01 per share

(Title of Class of Securities)

142042209

(CUSIP Number of Class of Securities)

Joachim Creus

JAB Beech Inc.

2200 Pennsylvania Avenue NW

Washington, DC 20037

Tel: (202) 507-5838

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

Copy to:

Paul T. Schnell, Esq.

Sean C. Doyle, Esq.

Skadden, Arps, Slate, Meagher & Flom LLP

4 Times Square

New York, New York 10036

(212) 735-3000

CALCULATION OF FILING FEE

Transaction Valuation(1)	Amount of Filing Fee(2)
\$339,467,568	\$46,304

- (1) Estimated solely for purposes of calculating the filing fee. The transaction value was determined by multiplying (x) \$16.00 (i.e., the tender offer price) by (y) 21,216,723, the estimated maximum number of shares of the Company common stock to be acquired in the tender offer.
- (2) The filing fee was calculated in accordance with Rule 0-11 under the Securities Exchange Act of 1934, as amended, and Fee Rate Advisory #1 for Fiscal Year 2013, issued August 31, 2012, by multiplying the transaction value by 0.0001364.
- 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 registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: \$46,304

Filing Party: JAB Beech Inc.

Form or Registration No.: Schedule TO

Date Filed: December 21, 2012

- 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 Amendment No. 11 further amends and supplements the Tender Offer Statement on Schedule TO filed with the Securities and Exchange Commission on December 21, 2012 (as amended on December 26, 2012, December 28, 2012, December 31, 2012, January 2, 2013, January 3, 2013, January 4, 2013, January 8, 2013, January 9, 2013, January 10, 2013 and January 14, 2013, "Schedule TO") relating to the offer by JAB Beech Inc., a Delaware corporation ("Parent") and Pine Merger Sub, Inc., a Minnesota corporation and a wholly-owned subsidiary of Parent ("Purchaser" and, together with Parent, the "Offerors"), to purchase all outstanding shares of common stock, par value \$0.01 per share ("Shares"), of Caribou Coffee Company, Inc., a Minnesota corporation (the "Company"), at a price of \$16.00 per Share, net to the seller in cash (less any required withholding taxes and without interest), upon the terms and subject to the conditions set forth in the Offer to Purchase dated December 21, 2012 (together with any amendments or supplements thereto, the "Offer to Purchase") and in the related Letter of Transmittal (together with any amendments or supplements thereto, the "Letter of Transmittal" and, together with the Offer to Purchase, the "Offer"), which are annexed to and filed with the Schedule TO as Exhibits (a)(1)(A) and (a)(1)(B), respectively.

All the information set forth in the Offer to Purchase, to the extent incorporated by reference therein, is hereby amended and supplemented as set forth below.

ITEM 11. ADDITIONAL INFORMATION

Item 11 of the Schedule TO is hereby amended and supplemented by adding the following text thereto:

"At 12:00 midnight, New York City time, on January 22, 2013, the Offer expired as scheduled. Parent was advised by the Depository that, as of the expiration of the Offer, a total of 13,554,419 Shares were validly tendered and not withdrawn in the tender offer, representing approximately 63.9% of the currently outstanding Shares on a fully diluted basis (including 945,361 Shares delivered through Notices of Guaranteed Delivery, representing approximately 4.5% of the Shares outstanding on a fully diluted basis).

The number of Shares tendered pursuant to the Offer satisfies the Minimum Tender Condition. Purchaser has accepted for payment all Shares that were validly tendered and not withdrawn pursuant to the Offer and will promptly make payment to the Depository for such Shares.

Purchaser currently intends to exercise its Top-Up Option, pursuant to which the Company will issue Shares to Purchaser, at a price per Share equal to the Offer Price, in an amount sufficient to ensure that Purchaser and Parent could effect a short-form merger under applicable Minnesota law. Accordingly, Parent delivered a notice of such intent to the Company and pursuant to the Merger Agreement, the consummation of the Top-Up transaction will take place on January 24, 2013.

