

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

**FORM 8-K/A
Amendment No. 5**

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 18, 2022**

HEALTHIER CHOICES MANAGEMENT CORP.

(Exact name of registrant as specified in its charter)

Delaware

(State or Other Jurisdiction
of Incorporation)

001-36469

(Commission
File Number)

84-1070932

(I.R.S. Employer
Identification No.)

3800 North 28th Way

Hollywood, Florida 33020

(Address of Principal Executive Office) (Zip Code)

(888) 766-5351

(Registrant's telephone number, including area code)

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:

- ☐ 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))

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).

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

Title of each class
Common

Trading symbol(s)
HCMC

Name of each exchange on which registered
OTC Pink

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

This Amendment No. 5 on Form 8-K/A to the Form 8-K filed on August 23, 2022, is being filed for the purpose of filing Exhibit 10.1 and describing the Third Amendment to the Securities Purchase Agreement.

ITEM 1.01. ENTRY INTO A MATERIAL DEFINITIVE AGREEMENT

On August 18, 2022, Healthier Choices Management Corp. (the "Company" or "HCMC") entered into a Securities Purchase Agreement (the "SPA"), pursuant to which the Company sold and issued 14,722,075 shares of its Series E Redeemable Convertible Preferred Stock (the "Preferred Stock") to five institutional investors (the "Purchasers") for an aggregate subscription price of \$13,250,000 (the "Offering").

On March 2, 2023, the parties to the SPA entered into First Amendment to Securities Purchase Agreement, pursuant to which the Company agreed to pay each Purchaser ten percent (10%) of the Stated Value (the "Conversion Payment") of the Preferred Stock upon conversion of such Preferred Stock into common stock prior to the record date for the Spin Off.

On May 15th, the parties to the SPA entered into Second Amendment to the Securities Purchase Agreement, pursuant to which the Company and such parties agreed to: (1) extend the time period for the Conversion Payment eligibility to December 1, 2023, (2) amend the Certificate of Designation as set forth in Item 5.03 below and (3) require the Purchasers to purchase Series A Convertible Preferred Stock of a newly created public company (resulting from spin off of HCMC's grocery and wellness businesses) in the same subscription amounts that the Purchasers paid for the HCMC Preferred Stock (the "Spinoff") only if the Spinoff is completed prior to December 1, 2023 ("Completion Date").

On October 30, 2022, the parties to the SPA entered into Third Amendment to the Securities Purchase Agreement, pursuant to which the Company and such parties agreed to: (1) set the initial conversion price for the Series A Preferred Stock to be the 5-day volume weighted average price measured using the 5 trading days preceding the purchase of the Series A Preferred Stock, (2) on the 40th calendar day (the "Reset Date") after the sale of the Series A Preferred Stock, reset the conversion price in the event the closing price of the Class A common stock on such date is less than the initial conversion, (3) have the reset conversion price equal a 10% discount to the 5-day volume weighted average price

measured using the 5 trading days preceding the Reset Date; provided, however, in no instance will the conversion price be reset below 30% of the initial conversion price, and (4) amend the Completion Date to March 1, 2024.

On February 20, 2024, the parties to the SPA entered into a Fourth Amendment to the Securities Purchase Agreement, pursuant to which the Company and such parties agreed to amend the Completion Date to June 1, 2024.

On April 8, 2024, the parties to the SPA entered into a Fifth Amendment to the Securities Purchase Agreement, pursuant to which the Company and such parties agreed to amend the Completion Date to August 1, 2024.

As of April 8, 2024, 1,585 shares of Preferred Stock have been converted and 12,026 shares of Preferred Stock have been redeemed for total redemption payments of \$12,004,000.

The foregoing description of the Third Amendment to Securities Purchase Agreement is a summary and is qualified in its entirety by reference to the provisions thereof, a copy of which is attached to this Current Report as Exhibit 10.1, which is incorporated by reference herein.

ITEM 9.01. FINANCIAL STATEMENTS AND EXHIBITS.

