

Gold Kist Inc.  
Form SC TO-T/A  
November 20, 2006

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# SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

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## SCHEDULE TO

Tender Offer Statement Under Section 14(d)(1) or 13(e)(1)

of the Securities Exchange Act of 1934

(Amendment No. 9)

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## GOLD KIST INC.

(Name of Subject Company)

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PROTEIN ACQUISITION CORPORATION

PILGRIM S PRIDE CORPORATION

(Names of Filing Persons Offerors)

Common Stock, Par Value \$0.01 Per Share

(Title of Class of Securities)

380614107

(CUSIP Number of Class of Securities)

Richard A. Cogdill

Pilgrim s Pride Corporation

4845 US Highway 271 North

Pittsburg TX 75686-0093

(903) 434-1000

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

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*Copy to:*

**Alan G. Harvey**

**Baker & McKenzie LLP**

**2300 Trammell Crow Center**

**2001 Ross Avenue**

**Dallas TX 75201**

**CALCULATION OF FILING FEE**

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<b>Transaction Valuation*</b>	<b>Amount of Filing Fee**</b>
\$1,060,016,120	\$113,422.00

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- \* Estimated for purposes of calculating the amount of the filing fee only. Calculated by multiplying \$20.00, the per share tender offer price, by the sum of (i) the 51,036,806 outstanding shares of Common Stock as of August 9, 2006 (according to the Quarterly Report on Form 10-Q for the period ended July 1, 2006 filed by Gold Kist Inc.), and (ii) the 1,964,000 shares of Common Stock subject to outstanding grants and awards under Gold Kist Inc. share-based compensation plans (according to the Report on Form 10-Q for the period ended July 1, 2006 filed by Gold Kist Inc.).
- \*\* Calculated as 0.0107% of the transaction value.

.. 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: \_\_\_\_\_ Filing Party: \_\_\_\_\_  
Form or Registration No.: \_\_\_\_\_ Date Filed: \_\_\_\_\_

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

Check the appropriate boxes 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. 7 (this Amendment) amends and supplements the Tender Offer Statement on Schedule TO filed on September 29, 2006 and amended by Amendment No. 1 filed September 29, 2006, Amendment No. 2 filed October 12, 2006, Amendment No. 3 filed October 16, 2006, Amendment No. 4 filed October 17, 2006, Amendment No. 5 filed October 23, 2006, Amendment No. 6 filed October 24, 2006, Amendment No. 7 filed October 30, 2006 and Amendment No. 8 filed November 13, 2006 (as so amended, the Schedule TO) by Protein Acquisition Corporation, a Delaware corporation (Purchaser) and Pilgrim's Pride Corporation, a Delaware Corporation (Parent) and owner of all of the outstanding common stock of Purchaser. The Schedule TO relates to the offer by Purchaser to purchase all the issued and outstanding shares of common stock, par value \$0.01 per share (the Common Stock), of Gold Kist Inc., a Delaware corporation (the Company), and the associated common stock and Series A Junior Participating Preferred Stock purchase rights (the Rights, and together with the Common Stock, the Shares) issued pursuant to the Stockholder Protection Rights Agreement, dated as of July 9, 2004, between the Company and Sun Trust Bank, as Rights Agent (the Rights Agreement), for \$20.00 per Share, net to the seller in cash (subject to applicable withholding taxes), without interest, upon the terms and subject to the conditions set forth in the Offer to Purchase dated September 29, 2006, as amended. Except as specifically provided herein, this Amendment does not modify any of the information previously reported on the Schedule TO.

### **Item 3. Identity and Background of Filing Person**

Item 3 of the Schedule TO is hereby amended and supplemented as follows:

Section 8, Certain Information Concerning Purchaser and Parent of the Offer to Purchase is hereby amended and supplemented as follows:

The third-to-last and second-to-last sentences of the third paragraph of this Section are hereby amended to read in their entirety as follows:

In fiscal 2006, Parent sold 5.7 billion pounds of dressed chicken and 149.2 million pounds of dressed turkey and generated net sales of \$5.2 billion. In fiscal 2006, Parent's U.S. operations including Puerto Rico accounted for 91.7% of its net sales, with the remaining 8.3% arising from its Mexico operations.

### **Item 6. Purposes of the Transaction and Plans or Proposals**

Item 6 of the Schedule TO is hereby amended and supplemented as follows:

Section 11, Purpose of the Offer; Plans for the Company after the Offer and the Merger, of the Offer to Purchase is hereby amended and supplemented as follows:

The discussion under the caption Debt Tender Offer in Section 11 of the Offer to Purchase is amended by revising and correcting the final paragraph thereof to read in full as follows:

On November 13, 2006, Parent issued a press release announcing the revised purchase price for the Gold Kist Notes as required by the terms of the offer to purchase such Notes, based on an assumed purchase date of December 2, 2006.

