

NATIONAL CINEMEDIA, LLC

FORM 8-K (Current report filing)

Filed 03/15/17 for the Period Ending 03/09/17

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SIC Code	7310 - Advertising
Fiscal Year	12/29

**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): **March 15, 2017 (March 9, 2017)**

National CineMedia, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-33296
(Commission
file number)

20-5665602
(IRS employer
identification no.)

National CineMedia, LLC

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

333-176056
(Commission
file number)

20-2632505
(IRS employer
identification no.)

**9110 E. Nichols Ave., Suite 200
Centennial, Colorado 80112-3405**
(Address of principal executive offices, including zip code)

(303) 792-3600
(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 (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 210.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 8.01 Other Events.

On March 9, 2017, National CineMedia, Inc. (the “Company”) and National CineMedia, LLC (“NCM LLC”) entered into a binding Memorandum of Understanding (“MOU”) with American Multi-Cinema, Inc. (“AMC”) to effectuate aspects of a final judgment entered by the Department of Justice in connection with AMC’s acquisition of Carmike Cinemas, Inc. (the “Final Judgment”).

Pursuant to the MOU, AMC will submit attendance from the acquired Carmike Cinemas, Inc. theatres (“Carmike theatres”) for an adjustment in its NCM LLC common membership units and will receive approximately 18.4 million NCM LLC common membership units in respect of the annual attendance at such Carmike theatres in accordance with the Common Unit Adjustment Agreement. The NCM LLC common membership units issued to AMC in respect of such Carmike theatres will not be entitled to receive any distributions in respect of periods ending in the 2016 calendar year. Because the Carmike theatres were subject to a pre-existing exhibitor services agreement with a third party and, for the duration of that pre-existing exhibitor services agreement, will not receive advertising services from NCM LLC, AMC will be obligated to make quarterly payments to NCM LLC (“integration payments”) reflecting the estimated value of the advertising services at the Carmike theatres as if NCM LLC had provided such services. The integration payments will continue until the earlier of (i) the date such theatres are transferred to the NCM LLC network or (ii) the expiration of AMC’s Exhibitor Services Agreement with NCM LLC.

The Final Judgment requires AMC to transfer advertising rights to 17 theatres from NCM LLC to another advertising provider (such theatres, the “Screen Transfer Theatres”). Pursuant to the MOU, AMC will convey to NCM LLC approximately 4.7 million NCM LLC common membership units in respect of such theatres and NCM LLC’s tax basis for its ESA asset shall be reduced by the value of such returned NCM LLC common membership units. The 4.7 million surrendered NCM LLC common membership units are comprised of (i) 2.9 million NCM LLC common membership units pursuant to the adjustment for divested theatres in the Common Unit Adjustment Agreement and (ii) an additional 1.8 million NCM LLC common membership units valued at \$25 million. AMC has agreed that any agreement it enters into with the advertising provider to whom it transfers the advertising rights for the Screen Transfer Theatres will have a term of no longer than 10 years and, that, upon the expiration of such agreement, such Screen Transfer Theatres will be transferred back to NCM LLC and will be governed by the Exhibitor Services Agreement between NCM LLC and AMC.

The Final Judgment also required AMC to divest certain theatres. AMC will convey NCM LLC common membership units to NCM LLC in respect of such divested theatres on the next Adjustment Date, pursuant to the Common Unit Adjustment Agreement and the ESA between NCM LLC and AMC.

Pursuant to the MOU, AMC also has agreed, among other things, to promote NCM LLC in and with respect to the theatres subject to its Exhibitor Services Agreement with NCM LLC, including by promoting such theatres on AMC’s website and via lobby promotions, and, subject to limited exceptions to retain at least 4.5% of NCM Inc.’s outstanding common stock and NCM LLC common membership units, taken together, on a fully converted basis during the term of the Final Judgment, subject to certain exceptions which allow for certain sell downs after the 30-month anniversary of the MOU.