(d) Exhibits.

Exhibit Number	Description
10.1	Fifth Amendment to Securities Purchase Agreement, dated as of April 8, 2024, by and among Healthier Choices Management Corp. and the purchasers named therein
104	Cover Page Interactive Data File (Embedded within the Inline XBRL document and included in Exhibit)

SIGNATURES

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 hereunto duly authorized.

Healthier Choices Management Corp.

Date: April 9, 2024

By: /s/ Jeffrey E. Holman
Jeffrey E. Holman
Chief Executive Officer

FIFTH AMENDMENT TO SECURITIES PURCHASE AGREEMENT

This Fifth Amendment to that certain Securities Purchase Agreement (this “Agreement”) is dated as of April 8, 2024, between Healthier Choices Management Corp., a Delaware corporation (the “Company”), and each purchaser identified on the signature pages hereto (each, including its successors and assigns, a “Purchaser” and collectively, the “Purchasers”). Capitalized terms not otherwise defined in this Agreement shall have the respective meanings ascribed to them in the SPA (as defined below).

WHEREAS, the parties entered into a Securities Purchase Agreement (“SPA”), dated as of August 18, 2022, and amended (the “Amendment”) on March 1, 2023, May 15, 2023, October 30, 2023 and February 20, 2024, the Purchasers and the Seller; and

WHEREAS, the parties have decided to amend the SPA as set forth below to add certain provision.

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements herein contained, and intending to be legally bound hereby, the parties hereto agree as follows:

ARTICLE I
AMENDMENTS

1.1 Spin-Off Financing. The first sentence of Section 4.14 of the SPA shall be revised to replace “June 1, 2024” with “August 1, 2024”.

1.2 No Amendment. Nothing contained herein in any manner modifies or amends any other terms or provisions of the SPA all of which remain in full force and effect unmodified.

ARTICLE II
MISCELLANEOUS

2.1 Entire Agreement. This Agreement and the SPA contains the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, either oral or written.

2.2 Amendment and Waiver. This Agreement may be amended only by an instrument in writing signed by all of the signatories hereto.

2.3 Assignment. This Agreement and the rights and obligations set forth herein shall inure to the benefit of, and be binding upon the parties hereto, and each of their respective successors, heirs and permitted assigns.

2.4 Governing Law; Venue; Waiver of Jury Trial. This Agreement shall be governed by the laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule that would cause application of the laws of any jurisdiction other than the State of New York. Each of the parties to this Agreement irrevocably submits to the exclusive jurisdiction of the courts of the State of New York for the purpose of any dispute arising out of or relating to this Agreement. EACH OF THE PARTIES HERETO WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY ACTION RELATED TO OR ARISING OUT OF THIS AGREEMENT.

1

2.5 Construction. Each party hereto acknowledges that it has been advised by legal and any other counsel retained by such party in its sole discretion. Each party acknowledges that such party has had a full opportunity to review this Agreement and all related exhibits, schedules and ancillary agreements and to negotiate any and all such documents in its sole discretion, without any undue influence by any other party hereto or any third party. The parties have participated jointly in the negotiations and drafting of this Agreement and both shall be deemed drafters. In the event of any ambiguity or question of intent or interpretation, no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

2.6 Counterparts. This Agreement may be executed in two or more counterparts, any one of which need not contain the signatures of all parties, but all of which counterparts when taken together will constitute one and the same agreement. Facsimile signatures (including in .pdf format) shall constitute original signatures for all purposes of this Agreement.

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2

NOW, THEREFORE, the parties hereto have executed this Fifth Amendment to Securities Purchase Agreement by their duly authorized representatives as an instrument under seal as of the date first written above.

PURCHASER:

Sabby Volatility Warrant Master Fund, Ltd.

By: /s/ Robert Grundstein
Name: Robert Grundstein
Title: COO of Investment Manager

Healthier Choices Management Corp.

By: /s/ Jeffrey E. Holman
Name: Jeffrey E. Holman
Title: Chief Executive Officer

3

