

# AVIAT NETWORKS, INC.

## **FORM 8-K** (Current report filing)

Filed 09/22/17 for the Period Ending 09/21/17

Address 860 N. MCCARTHY BLVD, SUITE 200  
MILPITAS, CA, 95035  
Telephone 4089417100  
CIK 0001377789  
Symbol AVNW  
SIC Code 3663 - Radio and Television Broadcasting and Communications Equipment  
Industry Communications & Networking  
Sector Technology  
Fiscal Year 07/01

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

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**Form 8-K**

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**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of the  
Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported): September 21, 2017**

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**AVIAT NETWORKS, INC.**

(Exact name of registrant as specified in its charter)

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

**001-33278**  
(Commission File  
Number)

**20-5961564**  
(I.R.S. Employer  
Identification No.)

**Address of principal executive offices: 860 N. McCarthy Blvd., Suite 200, Milpitas, California**

**Registrant's telephone number, including area code: (408)941-7100**

(Former name or former address, if changed since last report.)

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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.**

On September 21, 2017, Aviat Networks, Inc. (the “Company”) entered into Amendment No. 8 to Second Amended and Restated Loan Agreement (the “Amendment”) by and among the Company, Aviat U.S., Inc. (“Opco”), Aviat Networks (S) Pte. Ltd. (the “Singapore Borrower” and collectively with the Company and Opco, the “Borrowers”) and Silicon Valley Bank, as lender (the “Lender”). The Amendment amends the terms of the Company’s Second Amended and Restated Loan and Security Agreement, dated as of March 28, 2014, as amended, by and among the Borrowers and the Lender (the “Agreement”). Among other things, the Amendment allows for up to 30% of the Singapore Borrower’s accounts receivable to be included in the calculation of the borrowing base and the inclusion of the accounts receivable of certain high credit quality customers of the Company that are aged 90 to 120 days to be included in the calculation of the borrowing base.

The foregoing description of the Amendment is qualified in its entirety by reference to the full text of the Amendment, a copy of which is attached as Exhibit 10.1 hereto and incorporated herein by reference.

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

(d) Exhibits.

**Exhibit No.    Description**

10.1            Amendment No. 8 to Second Amended and Restated Loan and Security Agreement, dated as of September 21, 2017, by and among Aviat Networks, Inc., Aviat U.S., Inc., Aviat Networks (S) Pte. Ltd. and Silicon Valley Bank.

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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.

AVIAT NETWORKS, INC.

Date: September 21, 2017

By: /s/ Ralph S. Marimon

Name: Ralph S. Marimon

Title: Senior Vice President and Chief Financial Officer

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## EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
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10.1	Amendment No. 8 to Second Amended and Restated Loan and Security Agreement, dated as of September 21, 2017, by and among Aviat Networks, Inc., Aviat U.S., Inc., Aviat Networks (S) Pte. Ltd. and Silicon Valley Bank.
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**AMENDMENT NO. 8  
TO  
SECOND AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT**

THIS AMENDMENT NO. 8 TO THE SECOND AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT (this “**Amendment**”) is entered into this 21st day of September, 2017, by and among AVIAT NETWORKS, INC., a Delaware corporation (“**Parent**”), AVIAT U.S., INC. (“**Opco**,” together with Parent, the “**US Borrowers**”) and AVIAT NETWORKS (S) PTE. LTD., a private company limited by shares formed under the laws of the Republic of Singapore (“**Aviat Singapore**” or “**Singapore Borrower**,” and together with the US Borrowers, the “**Borrowers**”), and SILICON VALLEY BANK (“**Bank**”). Capitalized terms used herein without definition shall have the same meanings given them in the Loan Agreement (as defined below).

**RECITALS**

- A. Borrowers and Bank have entered into that certain Second Amended and Restated Loan and Security Agreement dated as of March 28, 2014 (as amended, restated, modified and/or supplemented from time to time, the “Loan Agreement”), pursuant to which Bank agreed to extend and make available to Borrowers certain advances of money.
- B. Bank has extended credit to Borrowers for the purposes permitted in the Loan Agreement.
- C. Borrowers have requested that Bank amend the Loan Agreement to make certain revisions to the Loan Agreement as more fully set forth herein.
- D. Bank has agreed to so amend certain provisions of the Loan Agreement, but only to the extent, in accordance with the terms, subject to the conditions and in reliance upon the representations and warranties set forth below.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing Recitals and intending to be legally bound, the parties hereto agree as follows:

**1. AMENDMENT TO LOAN AGREEMENT .**

**1.1 . Section 13.1 (Definitions)** . The definition of Borrowing Base is hereby amended and restated in its entirety to read as follows:

‘ “**Borrowing Base**” is (a) 80% of Eligible Accounts (other than Singapore Borrower Eligible Accounts), as determined by Bank from Borrower’s most recent Borrowing Base Certificate, plus (b) 50% of all Domestic unbilled accounts, plus (c) (i) the Singapore Borrower Eligible Account Advance Rate multiplied by (ii) the Singapore Borrower Eligible Accounts; provided, however, that Bank may decrease the foregoing amount and percentage in its good faith business judgment based on events, conditions, contingencies, or risks which, as determined by Bank, may adversely affect Collateral.’