To facilitate the transfer of the advertising rights of the Screen Transfer Theatres, each of AMC and Regal Cinemas, Inc. (“Regal”) entered into an amendment of its Exhibitor Services Agreement with NCM LLC, and Cinemark USA, Inc. (“Cinemark”) entered into a waiver of its rights under Section 12.06 of the ESA. Copies of the Exhibitor Services Agreement Amendments between NCM LLC and AMC and Regal are filed as Exhibits 10.1 and 10.2 respectively, and a copy of the Cinemark waiver is filed as Exhibit 10.3, to this Current Report on Form 8-K and each is incorporated by reference herein.

On March 10, 2017, the Company issued a press release announcing that NCM and AMC reached an agreement on the MOU that enables AMC to comply with the Final Judgment while reaffirming their commitment to the continued partnership between NCM and AMC. The press release is attached as Exhibit 99.1 and is incorporated by reference herein.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
10.1	Amendment to Exhibitor Services Agreement dated as of March 9, 2017, by and between National CineMedia, LLC and American Multi-Cinema, Inc.
10.2	Amendment to Exhibitor Services Agreement dated as of March 9, 2017, by and between National CineMedia, LLC and Regal Cinemas, Inc.
10.3	Waiver of Section 12.06 of the ESA, dated as of March 14, 2017, by and between National CineMedia, LLC and Cinemark USA, Inc.
99.1	Press release issued by National CineMedia, Inc. on March 10, 2017.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, each of NCM, Inc. and NCM LLC has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

NATIONAL CINEMEDIA, INC.

Dated: March 15, 2017

By: /s/ Ralph E. Hardy
Ralph E. Hardy
Executive Vice President, General
Counsel and Secretary

NATIONAL CINEMEDIA, LLC

By: National CineMedia, Inc., its manager

Dated: March 15, 2017

By: /s/ Ralph E. Hardy
Ralph E. Hardy
Executive Vice President, General
Counsel and Secretary

EXHIBIT INDEX

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FIRST AMENDMENT TO AMENDED AND RESTATED EXHIBITOR SERVICES AGREEMENT

This Amendment, dated as of March 9, 2017, (this **Amendment**), to the Amended and Restated Exhibitor Services Agreement between National CineMedia, LLC (**NCM**) and American Multi-Cinema, Inc. (**AMC**), dated as of February 13, 2007 and amended and restated as of December 26, 2013 (the **ESA**) is entered into by the parties to the ESA. Capitalized terms used but not defined herein shall have the respective meanings specified in the ESA.

WHEREAS, NCM and AMC have entered into the ESA;

WHEREAS, NCM and AMC desire to amend the ESA as provided in this Amendment;

WHEREAS, the Board of Directors of NCM and the Special Committee of NCM have deemed this Amendment advisable and in the best interests of NCM and its shareholders, including its public shareholders;

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements herein made and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Amendment of Section 4.13 (Excluded Theatres; IMAX Screens). Section 4.13 of the ESA shall be amended and restated to read in its entirety as follows:

“ Section 4.13 Excluded Theatres; IMAX Screens .

