

HERBALIFE LTD.
Form SC TO-I/A
August 28, 2017

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. 1**

HERBALIFE LTD.

(Name of Subject Company (Issuer))

Herbalife Ltd.

(Name of Filing Persons (Offeror))

Common Shares, par value \$0.001 per share

(Title of Class of Securities)

G4412G101

(CUSIP Number of Class of Securities)

John G. DeSimone

Chief Financial Officer

Herbalife Ltd.

P.O. Box 309GT

Ugland House, South Church Street

Grand Cayman, Cayman Islands

(213) 745-0500

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

Copies to:

Jonathan K. Layne

James J. Moloney

Gibson, Dunn & Crutcher LLP

2029 Century Park East

Los Angeles, CA 90067

(310) 552-8500

Calculation of Filing Fee

Transaction valuation*

\$600,000,000

Amount of filing fee**

\$69,540.00***

* Estimated for purposes of calculating the amount of the filing fee only, this amount is based on the purchase of common shares, par value \$0.001 per share, of the Issuer for a maximum aggregate tender offer price of \$600,000,000.

**The amount of the filing fee, calculated in accordance with Rule 0-11(b) and Rule 1-11(d) of the Securities Exchange Act of 1934, as amended and Fee Rate Advisory #1 for Fiscal Year 2017 equals \$115.90 per \$1,000,000 of the aggregate value of the transaction.

***Amount Previously Paid: \$69,540.00 Form or Registration No.: Schedule TO Date Filed: August 21, 2017

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

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Schedule and the date of its filing.

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:

If applicable, check the appropriate box(es) below to designate the appropriate rule provision(s) relied upon:

- Rule 13e-4(i) (Cross-Border Issuer Tender Offer)
- Rule 14d-1(d) (Cross-Border Third-Party Tender Offer)

This Amendment No. 1 to the Tender Offer Statement on Schedule TO (the Amendment) amends and supplements the Schedule TO filed with the Securities and Exchange Commission on August 21, 2017 (as amended and supplemented, the Schedule TO), and relates to the offer by Herbalife Ltd., a Cayman Islands exempted company incorporated with limited liability (the Company), to purchase common shares, par value \$0.001 per share in the capital, of the Company (the common shares), for an aggregate cash purchase price of up to \$600 million and at a price per share (i) not greater than \$68.00 nor less than \$60.00 per share, net to the seller in cash, less any applicable tax withholding and without interest, plus (ii) a non-transferable contractual contingent value right (a CVR) pursuant to the Contingent Value Rights Agreement, a copy of which is annexed to and filed with the Schedule TO as Exhibit (a)(1)(F) (the CVR Agreement), to receive a contingent payment upon the occurrence of a Going Private Transaction (as such term is defined in the CVR Agreement) within the time period specified in the CVR Agreement, without interest and less any applicable tax withholding, each upon the terms and subject to the conditions set forth in the Offer to Purchase, dated August 21, 2017 (the Offer to Purchase), and in the related Letter of Transmittal (the Letter of Transmittal which, together with the Offer to Purchase, as each may be amended or supplemented from time to time, collectively constitute the Offer), copies of which are annexed to and filed with this Schedule TO as Exhibits (a)(1)(A) and (a)(1)(B), respectively. All capitalized terms used but not otherwise defined in this Amendment have the meanings ascribed to such terms in the Offer to Purchase.

The Schedule TO, and 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. Every Item in the Schedule TO is automatically updated, to the extent such Item incorporates by reference any section of the Offer to Purchase that is amended and supplemented therein. Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Offer to Purchase.

Items 1 through 11.

Items 1 through 11 of the Schedule TO are hereby amended and supplemented as follows:

Following commencement of the Offer, the reported closing price of the common shares on the New York Stock Exchange (the NYSE) on August 22, 2017 was \$69.36, which represents an increase of approximately 11.96% over the \$61.95 reported closing price of the common shares on the NYSE on August 18, 2017, the last full trading day before the Company commenced the Offer. Consequently, the condition set forth below and contained in Section 7

Conditions of the Tender Offer of the Offer to Purchase was triggered. On August 28, 2017, the Company determined to waive the following condition:

any increase or decrease in excess of 10% in the market price for the common shares, measured from the close of trading on August 18, 2017, the last full trading day before we commenced the Offer, to the close of trading on any other trading day during the Offer, up to and including the close of trading on the Expiration Time shall have occurred;

In connection with the Company waiving and amending this condition, the second to last bullet on the bottom of page 4 of the Summary Term Sheet in the Offer to Purchase is hereby deleted and replaced in its entirety with the following:

The reported market price of the common shares at the close of trading on any trading day during the Offer, up to and including the close of trading on the Expiration Time, shall not be greater than \$71.40 (which amount is 5% greater than the highest Cash Purchase Price possible under the Offer) or less than \$57.00 (which amount is 5% less than the lowest Cash Purchase Price possible under the Offer).

In addition, the third to last bullet on the bottom of page 25 of Section 7 Conditions of the Tender Offer in the Offer to Purchase is hereby deleted and replaced in its entirety with the following:

the reported market price of the common shares at the close of trading on any trading day during the Offer, up to and including the close of trading on the Expiration Time, shall not be greater than \$71.40 (which amount is 5% greater than the highest Cash Purchase Price possible under the Offer) or less than \$57.00 (which amount is 5% less than the lowest Cash Purchase Price possible under the Offer);

The full text of the press release issued by the Company announcing the foregoing waiver and amendments is attached hereto as Exhibit (a)(5)(A) and is incorporated herein by reference.

Item 12. Exhibits.

Item 12 of the Schedule TO is hereby amended and supplemented by adding the following Exhibit:

| Exhibit | Description |
|----------------|---|
| (a)(5)(A) | Press release issued by the Company, dated August 28, 2017. |

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.

HERBALIFE LTD.

By: /s/ JOHN G. DESIMONE
Name: John G. DeSimone
Title: *Chief Financial Officer*

Dated: August 28, 2017

EXHIBIT INDEX

| Exhibit | | Description |
|----------------|---|--|
| (a)(1)(A) | * | Offer to Purchase, dated August 21, 2017. |
| (a)(1)(B) | * | Form of Letter of Transmittal (including Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9). |
| (a)(1)(C) | * | Form of Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees. |
| (a)(1)(D) | * | Form of Letter to Clients for Use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees. |
| (a)(1)(E) | * | Press release issued by the Company, dated August 21, 2017. |
| (a)(1)(F) | * | Form of Contingent Value Rights Agreement by and between the Company and Computershare Trust Company, N.A., as Administrative Agent. |
| (a)(5)(A) | | Press release issued by the Company, dated August 28, 2017. |
| (b) | | Not applicable. |
| (d)(1) | * | Agreement by and among the Company and Carl C. Icahn and his controlled affiliates, dated August 21, 2017. |
| (g) | | Not applicable. |
| (h) | | Not applicable. |

* Previously Filed