**Item 10. Financial Statements**

Item 10 of the Schedule TO is hereby amended and supplemented as follows:

Section 8, Certain Information Concerning Purchaser and Parent of the Offer to Purchase is hereby amended and supplemented as follows:

The paragraph entitled Summary Financial Information and the table immediately following such paragraph are hereby amended to read in their entirety as follows:

*Summary Financial Information.* The following table sets forth summary historical financial data for Parent as of and for the fiscal years ended September 30, 2006 and October 1, 2005. The selected financial information set forth below is extracted from, and should be read in conjunction with, the audited financial statements and other financial information contained in Parent's Annual Report on Form 10-K filed with the SEC on November 17, 2006, for the fiscal year ending September 30, 2006, including the notes thereto. More comprehensive financial information is included in such reports (including management's discussion and analysis of financial condition and results of operations) and other documents filed by Parent with the SEC, and the following summary is qualified in its entirety by reference to such reports and other documents and all of the financial information and notes contained therein.

	<b>Fiscal Years Ended</b>	
	<b>September 30, 2006</b>	<b>October 1, 2005</b>
	<b>(In thousands, except ratios and per share amounts)</b>	
<b>Operating Results Information</b>		
Net sales	\$ 5,235,565	\$ 5,666,275
Gross profit	297,600	745,199
Operating income	3,002	435,812
Net income (loss)	(34,232)	264,979
Ratio of earnings to fixed charges	<sup>1</sup>	7.19
<b>Balance Sheet Information</b>		
Total current assets	1,105,674	999,415
Total non-current assets	1,321,194	1,512,488
<b>Total Assets</b>	<b>2,426,868</b>	<b>2,511,903</b>
Total current liabilities	576,837	594,814
Total non-current liabilities	730,745	692,095
Minority interest	1,958	1,396
<b>Total Liabilities</b>	<b>1,309,540</b>	<b>1,288,305</b>
<b>Per Common Share Information</b>		
Net Income (loss) Basic and diluted	(0.51)	3.98
Book value per share	16.79	18.38

<sup>1</sup> For the fiscal year ended September 30, 2006, earnings were insufficient to cover fixed charges by \$40,615.

**Item 12. Material to Be Filed as Exhibits.**

- (a)(1) Offer to Purchase dated September 29, 2006.
- (a)(2) Form of Letter of Transmittal.
- (a)(3) Form of Notice of Guaranteed Delivery.

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- (a)(4) Form of Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.
- (a)(5) Form of Letter to Clients.
- (a)(6) Form of Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9.
- (a)(7) Summary Advertisement as published in The Wall Street Journal on September 29, 2006.
- (a)(8) Press Release announcing Parent's intention to commence the Offer issued by Parent on September 28, 2006 (incorporated by reference to the Current Report on Form 8-K filed by Parent on September 28, 2006).
- (a)(9) Letter dated September 28, 2006 from Parent to the Board of Directors of the Company (included in Exhibit (a)(8)).
- (a)(10) Letter dated September 28, 2006 to employees of Parent (incorporated by reference to the Current Report on Form 8-K filed by Parent on September 28, 2006).
- (a)(11) Letter dated September 28, 2006 to customers of Parent (incorporated by reference to the Current Report on Form 8-K filed by Parent on September 28, 2006).
- (a)(12) Letter dated September 28, 2006 to Parent growers (incorporated by reference to the Current Report on Form 8-K filed by Parent on September 28, 2006).
- (a)(13) Tender Offer FAQs (incorporated by reference to the Current Report on Form 8-K filed by Parent on September 28, 2006).
- (a)(14) Frequently Asked Questions for Pilgrim's Pride Employees (incorporated by reference to the Current Report on Form 8-K filed by Parent on September 28, 2006).
- (a)(15) Press release issued by Parent on September 28, 2006 announcing Parent's intention to commence the Offer to Purchase Gold Kist 10<sup>1</sup>/<sub>4</sub>% Senior Notes due March 15, 2014 and related Consent Solicitation (incorporated by reference to the Current Report on Form 8-K filed by Parent on September 28, 2006).
- (a)(16) Press release issued by Parent on August 18, 2006 (previously filed on August 18, 2006 pursuant to Rule 14a-12 under the Securities Exchange Act of 1934 (the "Exchange Act") and refiled on August 24, 2006 pursuant to Rule 425 under the Securities Act of 1933 (the "Securities Act") and deemed filed pursuant to Rule 14a-12 and Rule 14d-2 under the Exchange Act).
- (a)(17) Pilgrim's Pride Corporation's Proposal for Gold Kist Inc. Frequently Asked Questions (FAQs) dated August 21, 2006 (previously filed on August 21, 2006 pursuant to Rule 425 under the Securities Act and deemed filed pursuant to Rule 14a-12 and Rule 14d-2 under the Exchange Act).
- (a)(18) Investor Presentation dated August 21, 2006 (previously filed on August 21, 2006 pursuant to Rule 425 under the Securities Act and deemed filed pursuant to Rule 14a-12 and Rule 14d-2 under the Exchange Act).
- (a)(19) Letter dated August 18, 2006 from Parent to the Company regarding the stockholder proposal provided by O.B. Goolsby, Jr., to the Company (previously filed on August 22, 2006 pursuant to Rule 425 under the Securities Act and deemed filed pursuant to Rule 14a-12 and Rule 14d-2 under the Exchange Act).
- (a)(20) Letter dated August 30, 2006 from Parent to the Company.
- (a)(21) Letter dated September 20, 2006 from Parent to the Company.
- (a)(22) Press Release issued by Parent on September 29, 2006 announcing commencement of the Offer to Purchase the Company's 10<sup>1</sup>/<sub>4</sub>% Senior Notes due March 15, 2014 and related Consent Solicitation.
- (a)(23) Press Release issued by Parent on October 12, 2006 responding to the Schedule 14D-9 filed by the Company.