- (a) Excluded Theatres. AMC shall have the right to designate art house and draft house theatres that for purposes of this Agreement shall be “Excluded Theatres”; provided, however, that the aggregate annual attendance at all such Excluded Theatres on the date of designation shall not exceed four (4) percent of the aggregate annual attendance at the Theatres. The list of Excluded Theatres identified as of the Restated Effective Date is set forth in the Specification Documentation. In addition, upon the consent of the Board of Directors of National CineMedia, in the event that AMC: (i) enters into a transaction to acquire a theatre chain, (ii) to secure governmental approval for such transaction is required by the United States Department of Justice to transfer, for a period not to exceed 10 years (the **Transfer Period**), the advertising services of certain theatres (the **Transfer Theatres**) to a cinema advertising company other than LLC, (iii) agrees that immediately upon the expiration of the Transfer Period such Transfer Theatres shall be transferred back to NCM and again will become NCM exhibitors and Theatres within the meaning of the ESA, (iv) agrees that NCM’s tax basis for the ESA asset will be reduced by (A) the value of the Common Unit Adjustment in respect of such Transfer Theaters, which shall be determined in accordance with the Common Unit Adjustment Agreement as if such Transfer Theatres had been Disposed on a date to be mutually agreed by NCM and AMC plus (B) an additional amount which will equal fair value to NCM for the Transfer Theatres being deemed Excluded Theatres during the Transfer Period and further agrees that there shall be a corresponding reduction to NCM’s obligation under the Tax Receivables Agreement, as such agreement may be amended from time to time, which reduction to NCM’s obligation shall be borne solely by AMC and shall not affect TRA payments to the TRA parties (other than AMC) and (v) if, in the judgment of the Board of Directors of National CineMedia, the aggregate annual
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attendance at the Transfer Theatres on the date of designation represents a diminimis amount of the aggregate annual attendance at the Theatres, then AMC shall have the right to designate such Transfer Theatres as “Excluded Theatres” for the purposes of this Agreement, and during the Transfer Period such Transfer Theatres shall be treated as Excluded Theatres and shall be exempt from the exclusivity obligations set forth in Section 2.04. AMC shall provide written or electronic notice to LLC, in the form specified by LLC, each time there is a change in its list of Excluded Theatres. Excluded Theatres shall not be deemed Theatres for purposes of this Agreement. Excluded Theatres will not receive Advertising Services. Excluded Theatres will not be considered for purposes of the calculation of Theatre Access Fees. Except as specifically provided in the foregoing, Excluded Theatres will be subject to the exclusivity obligations of AMC, as set forth in Section 2.04 to the same extent as a Theatre hereunder. With respect to any Theatre subsequently designated as an Excluded Theatre, the parties will negotiate in good faith terms for the discontinuation of delivery of the Advertising Services to such Excluded Theatre.

(b) IMAX Screens. All Theatre screens dedicated to the exhibition of films using “IMAX” technology shall be deemed “IMAX Screens.” IMAX Screens will not receive, and AMC will have no duty to exhibit on any IMAX Screen, the Digital Carousel, the Pre-Feature Program or the Traditional Content Program; provided however, that AMC may elect to exhibit the Digital Carousel, the Pre-Feature Program or the Traditional Content Program on its IMAX Screens in its sole discretion. Notwithstanding the foregoing, all IMAX Screens will be subject to the exclusivity obligations of AMC, as set forth in Section 2.04 to the same extent as a Theatre hereunder. AMC will provide LLC prompt written or electronic notice, in the form specified by LLC, of any additions to or deletions from its list of IMAX Screens, which list as of the Restated Effective Date is provided in the Specification Documentation.”

2. Ratification. Except as otherwise provided herein, all of the terms, covenants and other provisions of the ESA are hereby ratified and confirmed and shall continue to be in full force and effect in accordance with their respective terms. After the date hereof, all references to the ESA shall refer to the ESA as amended by this Amendment.
3. Miscellaneous. Section 15.07 of the ESA shall apply to this Amendment *mutatis mutandi*. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall together constitute one and the same instrument and shall bind and inure to the benefit of the parties and their respective successors and assigns.

[REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, NCM and AMC have caused this Amendment to be signed by their respective officers thereunto duly authorized, all as of the date first written above.

NATIONAL CINEMEDIA, LLC

By: /s/ Andrew J. England
Name: Andrew J. England
Title: Chief Executive Officer

AMC ENTERTAINMENT, INC.

By: /s/ Craig R. Ramsey
Name: Craig R. Ramsey
Title: EVP & Chief Financial Officer

FIRST AMENDMENT TO AMENDED AND RESTATED EXHIBITOR SERVICES AGREEMENT

This Amendment, dated as of March 9, 2017, (this **Amendment**), to the Amended and Restated Exhibitor Services Agreement between National CineMedia, LLC (**NCM**) and Regal Cinemas, Inc. (**Regal**), dated as of February 13, 2007 and amended and restated as of December 26, 2013 (the **ESA**) is entered into by the parties to the ESA. Capitalized terms used but not defined herein shall have the respective meanings specified in the ESA.

