

CREE INC
Form 10-K/A
August 21, 2018

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K/A

(Amendment No. 1)

(Mark One)

☒ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended June 24, 2018

or

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission file number 0-21154

CREE, INC.

(Exact name of registrant as specified in its charter)

North Carolina

56-1572719

(State or other jurisdiction of incorporation or organization) (I.R.S. Employer Identification No.)

4600 Silicon Drive

27703

Durham, North Carolina

(Address of principal executive offices)

(Zip Code)

(919) 407-5300

(Registrant's telephone number, including area code)

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

Title of each class	Name of each exchange on which registered
---------------------	-------------------------------------------

Common Stock, \$0.00125 par value	The Nasdaq Stock Market LLC
-----------------------------------	-----------------------------

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

None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

Edgar Filing: CREE INC - Form 10-K/A

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☐

Accelerated filer ☐

Non-accelerated filer ☐ (Do not check if a smaller reporting company) Smaller reporting company ☐

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.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

The aggregate market value of common stock held by non-affiliates of the registrant as of December 22, 2017, the last business day of the registrant's most recently completed second fiscal quarter, was \$3,728,836,361 (based on the closing sale price of \$37.33 per share).

The number of shares of the registrant's Common Stock, \$0.00125 par value per share, outstanding as of August 16, 2018 was 101,758,035.

EXPLANATORY NOTE

This Amendment No. 1 on Form 10-K/A ("Amendment No. 1") hereby amends the Registrant's Annual Report on Form 10-K for the fiscal year ended June 24, 2018 ("Original Form 10-K"), filed with the U.S. Securities and Exchange Commission on August 20, 2018. This Amendment No. 1 is being filed solely to include Exhibit 10.29 - Schedule of Compensation for Non-Employee Directors, to the Form 10-K/A, which was inadvertently omitted in the original filing of the Form 10-K, and to hyper-link Exhibit 10.29 in the Exhibit List under Item 15 of this Amendment No. 1. This Amendment No. 1 does not modify or update in any way the financial position, results of operations, cash flows or other disclosures in, or exhibits to, the Original Form 10-K, nor does it reflect events occurring after the filing of the Original Form 10-K. Accordingly, this Amendment No. 1 should be read in conjunction with the Original Form 10-K.

Part IV

Item 15. Exhibits and Financial Statements Schedules

(a)(1) and (2) The financial statements and reports of independent registered public accounting firm are filed as part of this Annual Report (see "Index to Consolidated Financial Statements" at Item 8). The financial statement schedules are not included in this item as they are either not applicable or are included as part of the consolidated financial statements.

(a)(3) The following exhibits have been or are being filed herewith and are numbered in accordance with Item 601 of Regulation S-K:

EXHIBIT NO. DESCRIPTION

<u>3.1</u>	Articles of Incorporation, as amended (incorporated herein by reference to Exhibit 3.1 to the Company's Annual Report on Form 10-K for the fiscal year ended June 30, 2002, as filed with the Securities and Exchange Commission on August 19, 2002)
<u>3.2</u>	Bylaws, as amended and restated (incorporated herein by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K, dated January 27, 2015, filed with the Securities and Exchange Commission on January 28, 2015)
<u>4.1</u>	Specimen Common Stock Certificate (incorporated herein by reference to Exhibit 4.1 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended December 24, 2017, as filed with the Securities and Exchange Commission on January 24, 2018)
<u>10.1*</u>	2004 Long-Term Incentive Compensation Plan, as amended (incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K, dated October 23, 2012, as filed with the Securities and Exchange Commission on October 25, 2012)
<u>10.2*</u>	Addendum to Form of Master Stock Option Award Agreement Terms and Conditions for Grants of Nonqualified Stock Options to Non-Employee Directors (incorporated herein by reference to Exhibit 10.5 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended September 27, 2009, as filed with the Securities and Exchange Commission on October 21, 2009)
<u>10.3*</u>	Form of Nonqualified Stock Option Award Agreement for Non-Employee Directors (incorporated herein by reference to Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended September 23, 2012, as filed with the Securities and Exchange Commission on October 17, 2012)
<u>10.4*</u>	Form of Master Stock Option Award Agreement for Grants of Nonqualified Stock Options (incorporated herein by reference to Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended September 24, 2006, as filed with the Securities and Exchange Commission on November 2, 2006)
<u>10.5*</u>	Form of Master Stock Option Award Agreement for Grants of Nonqualified Stock Options (incorporated herein by reference to Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended December 26, 2010, as filed with the Securities and Exchange Commission on January 19, 2011)
<u>10.6*</u>	Form of Nonqualified Stock Option Agreement (incorporated herein by reference to Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended September 23, 2012, as filed with the Securities and Exchange Commission on October 17, 2012)

