

NETGEAR, INC  
Form S-8  
July 28, 2010

As filed with the Securities and Exchange Commission on July 28, 2010

Registration No. 333-

# SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

## FORM S-8

## REGISTRATION STATEMENT

*Under*

*The Securities Act of 1933*

## NETGEAR, Inc.

(Exact name of Registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

350 East Plumeria Drive

San Jose, CA 95134

**77-0419172**  
(I.R.S. Employer  
Identification Number)

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(Address of principal executive offices)

**Amended and Restated 2006 Long-Term Incentive Plan**

(Full title of the plan)

**Patrick C.S. Lo**

**Chairman of the Board and Chief Executive Officer**

**NETGEAR, Inc.**

**350 East Plumeria Drive**

**San Jose, CA 95134**

**(408) 907-8000**

(Name, address, including zip code, and telephone number, including area code, of agent for service)

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 the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer  Accelerated filer   
Non-accelerated filer  Smaller reporting company

**CALCULATION OF REGISTRATION FEE**

<b>Title of Securities to be Registered</b>	<b>Amount to be Registered(1)</b>	<b>Proposed Maximum Offering Price Per Share(2)</b>	<b>Proposed Maximum Aggregate Offering Price</b>	<b>Amount of Registration Fee</b>
Common Stock, par value \$0.001 per share, Issuable under the Registrant's Amended and Restated 2006 Long-Term Incentive Plan	1,500,000 shares	\$20.105	\$30,157,500.00	\$2,150.23

(1) This registration statement shall also cover any additional shares of Common Stock which become issuable by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without the receipt of consideration which results in an increase

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in the number of shares of the Registrant's outstanding Common Stock.

- (2) Estimated in accordance with Rule 457(c) and Rule 457(h) under the Securities Act of 1933, as amended, solely for the purpose of calculating the registration fee, based on the average of the high and low price per share of the Registrant's Common Stock as reported on the Nasdaq Global Market on July 21, 2010.

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**STATEMENT UNDER GENERAL INSTRUCTION E**

**REGISTRATION OF ADDITIONAL SECURITIES**

This Registration Statement registers additional shares of the Registrant's Common Stock to be issued pursuant to the Registrant's Amended and Restated 2006 Long-Term Incentive Plan. Accordingly, the contents of the Registration Statements on Form S-8 filed by the Registrant with the Securities and Exchange Commission (the "SEC") on August 25, 2006 (File No. 333-136892) and June 13, 2008 (File No. 333-151638) (together, the "Previous Registration Statements on Form S-8"), including periodic reports that the Registrant filed after the Previous Registration Statements on Form S-8 to maintain current information about the Registrant, are incorporated by reference into this Registration Statement pursuant to General Instruction E of Form S-8.

**Item 3. Incorporation of Documents by Reference.**

The following documents, which have been filed by the Registrant with the SEC, are incorporated herein by reference:

- (1) The Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2009, filed with the SEC on March 1, 2010;
- (2) The Registrant's Current Reports on Form 8-K, filed with the SEC on February 9, 2010, April 21, 2010, May 27, 2010, and July 21, 2010. The Registrant specifically excludes from incorporation such information that has been furnished and not filed pursuant to Item 2.02 of the Registrant's Current Reports on Form 8-K filed with Commission on February 9, 2010, April 21, 2010 and July 21, 2010; and
- (3) The Registrant's Quarterly Report on Form 10-Q for the fiscal quarter ended March 28, 2010, filed with the SEC on May 6, 2010.

All documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act prior to the filing of a post-effective amendment to the Registration Statement which indicates that all of the shares of Common Stock offered have been sold or that deregisters all of such shares then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of the filing of such documents. For the purposes of this Registration Statement, any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded to the extent that a statement contained herein or in any other subsequently filed document that also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

**PART II**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 6. Indemnification of Directors and Officers.**

The Registrant is a corporation organized under the laws of the State of Delaware. Section 145 of the Delaware General Corporation Law provides that a corporation may indemnify any person who was or is a party or is threatened to be made a party to an action by reason of the fact that he or she was a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful, except that, in the case of an action by or in right of the corporation, no indemnification may generally be made in respect of any claim as to which such person is adjudged to be liable to the corporation.

