

ROCKY MOUNTAIN CHOCOLATE FACTORY INC

Form S-8 POS

September 11, 2007

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As filed with the Securities and Exchange Commission on September 11, 2007

Registration No. 333-109936

**SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

**FORM S-8
POST-EFFECTIVE AMENDMENT NO. 1 TO
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

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

Colorado (State or other jurisdiction of incorporation or organization) **84-0910696** (I.R.S. Employer Identification No.)

**265 Turner Drive
Durango, Colorado 81303
(970) 259-0554**

(Address of principal executive offices, including zip code)

**2000 NONQUALIFIED STOCK OPTION PLAN FOR
NONEMPLOYEE DIRECTORS OF ROCKY MOUNTAIN
CHOCOLATE FACTORY**

(Full title of the plan)

**Franklin E. Crail
Chairman of the Board, Chief Executive Officer and President
Rocky Mountain Chocolate Factory, Inc.**

**265 Turner Drive
Durango, Colorado 81303
(970) 259-0554**

(Name, address and telephone number, including area code, of agent for service)

**Copy to:
Sonny Allison
Perkins Coie llp
1899 Wynkoop Street, Suite 700
Denver, Colorado 80202-1043
303-291-2300**

CALCULATION OF REGISTRATION FEE

| Title of Securities to Be Registered | Amount to Be Registered | Proposed Maximum Offering Price Per Share | Proposed Maximum Aggregate Offering Price) | Amount of Registration Fee |
|--|--------------------------------|--|---|-----------------------------------|
| Common Stock, par value \$.03 per share, together with associated preferred stock purchase rights, under the 2000 Nonqualified Stock | (1) | (1) | (1) | (1) |

Option Plan for
Nonemployee Directors
of Rocky Mountain
Chocolate Factory

- (1) No additional shares are being registered and registration fees were paid upon filing of the original Form S-8 Registration Statement with the Securities and Exchange Commission on October 23, 2003 (Registration No. 333-109936) for the plan. Therefore, no further registration fee is required.
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Consent of Ehrhardt Keefe Steiner & Hottman PC

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EXPLANATORY NOTE

The Registrant suspended its 2000 Nonqualified Stock Option Plan for Nonemployee Directors, as amended (the Director's Plan) with respect to issuances of new stock option grants thereunder, effective August 17, 2007, and adopted a new plan, the Rocky Mountain Chocolate Factory, Inc. 2007 Equity Incentive Plan (the 2007 Plan), effective as of August 17, 2007. The Registrant's Form S-8 Registration Statement filed with the Securities and Exchange Commission (the Commission) on October 23, 2003 (Registration No. 333-109936) (the Registration Statement) is hereby amended to provide that up to 56,960 shares available for issuance, but not issued or subject to outstanding options, under the Director's Plan (the Unissued Option Shares) are no longer issuable under the Director's Plan and may now be issued under the 2007 Plan. A registration statement on Form S-8 with respect to the Unissued Option Shares, is being filed with the Commission concurrently with this Post-Effective Amendment No. 1.

The Registration Statement shall remain in effect for purposes of outstanding stock options granted under the Director's Plan.

The contents of the Registration Statement are otherwise incorporated by reference into this Post-Effective Amendment No. 1 to such Registration Statement, except as described herein. Required consents and signatures are included in this amendment.

PART II

INFORMATION REQUIRED IN REGISTRATION STATEMENT

Item 8. EXHIBITS

| Exhibit Number | Description |
|----------------|---|
| 5.1* | Opinion of Perkins Coie llp regarding legality of the Common Stock being registered |
| 23.1 | Consent of Ehrhardt Keefe Steiner & Hottman PC |
| 23.2* | Consent of Perkins Coie llp |
| 24.1* | Power of Attorney |

* Previously filed.

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SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all the requirements for filing on Form S-8 and has duly caused this Post-Effective Amendment No. 1 to Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Durango, State of Colorado, on September 11, 2007.

ROCKY MOUNTAIN CHOCOLATE FACTORY, INC.

By: /s/ Franklin E. Crail

Name: Franklin E. Crail

Title: President, Chief Executive Officer, and Chairman of the Board

Pursuant to the requirements of the Securities Act of 1933, this Post-Effective Amendment No. 1 to Registration Statement has been signed by the following persons in the capacities indicated below on September 11, 2007.

| <u>Signature</u> | <u>Title</u> |
|-------------------------------------|---|
| /s/ Franklin E. Crail | President, Chief Executive Officer, and Chairman of the Board (Principal Executive Officer) |
| Franklin E. Crail | |
| /s/ Bryan J. Merryman | Chief Operating Officer, Chief Financial Officer, Treasurer and Director (Principal Financial Officer and Principal Accounting Officer) |
| Bryan J. Merryman | Director |
| * | |
| Gerald A. Kien | Director |
| * | |
| Lee N. Mortenson | Director |
| * | |
| Fred M. Trainor | Director |
| * | |
| Clyde Wm. Engle | |
| *By: /s/ Franklin E. Crail | |
| Franklin E. Crail, Attorney-in-Fact | |

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