- 10.7* Form of Master Restricted Stock Award Agreement (incorporated herein by reference to Exhibit 10.5 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended September 24, 2006, as filed with the Securities and Exchange Commission on November 2, 2006)
- 10.8* Form of Restricted Stock Award Agreement (incorporated herein by reference to Exhibit 10.5 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended September 23, 2012, as filed with the Securities and Exchange Commission on October 17, 2012)
- 10.9* Non-Employee Director Stock Compensation and Deferral Program (incorporated herein by reference to Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended September 27, 2009, as filed with the Securities and Exchange Commission on October 21, 2009)
- 10.10* Amendment One to Non-Employee Director Stock Compensation and Deferral Program (incorporated herein by reference to Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended December 26, 2010, as filed with the Securities and Exchange Commission on January 19, 2011)
-

10.11* Form of Cree, Inc. Indemnification Agreement for Directors and Officers (incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K, dated October 25, 2010, as filed with the Securities and Exchange Commission on October 29, 2010)

10.12* Form of Master Performance Unit Award Agreement (incorporated herein by reference to Exhibit 10.6 to the Company's Current Report on Form 8-K, dated August 30, 2013, as filed with the Securities and Exchange Commission on September 5, 2013)

10.13* Form of Stock Unit Award Agreement (Time-Based) (incorporated herein by reference to Exhibit 10.7 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended September 29, 2013, as filed with the Securities and Exchange Commission on October 23, 2013)

10.14* Form of Stock Unit Award Agreement (Performance-Based) (incorporated herein by reference to Exhibit 10.8 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended September 29, 2013, as filed with the Securities and Exchange Commission on October 23, 2013)

10.15* 2005 Employee Stock Purchase Plan, as amended (incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K, dated October 24, 2017, as filed with the Securities and Exchange Commission on October 24, 2017)

10.16* Form of Nonqualified Stock Option Award Agreement (incorporated herein by reference to Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended December 29, 2013, as filed with the Securities and Exchange Commission on January 22, 2014)

10.17* Form of Restricted Stock Unit Award Agreement (incorporated herein by reference to Exhibit 10.5 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended December 29, 2013, as filed with the Securities and Exchange Commission on January 22, 2014)

10.18* Form of Master Performance Unit Award Agreement (incorporated herein by reference to Exhibit 10.4 of the Company's Current Report on Form 8-K, dated August 25, 2014, filed with the Securities and Exchange Commission on August 29, 2014)

10.19* 2013 Long-Term Incentive Compensation Plan, as amended (incorporated herein by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K, dated October 25, 2016, filed with the Securities and Exchange Commission on October 28, 2016)

10.20* Credit Agreement, dated January 9, 2015, by and between Cree, Inc., Wells Fargo Bank, National Association, as administrative agent and lender, E-conolight LLC, a domestic subsidiary of the Company, as guarantor, and the other lenders party thereto (incorporated herein by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K, dated January 9, 2015, filed with the Securities and Exchange Commission on January 12, 2015)

10.21* First Amendment to the Credit Agreement, dated September 10, 2015, by and among Cree, Inc., Wells Fargo Bank, National Association, as administrative agent, E-conolight LLC, a domestic subsidiary of the Cree, Inc., as guarantor, and the other lenders party thereto (incorporated herein by reference to Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended December 24, 2017, as filed with the Securities and Exchange Commission on January 24, 2018)

10.22*

Edgar Filing: CREE INC - Form 10-K/A

Credit Agreement Consent, dated as of July 13, 2016, by and between Cree, Inc., Wells Fargo Bank, National Association, as administrative agent and lender, E-conolight LLC, a domestic subsidiary of the Company, as guarantor, and the other lenders party to the Credit Agreement (incorporated herein by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended September 25, 2016, as filed with the Securities and Exchange Commission on October 19, 2016)

10.23* Second Amendment to Credit Agreement, dated November 13, 2017, by and among Cree, Inc., Wells Fargo, National Association, as administrative agent, E-conolight LLC, a domestic subsidiary of the Cree, Inc., as guarantor, and the other lenders party thereto (incorporated herein by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K, dated November 13, 2017, filed with the Securities and Exchange Commission on November 16, 2017)

10.24* Notice of Grant to Charles M. Swoboda (incorporated herein by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K, dated August 28, 2017, filed with the Securities and Exchange Commission on September 1, 2017)

10.25* Notice of Grant to Michael E. McDevitt (incorporated herein by reference to Exhibit 10.2 of the Company's Current Report on Form 8-K, dated August 28, 2017, filed with the Securities and Exchange Commission on September 1, 2017)