As a result of the purchase of Shares in the Offer and the issuance of Shares pursuant to the Top-Up Option, Purchaser and Parent will have sufficient voting power to approve the Merger without the affirmative vote of any other shareholder of the Company. Accordingly, Purchaser and Parent intend to effect a short-form merger in which Purchaser is merged with and into the Company, with the Company surviving the Merger and continuing as a wholly-owned subsidiary of Parent. In the Merger, each Share issued and outstanding immediately prior to the effective time of the Merger, other than (i) Shares owned by Parent, Purchaser or any other affiliate of Parent that is directly or indirectly wholly owned by the ultimate parent of Parent, (ii) Shares owned by the Company or any direct or indirect wholly owned subsidiary of the Company and (iii) Shares held by Company shareholders who properly demand and perfect dissenters' rights under Minnesota law, will automatically be converted into the right to receive the Offer Price. All Shares converted into the right to receive the Offer Price shall be canceled and cease to exist.

On January 23, 2013, Parent issued a press release announcing the expiration and results of the Offer. The full text of the press release is attached as Exhibit (a)(5)(O) to the Schedule TO and is incorporated herein by reference."

ITEM 12. EXHIBITS

Item 12 of the Schedule TO is hereby amended and restated in its entirety as follows:

- (a)(1)(A)* Offer to Purchase, dated December 21, 2012
- (a)(1)(B)* Form of Letter of Transmittal
- (a)(1)(C)* Form of Notice of Guaranteed Delivery
- (a)(1)(D)* Form of Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees
- (a)(1)(E)* Form of Letter to Clients for Use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees
- (a)(1)(F)* Internal Revenue Service Form W-9 (Request for Taxpayer Identification Number and Certification), including instructions for completing the form
- (a)(1)(G)* Summary Advertisement, published December 21, 2012 in *The Wall Street Journal*
- (a)(2) Not applicable
- (a)(3) Not applicable
- (a)(4) Not applicable
- (a)(5)(A)* Joint Press Release of Parent and the Company, dated December 17, 2012 (incorporated by reference to the Current Report on Form 8-K filed by the Company with the Securities and Exchange Commission on December 17, 2012)
- (a)(5)(B)* Complaint filed by James Randolph Richeson in the District Court of the State of Minnesota, Fourth Judicial District on December 18, 2012
- (a)(5)(C)* Complaint filed by Greentech Research LLC in the District Court of the State of Minnesota, Fourth Judicial District on December 18, 2012
- (a)(5)(D)* Complaint filed by Suketu Shah, in the District Court of the State of Minnesota, Fourth Judicial District on December 20, 2012
- (a)(5)(E)* Order Granting Companionship of Cases, issued December 21, 2012 by District Court of the State of Minnesota, Fourth Judicial District
- (a)(5)(F)* Complaint filed by Mary Arciero, in the District Court of the State of Minnesota, Fourth Judicial District on December 21, 2012
- (a)(5)(G)* Complaint filed by Jay Schufman, in the District Court of the State of Minnesota, Fourth Judicial District on December 20, 2012
- (a)(5)(H)* Amended Complaint filed by James Randolph Richeson in the District Court of the State of Minnesota, Fourth Judicial District on December 27, 2012
- (a)(5)(I)* Complaint filed by Thomas McCormack, in the District Court of the State of Minnesota, Fourth Judicial District on December 28, 2012
- (a)(5)(J)* Complaint filed by Delmar Bishop, in the District Court of the State of Minnesota, Fourth Judicial District on December 28, 2012
- (a)(5)(K)* Complaint filed by Ryan David Harrigill, in the District Court of the State of Minnesota, Fourth Judicial District on January 2, 2013
- (a)(5)(L)* Complaint filed by Steven Morgan in the United States District Court, District of Minnesota on January 7, 2013

