

# CREE INC

## FORM S-8

(Securities Registration: Employee Benefit Plan)

Filed 01/31/17

Address	4600 SILICON DR DURHAM, NC 27703
Telephone	9194075300
CIK	0000895419
Symbol	CREE
SIC Code	3674 - Semiconductors and Related Devices
Industry	Semiconductors
Sector	Technology
Fiscal Year	06/27

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

**FORM S-8**

**REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

**CREE, INC.**

(Exact name of registrant as specified in its charter)

**North Carolina**

(State or other jurisdiction of incorporation or organization)

**56-1572719**

(I.R.S. Employer Identification No.)

**4600 Silicon Drive  
Durham, North Carolina**

(Address of Principal Executive Offices)

**27703**

(Zip Code)

**CREE, INC. 2013 LONG-TERM INCENTIVE COMPENSATION PLAN**

(Full title of the plan)

Michael E. McDevitt  
Executive Vice President and Chief Financial Officer  
Cree, Inc.  
4600 Silicon Drive  
Durham, North Carolina 27703  
(919) 407-5300

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

Copy to:  
Bradley D. Kohn, Esq.  
Cree, Inc.  
4600 Silicon Drive  
Durham, North Carolina 27703

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. (Check one):

Large accelerated filer

Non-accelerated filer

(Do not check if a smaller reporting company)

Accelerated filer

Smaller reporting company

### CALCULATION OF REGISTRATION FEE

Title of Securities To Be Registered	Amount To Be Registered	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, \$0.00125 Par Value (1)	6,553,127 (2)	\$27.84 (3)	\$182,439,056 (3)	\$21,144.69 (3)

- (1) Each share of Common Stock issued by the Registrant includes one right to purchase a fraction of a share of Series A Preferred Stock. Prior to the occurrence of certain events, the preferred stock purchase rights will not be exercisable or evidenced separately from the Common Stock. Accordingly, no additional registration fee is required.
- (2) Includes (a) 2,000,000 additional shares of Common Stock that are authorized for issuance under the Registrant's 2013 Long-Term Incentive Compensation Plan, as amended (the "Plan"), and approved by the Registrant's shareholders at the annual meeting of shareholders held on October 28, 2014, (b) 2,500,000 additional shares of Common Stock that are authorized for issuance under the Plan and approved by the Registrant's shareholders at the annual meeting of shareholders held on October 25, 2016, and (c) 2,053,127 shares carried forward from the Registrant's 2004 Long-Term Incentive Compensation Plan, as amended (the "Predecessor Plan"), that were subject to outstanding awards under the Predecessor Plan as of January 1, 2014 and subsequently expired, were canceled or otherwise terminated unexercised or unused for any reason. In addition, pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the "Securities Act"), this Registration Statement also covers such additional shares of Common Stock as may be issued to prevent dilution of the shares of Common Stock covered hereby resulting from stock splits, stock dividends or similar transactions.
- (3) Calculated solely for the purpose of this offering pursuant to Rule 457(h) on the basis of the average of the high and low prices of the Common Stock as reported on the Nasdaq Global Select Market on January 30, 2017.
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## PART I

### INFORMATION REQUIRED IN THE 10(a) PROSPECTUS

This Registration Statement on Form S-8 is being filed by Cree, Inc. (the “Registrant”) to register 6,553,127 shares of the Common Stock of the Registrant, \$0.00125 par value, issuable under the Cree, Inc. 2013 Long-Term Incentive Compensation Plan, as amended (the “Plan”). As permitted by the rules of the Securities and Exchange Commission (the “Commission”), this Registration Statement omits the information specified in Part I of Form S-8 and consists of only those items required by General Instruction E to Form S-8. The document containing the information specified in Part I will be delivered to the participants in the Plan as required by Rule 428(b) under the Securities Act. This document is not being filed with the Commission as part of this Registration Statement or as a prospectus or prospectus supplement pursuant to Rule 424.

## PART II

### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Pursuant to General Instruction E of Form S-8, the prior Registration Statements relating to the Plan, Registration Nos. 333-191973 and 333-198381 filed with the Commission on October 29, 2013 and August 27, 2014 remain effective, and the contents of such Registration Statements are incorporated in this Registration Statement by this reference.

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

The following documents filed with the Commission are hereby incorporated by reference in this Registration Statement:

- (a) The Registrant’s Annual Report on Form 10-K for the fiscal year ended June 26, 2016, filed with the Commission on August 25, 2016;
- (b) The Registrant’s Quarterly Reports on Form 10-Q for the quarter ended September 25, 2016, filed with the Commission on October 19, 2016, and for the quarter ended December 25, 2016, filed with the Commission on January 25, 2017;
- (c) The Registrant’s Current Reports on Form 8-K filed on July 14, 2016, as amended July 18, 2016, July 18, 2016, August 25, 2016, and October 28, 2016;
- (d) The description of the Registrant’s Common Stock contained in the Registrant’s Registration Statement on Form 8-A filed on January 29, 1993, and any amendments or reports filed for the purpose of updating such description; and
- (e) The description of the rights attached to the Registrant’s Common Stock contained in the Registrant’s Registration Statement on Form 8-A filed on May 30, 2002, and any amendments or reports filed for the purpose of updating such description.