<u>10.26</u> *	Notice of Grant to Daniel J. Castillo (incorporated herein by reference to Exhibit 10.3 of the Company's Current Report on Form 8-K, dated August 28, 2017, filed with the Securities and Exchange Commission on September 1, 2017)
<u>10.27</u> *	Notice of Grant to David T. Emerson (incorporated herein by reference to Exhibit 10.4 of the Company's Current Report on Form 8-K, dated August 28, 2017, filed with the Securities and Exchange Commission on September 1, 2017)
<u>10.28</u> *	Management Incentive Compensation Plan, as amended and restated (incorporated herein by reference to Exhibit 10.4 to the Company's Current Report on Form 8-K, dated August 23, 2016, as filed with the Securities and Exchange Commission on August 25, 2016)
<u>10.29</u> *	Schedule of Compensation for Non-Employee Directors +
<u>10.30</u> *	Form of Performance Share Award Agreement - Section 16 Officer (incorporated herein by reference to Exhibit 10.6 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended September 27, 2015, as filed with the Securities and Exchange Commission on October 21, 2015)
<u>10.31</u> *	Termination Agreement, dated as of March 6, 2017, by and between Cree, Inc. and Infineon Technologies AG (incorporated by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K, March 6, 2017, filed with the Securities and Exchange Commission on March 7, 2017)
<u>10.32</u> *	Separation, General Release and Consulting Agreement, dated May 18, 2017, between Cree, Inc. and Charles M. Swoboda (incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K, dated May 18, 2017, as filed with the Securities and Exchange Commission on May 24, 2017)
<u>10.33</u> *	Change in Control Agreement for Chief Executive Officer, dated September 22, 2017, between Cree, Inc. and Gregg A. Lowe (incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K, dated September 27, 2017, as filed with the Securities and Exchange Commission on September 28, 2017)
<u>10.34</u> *	First Amendment to Change in Control Agreement (for Chief Executive Officer), dated May 4, 2018 (incorporated herein by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K, dated April 30, 2018, as filed with the Securities and Exchange Commission on May 4, 2018)
<u>10.35</u> *	Notice of Grant to Gregg A. Lowe, dated September 27, 2017 (incorporated herein by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K, dated September 27, 2017, as filed with the Securities and Exchange Commission on September 28, 2017)
<u>10.36</u> *	Form of Stock Unit Award Agreement (Performance-Based) for Gregg A. Lowe (incorporated herein by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K, dated September 27, 2017, as filed with the Securities and Exchange Commission on September 28, 2017)

Edgar Filing: CREE INC - Form 10-K/A

<u>10.37</u> *	Separation and General Release Agreement with Daniel J. Castillo, dated December 21, 2017 (incorporated herein by reference to Exhibit 10.6 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended December 24, 2017, as filed with the Securities and Exchange Commission on January 24, 2018)
<u>10.38</u> *	Cree Severance Plan - Senior Leadership Team, Plan Document and Summary Plan Description, effective as of April 30, 2018 (incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K, dated April 30, 2018, as filed with the Securities and Exchange Commission on May 4, 2018)
<u>10.39</u> *	Form of Participation Agreement Under Cree Severance Plan - Senior Leadership Team (incorporated herein by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K, dated April 30, 2018, as filed with the Securities and Exchange Commission on May 4, 2018)
<u>10.40</u> *	Separation, General Release and Consulting Agreement, dated June 7, 2018, between Cree, Inc. and Michael E. McDevitt (incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K, dated June 5, 2018, as filed with the Securities and Exchange Commission on June 7, 2018)
<u>10.41</u> *	Form of Stock Unit Award Agreement (Performance-Based) ++
<u>10.42</u> *	Form of Stock Unit Award Agreement (Time-Based) ++
<u>21.1</u>	Subsidiaries of the Company ++
<u>23.1</u>	Consent of PricewaterhouseCoopers LLP ++
<u>23.2</u>	Consent of KPMG ++
<u>31.1</u>	Certification by Chief Executive Officer pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 +

- 31.2 Certification by Chief Financial Officer pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 +
- 32.1 Certification by Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 ++
- 32.2 Certification by Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 ++
- 99.1** Audited financial statements of Lextar Electronics Corporation as of and for the years ended December 31, 2015 and 2014. ++
- 101 The following materials from Cree, Inc.'s Annual Report on Form 10-K for the fiscal year ended June 24, 2018 formatted in XBRL (eXtensible Business Reporting Language): (i) Consolidated Balance Sheets; (ii) Consolidated Statements of Loss; (iii) Consolidated Statements of Comprehensive Loss; (iv) Consolidated Statements of Cash Flows; (v) Consolidated Statements of Shareholders' Equity; and (vi) Notes to Consolidated Financial Statements

* Management contract or compensatory plan

The financial statements as of and for the years ended December 31, 2015 and 2014 of Lextar Electronics Corporation, prepared by Lextar and audited by its independent public accounting firm, are included in this Annual Report pursuant to Rule 3-09 of Regulation S-X.

+ Filed herewith

++Previously Filed

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act, the Registrant has duly caused this Report to be signed on its behalf by the undersigned thereunto duly authorized.

Date: August 21, 2018 /s/ MICHAEL E. MCDEVITT

Michael E. McDevitt

Executive Vice President and Chief Financial Officer