

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): February 1, 2022



Rocky Mountain Chocolate Factory, Inc.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-36865
(Commission
File Number)

47-1535633
(IRS Employer
Identification No.)

265 Turner Drive
Durango, Colorado 81303
(Address, including zip code, of principal executive offices)

Registrant's telephone number, including area code: (970) 259-0554

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class registered	Trading symbol(s)	Name of each exchange on which registered
Common Stock, \$0.001 par value per share	RMCF	Nasdaq Global Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Explanatory Note

As previously disclosed, on October 2, 2021, the Board of Directors (the “Board”) of Rocky Mountain Chocolate Factory, Inc. (the “Company”) approved the redemption of all the outstanding preferred stock purchase rights (the “Rights”) granted pursuant to the Rights Agreement, dated March 1, 2015, between the Company and Computershare Trust Company, N.A., as Rights Agent (as amended, the “Rights Agreement”). Immediately upon the action of the Board to approve the redemption of the Rights, the right to exercise the Rights terminated, which effectively terminated the Rights Agreement. Pursuant to the Rights Agreement and a Notice of Redemption, dated October 15, 2021, the Rights were redeemed at a redemption price of \$0.01 per Right.

Item 3.03. Material Modification to Rights of Security Holders.

The information set forth under Item 5.03 of this Current Report on Form 8-K is incorporated herein by reference.

Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

On February 1, 2022, the Company filed with the office of the Secretary of State of the State of Delaware (the “Secretary of State”) a Certificate of Elimination (the “Certificate of Elimination”), which, effective on February 1, 2022, eliminated from the Company’s Amended and Restated Certificate of Incorporation all matters set forth in the Company’s Certificate of Designations of Series A Junior Participating Preferred Stock, Par Value \$0.001 Per Share, of Rocky Mountain Chocolate Factory, Inc. (the “Series A Junior Participating Preferred Stock”), as filed with the Secretary of State of the State February 26, 2015. The 50,000 shares of preferred stock previously designated as Series A Junior Participating Preferred Stock were eliminated and returned to the status of authorized but unissued shares of preferred stock, without designation. No shares of the Series A Junior Participating Preferred Stock were issued and outstanding at the time of filing the Certificate of Elimination.

The foregoing description does not purport to be complete and is qualified in its entirety by reference to the full text of the Certificate of Elimination, which is attached hereto as Exhibit 3.1 and incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
3.1	Certificate of Elimination of the Series A Junior Participating Preferred Stock of Rocky Mountain Chocolate Factory, Inc.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

ROCKY MOUNTAIN CHOCOLATE FACTORY, INC.

Date: February 2, 2022

By: /s/ Bryan J. Merryman
Name: Bryan J. Merryman
Title: Interim President and Chief Executive Officer, and
Chief Financial Officer

**CERTIFICATE OF ELIMINATION
OF THE
SERIES A JUNIOR PARTICIPATING PREFERRED STOCK
OF
ROCKY MOUNTAIN CHOCOLATE FACTORY, INC.**

Pursuant to Section 151(g) of the General Corporation Law of the State of Delaware

Rocky Mountain Chocolate Factory, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Company"), does hereby certify as follows:

1. Pursuant to Section 151(g) of the General Corporation Law of the State of Delaware (the "DGCL") and the authority vested in the Board of Directors (the "Board") of the Company, the Board adopted the following resolutions on October 2, 2021 respecting the Company's Series A Junior Participating Preferred Stock, which resolutions have not been amended or rescinded:

WHEREAS, effective March 1, 2015, the Board authorized the issuance of a series of 50,000 shares of Series A Junior Participating Preferred Stock (the "Series A Junior Participating Preferred Stock").

WHEREAS, the Board deems it advisable and in the best interest of the Company and its stockholders to eliminate the Series A Junior Participating Preferred Stock.

RESOLVED, that none of the authorized shares of Series A Junior Participating Preferred Stock are outstanding, and none will be issued subject to the Certificate of Designations of Series A Junior Participating Preferred Stock, Par Value \$0.001 Per Share, of the Company, previously filed with respect to the Series A Junior Participating Preferred Stock (the "Certificate of Designation").

RESOLVED, FURTHER, that each of the officers of the Company be, and each of them individually hereby is, authorized and directed to take any and all actions as such officers deem necessary and appropriate to eliminate the Series A Junior Participating Preferred Stock, including to execute and file, or cause to be executed and filed, a Certificate of Elimination of the Series A Junior Participating Preferred Stock (the "Certificate of Elimination") with the Secretary of State of the State of Delaware.

RESOLVED, FURTHER, that when the Certificate of Elimination setting forth these resolutions becomes effective, it shall have the effect of eliminating from the Amended and Restated Certificate of Incorporation of the Company all matters set forth in the Certificate of Designation with respect to the Series A Junior Participating Preferred Stock, and all of the shares that were designated as Series A Junior Participating Preferred Stock shall be returned to the status of preferred shares of the Company, without designation as to series.

2. In accordance with Section 151(g) of the DGCL, all matters set forth in the previously filed Certificate of Designation with respect to the Series A Junior Participating Preferred Stock are hereby eliminated and the shares that were designated to such series hereby are returned to the status of authorized but unissued shares of the preferred stock of the Company, without designation as to series.

* * * *

IN WITNESS WHEREOF, the Company has caused this Certificate to be signed by its duly authorized officer this 1st day of February, 2022.

ROCKY MOUNTAIN CHOCOLATE FACTORY, INC.

By: /s/ Bryan J. Merryman

Name: Bryan J. Merryman

Title: Interim Chief Executive Officer and Chief Financial Officer