
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, DC 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): **April 17, 2024**



NETLIST, INC.

(Exact Name of Registrant as Specified in Charter)

Delaware
(State or Other Jurisdiction of
Incorporation)

001-33170
(Commission
File Number)

95-4812784
(IRS Employer
Identification No.)

111 Academy, Suite 100
Irvine, California 92617
(Address of Principal Executive Offices) (Zip Code)

(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:

- 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))

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
N/A	N/A	N/A

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

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.

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. The Agreement was subsequently amended on April 16, 2019, as previously reported, to amend the “Expiration Date” in the Rights Agreement to extend the term for an additional two year period which extended the final expiration of the Rights issued pursuant to the Rights Agreement from April 17, 2019 to April 17, 2021. The Agreement was subsequently amended on August 14, 2020, as previously reported, to amend the “Expiration Date” in the Rights Agreement to extend the term for an additional three year period which extended the final expiration of the Rights issued pursuant to the Rights Agreement from April 17, 2021 to April 17, 2024.

On April 17, 2024, the Company entered into a fourth amendment (the “Fourth Amendment”) to the Rights Agreement. The Fourth Amendment appoints Equiniti Trust Company, LLC as rights agent and amends the definition of “Expiration Date” in the Rights Agreement to extend the term for an additional three year period which extends the final expiration of the Rights issued pursuant to the Rights Agreement from April 17, 2024 to April 17, 2027. As a result and pursuant to the Fourth Amendment, the Rights will expire and become unexercisable on or before the close of business on April 17, 2027, in accordance with the terms of the Rights Agreement.

The foregoing description of the Fourth 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 9.01 Financial Statements and Exhibits.**(d) Exhibits.**

Exhibit Number	Description
4.1	Amendment No. 4 to Rights Agreement, dated as of April 17, 2024, by and between Netlist, Inc. and Equiniti Trust Company, LLC, as rights agent.
104	Cover Page Interactive Data File (embedded within the inline XBRL document)

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.

NETLIST, INC.

April 17, 2024

By: /s/ Gail M. Sasaki

Gail M. Sasaki

Executive Vice President and Chief Financial Officer

AMENDMENT NO. 4 TO RIGHTS AGREEMENT

This AMENDMENT NO. 4 TO RIGHTS AGREEMENT (this "Amendment"), dated as of April 17, 2024, is entered into by and between Netlist, Inc., a Delaware corporation (the "Company") and Equiniti Trust Company, LLC, as rights agent ("Equiniti"), with reference to the following facts:

WHEREAS, the Company and Computershare Trust Company, N.A. ("Computershare") have entered into that certain Rights Agreement, dated as of April 17, 2017, as amended pursuant to that certain Amendment No. 1 to Rights Agreement, dated as of April 16, 2018, that certain Amendment No. 2 to Rights Agreement, dated as of April 16, 2019, and that certain Amendment No. 3 to Rights Agreement, dated as of August 14, 2020 (the "Rights Agreement");

WHEREAS, Computershare ceased to be the Company's transfer agent effective as of March 4, 2024 (the "TA Termination Date") and pursuant to Section 21 of the Rights Agreement, Computershare is deemed to have resigned automatically and be discharged from its duties as Rights Agent under the Rights Agreement effective as of the TA Termination Date;

WHEREAS, the Company has appointed Equiniti as successor Rights Agent under the Rights Agreement, and Equiniti has agreed to accept such appointment as of the date hereof;

WHEREAS, the Company now desires to amend certain provisions of the Rights Agreement as set forth in this Amendment;

WHEREAS, Section 27 of the Rights Agreement provides that, prior to the Distribution Date, the Company may, in its sole and absolute discretion, supplement or amend any provision of the Rights Agreement in any respect without the approval of any holders of certificates representing Rights or shares of Company Common Stock, and the Rights Agent shall, if the Company so directs and upon the delivery of a certificate from an appropriate officer of the Company which states that the proposed supplement or amendment is in compliance with the terms of Section 27 of the Rights Agreement, duly execute and deliver such supplement or amendment requested by the Company; and

WHEREAS, capitalized terms used and not otherwise defined in this Amendment shall have the respective meanings given to such terms in the Rights Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein set forth, the parties hereto hereby agree as follows:

Section 1. Successor Rights Agent. Effective as of the date hereof, Equiniti shall serve as Rights Agent under the Rights Agreement, as successor to Computershare, and from and after that date shall be vested with the same powers, rights, duties and responsibilities, without further act or deed, as if it had been originally named as Rights Agent as of April 17, 2017. Notices to Equiniti with respect to its responsibilities under the Rights Agreement shall be mailed to:

Equiniti Trust Company, LLC
6201 15th Avenue
Brooklyn, NY 11219
Attention: Legal Team

Section 2. Amendments.

