

NETFLIX INC
Form 10-K/A
February 08, 2019

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 December 31, 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: 001-35727

Netflix, Inc.
(Exact name of Registrant as specified in its charter)

Delaware 77-0467272
(State or other jurisdiction of incorporation or organization) (I.R.S. Employer Identification Number)
100 Winchester Circle Los Gatos, California 95032
(Address and zip code of principal executive offices)
(408) 540-3700
(Registrant's telephone number, including area code)

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

Title of each class	Name of Exchange on which registered
Common stock, \$0.001 par value	NASDAQ Stock Market LLC (NASDAQ Global Select Market)

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 Section 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, every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

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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. x

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

Large accelerated filer ☒ Accelerated filer ☐

Non-accelerated filer ☐ 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 ☒

As of June 30, 2018 the aggregate market value of voting stock held by non-affiliates of the registrant, based upon the closing sales price for the registrant's common stock, as reported in the NASDAQ Global Select Market System, was \$148,681,810,838. Shares of common stock beneficially owned by each executive officer and director of the Registrant and by each person known by the Registrant to beneficially own 10% or more of the outstanding common stock have been excluded in that such persons may be deemed to be affiliates. This determination of affiliate status is not necessarily a conclusive determination for any other purpose.

As of December 31, 2018, there were 436,598,597 shares of the registrant's common stock, par value \$0.001, outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Parts of the registrant's Proxy Statement for Registrant's 2019 Annual Meeting of Stockholders are incorporated by reference into Part III of this Annual Report on Form 10-K.

EXPLANATORY NOTE

This Amendment No. 1 to the Annual Report on Form 10-K of Netflix Inc. (the “Company”) for the year ended December 31, 2018 as filed with the Securities and Exchange Commission on January 29, 2019 (the “Original Form 10-K”), is being filed for the sole purpose of updating the consent in Exhibit 23.1 to reflect the signature of Ernst & Young LLP, the Company’s independent auditor, which was inadvertently omitted from the consent filed electronically as part of the Original Form 10-K, although the Company had the signed consent at the time the Original Form 10-K was filed.

Except as otherwise expressly noted herein, 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.

Item 15. Exhibits, Financial Statement Schedules

(a) The following documents are filed as part of this Annual Report on Form 10-K:

(1) Financial Statements:

The financial statements are filed as part of this Annual Report on Form 10-K under “Item 8. Financial Statements and Supplementary Data.”

(2) Financial Statement Schedules:

The financial statement schedules are omitted as they are either not applicable or the information required is presented in the financial statements and notes thereto under “Item 8. Financial Statements and Supplementary Data.”

(3) Exhibits:

Exhibit Number	Exhibit Description	Incorporated by Reference Form	File No.	Exhibit	Filing Date	Filed Herewith
<u>3.1</u>	<u>Restated Certificate of Incorporation</u>	10-Q	001-35727	3.1	July 17, 2015	
<u>3.2</u>	<u>Amended and Restated Bylaws</u>	8-K	000-49802	3.1	March 20, 2009	
<u>3.3</u>	<u>Certificate of Amendment to the Amended and Restated Certificate of Incorporation</u>	10-Q	000-49802	3.3	August 2, 2004	
<u>4.1</u>	<u>Form of Common Stock Certificate</u>	S-1/A	333-83878	4.1	April 16, 2002	
<u>4.2</u>	<u>Indenture, dated as of February 1, 2013, by and between the Company and Wells Fargo Bank, National Association, as Trustee.</u>	8-K	001-35727	4.1	February 1, 2013	
<u>4.3</u>	<u>Indenture, dated as of February 19, 2014, by and between the Company and Wells Fargo Bank, National Association, as Trustee.</u>	8-K	001-35727	4.1	February 19, 2014	
<u>4.4</u>	<u>Indenture, dated as of February 5, 2015, by and between the Company and Wells Fargo Bank, National Association, as Trustee.</u>	8-K	001-35727	4.1	February 5, 2015	
<u>4.5</u>	<u>Indenture, dated as of February 5, 2015, by and between the Company and Wells Fargo Bank, National Association, as Trustee.</u>	8-K	001-35727	4.2	February 5, 2015	
<u>4.6</u>	<u>Indenture, dated as of October 27, 2016, by and between the Company and Wells Fargo Bank, National Association, as Trustee.</u>	8-K	001-35727	4.1	October 27, 2016	
<u>4.7</u>	<u>First Supplemental Indenture, dated as of September 24, 2014, by and between the Company and Wells Fargo Bank, National Association, as Trustee.</u>	10-Q	001-35727	4.7	April 20, 2017	
<u>4.8</u>	<u>Indenture, dated as of May 2, 2017, by and between the Company and Wells Fargo Bank, National Association, as Trustee.</u>	8-K	001-35727	4.1	May 3, 2017	
<u>4.9</u>	<u>Indenture, dated as of October 26, 2017, by and between the Company and Wells Fargo Bank National Association, as Trustee</u>	8-K	001-35727	4.1	October 26, 2017	
<u>4.10</u>	<u>Indenture, dated as of April 26, 2018, by and between the Company and Wells Fargo Bank National Association, as Trustee</u>	8-K	001-35727	4.1	April 26, 2018	
<u>4.11</u>		8-K	001-35727	4.1		

Indenture, dated as of October 26, 2018, by and between
the Company and Wells Fargo Bank National
Association, as Trustee (6.375% Senior Notes due 2029)

October 26,
2018

4.12

Indenture, dated as of October 26, 2018, by and between
the Company and Wells Fargo Bank National
Association, as Trustee (4.625% Senior Notes due 2029)

