

MDC PARTNERS INC  
Form 8-K  
March 28, 2014

**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 Earliest Event reported) — March 28, 2014

**MDC PARTNERS INC.**

(Exact name of registrant as specified in its charter)

Canada                                      001-13718                                      98-0364441

(Jurisdiction of Incorporation) (Commission File Number) (IRS Employer Identification No.)

745 Fifth Avenue, New York, New York 10151

(Address of principal executive offices and zip code)

(646) 429-1800

(Registrant's Telephone Number)

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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))

## **Item 1.01 Entry Into a Material Agreement**

### ***Amendment to Senior Secured Revolving Credit Facility***

On March 27, 2014, MDC Partners Inc. (the “Company”) entered into a consent and amendment (the “Amendment”) to our senior secured revolving credit facility, dated March 20, 2013 (the “Credit Facility”), among the Company, Maxxcom Inc., as the borrower, and the agents and lenders party thereto. The Amendment, among other things, increases the amount of unsecured indebtedness we are permitted to incur to \$800 million from \$700 million. The Amendment is filed as Exhibit 10.1 hereto and incorporated herein by reference.

## **Item 2.02 Results of Operations and Financial Condition**

In connection with a confidential offering circular, the Company is disclosing Covenant EBITDA because it is tied to the covenants in our Indenture (as defined below).

“EBITDA,” a measure used by management to evaluate ongoing performance, refers to operating profit (loss) plus (i) depreciation and amortization, (ii) stock-based compensation, (iii) acquisition deal costs, (iv) deferred acquisition consideration adjustments, (v) one time incentive and (vi) profit distributions from affiliates. “Covenant EBITDA” is defined as EBITDA adjusted for certain pro forma and one-time adjustments as described in the Indenture that will govern the Senior Notes (as defined below). Both EBITDA and operating profit (loss) include 100% of consolidated operating profit (loss) for subsidiaries that are not wholly owned by the Company.

The terms EBITDA and Covenant EBITDA are not defined under U.S. GAAP, are not measures of operating profit, operating performance or liquidity presented in accordance with U.S. GAAP and are subject to important limitations. These measures do not have standardized meanings prescribed by U.S. GAAP and, therefore, may not be comparable to similarly titled measures presented by other publicly traded companies, nor should they be construed as alternatives to other titled measures determined in accordance with U.S. GAAP. The Company believes that the presentation of EBITDA and Covenant EBITDA enhances an investor’s understanding of the Company’s financial performance. The Company believes that EBITDA and Covenant EBITDA are useful financial metrics to assess its operating performance from period to period by excluding certain items that the Company believes are not representative of its core business. The Company also believes EBITDA and Covenant EBITDA are useful tools to assess the comparability between periods of its ability to generate cash from operations sufficient to pay taxes, to service debt and to undertake capital expenditures because EBITDA and Covenant EBITDA eliminate depreciation and amortization expense.

A reconciliation of operating profit (loss), the most directly comparable U.S. GAAP measure, to EBITDA and Covenant EBITDA for the periods indicated is as follows:

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(Dollars in Thousands)	Year Ended December 31,		
	2011	2012	2013
Operating profit (loss)	\$10,481	\$(15,926 )	\$(31,992 )
Plus:			
Depreciation and amortization	\$39,661	\$45,792	\$39,600
Stock based compensation <sup>(1)</sup>	\$23,657	\$32,197	\$100,405
Acquisition deal costs	\$3,819	\$3,364	\$2,074
Deferred acquisition consideration adjustments	\$12,849	\$53,027	\$35,914
One time incentive <sup>(2)</sup>	\$--	\$--	\$9,649
Profit distributions from affiliates	\$1,065	\$1,288	\$3,761
EBITDA	\$91,532	\$119,742	\$159,411
Pro forma adjustments <sup>(3)</sup>	\$14,012	\$10,661	\$17,582
One-time adjustments <sup>(4)</sup>	\$2,968	\$4,369	\$6,462
Covenant EBITDA	\$108,512	\$134,772	\$183,455

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(1) December 31, 2013, stock-based compensation included \$78.0 million relating to the cash settlement of the Company's SARs.

