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**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**  
(State or Other Jurisdiction of  
Incorporation)

**001-33170**  
(Commission  
File Number)

**95-4812784**  
(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:

- 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).

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.

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**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

<u>Exhibit Number</u>	<u>Description</u>
4.1	<a href="#"><u>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.</u></a>
99.1	<a href="#"><u>Press Release, dated April 17, 2019, issued by Netlist, Inc.</u></a>

**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

## AMENDMENT NO. 2 TO RIGHTS AGREEMENT

This AMENDMENT NO. 2 TO RIGHTS AGREEMENT (this “Amendment”), dated as of April 16, 2019, is entered into by and between Netlist, Inc., a Delaware corporation (the “Company”), and Computershare Trust Company, N.A., as rights agent (the “Rights Agent”), with reference to the following facts:

WHEREAS, the Company and the Rights Agent 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 (the “Rights Agreement”);

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. 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, 2021 (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.”

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(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, 2021. 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 2. 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 3. 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 4. 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 5. Counterparts. This Amendment may be executed (including by facsimile) 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

COMPUTERSHARE TRUST COMPANY, N.A.

By: /s/ Patrick Hayes  
Name: Patrick Hayes  
Title: Vice President & Manager

*(Signature Page to Amendment to Rights Agreement)*

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EXHIBIT A

OFFICER'S CERTIFICATE

April 16, 2019

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 (the "Rights Agreement"), by and between Netlist, Inc., a Delaware corporation (the "Company"), and Computershare Trust Company, N.A., as rights agent (the "Rights Agent"), the undersigned officer of the Company does hereby certify that Amendment No. 2 to Rights Agreement, to be entered into as of the date hereof by and between the Company and the Rights Agent, is in compliance with the terms of Section 27 of the Rights Agreement.

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

By: \_\_\_\_\_

Name: Gail M. Sasaki

Title: Chief Financial Officer

*(Signature Page to Officer's Certificate)*

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### **Netlist Renews Stockholder Rights Agreement**

IRVINE, Calif., April 17, 2019 — Netlist, Inc. (OTCQX: NLST) (“Netlist” or the “Company”), today announced that its Board of Directors has renewed the stockholder rights agreement (the “Rights Agreement”) it originally entered into in April 2017. The amendment to the Rights Agreement extends the term for an additional two year period that will expire in April 2021. Other terms of the renewed Rights Agreement remain unchanged.

In general terms, the Rights restrict any person or group from acquiring beneficial ownership of 15% or more of the Company’s outstanding common stock (including, for these purposes, certain derivative securities), which may block or render more difficult a merger, tender offer or other business combination or takeover attempt of the Company without the support of the Netlist Board of Directors.

Pursuant to the Rights Agreement, one Right was distributed for each outstanding share of Netlist’s common stock held by stockholders of record as of the close of business on May 18, 2017 and for each share of Netlist’s common stock issued thereafter (subject to certain exceptions). Each Right entitles the holder to purchase a unit (each, a “Unit”) consisting of a fraction of a share of the Company’s Series A preferred stock having economic and voting rights similar to one share of the Company’s common stock. The Rights will become exercisable only if a person or group (subject to certain exceptions) acquires beneficial ownership of 15% or more of the Company’s common stock. In that situation, each holder of a Right (other than the person or group triggering the exercise of the Rights) will be entitled to purchase, at the then-current exercise price, a number of Units (and, in certain circumstances, other consideration) having a value of twice the exercise price of the Right (a 50% discount). Subject to adjustment as set forth in the Rights Agreement, the exercise price will continue to be \$6.56 per Right. Stockholders are not required to take any action as a result of the renewal of the Rights Agreement. Until the Rights become exercisable, they will not be evidenced by separate certificates and will trade automatically with shares of the Company’s common stock.

Further information about the Rights Agreement and the renewal of its term can be found in the Company’s Current Report on Form 8-K filed with the Securities and Exchange Commission on April 17, 2017, April 17, 2018 and April 17, 2019 and in the “Summary of Rights” contained in the “Investors” section of the Company’s website, [www.netlist.com](http://www.netlist.com).

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**About Netlist**

Netlist provides high-performance SSDs and modular memory subsystems to enterprise customers in diverse industries. Flagship products NVvault® and EXPRESSvault™ enable customers to accelerate data in their servers and storage and reliably protect enterprise-level cache, metadata and log data in the event of a system failure or power outage. HybriDIMM™, Netlist's next-generation storage class memory product, addresses the growing need for real-time analytics in Big Data applications, in-memory databases, high-performance computing and advanced data storage solutions. Netlist also manufactures and provides a line of specialty and legacy memory products to storage customers, appliance customers, system builders and cloud and datacenter customers. Netlist holds a portfolio of patents, many seminal, in the areas of hybrid memory, storage class memory, rank multiplication and load reduction. To learn more, visit [www.netlist.com](http://www.netlist.com).

**Safe Harbor Statement**

This news release contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements are statements other than historical facts and often address future events or Netlist's future performance. All forward-looking statements reflect management's present expectations regarding future events and are subject to known and unknown risks, uncertainties and other factors that could cause actual results to differ materially from those expressed in or implied by any forward-looking statements. These risks, uncertainties and other factors include, among others: risks related to Netlist's plans for its intellectual property, including its strategies for monetizing, licensing, expanding, and defending its patent portfolio; risks associated with patent infringement litigation initiated by Netlist, such as its ongoing proceedings against SK hynix Inc., or by others against Netlist, as well as the costs and unpredictability of any such litigation; risks associated with Netlist's product sales, including the market and demand for products sold by Netlist and its ability to successfully develop and launch new products that are attractive to the market; the success of product, joint development and licensing partnerships, including its relationship with Samsung Electronics Co., Ltd.; the competitive landscape of Netlist's industry; and general economic, political and market conditions. All forward-looking statements reflect management's present assumptions, expectations and beliefs regarding future events and are subject to known and unknown risks, uncertainties and other factors that could cause actual results to differ materially from those expressed in or implied by any forward-looking statements. These and other risks and uncertainties are described in Netlist's annual report on Form 10-K for its most recently completed fiscal year filed on March 22, 2019, and the other filings it makes with the U.S. Securities and Exchange Commission from time to time, including any subsequently filed quarterly and current reports. In light of these risks, uncertainties and other factors, these forward-looking statements should not be relied on as predictions of future events. These forward-looking statements represent Netlist's assumptions, expectations and beliefs only as of the date they are made, and except as required by law, Netlist undertakes no obligation to revise or update any forward-looking statements for any reason.

For more information, please contact:

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