8-K 001-35727 4.3

October 26,
2018

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Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Herewith
		Form	File No.	Exhibit	
10.1†	<u>Form of Indemnification Agreement entered into by the registrant with each of its executive officers and directors</u>	S-1/A	333-83878	10.1	March 20, 2002
10.2†	<u>Amended and Restated 2002 Stock Plan</u>	Def 14A	000-49802	A	March 31, 2006
10.3†	<u>2011 Stock Plan</u>	Def 14A	000-49802	A	April 20, 2011
10.4†	<u>Description of Director Equity Compensation Plan</u>	8-K	001-35727	Item 5.02	January 24, 2018
10.5†	<u>Amended and Restated Executive Severance and Retention Incentive Plan</u>	10-K	000-49802	10.7	February 1, 2013
10.6	<u>Registration Rights Agreement, dated as of February 19, 2014, by and among the Company and Morgan Stanley & Co. LLC, as representative of the Initial Purchasers listed in Schedule 1 thereto</u>	8-K	001-35727	10.1	February 19, 2014
10.7†	<u>Performance Bonus Plan</u>	Def 14A	001-35727	A	April 28, 2014
10.8	<u>Registration Rights Agreement, dated as of February 5, 2015, by and among the Company and Morgan Stanley & Co. LLC, as representative of the Initial Purchasers listed in Schedule 1 thereto</u>	8-K	001-35727	10.1	February 5, 2015
10.9	<u>Registration Rights Agreement, dated as of February 5, 2015, by and among the Company and Morgan Stanley & Co. LLC, as representative of the Initial Purchasers listed in Schedule 1 thereto</u>	8-K	001-35727	10.2	February 5, 2015
10.10	<u>Purchase Agreement, dated as of October 24, 2016, between the Company and Morgan Stanley & Co. LLC, as representative of the Initial Purchasers listed in Schedule 1 thereto</u>	8-K	001-35727	10.1	October 27, 2016
10.11	<u>Registration Rights Agreement, dated as of October 27, 2016, by and between the Company and Morgan Stanley & Co. LLC, as representative of the Initial Purchasers listed in Schedule 1 thereto</u>	8-K	001-35727	10.2	October 27, 2016
10.12	<u>Purchase Agreement, dated as of April 26, 2017, between the Company and Morgan Stanley & Co. International plc, as representative of the Initial Purchasers listed on Schedule 1 thereto.</u>	8-K	001-35727	10.1	April 27, 2017
10.13	<u>Registration Rights Agreement, dated as of May 2, 2017, by and between the Company and Morgan Stanley & Co. International plc, as representative of the Initial Purchasers listed in Schedule 1 thereto</u>	8-K	001-35727	10.1	May 3, 2017
10.14†	<u>Executive Severance and Retention Incentive Plan, as amended and restated as of July 12, 2017</u>	10-Q	001-35727	10.14	July 19, 2017
10.15	<u>Revolving Credit Agreement among the Company, Deutsche bank AG New York Branch, Goldman Sachs Bank USA, JPMorgan Chase Bank, N.A., Morgan Stanley Senior Funding, Inc. and Wells</u>	10-Q	001-35727	10.15	October 18, 2017

Fargo Bank, N.A. and the administrative agent,
dated as of July 27, 2017

Purchase Agreement, dated as of October 23, 2017

10.16 between the Company and Morgan Stanley & Co. 8-K 001-35727 10.1 October 26,
LLC, as representative of the Initial Purchasers
listed in Schedule 1 thereto. 2017

Exhibit Number	Exhibit Description	Incorporated by Reference			Filing Date	Filed Herewith
		Form	File No.	Exhibit		
<u>10.17</u>	<u>Purchase Agreement, dated as of October 23, 2018 between the Company and Morgan Stanley & Co. LLC, as representative of the Initial Purchasers listed in Schedule 1 thereto.</u>	8-K	001-35727	10.1	October 26, 2018	
<u>10.18</u>	<u>Purchase Agreement, dated as of October 23, 2018 between the Company and Morgan Stanley & Co. LLC, as representative of the Initial Purchasers listed in Schedule 1 thereto.</u>	8-K	001-35727	10.2	October 26, 2018	
<u>21.1</u>	<u>List of Significant Subsidiaries</u>	10-K	001-35727	21.1	January 29, 2019	
<u>23.1</u>	<u>Consent of Ernst & Young LLP</u>					X
<u>24</u>	<u>Power of Attorney</u>	10-K	001-35727	24.0	January 29, 2019	
<u>31.1</u>	<u>Certification of Chief Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</u>					X
<u>31.2</u>	<u>Certification of Chief Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</u>					X
<u>32.1*</u>	<u>Certifications of Chief Executive Officer and Chief Financial Officer Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</u>					X
101	The following financial information from Netflix, Inc.'s Annual Report on Form 10-K for the year ended December 31, 2018 filed with the SEC on January 29, 2019, formatted in XBRL includes: (i) Consolidated Statements of Operations for the Years Ended December 31, 2018, 2017 and 2016, (ii) Consolidated Statements of Comprehensive Income for the Years Ended December 31, 2018, 2017 and 2016, (iii) Consolidated Statements of Cash Flows for the Years Ended December 31, 2018, 2017 and 2016, (iv) Consolidated Balance Sheets as of December 31, 2018 and 2017, (v) Consolidated Statements of Stockholders' Equity for the Years Ended December 31, 2018, 2017 and 2016 and (vi) the Notes to Consolidated Financial Statements.	10-K	001-35727	101	January 29, 2019	

* These certifications are not deemed filed by the SEC and are not to be incorporated by reference in any filing we make under the Securities Act of 1933 or the Securities Exchange Act of 1934, irrespective of any general incorporation language in any filings.

† Indicates a management contract or compensatory plan

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Dated: February 8, 2019 By: /S/ SPENCER NEUMANN
Spencer Neumann
Chief Financial Officer