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- (a)(5)(M)* Complaint filed by Bipin Agarwal in the United States District Court, District of Minnesota on January 8, 2013
- (a)(5)(N)* Memorandum of Understanding, entered into as of January 14, 2013, by and among Defendants Caribou Coffee Company, Inc., JAB Beech Inc., Pine Merger Sub, Inc., Michel J. Tattersfield, Gary A. Graves, Kip R. Caffey, Sarah Palisi Chapin, Philip H. Sanford, Charles H. Ogburn and Wallace B. Doolin, and Plaintiffs Greentech Research LLC, James Randolph Richeson, Suketu Shah, Jay Schufman, Mary Arciero, Thomas McCormack, Delmar Bishop, and Ryan David Harrigill on behalf of themselves and as putative representatives of the absent members of the alleged class that the plaintiffs purport to represent
- (a)(5)(O) Press Release of Parent dated January 23, 2013
- (b) Not applicable
- (d)(1)* Agreement and Plan of Merger, dated as of December 16, 2012, among Parent, Purchaser and the Company (incorporated by reference to the Current Report on Form 8-K filed by the Company with the Securities and Exchange Commission on December 17, 2012)
- (d)(2)* Non-Disclosure Agreement, dated December 7, 2012, between the Company and Parent
- (g) Not applicable
- (h) Not applicable

* Previously filed

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 23, 2013

JAB BEECH INC.

By: /s/ Joachim Creus

Name: Joachim Creus

Title: President

PINE MERGER SUB, INC.

By: /s/ Joachim Creus

Name: Joachim Creus

Title: President

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- (g) Not applicable
- (h) Not applicable

* Previously filed

**JAB BEECH INC. COMPLETES TENDER OFFER FOR ALL OUTSTANDING SHARES OF
CARIBOU COFFEE COMPANY, INC.**

MINNEAPOLIS, MN - January 23, 2013 –JAB Beech Inc. (“JAB”), a member of the Joh. A Benckiser Group today announced the successful completion of the tender offer by its wholly-owned subsidiary, Pine Merger Sub, Inc. (“Purchaser”), for all of the outstanding shares of common stock of Caribou Coffee Company, Inc. (Nasdaq: CBOU) (“Caribou”) at a price of \$16 per share, net to the seller in cash (less any required withholding taxes and without interest).

Wells Fargo Shareowner Services, the depository for the tender offer, has advised JAB that, as of 12:00 midnight, New York City time, on January 22, 2013, the expiration of the tender offer, 13,554,419 shares were validly tendered and not withdrawn in the tender offer, representing approximately 63.9% of Caribou’s currently outstanding shares on a fully diluted basis (including 945,361 shares delivered through Notices of Guaranteed Delivery, representing approximately 4.5% of the shares outstanding on a fully diluted basis). JAB has accepted for payment all shares validly tendered and not withdrawn and will promptly pay for such shares.

Purchaser will acquire all of the remaining outstanding shares of Caribou common stock by means of a merger under Minnesota law, which is expected to be completed on January 24, 2013. As a result of the purchase of shares in the tender offer, Purchaser has sufficient voting power to approve the merger without the affirmative vote of any other Caribou stockholder. In order to accomplish the merger as a “short-form” merger, Purchaser currently intends to exercise its “top-up” option pursuant to the merger agreement, which permits Purchaser to purchase additional shares of common stock of Caribou directly from Caribou for \$16 per share (the same purchase price paid in the tender offer). Following the merger, Caribou will become a wholly-owned subsidiary of JAB, and each share of Caribou’s outstanding common stock will be cancelled and converted into the right to receive the same consideration, without interest, received by holders who tendered in the tender offer. Thereafter, Caribou common stock will cease to be traded on the NASDAQ Global Select Market.

