

TASTY BAKING CO
Form SC TO-T/A
May 02, 2011

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**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. 2)**

**Tasty Baking Company
(Name of Subject Company)**

**Compass Merger Sub, Inc.
a wholly-owned subsidiary of
Flowers Foods, Inc.
(Name of Filing Persons (Offeror))**

**Common Stock, Par Value \$0.50 Per Share
(Title of Class of Securities)
876553306
(CUSIP Number of Class of Securities)**

**A. Ryals McMullian, Jr., Esq.
Vice President and Associate General Counsel
Flowers Foods, Inc.
1919 Flowers Circle
Thomasville, Georgia 31757
(229) 226-9110**

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

**With copies to:
Sterling A. Spainhour, Jr., Esq.
Jones Day
1420 Peachtree St., NE
Suite 800
Atlanta, GA 30309-3053
(404) 581-3939
Calculation of Filing Fee**

**Transaction Valuation(*)
\$35,984,308**

Amount of Filing Fee()
\$4,178**

(*) Estimated for purposes of calculating the amount of the filing fee only. The transaction valuation was calculated by multiplying the offer price of \$4.00 per share of common stock of Tasty Baking Company, par value \$0.50 per share, (Shares) by 8,996,077 Shares, which is the sum of (i) 8,622,847 Shares outstanding (including unvested restricted shares) and (ii) 373,230 Shares authorized and reserved for issuance (including Shares subject to issuance pursuant to applicable stock options and deferred stock units).

(**) Estimated for purposes of calculating the amount of the filing fee only. The filing fee was calculated in accordance with Rule 0-11 under the Securities Exchange Act of 1934 by multiplying the transaction value by .0001161.

ÿ 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 date of its filing.

Amount Previously		Filing	Flowers Foods, Inc. and Compass
Paid:	\$4,178	Party:	Merger Sub, Inc.
Form or Registration		Date	April 21, 2011
No.:	Schedule TO	Filed:	

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

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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).

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Item 1. Summary Term Sheet.

Item 11. Additional Information.

SIGNATURE

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This Amendment No. 2 (this Amendment) amends and supplements the Tender Offer Statement on Schedule TO (which, together with this Amendment, Amendment No. 1, filed April 25, 2011, and any subsequent amendments and supplements thereto, collectively constitute this Schedule TO) originally filed on April 21, 2011 by (i) Compass Merger Sub, Inc., a Pennsylvania corporation (Purchaser), and a wholly-owned direct subsidiary of Flowers Foods, Inc., a Georgia corporation (Parent), and (ii) Parent. This Schedule TO relates to the offer (the Offer) by Purchaser to purchase all of the outstanding shares of common stock, par value \$0.50 per share, of Tasty Baking Company, a Pennsylvania corporation (Tasty Baking), at a purchase price of \$4.00 per Share (the Offer Price) net to the seller in cash, without interest thereon and less any applicable withholding taxes, upon the terms and subject to the conditions set forth in the Offer to Purchase, dated April 21, 2011 (which, together with any amendments and supplements thereto, collectively constitute the Offer to Purchase), and in the related Letter of Transmittal, copies of which are attached to and filed with the Schedule TO as Exhibits (a)(1)(A) and (a)(1)(B), respectively.

The items of the Schedule TO set forth below are hereby amended and supplemented to the extent specifically provided in this Amendment.

Item 1. Summary Term Sheet.

The information set forth in the Summary Term Sheet of the Offer to Purchase is hereby amended and supplemented by replacing the second sentence under the question What will happen to my stock options in the Offer? with the following:

Pursuant to the Merger Agreement, each Option that is outstanding immediately prior to the Effective Time, whether or not then vested or exercisable, will be canceled without any action on the part of the holder of any Option and converted into the right to receive promptly after the Effective Time an amount in cash, less any applicable withholding taxes and without interest, equal to the excess of the Offer Price over the per Share exercise price of the Option for each Share subject to such Option.

Item 11. Additional Information.

Section (a)(5) of Item 11 of the Schedule TO is hereby amended and supplemented as follows:

The information set forth in Section 16. Certain Legal Matters; Regulatory Approvals of the Offer to Purchase is hereby amended and supplemented by replacing the first paragraph under the heading General with the following paragraphs:

On April 21, 2011, Julie Michelsen and Tim Enochs filed a purported class action in the Court of Common Pleas of Philadelphia County, Pennsylvania against Tasty Baking, its directors, Parent and Flowers Bakeries, in connection with the proposed Merger. The lawsuit also alleges a derivative claim on behalf of Tasty Baking. This complaint alleges, among other things, that the defendants breached and/or aided and abetted the breach of fiduciary duties owed to Tasty Baking by its directors. Plaintiffs claim that the sale of Tasty Baking was accomplished through an allegedly unfair and inadequate process and that certain defendants engaged in the waste of Tasty Baking assets. The suit seeks equitable relief that would delay or enjoin the Merger based on allegations regarding the process by which offers or potential offers were evaluated by Tasty Baking, damages to the plaintiffs based upon alleged improper benefits received by defendants and attorney fees and expenses.

On April 27, 2011, Paul F. Ringheiser III filed a purported class action in the Court of Common Pleas of Philadelphia County, Pennsylvania against Tasty Baking, its directors, Parent and Flowers Bakeries, in connection with the proposed Merger. The lawsuit also alleges a derivative claim on behalf of Tasty Baking. This complaint alleges, among other things, that the defendants breached and/or aided and abetted the breach of fiduciary duties owed to Tasty Baking by its directors. Plaintiffs claim that the sale of Tasty Baking was accomplished through an allegedly unfair and inadequate process and that certain defendants engaged in the waste of Tasty Baking assets. The suit seeks equitable relief that would delay or enjoin the Merger based on allegations regarding the process by which offers or potential offers were evaluated by Tasty Baking, damages to the plaintiffs based upon alleged improper benefits received by defendants and attorney fees and expenses.

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On April 29, 2011, a shareholder of Tasty Baking filed a derivative action styled, *Taylor v. Pizzi, et al.*, Case No. 11-05-00004 in the Court of Common Pleas of Philadelphia County, Pennsylvania against Tasty Baking, its directors, Parent, and Flowers Bakeries in connection with the proposed Merger. The complaint alleges, among other things, that Tasty Baking's directors breached their fiduciary duties owed to the company by (i) engaging in self dealing, (ii) failing to make certain material disclosures to the shareholders in the company's April 21, 2011 Schedule 14D-9; (iii) failing to maximize the value of Tasty Baking by recommending that the shareholders accept the tender offer at an unfair price; and (iv) putting the interest of Parent ahead of the interests of Tasty Baking. The complaint further alleges that the Tasty Baking directors wasted corporate assets by entering into the Merger Agreement. Flowers Bakeries and Tasty Baking are alleged to have aided and abetted the alleged breaches of fiduciary duty. The complaint seeks, among other things, a declaration that the action is properly maintainable as a derivative action, equitable relief that would delay or enjoin the Merger, damages to the plaintiffs based upon alleged improper benefits received by defendants, and the award of plaintiff's costs, including attorneys' and experts' fees.

Parent believes these allegations are without merit, and is defending the actions vigorously. The absence of an injunction or court order preventing the consummation of the transaction is a condition to Parent's obligation to complete the Offer pursuant to the Merger Agreement.

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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.

Date: May 2, 2011

COMPASS MERGER SUB, INC.

By: /s/ Stephen R. Avera

Name: Stephen R. Avera

Title: President

FLOWERS FOODS, INC.

By: /s/ Stephen R. Avera

Name: Stephen R. Avera

Title: Executive Vice President, Secretary
and General Counsel