NETLIST INC
Form 8-K
April 17, 2019

# UNITED STATES

# SECURITIES AND EXCHANGE COMMISSION

**Washington, D.C. 20549**

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# 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): **April 16, 2019**

# NETLIST, INC.

(Exact Name of Registrant as Specified in its Charter)

| **Delaware** | **001-33170** | **95-4812784** |
|---|---|---|
| (State or Other Jurisdiction of Incorporation) | (Commission File Number) | (IRS Employer Identification Number) |

**175 Technology, Suite 150**

**Irvine, California 92618**

(Address of Principal Executive Offices)

**(949) 435-0025**

(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:

o Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

o Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

o Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

o 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).

Emerging growth company o

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. o

**Item 1.01.** **Entry into a Material Definitive Agreement.**

As previously reported, on April 17, 2017, Netlist, Inc. (the Company ) entered into a rights agreement (the Rights Agreement ) with Computershare Trust Company, N.A., as rights agent, pursuant to which the Company s Board of Directors (the Board ) authorized and declared a dividend of one right (each, a Right ) for each outstanding share of the Company s common stock, par value $0.001 per share ( Common Stock ), to stockholders of record at the close of business on May 18, 2017, and authorized the issuance of one Right for each share of Common Stock issued by the Company (except as otherwise provided in the Rights Agreement) between the Record Date and the Expiration Date (as defined in the Rights Agreement). The Board approved the Rights Agreement as part of the Company s strategy in connection with its legal proceedings for patent infringement against SK hynix, Inc. ( SK hynix ). The Rights Agreement was subsequently amended on April 16, 2018, as previously reported, to amend the Expiration Date in the Rights Agreement to incorporate the Company s legal proceedings against SK hynix, and amended the definition of Final Expiration Date in the Rights Agreement to mean the close of business on April 17, 2019.

On April 16, 2019, the Company entered into a second amendment (the Second Amendment ) to the Rights Agreement. The Second Amendment amends the definition of Expiration Date in the Rights Agreement to extend the term for an additional two year period which extends the final expiration of the Rights issued pursuant to the Rights Agreement from April 17, 2019 to April 17, 2021. As a result and pursuant to the Second Amendment, the Rights will expire and become unexercisable on or before the close of business on April 17, 2021, in accordance with the terms of the Rights Agreement.

The foregoing description of the Second Amendment does not purport to be complete and is qualified in its entirety by reference to the full text thereof, a copy of which has been filed as Exhibit 4.1 hereto and is incorporated herein by reference.

**Item 3.03. Material Modification of Rights of Security Holders.**

The information set forth under Item 1.01 of this Current Report on Form 8-K is incorporated into this Item 3.03 by reference.

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

On April 17, 2019, the Company issued a press release announcing the Second Amendment. The press release is attached as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated into this Item 8.01 by reference.

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

*(d)* *Exhibits*

| Exhibit Number | Description |
|---|---|
| 4.1 | Amendment No. 2 to Rights Agreement, dated as of April 16, 2019, by and between Netlist, Inc. and Computershare Trust Company, N.A., as rights agent. |
| 99.1 | Press Release, dated April 17, 2019, issued by Netlist, Inc. |

**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 hereunto duly authorized.

**NETLIST, INC.**

Date: April 17, 2019

By: */s/ Gail M. Sasaki*
Gail M. Sasaki
Vice President, Chief Financial Officer and Secretary