**1.2. Section 13.1 (Definitions)** . The definition of Eligible Accounts is hereby amended by amending and restating subsection (b) thereof in its entirety to read as follows:

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“(b) Accounts that the Account Debtor has not paid within (i) ninety (90) days from the invoice date or (ii) one hundred and twenty (120) days from the invoice date (x) in the case of Accounts of Singapore Borrower, if so approved by Bank in its sole discretion and (y) in the case of Accounts owing from Top Tier Account Debtors, but not to exceed in the aggregate 10% of all Accounts owing to US Borrowers, in each case, regardless of invoice payment period terms;”

1.3. **Section 13.1 (Definitions)**. The definition of Singapore Borrower Eligible Account Advance Rate is hereby amended and restated in its entirety to read as follows:

‘ “**Singapore Borrower Eligible Account Advance Rate**” is 30%; provided, however, that Bank may decrease the foregoing amount and percentage in its good faith business judgment based on events, conditions, contingencies, or risks which, as determined by Bank, may adversely affect Collateral.’

1.4. **Section 13.1 (Definitions)** . The following definition is hereby added to Section 13.1 of the Loan Agreement in proper alphabetical order as follows:

“**Top Tier Account Debtors**” refers to those certain Account Debtors identified in writing as such by US Borrowers and approved, on a case-by-case basis, by Bank in its sole discretion.’

2. **BORROWERS’ REPRESENTATIONS AND WARRANTIES** . Each Borrower hereby represents and warrants that:

(a) immediately upon giving effect to this Amendment (i) the representations and warranties contained in the Loan Documents are true, accurate and complete in all material respects as of the date hereof (except to the extent such representations and warranties relate to an earlier date, in which case they are true and correct as of such date), and (ii) no Event of Default has occurred and is continuing;

(b) such Borrower has the corporate power and authority to execute and deliver this Amendment and to perform its obligations under the Loan Agreement, as amended by this Amendment;

(c) the certificate of incorporation, bylaws and other organizational documents of such Borrower delivered to Bank in connection with the Loan Agreement remain true, accurate and complete and have not been amended, supplemented or restated and are and continue to be in full force and effect;

(d) the execution and delivery by such Borrower of this Amendment and the performance by such Borrower of its obligations under the Loan Agreement, as amended by this Amendment, have been duly authorized by all necessary corporate action on the part of such Borrower; and

(e) this Amendment has been duly executed and delivered by such Borrower and is the binding obligation of such Borrower, enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, liquidation, moratorium or other similar laws of general application and equitable principles relating to or affecting creditors’ rights.

3. **LIMITATION** . The amendments set forth in this Amendment shall be limited precisely as written and shall not be deemed (a) to be a waiver or modification of any other term or condition of the Loan Agreement or of any other instrument or agreement referred to therein or to prejudice any right or remedy which Bank may now have or may have in the future under or in connection with the Loan Agreement or any instrument or agreement referred to therein; or (b) to be a consent to any future amendment or modification

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or waiver to any instrument or agreement the execution and delivery of which is consented to hereby, or to any waiver of any of the provisions thereof. Except as expressly amended hereby, the Loan Agreement shall continue in full force and effect.

**4. EFFECTIVENESS** . This Amendment shall become effective upon (a) delivery of this Amendment, duly executed by each Borrower and Bank; and (b) payment of all fees and expenses, as described in Section 5 of this Amendment, such date being the “Seventh Amendment Effective Date”.

**5. FEES AND EXPENSES**. Borrowers agree to pay Bank Expenses (including the fees and expenses of Bank’s counsel, advisors and consultants) accrued and incurred in connection with the transactions contemplated by this Amendment, and all other Bank Expenses (including the fees and expenses of Bank’s counsel, advisors and consultants) payable in accordance with the Loan Agreement.

**6. COUNTERPARTS** . This Amendment may be signed in any number of counterparts, and by different parties hereto in separate counterparts, with the same effect as if the signatures to each such counterpart were upon a single instrument. All counterparts shall be deemed an original of this Amendment.

**7. INTEGRATION** . This Amendment and any documents executed in connection herewith or pursuant hereto contain the entire agreement between the parties with respect to the subject matter hereof and supersede all prior agreements, understandings, offers and negotiations, oral or written, with respect thereto and no extrinsic evidence whatsoever may be introduced in any judicial or arbitration proceeding, if any, involving this Amendment; except that any financing statements or other agreements or instruments filed by Bank with respect to Borrowers and the Collateral shall remain in full force and effect. This Amendment is a Loan Document.

**8. CHOICE OF LAW, VENUE, JURY TRIAL WAIVER, AND JUDICIAL REFERENCE**. THIS AMENDMENT SHALL BE SUBJECT TO THE PROVISIONS REGARDING CHOICE OF LAW AND VENUE, JURY TRIAL WAIVER, REFERENCE PROCEEDINGS AND ARBITRATION SET FORTH IN SECTION 11 OF THE LOAN AGREEMENT, AND SUCH PROVISIONS ARE INCORPORATED HEREIN BY REFERENCE, *MUTATIS MUTANDIS* .

*[Signature Pages Follow]*

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

**BORROWERS :**

AVIAT NETWORKS, INC.

By /s/ Ralph Marimon  
Name: Ralph Marimon  
Title: CFO

AVIAT U.S., INC.

By /s/ Kevin Holwell  
Name: Kevin Holwell  
Title: VP Finance

AVIAT NETWORKS (S) PTE. LTD.

By /s/ Kevin Holwell  
Name: Kevin Holwell  
Title: Director

[Signature Page to Amendment No. 8 to Second Amended and Restated Loan and Security Agreement]

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

**BANK :**

SILICON VALLEY BANK

By /s/ Kyle Larrabee  
Name: Kyle Larrabee  
Title: VP

[Signature Page to Amendment No. 8 to Second Amended and Restated Loan and Security Agreement]