- (a)(24) Press Release issued by Parent on October 12, 2006 announcing the purchase price for the Gold Kist Notes and receipt of tenders and related consents from holders of 73.2% of the outstanding Gold Kist Notes.
- (a)(25) Press Release issued by Parent on October 16, 2006 announcing receipt of tenders of Gold Kist Notes and related consents sufficient to approve proposed amendments to the Gold Kist Indenture.
- (a)(26) Press Release issued by Parent on October 17, 2006 announcing early termination of the waiting period under the HSR Act.
- (a)(27) Press Release issued by Parent on October 23, 2006 with open letter to the Company's stockholders.
- (a)(28) Press Release issued by Parent on October 29, 2006 announcing reduction in weekly chicken processing.
- (a)(29) Press Release issued by Parent on October 30, 2006 announcing extension of the Offer and extension of Parent's offer to purchase and consent solicitation with respect to the Gold Kist Notes.
- (a)(30) Order of the U.S. District Court issued November 2, 2006 denying the Company's Motion for Expedited Hearing and granting Parent's Motion to Modify Scheduling Order.
- (a)(31) Defendants' Motion to Dismiss the Company's Exchange Act Claims.
- (a)(32) Defendants' Memorandum in Support of Motion to Dismiss the Company's Exchange Act Claims.
- (a)(33) Motion by the Parent Nominees (other than Joseph C. Moran and Michael A. Pruitt) to Dismiss the Company's Complaint for lack of personal jurisdiction over such Defendants.
- (a)(34) Memorandum in Support of Motion by the Parent Nominees (other than Joseph C. Moran and Michael A. Pruitt) to Dismiss the Company's Complaint for lack of personal jurisdiction over such Defendants.
- (a)(35) Press Release issued by Parent on November 13, 2006 announcing the revised purchase price for the Gold Kist Notes.
- (b)(1) Credit Agreement by and among CoBank ACB, Agriland FCS and the Company dated as of September 21, 2006 (incorporated by reference to the Current Report on Form 8-K filed by Parent on September 28, 2006).
- (b)(2) Pilgrim's Pride Corporation \$450,000,000 Senior Unsecured Increasing Rate Bridge Facility Commitment Letter from Lehman Brothers to the Company dated September 27, 2006 (incorporated by reference to the Current Report on Form 8-K filed by Parent on September 28, 2006).
- (b)(3) Supplemental Commitment Letter from Lehman Brothers and Credit Suisse to Parent dated October 20, 2006.
- (d) None.
- (g) None.
- (h) None.

**SIGNATURES**

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: November 17, 2006

**PROTEIN ACQUISITION CORPORATION**

**By:** /s/ RICHARD A. COGDILL  
**Name:** Richard A. Cogdill  
**Title:** Executive Vice President, Chief Financial Officer,  
Secretary and Treasurer

**PILGRIM S PRIDE CORPORATION**

**By:** /s/ RICHARD A. COGDILL  
**Name:** Richard A. Cogdill  
**Title:** Executive Vice President, Chief Financial Officer,  
Secretary and Treasurer

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**EXHIBIT INDEX**

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- (a)(15) Press release issued by Parent on September 28, 2006 announcing Parent's intention to commence the Offer to Purchase Gold Kist 10 1/4% Senior Notes due March 15, 2014 and related Consent Solicitation (incorporated by reference to the Current Report on Form 8-K filed by Parent on September 28, 2006).
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**Exhibit No.**

- (a)(22) Press Release issued by Parent on September 29, 2006 announcing commencement of the Offer to Purchase the Company's 10¼% Senior Notes due March 15, 2014 and related Consent Solicitation.
- (a)(23) Press Release issued by Parent on October 12, 2006 responding to the Schedule 14D-9 filed by the Company.
- (a)(24) Press Release issued by Parent on October 12, 2006 announcing the purchase price for the Gold Kist Notes and receipt of tenders and related consents from holders of 73.2% of the outstanding Gold Kist Notes.
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