

LABRANCHE & CO INC  
Form SC TO-I/A  
February 09, 2010

**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. 1)**

**LaBRANCHE & CO INC.**

**(Name of Subject Company (Issuer) and Name of Filing Person (Offeror))**

**Common Stock, Par Value \$0.01 Per Share**

**(Title of Class of Securities)**

**505447102**

**(CUSIP Number of Class of Securities)**

**George M.L. LaBranche, IV**

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33 Whitehall Street

New York, NY 10004

(212) 425-1144

(Name, address and telephone number of person authorized to receive notices

and communications on behalf of Filing Persons)

*Copy to:*

Michael J. Aiello

Weil, Gotshal & Manges LLP

767 Fifth Avenue

New York, NY 10153

Tel: (212) 310-8000

**CALCULATION OF REGISTRATION FEE**

**Transaction Valuation\***  
\$69,000,000

**Amount of Filing Fee\*\***  
\$4,919.70

- \* Estimated for purposes of calculating the amount of the filing fee only, this amount is based on the purchase of 15,000,000 shares of common stock at the tender offer price of \$4.60 per share.
- \*\* The Amount of Filing Fee calculated in accordance with Rule 0 11(b) of the Securities Exchange Act of 1934, as amended, equals \$71.30 for each \$1,000,000 of the value of the transaction.
- x Check the box if any part of the filing 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: \$4,919.70  
Form or Registration No.: Schedule TO

Filing Party: LaBranche & Co Inc.  
Date Filed: January 29, 2010

.. 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 transaction to which the statement relates:

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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)

## INTRODUCTION

This Amendment No. 1 (the Amendment) amends and supplements the Tender Offer Statement on Schedule TO (as amended, the Schedule TO) filed by LaBranche & Co Inc., a Delaware corporation (LaBranche or the Company), on January 29, 2010, pursuant to Rule 13e-4 under the Securities Act of 1934, as amended (the Exchange Act), in connection with its offer to purchase up to 15,000,000 shares of its common stock, par value \$0.01 per share, at a price of \$4.60 per share, net to the seller in cash, less any applicable withholding taxes and without interest, upon the terms and subject to the conditions set forth in the Offer to Purchase dated January 29, 2010 (the Offer to Purchase), and in the related Letter of Transmittal (the Letter of Transmittal), and Notice of Guaranteed Delivery (the Notice of Guaranteed Delivery) copies of which are attached to the Schedule TO as Exhibits (a)(i)(A) and (a)(1)(B), respectively (which, together with any supplements or amendments thereto, collectively constitute the Offer).

The information in the Offer, including all schedules and annexes thereto, which were previously filed with the Schedule TO, is hereby expressly incorporated by reference into this Amendment, except that such information is hereby amended and supplemented to the extent specifically provided herein.

The Offer to Purchase is hereby amended and supplemented as follows:

(1) The sentence on page 20 under the heading 6. Conditional Tender of Shares is hereby amended and restated in its entirety as provided below:

Under certain circumstances, we may prorate the number of shares purchased in the Offer. As discussed in Section 14, the number of shares to be purchased from a particular stockholder may affect the tax treatment of the purchase to the stockholder and the stockholder's decision whether to tender. Accordingly, a stockholder may tender shares subject to the condition that a specified minimum number of the stockholder's shares tendered pursuant to a Letter of Transmittal or notice of guaranteed delivery must be purchased if any shares tendered are purchased. We urge each stockholder to consult with his or her own tax advisor.

If you wish to make a conditional tender you must indicate this in the box captioned Conditional Tender in the Letter of Transmittal or, if applicable, the notice of guaranteed delivery. In the appropriate box in the Letter of Transmittal or the notice of guaranteed delivery, you must calculate and appropriately indicate the minimum number of shares that must be purchased if any are to be purchased. After the Offer expires, if in excess of 15,000,000 shares are properly tendered and not properly withdrawn and we must prorate our acceptance of and payment for tendered shares, we will calculate a preliminary proration percentage based upon all shares properly tendered, conditionally or unconditionally. If the effect of this preliminary proration would be to reduce the number of shares to be purchased from any stockholder below the minimum number specified by that stockholder, the conditional tender will automatically be regarded as withdrawn, unless chosen by lot for reinstatement as discussed in the next paragraph.

After giving effect to these withdrawals, we will accept the remaining shares properly tendered, conditionally or unconditionally, on a pro rata basis, if necessary. If we are able to purchase all of the remaining tendered shares and the number that we would purchase would be less than 15,000,000, then, to the extent feasible, we will select enough of the conditional tenders that would otherwise have been deemed withdrawn to permit us to purchase a total of 15,000,000 shares. In selecting these conditional tenders, we will select by random lot, treating all tenders by a particular stockholder as a single lot, and will select only from stockholders who tendered all of their shares. Upon selection by lot, if any, we will limit our purchase in each case to the designated minimum number of shares to be purchased.