BDT Capital, a Chicago-based merchant bank that provides long-term private capital solutions to closely held companies, is a minority investor in this transaction alongside the Joh. A Benckiser Group. In addition to BDTCP’s capital investment, BDT & Company served as a financial co-advisor to the Joh. A Benckiser Group with Morgan Stanley & Co. LLC. Skadden, Arps, Slate, Meagher & Flom LLP is acting as legal advisor to the Joh. A Benckiser Group in this transaction. Moelis & Co LLC is serving as an exclusive financial advisor to Caribou in connection with this transaction and Briggs and Morgan P.A. is acting as Caribou’s legal advisor.

About Caribou

Founded in 1992, Caribou is one of the leading branded coffee companies in the United States, with a compelling multi-channel approach to their customers. Based on the number of coffeehouses, Caribou is the second largest company-operated premium coffeehouse operator in the United States. As of September 30, 2012, the Company had 610 coffeehouses, including 202 franchised locations, in 22 states, the District of Columbia and ten international markets. The Company’s coffeehouses aspire to be the community place loved by guests who are provided an extraordinary experience that makes their day better. Caribou provides the highest quality handcrafted beverages, foods and coffee lifestyle items with a unique blend of expertise, fun and authentic human connection in a comfortable and welcoming coffeehouse environment. In addition, Caribou’s unique coffees are available within grocery stores, mass merchandisers, club stores, office coffee and foodservice providers, hotels, entertainment venues and e-commerce channels. Caribou is a proud recipient of the Rainforest Alliance Corporate Green Globe Award and is committed to operating practices that promote sustainability and environmental protection. For more information, visit the Caribou web site at www.cariboucoffee.com.

About The Joh. A Benckiser Group

The Joh. A Benckiser Group is a privately held group of affiliated companies focused on long term investments in companies with premium brands in the Fast Moving Consumer Goods category. The Joh. A Benckiser Group’s portfolio includes a majority stake in Coty Inc., a global leader in beauty, a majority stake in Peet’s Coffee & Tea Inc., a premier specialty coffee and tea company, a minority stake in Reckitt Benckiser Group PLC, a global leader in health, hygiene and home products and a minority investment in D.E Master

Blenders 1753 N.V., an international coffee and tea company. The Joh. A Benckiser Group also owns Labelux, a luxury leather goods company with

brands such as Jimmy Choo, Bally and Belstaff. The assets of the group are overseen by its three senior partners, Peter Harf, Bart Becht and Olivier Goudet.

About BDT Capital Partners

BDT Capital Partners provides family-owned and entrepreneurially led companies with long-term capital, solutions-based advice and access to an extensive network of world-class family businesses. Based in Chicago, BDT Capital Partners is a merchant bank structured to provide advice and capital that address the unique needs of closely held businesses. The firm has a \$3 billion investment fund as well as an investor base with the ability to co-invest significant additional capital. Through its advisory business, BDT & Company works with family businesses to pursue their long-term strategic and financial objectives.

Forward-Looking Statements

This press release contains forward-looking statements that are not historical facts and are subject to risks and uncertainties that could cause actual results to differ materially from those described. All statements other than statements of historical fact are statements that could be deemed forward-looking statements. Forward-looking statements in this communication include statements regarding the anticipated benefits of the transaction; statements regarding the expected timing of the completion of the transaction; and any statements of assumptions underlying any of the foregoing. All forward-looking statements are based largely on current expectations and beliefs concerning future events, approvals and transactions that are subject to substantial risks and uncertainties. Factors that may cause or contribute to the actual results or outcomes being different from those expressed or implied in the forward-looking statements include are discussed in the Company' s filings with the SEC, including in its periodic reports filed on Form 10-K and Form 10-Q with the SEC. Copies of the Company' s filings with the SEC may be obtained at the "Investors" section of the Company' s website at www.cariboucoffee.com. The forward-looking statements made in this communication are made only as of the date of this communication, and the Company undertakes no obligation to update them to reflect subsequent events or circumstances.

Media Contacts:

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Abernathy MacGregor Group
tbj@abmac.com/clb@abmac.com
(212) 371-5999

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