Section 102(b)(7) of the Delaware General Corporation Law permits a corporation to provide in its certificate of incorporation that a director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duties as a director, except for liability for any:

breach of a director's duty of loyalty to the corporation or its stockholders;

act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;

unlawful payment of dividends or redemption of shares; or

transaction from which the director derives an improper personal benefit.

The Registrant's certificate of incorporation and bylaws provide that the Registrant shall indemnify its directors, officers, employees and agents to the full extent permitted by Delaware General Corporation Law, including in circumstances in which indemnification is otherwise discretionary under Delaware law.

In addition, the Registrant has entered into separate indemnification agreements with its directors, officers and certain employees which requires the registrant, among other things, to indemnify them against certain liabilities which may arise by reason of their status as directors, officers or certain other employees. The Registrant also intends to maintain director and officer liability insurance, if available on reasonable terms.

These indemnification provisions and the indemnification agreements entered into between the Registrant and its officers and directors may be sufficiently broad to permit indemnification of the registrant's officers and directors for liabilities (including reimbursement of expenses incurred) arising under the Securities Act.

**Item 8. Exhibits.**

The following exhibits are filed as part of this Registration Statement:

<b>Exhibit Number</b>	<b>Description</b>
4.1	Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.3 of the Registrant's Form S-1 as filed on April 10, 2003, File No. 333-104419)
4.2	Amended and Restated Bylaws (incorporated by reference to Exhibit 3.5 of the Registrant's Form S-1 as filed on April 10, 2003, File No. 333-104419)
4.3	Amended and Restated 2006 Long-Term Incentive Plan
5.1	Opinion of NETGEAR, Inc. Vice President, Legal and Corporate Development, as to legality of securities being registered
23.1	Consent of Independent Registered Public Accounting Firm
23.2	Consent of Counsel. Reference is made to Exhibit 5.1
24.1	Power of Attorney. Reference is made to the signature pages

**Item 9. Undertakings.**

(a) The Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) to include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) to reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement;

(iii) to include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to the information in this Registration Statement;

*provided, however,* that paragraphs (a)(1)(i) and (a)(1)(ii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in this Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act, each post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Commission, such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act, and will be governed by the final adjudication of such issue.

**SIGNATURES**

Pursuant to the requirements of the Securities Act, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in San Jose, California, on July 28, 2010.

By: /s/ PATRICK C.S. LO  
 Name: Patrick C.S. Lo  
 Title: Chairman of the Board and Chief Executive Officer

**POWER OF ATTORNEY**

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Patrick C.S. Lo and Christine M. Gorjanc, and each of them acting individually, as his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to the Registration Statement on Form S-8, and to file the same, with all exhibits thereto, and all documents in connection therewith, with the U.S. Securities and Exchange Commission, granting unto said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he or she could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

This Power of Attorney may be executed 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 together shall constitute one and the same agreement.

Pursuant to the requirements of the Securities Act, the Registration Statement on Form S-8 has been signed below by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ PATRICK C.S. LO  Patrick C.S. Lo	President, Chief Executive Officer, and Director  (Principal Executive Officer)	July 28, 2010
/s/ CHRISTINE M. GORJANC  Christine M. Gorjanc	Chief Financial Officer  (Principal Financial and Accounting Officer)	July 28, 2010
/s/ JOCELYN E. CARTER-MILLER  Jocelyn E. Carter-Miller	Director	July 28, 2010
/s/ RALPH E. FAISON  Ralph E. Faison	Director	July 28, 2010
/s/ A. TIMOTHY GODWIN  A. Timothy Godwin	Director	July 28, 2010
/s/ JEF GRAHAM  Jef Graham	Director	July 28, 2010

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/s/ LINWOOD A. LACY, JR.	Director	July 28, 2010
<b>Linwood A. Lacy, Jr.</b>		
/s/ GEORGE G.C. PARKER	Director	July 28, 2010
<b>George G.C. Parker</b>		
/s/ GREGORY J. ROSSMANN	Director	July 28, 2010
<b>Gregory J. Rossmann</b>		
/s/ JULIE A. SHIMER	Director	July 28, 2010
<b>Julie A. Shimer</b>		

**INDEX TO EXHIBITS**

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