All shares tendered by a stockholder subject to a conditional tender pursuant to the Letter of Transmittal or notice of guaranteed delivery regarded as withdrawn as a result of proration and not eventually purchased will be returned promptly after the expiration date without any expense to the stockholder.

The Letter of Transmittal is hereby amended and supplemented as follows:

(1) The bottom of page 2, under the section titled "Odd Lots" is supplemented as provided below:

**CONDITIONAL TENDER**

*(See Instruction 14)*

You may condition your tender of shares on our purchasing a specified minimum number of your tendered shares, all as described in Section 6 of the Offer to Purchase. Unless the minimum number of shares you indicate below is purchased by us in our Offer, none of the shares you tender will be purchased. It is your responsibility to calculate that minimum number of shares that must be purchased if any are purchased, and you are urged to consult your own tax advisor before completing this section. Unless this box has been checked and a minimum number of shares specified, your tender will be deemed unconditional.

" The minimum number of shares that must be purchased, if any are purchased, is: \_\_\_\_\_ shares.  
If, because of proration, the minimum number of shares that you designated above will not be purchased, we may accept conditional tenders by random lot, if necessary. However, to be eligible for purchase by random lot, you must have tendered all your shares and checked this box:

" The tendered shares represent all shares held by me.  
(2) The bottom of page 11, under the heading "13. Order of Purchase in Event of Proration" is supplemented as provided below:

14. *Conditional Tenders.* As described in Section 6 of the Offer to Purchase, you may tender shares subject to the condition that all or a specified minimum number of your shares tendered pursuant to this Letter of Transmittal or a notice of guaranteed delivery must be purchased if any shares tendered are purchased.

If you wish to make a conditional tender, you must indicate this in the box captioned "Conditional Tender" in this Letter of Transmittal or, if applicable, the notice of guaranteed delivery. In the box captioned "Conditional Tender" in this Letter of Transmittal or the notice of guaranteed delivery, you must calculate and appropriately indicate the minimum number of shares that must be purchased if any are to be purchased.

As discussed in Section 6 of the Offer to Purchase, proration may affect whether we accept conditional tenders and may result in shares tendered pursuant to a conditional tender being deemed withdrawn if the minimum number of shares would not be purchased. If, because of proration, the minimum number of shares that you designate will not be purchased, we may accept conditional tenders by random lot, if necessary. However, to be eligible for purchase by random lot, you must have tendered all your shares and check the box so indicating. Upon selection by lot, if any, we will limit our purchase in each case to the designated minimum number of shares.

All tendered shares will be deemed unconditionally tendered unless the "Conditional Tender" box is completed.

The conditional tender alternative is made available so that a stockholder may seek to structure our purchase of shares in our Offer from the stockholder in a manner that the sale will be treated as a sale of those shares by the stockholder, rather than the payment of a dividend to the stockholder, for federal income tax purposes. It is the tendering stockholder's responsibility to calculate the minimum number of shares that must be purchased from the stockholder in order for the stockholder to qualify for sale rather than dividend treatment.

The Notice of Guaranteed Delivery is hereby amended and supplemented as follows:

(1) The bottom of page 3, under the section titled "Odd Lots" is supplemented as provided below:

**CONDITIONAL TENDER**

*(SEE INSTRUCTION 14 TO THE LETTER OF TRANSMITTAL)*

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You may condition your tender of shares on our purchasing a specified minimum number of your tendered shares, all as described in Section 6 of the Offer to Purchase. Unless the minimum number of shares you indicate below is purchased by us in the Offer, none of the shares you tender will be purchased. It is your responsibility to calculate that minimum number of shares that must be purchased if any are purchased, and you are urged to consult your own tax advisor before completing this section. Unless this box has been checked and a minimum number of shares specified, your tender will be deemed unconditional.

The minimum number of shares that must be purchased, if any are purchased, is: \_\_\_\_\_ shares.

If because of proration, the minimum number of shares that you designated above will not be purchased, we may accept conditional tenders by random lot, if necessary. However, to be eligible for purchase by random lot, you must have tendered all your shares and checked this box:

The tendered shares represent all shares held by me.

Signature(s):

Name(s) of Record Holder(s):

**(PLEASE TYPE OR PRINT)** Certificate Nos.:

Address:

**(INCLUDE ZIP CODE)**

Daytime Area Code and Telephone No.:

Date:

If shares will be delivered by book-entry transfer, provide the following information:

Account Number:

The Letter to Clients for use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees is hereby supplemented and amended as follows:

- (1) The bottom of page 5, under the section titled "Odd Lots" is supplemented as provided below:

**CONDITIONAL TENDER**

*(See Instruction 14 to the Letter of Transmittal)*

You may condition your tender of shares on the Company purchasing a specified minimum number of your tendered shares, all as described in Section 6 of the Offer to Purchase. Unless the minimum number of shares you indicate below is purchased by the Company in its Offer, none of the shares you tender will be purchased. It is your responsibility to calculate that minimum number of shares that must be purchased if any are purchased, and you are urged to consult your own tax advisor before completing this section. Unless this box has been checked and a minimum number of shares specified, your tender will be deemed unconditional.

