

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): August 3, 2023



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:

<u>Title of each class</u>	<u>Trading Symbol</u>	<u>Name of each exchange on which registered</u>
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.

Item 1.01. Entry into a Material Definitive Agreement.

As previously reported on a Current Report on Form 8-K filed with the Securities and Exchange Commission on December 16, 2022, on December 14, 2022 (the “Effective Date”), Rocky Mountain Chocolate Factory, Inc. (the “Company”) entered into a Settlement Agreement and Release (the “Agreement”), by and among the Company, Bradley L. Radoff, an individual (“Radoff”), Andrew T. Berger, an individual (“Berger”), AB Value Partners, LP (“AB Value Partners”), AB Value Management LLC (“AB Value Management” and, together with AB Value Partners, “AB Value” and, together with Radoff, “ABV-Radoff”), and Mary Bradley, an individual (each, a “Party” and together, the “Parties”), pertaining to, among other things, the dismissal of all pending lawsuits between the Parties.

Pursuant to the Agreement, the Company and ABV-Radoff agreed to a “Standstill Period” commencing on the Effective Date and ending on the date that is forty-five (45) days prior to the beginning of the Company’s advance notice period for the nomination of directors at the Company’s 2025 annual meeting of stockholders. During the Standstill Period, ABV-Radoff agreed, subject to certain exceptions, other than in Rule 144 open market broker sale transactions where the identity of the purchaser is not known and in underwritten widely dispersed public offerings, not to sell, offer, or agree to sell directly or indirectly, through swap or hedging transactions or otherwise, the securities of the Company or any rights decoupled from the underlying securities of the Company held by ABV-Radoff to any person or entity other than the Company or an affiliate of ABV-Radoff (a “Third Party”) that, to the ABV-Radoff’s knowledge would result in such Third Party, together with its Affiliates and Associates (as such terms are defined in the Agreement), owning, controlling, or otherwise having beneficial ownership or other ownership interest in the aggregate of more than 4.9% of the shares of common stock of the Company, par value \$0.001 per share (“Common Stock”), outstanding at such time, or would increase the beneficial ownership or other ownership interest of any Third Party who, together with its Affiliates and Associates, has a beneficial ownership or other ownership interest in the aggregate of more than 4.9% of the shares Common Stock outstanding at such time (such restrictions collectively, the “Lock-Up Restriction”).

On August 3, 2023, the board of directors (the “Board”) of the Company authorized and approved the Company to issue a limited waiver (the “Limited Waiver”) of the Lock-Up Restriction with regard to a sale by ABV-Radoff of up to 200,000 shares of Common Stock to Global Value Investment Corp. (“GVIC”) to be consummated by August 7, 2023. Jeffrey Geygan, the Company’s Chairman of the Board, is the chief executive officer and a principal of GVIC. Other than as waived by the Limited Waiver, the Agreement remains in full force and effect and the rights and obligations under the Agreement of each of the Parties remain unchanged.

The foregoing description of the Limited Waiver does not purport to be complete and is qualified in its entirety by reference to the full text of the Waiver, a copy of which is filed as Exhibit 10.1 to this Current Report on Form 8-K and incorporated herein by reference.

Item 7.01. Regulation FD Disclosure.

The information set forth in Item 1.01 is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
10.1	Waiver and Consent, dated August 3, 2023
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: August 7, 2023

By: /s/ A. Allen Arroyo
A. Allen Arroyo, Chief Financial Officer



Rocky Mountain Chocolate Factory Inc.
265 Turner Drive • Durango, CO USA 81303
011.877.536.7080 • 011.970.259.0554

August 3, 2023

Bradley L. Radoff
2727 Kirby Dr., Unit 29L
Houston, Texas 77098
Email: brad@fondrenlp.com

Re: Sale of Shares of Common Stock of Rocky Mountain Chocolate Factory, Inc.

Dear Mr. Radoff:

We understand you have proposed to sell up to 200,000 shares (the "Shares") of common stock ("Company Common Stock") of Rocky Mountain Chocolate Factory, Inc. (the "Company") and that Global Value Investment Corp. ("GVIC"), a stockholder of the Company that holds in excess of 4.9% of the Company Common Stock, may purchase some or all of the Shares (such one-time sale of the Shares, the "Sale Transaction"). In accordance with Section 4(b)(iv) of the Settlement Agreement and Release, dated December 14, 2022 (the "Agreement"), by and among the Company, you, and certain other parties, you have requested the Company's written consent to the Sale Transaction due to the limitations set forth in Section 4(b)-iv of the Agreement.

Subject to the terms hereof, the Company provides its consent under the Agreement, which consent has been approved by a resolution of a majority of the Company's directors, to the Sale Transaction (this "Consent"). This Consent does not waive, amend or provide consent under any of the other provisions of the Agreement. The Agreement remains in full force and effect and the rights and obligations under the Agreement of each of the parties remain unchanged. The granting of this Consent will not obligate the Company to take any action in the future, except as explicitly required by the Agreement. If the Company determines that it is necessary or advisable to make any public statement or any filing with the Securities and Exchange Commission in connection with this Consent, you agree, for yourself and as the ABV-Radoff Defendants Representative (as defined in the Agreement), that such statement or filing is not inconsistent with or contrary to the Current Report on Form 8-K filed by the Company reporting the entry into the Agreement and consent to any such statement or filing.

You agree, for yourself and as the ABV-Radoff Defendants Representative, that you and the ABV-Radoff Defendants will refrain from taking any action, including legal action with regards to this Consent or the Sale Transaction.

The Consent shall remain effective only until August 7, 2023 and, if the Sale Transaction has not occurred by then, you will need to obtain the Company's further consent with respect to the Sale Transaction. This Consent is solely for the benefit of the Company and you, as well as any respective permitted successors and assigns under the Agreement, and cannot be enforced by or transferred to any other person.

This Consent is not effective unless and until you acknowledge and agree to the terms set forth in this Consent, in your individual capacity and in your capacity as the ABV-Radoff Defendants Representative under the Agreement, by your signature below, which may be executed either manually or by electronic or digital signature (including by facsimile or email transmission). In acknowledging and agreeing to this Consent, you acknowledge that you have had the opportunity to allow counsel of your choice to review the Consent or any associated documents.

Sincerely,

ROCKY MOUNTAIN CHOCOLATE FACTORY, INC.

By: /s/ Robert J. Sarlls
Robert J. Sarlls
Chief Executive Officer

Acknowledged and Agreed to by:

/s/ Bradley L. Radoff
Bradley L. Radoff, individually
and in his capacity as the ABV-Radoff Defendants Representative under the Agreement

CC:

Olshan Frome Wolosky LLP
1325 Avenue of the Americas
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Attention: Ryan P. Nebel and Rebecca L. Van Derlaske
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