WHEREAS, NCM and Regal have entered into the ESA;

WHEREAS, NCM and Regal desire to amend the ESA as provided in this Amendment;

WHEREAS, the Board of Directors of NCM and the Special Committee of NCM have deemed this Amendment advisable and in the best interests of NCM and its shareholders, including its public shareholders;

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements herein made and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Amendment of Section 4.13 (Excluded Theatres; IMAX Screens). Section 4.13 of the ESA shall be amended and restated to read in its entirety as follows:

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2. Ratification. Except as otherwise provided herein, all of the terms, covenants and other provisions of the ESA are hereby ratified and confirmed and shall continue to be in full force and effect in accordance with their respective terms. After the date hereof, all references to the ESA shall refer to the ESA as amended by this Amendment.
3. Miscellaneous. Section 15.07 of the ESA shall apply to this Amendment *mutatis mutandi*. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall together constitute one and the same instrument and shall bind and inure to the benefit of the parties and their respective successors and assigns.

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IN WITNESS WHEREOF, NCM and Regal have caused this Amendment to be signed by their respective officers thereunto duly authorized, all as of the date first written above.

NATIONAL CINEMEDIA, LLC

By: /s/ Andrew J. England
Name: Andrew J. England
Title: Chief Executive Officer

REGAL CINEMAS, INC.

By: /s/ Peter B. Brandow
Name: Peter B. Brandow
Title: EVP, General Counsel and Secretary



March 14, 2017

National CineMedia, LLC
9110 East Nichols Ave, Suite 200
Centennial, Colorado 80112
Attention: Andrew England, Chief Executive Officer

RE: Waiver of Most Favored Nations Rights and Consent to Contemplated Transactions

Dear Mr. England:

Reference is made to the (i) Amended and Restated Exhibitor Services Agreement between National CineMedia, LLC (**NCM, LLC**) and Cinemark USA, Inc. (**Cinemark**), dated as of February 13, 2007, and amended and restated as of December 26, 2013 (the **ESA**), (ii) Memorandum of Understanding by and among National CineMedia, Inc. and NCM, LLC (together, **NCM**) and AMC dated as of March 9, 2017 (the **MOU**).

Cinemark hereby waives its rights under Section 12.06 (Most Favored Nations) of the ESA in connection with the MOU, the transactions contemplated by the MOU and the ancillary documents executed in connection with the MOU, including the Amendment to the Exhibitor Services Agreement dated as of March 9, 2017, by and between National CineMedia, LLC and American Multi-Cinema, Inc. and the Amendment to Exhibitor Services Agreement dated as of March 9, 2017, by and between National CineMedia, LLC and Regal Cinemas, Inc. and (ii) consents to the transactions contemplated by the MOU.

Sincerely,

Cinemark USA, Inc.

/s/ Michael Cavalier

Name: Michael Cavalier

Title: Executive Vice President-General Counsel

cc: Gene Hardy, General Counsel of NCM, LLC
Peter Brandow, Regal CineMedia Holdings, LLC and Regal Cinemas, Inc.
Kevin Connor, American Multi-Cinema, Inc.

NCM and AMC Reach Agreement Allowing AMC to Comply with DOJ's Final Order on Carmike Merger

Long-Time Partners to Both Benefit from Common Unit Adjustments, Transfer and Divestiture of Theaters, and Ongoing Cooperation

CENTENNIAL, CO — March 10, 2017 — National CineMedia, Inc. (NCM) and American Multi-Cinema, Inc. (AMC) and have reached an agreement that enables AMC to comply with the Department of Justice's (DOJ) Final Order on its acquisition of Carmike Cinemas, Inc. while reaffirming the companies' commitment to their continued partnership.

The key terms of the agreement, which is mutually beneficial to both companies and preserves the integrity of AMC's Exhibitor Services Agreement (ESA) with NCM which continues until 2037, are as follows:

Common Unit Adjustment for Acquired Carmike Theaters

- AMC will receive over 18.4 million units in NCM LLC as a common unit adjustment for its Carmike acquisition. Because the Carmike theaters were subject to a pre-existing advertising agreement and will not receive advertising services from NCM, AMC will be obligated to make quarterly payments to NCM reflecting the estimated value of the advertising services at the Carmike theaters as if NCM had provided such services. The quarterly payments (integration payments) will continue until the earlier of (i) the date the theaters are transferred to the NCM network or (ii) expiration of the ESA with NCM. These quarterly payments are expected to offset the cash impact from the decrease in NCM ownership as a result of the issuance of the units issued for the Carmike theaters.