The minimum number of shares that must be purchased, if any are purchased, is: \_\_\_\_\_ shares.

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If, because of proration, the minimum number of shares that you designated above will not be purchased, the Company may accept conditional tenders by random lot, if necessary. However, to be eligible for purchase by random lot, you must have tendered all your shares and checked this box:

The tendered shares represent all shares held by me.

**The method of delivery of this document is at the option and risk of the tendering shareholder. If you decide to make delivery by mail, we recommend you use registered mail with return receipt requested, properly insured. In all cases, sufficient time should be allowed to assure delivery.**

**SIGN HERE:**

Signature(s):

Print Name(s):

Address(es):

Area Code and Telephone Number:

Taxpayer Identification or Social Security Number:

Date:

My Account Number With You:

**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: February 9, 2010

LABRANCHE & CO INC.

By: /s/ JEFFREY A. McCUTCHEON  
Name: **Jeffrey A. McCutcheon**  
Title: **Senior Vice President and Chief**

**Financial Officer**



**Exhibit Index**

- (a)(1)(A)\* Offer to Purchase dated January 29, 2010.
- (a)(1)(B)\* Letter of Transmittal.
- (a)(1)(C)\* Notice of Guaranteed Delivery.
- (a)(1)(D)\* Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees dated January 29, 2010.
- (a)(1)(E)\* Letter to Clients for use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees dated January 29, 2010.
- (a)(1)(F)\* Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9.
- (a)(1)(G) Press Release, dated January 29, 2010, incorporated by reference from Exhibit 99.1 to LaBranche's Current Report on Form 8-K dated January 29, 2010.
- (a)(1)(H)\* Summary Advertisement dated January 29, 2010.
- (a)(2) Not Applicable.
- (a)(3) Not Applicable.
- (a)(4) Not Applicable.
- (a)(5) Not Applicable.
- (b) Not Applicable.
- (d)(1) Exchange Agreement by and among LaBranche & Co Inc., LaB Investing Co., L.L.C. and the members of LaB Investing Co. L.L.C. listed on Schedule A thereto. (Incorporated by reference to our Registration Statement on Form S-1 (Registration No. 333-81079), as amended, effective August 18, 1999.)
- (d)(2) LaBranche & Co Inc. Amended and Restated Annual Incentive Plan. (Incorporated by reference to Exhibit 10.4 of our Annual Report on Form 10-K for the year ended December 31, 2006, filed March 1, 2007.)
- (d)(3) Form of Employment Letter between LaBranche & Co Inc. and its executive officers. (Incorporated by reference to our Registration Statement on Form S-1 (Registration No. 333-81079), as amended, effective August 18, 1999.)
- (d)(4) Form of Agreement Relating to Noncompetition and Other Covenants. (Incorporated by reference to our Registration Statement on Form S-1 (Registration No. 333-81079), as amended, effective August 18, 1999.)
- (d)(5) Form of Pledge Agreement. (Incorporated by reference to our Registration Statement on Form S-1 (Registration No. 333-81079), as amended, effective August 18, 1999.)
- (d)(6) Stockholders' Agreement by and among LaBranche & Co Inc. and the Stockholders listed on Schedule I thereto. (Incorporated by reference to our Registration Statement on Form S-1 (Registration No. 333-81079), as amended, effective August 18, 1999.)

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- (d)(7) Amended and Restated LaBranche & Co Inc. Equity Incentive Plan. (Incorporated by reference to Exhibit 4.1 of our Registration Statement on Form S-8 (Registration No. 333-102607), effective January 21, 2003.)
- (d)(8) LaBranche & Co Inc. Amended and Restated Senior Executive Bonus Plan. (Incorporated by Reference to our Current Report on Form 8-K, filed on May 18, 2006.)
- (d)(9) Form of Restricted Stock Unit Agreement. (Incorporated by reference to our Annual Report on Form 10-K, filed on March 16, 2005.)
- (d)(10) Form of Change in Control Agreement, dated September 18, 2007, between the Company and each of Jeffrey A. McCutcheon and Stephen H. Gray. (Incorporated by reference to our Quarterly Report on Form 10-Q, filed on November 8, 2007.)
- (d)(11)\* LaBranche & Co Inc. 2010 Equity Incentive Plan
- (g) Not Applicable.
- (h) Not Applicable.

\* Previously filed on Schedule TO on January 29, 2010.