In addition, all documents subsequently filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities 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 filing of such documents. However, any documents or portions thereof, whether specifically listed above or filed in the future, that are not deemed “filed” with the Commission, including without limitation any information furnished pursuant to Item 2.02 or 7.01 of Form 8-K or certain exhibits furnished pursuant to Item 9.01 of Form 8-K, shall not be deemed to be incorporated by reference in this Registration Statement.

Any statement in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for the purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is incorporated or deemed to be incorporated by reference herein modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except

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as so modified or superseded, to constitute a part of this Registration Statement.

**Item 8. Exhibits.**

<u>Exhibit No.</u>	<u>Description</u>
4.1	Amended and Restated Rights Agreement, dated April 24, 2012, between Cree, Inc. and American Stock Transfer & Trust Company, LLC (incorporated herein by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K, dated April 24, 2012, as filed with the Commission on April 26, 2012)
4.2	Amendment No. 1 to Amended and Restated Rights Agreement, dated as of January 29, 2013 (incorporated herein by reference to Exhibit 4.1 to the Registrant's Current Report on Form 8-K, dated January 29, 2013, as filed with the Commission on January 31, 2013)
4.3	Amendment No. 2 to Amended and Restated Rights Agreement, dated as of February 11, 2015 (incorporated herein by reference to Exhibit 4.1 of the Registrant's Current Report on Form 8-K, dated February 11, 2015, as filed with the Commission on February 11, 2015)
5.1	Opinion of Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P.
23.1	Consent of Independent Registered Public Accounting Firm, PricewaterhouseCoopers LLP
23.2	Consent of Independent Auditors, KPMG
23.3	Consent of Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P. (Contained in Exhibit 5.1)
24.1	Power of Attorney (Contained on signature page)
99.1	2013 Long-Term Incentive Compensation Plan, as amended (incorporated herein by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K, dated October 25, 2016, as filed with the Commission on October 28, 2016)

**Item 9. Undertakings.**

(a) The undersigned 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 the 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 the 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% 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 the Registration Statement or any material change to such information in the 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 the Registrant pursuant to section 13 or section 15(d) of the Exchange Act that are incorporated by reference in the Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such 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.

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(b) The undersigned 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 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.

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## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, 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 the City of Durham, State of North Carolina, on this 31st day of January, 2017.

### CREE, INC.

By: /s/ Charles M. Swoboda  
Charles M. Swoboda  
Chairman, Chief Executive Officer and President

KNOW ALL MEN BY THESE PRESENTS that each individual whose signature appears below constitutes and appoints Charles M. Swoboda and Michael E. McDevitt, and each of them, his true and lawful attorneys-in-fact and agents with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and to file the same, with all exhibits thereto, and all documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents 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 might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or their substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Name</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Charles M. Swoboda</u> Charles M. Swoboda	Chairman, Chief Executive Officer and President (Principal Executive Officer)	January 31, 2017
<u>/s/ Michael E. McDevitt</u> Michael E. McDevitt	Executive Vice President and Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	January 31, 2017
<u>/s/ Clyde R. Hosein</u> Clyde R. Hosein	Director	January 31, 2017
<u>/s/ Robert A. Ingram</u> Robert A. Ingram	Director	January 31, 2017
<u>/s/ Darren R. Jackson</u> Darren R. Jackson	Director	January 31, 2017
<u>/s/ C. Howard Nye</u> C. Howard Nye	Director	January 31, 2017
<u>/s/ John B. Replogle</u> John B. Replogle	Director	January 31, 2017
<u>/s/ Thomas H. Werner</u> Thomas H. Werner	Director	January 31, 2017
<u>/s/ Anne C. Whitaker</u> Anne C. Whitaker	Director	January 31, 2017

## EXHIBIT INDEX

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99.1	2013 Long-Term Incentive Compensation Plan, as amended (incorporated herein by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K, dated October 25, 2016, as filed with the Commission on October 28, 2016)

SMITH, ANDERSON, BLOUNT, DORSETT, MITCHELL & JERNIGAN, L.L.P.

OFFICES  
Wells Fargo Capitol Center  
150 Fayetteville Street, Suite 2300  
Raleigh, North Carolina 27601

January 31, 2017

MAILING ADDRESS  
P.O. Box 2611  
Raleigh, North Carolina  
27602-2611  
—  
TELEPHONE: (919) 821-1220  
FACSIMILE: (919) 821-6800

Cree, Inc.  
4600 Silicon Drive  
Durham, North Carolina 27703

Re: Cree, Inc. Registration Statement on Form S-8

Ladies and Gentlemen:

We have acted as counsel for Cree, Inc., a North Carolina corporation (the “Company”), in connection with the registration on Form S-8 (the “Registration Statement”) under the Securities Act of 1933, as amended (the “Act”), of 6,553,127 shares of common stock of the Company (the “Shares”), with a par value of \$0.00125 per share, for issuance under the Company’s 2013 Long-Term Incentive Compensation Plan, as amended (the “Plan”), and the associated rights to purchase Series A Preferred Stock (the “Rights”) issuable pursuant to the Amended and Restated Rights Agreement, amended and restated as of April 24, 2012, between the Company and American Stock Transfer & Trust Company, LLC, as amended (the “Rights Agreement”).