(2) One time incentive consists of a one-time bonus payment of \$9.6 million to our Chief Executive Officer for our stock price achieving specified targets.

(3) For the year ended December 31, 2011, consists of \$10.0 million relating to the effect of acquisitions consummated in 2011, as if they were consummated on January 1, 2011, and \$4.0 million of operating expense reductions or other operating improvements or synergies for such acquisitions. For the year ended December 31, 2012, consists of \$7.8 million relating to the effect of acquisitions consummated in 2012, as if they were consummated on January 1, 2012, and \$2.9 million of operating expense reductions or other operating improvements or synergies for such acquisitions. For the year ended December 31, 2013, consists of \$4.4 million relating to the effect of acquisitions consummated in 2013, as if they were consummated on January 1, 2013, and \$13.1 million of operating expense reductions or other operating improvements or synergies for such acquisitions.

(4) For the year ended December 31, 2011, consists of one-time severance costs of \$2.5 million and legal settlement costs of \$0.4 million. For the year ended December 31, 2012, consists of one-time severance costs of \$4.1 million and legal settlement costs of \$0.3 million. For the year ended December 31, 2013, consists of one-time severance of \$5.1 million and legal settlement costs of \$1.3 million.

## **Item 7.01 Regulation FD Disclosure**

### ***Borrowings under Senior Secured Revolving Credit Facility***

The Company had \$44.1 million outstanding under the Credit Facility, as of March 27, 2014.

### ***EBITDA and Covenant EBITDA***

The information set forth in Item 2.02 is incorporated by reference into this Item 7.01.

## **Item 8.01. Other Events.**

***Commencement of Private Placement***

On March 28, 2014, the Company commenced a private placement of an additional \$75 million aggregate principal amount of its senior notes due 2020 (the “Notes”). The Notes are expected to be issued under our existing Indenture (the “Indenture”) governing the 6.75% Senior Notes due 2020 that the Company issued on March 20, 2013 and November 15, 2013 (the “Existing Notes” and, together with the Notes, the “Senior Notes”) as supplemented by a supplemental indenture, among the Company, the note guarantors and The Bank of New York Mellon, as trustee (the “Supplemental Indenture”). Upon completion of this private placement, the aggregate principal amount of outstanding Senior Notes will be \$735 million. The Company intends to use the net proceeds of this private placement for general corporate purposes, including the funding of deferred acquisition consideration, working capital, acquisitions and the repayment of the amount outstanding, if any, under the Credit Facility. A copy of the Company’s press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

The Senior Notes will not be registered under the Securities Act of 1933, as amended (the “Securities Act”) and therefore may not be offered or sold within the United States or to U.S. persons, except to “qualified institutional buyers” in reliance on the exemption from registration provided by Rule 144A and to certain persons in offshore transactions in reliance on Regulation S. You are hereby notified that sellers of the Senior Notes may be relying on the exemption from the provisions of Section 5 of the Securities Act provided by Rule 144A. This announcement does not constitute an offer to sell or the solicitation of an offer to buy Senior Notes in any jurisdiction in which such an offer or sale would be unlawful.

**Item 9.01. Financial Statements and Exhibits.**

*(d)*

*Exhibits*

- 10.1 Consent and Third Amendment, with an effective date of March 27, 2014, to Amended and Restated Credit Agreement, dated as of March 20, 2013, among the Company, Maxxcom Inc., a Delaware corporation, each of their subsidiaries party thereto, Wells Fargo Capital Finance, LLC, as agent, and the lenders from time to time party thereto.
- 99.1 Text of press release issued by MDC Partners Inc. on March 28, 2014, regarding the commencement of private placement of the Notes.

**Signatures**

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

Date: March 28, 2014 MDC Partners Inc.

By: /s/ Mitchell Gendel  
Name: Mitchell  
Gendel

Title: General  
Counsel &  
Corporate Secretary