Transfer of Pre-Show Advertising Provider

- NCM consents to the transfer of advertising rights for 17 theaters by AMC to Screenvision, LLC as required by the DOJ's Final Order for a period of 10 years, after which they will revert to NCM. These Transfer Theaters represent approximately 1% of NCM's total network theaters;
- To compensate for NCM's loss of these Transfer Theaters from its advertising network, AMC will return approximately 2.9 million common units as the ordinary common unit adjustment; plus, an additional approximately 1.8 million units valued at approximately \$25 million as compensation for NCM's lost operating income for these theaters during the 10-year term of the DOJ's Final Order. As a result of these transactions, NCM LLC's ownership allocation will change, with AMC owning 24.9%, Cinemark owning 17.5%, Regal Entertainment Group owning 17.9%, and NCM owning 39.7%.

Divestiture of Theaters

- AMC will also sell 17 additional theaters as per the DOJ's Final Order, many of which were previously Carmike theaters. If theaters which were not previously Carmike theaters are sold, then AMC will return an appropriate number of common units to compensate NCM for the loss of those theaters from the NCM advertising network.
 - These theaters may be purchased by any theater exhibitor, including those that are currently part of the NCM advertising network. Thus, the impact on NCM of these sales
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is yet to be determined. However, at most, they represent approximately 1% of NCM's total theater network.

Future AMC Growth

- As per the ESA, NCM will continue to benefit from the future growth of the now larger AMC entity under the terms of this long-term agreement, as all new theaters that are built or acquired will automatically become part of NCM's network.

Cooperation on NCM Equity Divestiture and Retention of NCM Equity

- NCM will cooperate with AMC on its required divestiture efforts to ensure an orderly sale and to help maintain the value of NCM stock, including assisting with pre-marketing tasks as well as participation in other efforts to market the stock.
- During the 10-year term of the DOJ Final Order, AMC will retain at least 4.5% (subject to limited exceptions), but not more than 4.99%, of NCM's outstanding common stock and NCM LLC's Common Units, taken together, on a fully converted basis.

Cost Reimbursement

- AMC will reimburse NCM for its incurred and ongoing costs and expenses related to the agreement between AMC and NCM up to \$1 million.

"AMC will continue to be a great partner to NCM, and I am pleased that we both remained committed to the preservation of the integrity of the ESA throughout this process," said Andy England, CEO of National CineMedia. "This agreement is a win for both of our companies and our shareholders, and is not expected to have a material impact on our financial results in 2017. In fact, we have already signed several new affiliate partners that more than compensate for any AMC attendance losses as a result of the settlement with the DOJ and look forward to welcoming them to the #1 Millennial weekend network in America."

About National CineMedia (NCM)

National CineMedia (NCM) is America's Movie Network. As the #1 Millennial weekend network in the U.S., NCM is the connector between brands and movie audiences. More than 700 million moviegoers annually attend theaters that are currently under contract to present NCM's FirstLook pre-show in over 40 leading national and regional theater circuits including AMC Entertainment Inc. (NYSE:AMC), Cinemark Holdings, Inc. (NYSE:CNK) and Regal Entertainment Group (NYSE: RGC). NCM's cinema advertising network offers broad reach and unparalleled audience engagement with over 20,500 screens in over 1,600 theaters in 189 Designated Market Areas® (all of the top 50). NCM Digital goes beyond the big screen, extending in-theater campaigns into online and mobile marketing programs to reach entertainment audiences. National CineMedia, Inc. (NASDAQ:NCMI) owns a 43.7% interest in, and is the managing member of, National CineMedia, LLC. For more information, visit www.ncm.com.

Forward Looking Statements

This press release contains various forward-looking statements that reflect management's current expectations or beliefs regarding future events, including the impact of the common unit adjustment, integration payments, AMC's future growth and the impact on 2017 financial results. Investors are cautioned that reliance on these forward-looking statements involves risks and uncertainties. Although NCM believes that the assumptions used in the forward-looking statements are reasonable, any of these assumptions could prove to be inaccurate and, as a

result, actual results could differ materially from those expressed or implied in the forward-looking statements.

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MEDIA CONTACT:

National CineMedia (NCM)

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INVESTOR RELATIONS:

National CineMedia (NCM)

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