This opinion is being furnished in accordance with the requirements of Item 8 of Form S-8 and Item 601(b)(5)(i) of Regulation S-K.

We have examined the Restated Articles of Incorporation of the Company, the Bylaws of the Company, as amended and restated, the Plan, the minutes of the Board of Directors of the Company relating to the Plan and the authorization and the issuance of the Shares, the Proxy Statements regarding the Plan and amendments thereto, the minutes of the annual shareholders’ meetings evidencing approval of the Plan and amendments thereto, the Rights Agreement and the minutes of the Board of Directors of the Company evidencing approval of the Rights Agreement, and such other documents and matters of law and fact as we, in our professional judgment, have deemed appropriate to render the opinions contained herein. In our examination, we have assumed the legal capacity of all natural persons, the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conforming to originals of all documents submitted to us as certified copies or photocopies, and the authenticity of originals of such latter documents. With respect to certain facts, we have considered it appropriate to rely upon certificates or other comparable documents of public officials and officers or other appropriate representatives of the Company, without investigation or analysis of any underlying data contained therein.

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Based upon and subject to the foregoing and the further assumptions, limitations, and qualifications hereinafter expressed, it is our opinion that:

(1) The Shares have been duly authorized, and when issued and delivered against payment therefor in accordance with the Plan as described in the Registration Statement and upon either (a) the countersigning of the certificates representing the Shares by a duly authorized signatory of the registrar for the Company's common stock, or (b) the book entry of the Shares by the transfer agent for the Company's common stock, will be validly issued, fully paid, and nonassessable.

(2) When issued in accordance with the Rights Agreement, the Rights will constitute the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except as may be limited by (a) applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium and similar laws affecting the enforcement of creditors' rights generally and (b) general principles of equity (regardless of whether considered in a proceeding in equity or at law), which may, among other things, deny rights of specific performance.

In rendering the opinion set forth in paragraph 2 above, we (i) express no opinion as to the determination that a court may make regarding whether the Company's Board of Directors would be required to redeem or terminate, or take other action with respect to, the Rights or the Rights Agreement in the future based on the facts and circumstances existing at the time, (ii) have assumed that the members of the Company's Board of Directors have acted in a manner consistent with their fiduciary duties as required under applicable law in approving and adopting the Rights Agreement, and (iii) have addressed the Rights and the Rights Agreement in their entirety, and we have not addressed whether the invalidity of any particular provision of the Rights Agreement or the Rights issued thereunder would result in invalidating the Rights in their entirety.

The opinions set forth herein are limited to matters governed by the laws of the State of North Carolina, and no opinion is expressed herein as to the laws of any other jurisdiction. The opinions expressed herein do not extend to compliance with federal and state securities laws relating to the sale of the Shares or the issuance of the Rights.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to all references to us in the Registration Statement and any amendment thereto. Such consent shall not be deemed to be an admission that our firm is within the category of persons whose consent is required under Section 7 of the Act or the regulations promulgated pursuant to the Act.

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Our opinions expressed herein are as of the date hereof, and we undertake no obligation to advise you of any changes in applicable law or any other matters that may come to our attention after the date hereof that may affect our opinions expressed herein.

Sincerely yours,

/s/ Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P.

SMITH, ANDERSON, BLOUNT, DORSETT,  
MITCHELL & JERNIGAN, L.L.P.

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We hereby consent to the incorporation by reference in this Registration Statement on Form S-8 of our report dated August 25, 2016 relating to the financial statements, and the effectiveness of internal control over financial reporting, which appears in Cree, Inc.'s Annual Report on Form 10-K for the year ended June 26, 2016.

/s/ PricewaterhouseCoopers LLP

Raleigh, North Carolina

January 31, 2017

**CONSENT OF INDEPENDENT AUDITORS**

We consent to the incorporation by reference in this registration statement on Form S-8 pertaining to the Cree, Inc. 2013 Long-Term Incentive Plan of our report dated August 9, 2016, with respect to the consolidated statements of financial position of Lextar Electronics Corporation and subsidiaries as of December 31, 2014 and 2015, and the related consolidated statements of comprehensive income, changes in equity and cash flows for the years then ended, which report appears in the June 26, 2016 annual report on Form 10-K of Cree, Inc., filed on August 25, 2016.

/s/ KPMG

**Taipei, Taiwan (the Republic of China)**

January 31, 2017