(a) Section 7(a) of the Rights Agreement shall be amended by amending and restating the first sentence thereof to read in its entirety as follows:

“Prior to the earlier of (i) the Close of Business on April 17, 2027 (the “Final Expiration Date”), (ii) the time at which the Rights are redeemed as provided in Section 23 hereof and (iii) the time at which the Rights are exchanged as provided in Section 24 hereof, at which time the Rights are deemed terminated (the earlier of (i), (ii) and (iii) being the “Expiration Date”), the registered holder of any Rights Certificate may, subject to the other provisions hereof, including without limitation Sections 7(e), 7(f), 9(c), 11(a) and 23 hereof, exercise the Rights evidenced thereby, in whole or in part, at any time after the Distribution Date upon surrender of the Rights Certificate, with the form of election to purchase and the certificate on the reverse side thereof properly completed and duly executed (with such signature duly guaranteed, if required), to the Rights Agent at the office of the Rights Agent designated for such purpose, together with payment of the aggregate Purchase Price for the number of Units of Preferred Stock (or, following a Triggering Event, other securities, cash or other assets, as the case may be) for which such surrendered Rights are then exercisable.”

(b) Exhibit B of the Rights Agreement shall be amended by amending and restating the fifth full paragraph thereof to read in its entirety as follows:

“The Rights are not exercisable until the Distribution Date and, unless earlier redeemed or exchanged by the Company as described below, will expire on the close of business on April 17, 2027. Under certain circumstances, as provided in the Rights Agreement, the exercisability of the Rights may be suspended. In no event, however, will the Rights be exercisable prior to the expiration of the period in which the Rights may be redeemed, as described below.”

Section 3. Officer’s Certificate. Pursuant to Section 27 of the Rights Agreement, a certificate from an appropriate officer of the Company which states that this Amendment is in compliance with the terms of Section 27 of the Rights Agreement is attached hereto as Exhibit A.

Section 4. Construction. Except as specifically set forth herein, all terms and provisions of the Rights Agreement shall remain unchanged, unmodified and in full force and effect. The Rights Agreement shall be read together with and construed with this Amendment in all respects, and references in the Rights Agreement (i) to “this Agreement” (and indirect references thereto) shall be deemed to be references to the Rights Agreement as amended by this Amendment, and (ii) to “the Rights” or “a Right” (and indirect references thereto) shall be deemed to include, subject to the terms and provisions of the Rights Agreement, Rights that may be issued after the Expiration Date, as such term was defined in the Rights Agreement before the effect of this Amendment.

Section 5. Governing Law. This Amendment shall be governed by, and construed in accordance with, the laws of the State of Delaware applicable to contracts executed in and to be performed entirely in such State.

Section 6. Counterparts. This Amendment may be executed and delivered (including by facsimile transmission or electronic mail) in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original, but all of which taken together shall constitute one and the same instrument. A signature to this Amendment executed and/or transmitted electronically shall have the same authority, effect, and enforceability as an original signature.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed, all as of the date first above written.

NETLIST, INC.

By: /s/ Gail Sasaki

Name: Gail Sasaki

Title: Chief Financial Officer

EQUINITI TRUST COMPANY, LLC

By: /s/ Carlos Pinto

Name: Carlos Pinto

Title: Senior Vice President

(Signature Page to Amendment to Rights Agreement)

EXHIBIT A

OFFICER'S CERTIFICATE

April 17, 2024

Pursuant to Section 27 of that certain Rights Agreement, dated as of April 17, 2017, as amended pursuant to that certain Amendment No. 1 to Rights Agreement, dated as of April 16, 2018, that certain Amendment No. 2 to Rights Agreement, dated as of April 16, 2019, and that certain Amendment No. 3 to Rights Agreement, dated as of August 14, 2020 (the "Rights Agreement"), by and between Netlist, Inc., a Delaware corporation (the "Company") and Computershare Trust Company, N.A., the undersigned officer of the Company does hereby certify that Amendment No. 4 to Rights Agreement, to be entered into as of the date hereof by and between the Company and Equiniti Trust Company, LLC, as rights agent, is in compliance with the terms of Section 27 of the Rights Agreement.

IN WITNESS WHEREOF, the undersigned hereby executes this Officer's Certificate as of the date first above written.

By: /s/ Gail Sasaki
Name: Gail M. Sasaki
Title: Chief Financial Officer

(Signature Page to Officer's Certificate)
