

Net Element, Inc.
Form SC 13D/A
January 22, 2016

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

SCHEDULE 13D
Under the Securities Exchange Act of 1934
(Amendment No. 5)*

Net Element, Inc.

(Name of Issuer)

Common Stock, par value \$0.0001 per share

(Title of Class of Securities)

64111R102

(CUSIP Number of Class of Securities)

Kenges Rakishev

c/o SAT & Company

241 Mukanova Street

Almaty 050008, Republic of Kazakhstan

7-727-2777-111

Novatus Holding PTE. Ltd.

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Attention: Kenges Rakishev

22B Duxton Hill

Singapore 089605, Republic of Singapore

(Name, Address and Telephone Number of Person Authorized to Receive Notices and Communications)

January 21, 2016

(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a Statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D and is filing this Schedule because of Rule 13d-1(e), 13d-1(f) or 13d-1(g), check the following box. "

Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See Rule 240.13d-7(b) for other parties to whom copies are to be sent.

* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be filed for the purpose of Section 18 of the Securities Exchange Act of 1934 (Act) or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

SCHEDULE 13D

CUSIP No. **64111R102**

1. NAME OF REPORTING PERSON:

Kenges Rakishev

2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

(a) (b)

3. SEC USE ONLY

4. SOURCE OF FUNDS

OO

5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e)

6. CITIZENSHIP OR PLACE OF ORGANIZATION

Republic of Kazakhstan

NUMBER OF 7. SOLE VOTING POWER

SHARES
BENEFICIALLY

14,665,298 (see Item 5)

OWNED BY 8. SHARED VOTING POWER
EACH

REPORTING

7,320,751 (see Item 5)

PERSON 9. SOLE DISPOSITIVE POWER

WITH

14,665,298 (see Item 5)
10. SHARED DISPOSITIVE POWER

7,320,751 (see Item 5)

11. AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

21,986,049

12. CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

..

13. PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

18.4%

14. TYPE OF REPORTING PERSON

HC; IN

CUSIP No. **64111R102**

SCHEDULE 13D

1. NAME OF REPORTING PERSON:

Novatus Holding PTE. Ltd.

2. CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP

(a) (b)

3. SEC USE ONLY

4. SOURCE OF FUNDS

WC

5. CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e)

6. CITIZENSHIP OR PLACE OF ORGANIZATION

Republic of Singapore

7. SOLE VOTING POWER

NUMBER OF

SHARES

0 (see Item 5)

BENEFICIALLY

8. SHARED VOTING POWER

OWNED BY

EACH

7,320,751 (see Item 5)

9. SOLE DISPOSITIVE POWER

REPORTING

PERSON

0 (see Item 5)

WITH

10. SHARED DISPOSITIVE POWER

7,320,751 (see Item 5)

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11. AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

7,320,751

12. CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES

..

13. PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

6.5%

14. TYPE OF REPORTING PERSON

CO

This Amendment No. 5 (the **Amendment**) relates to the Statement of Beneficial Ownership on Schedule 13D filed jointly by Kenges Rakishev (**Mr. Rakishev**), Mark Global Corporation (**Mark Global**) and Novatus Holding PTE. Ltd. (**Novatus**) (each of Mr. Rakishev and Novatus, a **Reporting Person** and collectively, the **Reporting Persons**) with the SEC on October 9, 2012, as amended by Amendment No. 1 to such statement filed with the SEC on June 11, 2013, as further amended by Amendment No. 2 to such statement filed with the SEC on June 8, 2015, as further amended by Amendment No. 3 to such statement filed with the SEC on September 9, 2015, as further amended by Amendment No. 4 to such statement filed with the SEC on November 24, 2015 (as further amended by this Amendment, the **Schedule 13D**).

Except as set forth below, all Items of the Schedule 13D remain unchanged. All capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Schedule 13D.

Item 3. Source and Amount of Funds or Other Consideration

Item 3 of the Schedule 13D is hereby amended to add the following information for updating:

All funds used by Mr. Rakishev to acquire the securities in the Second Investment Transaction (as defined below) have come directly from the assets controlled by Mr. Rakishev and his affiliates. The aggregate amount of consideration paid or payable by Mr. Rakishev for the securities in the Second Investment Transaction was \$910,000.00.

Item 4. Purpose of Transaction

Item 4 of the Schedule 13D is hereby amended to add the following information for updating:

In connection with a private placement of securities by the Issuer, Mr. Rakishev entered into a letter agreement, dated as of January 21, 2016 (the **Second Investment Agreement**), pursuant to which, among other things, Mr. Rakishev agreed to purchase, on the terms and conditions contained therein, (1) 4,664,275 shares of Common Stock and (2) an option (the **Second Option**) (such transactions are referred to herein as the **Second Investment Transaction**).

The Second Option will be immediately exercisable upon issuance for up to 4,664,275 shares of Common Stock at an initial exercise price of \$0.2146 per share of Common Stock, subject to adjustment as described below. The Second Option will expire on the fifth (5th) anniversary of the date of issuance. The Second Option also contains customary anti-dilution provisions in the event of stock dividends, stock splits, reorganizations or similar events.

The Second Investment Agreement provides that issuance of the shares of Common Stock and Second Option pursuant to the Second Investment Agreement is subject to the approval by the Issuer's stockholders in accordance with NASDAQ Listing Rule 5635 within 120 days from the date of the Second Investment Agreement (the **Stockholder Approval**). In the event that the Stockholder Approval is not obtained within 120 days from the date of the Second Investment Agreement, then at Mr. Rakishev's election, either (i) the purchase price for such shares of Common Stock and the Second Option shall be automatically amended to be equal to the product of (x) 4,664,275 and (y) the sum of (A) \$0.1951 and (B) \$0.125, in which case Mr. Rakishev shall have paid to the Issuer the difference between the previously paid purchase price for such shares of Common Stock and Second Option and the purchase price for such shares of Common Stock and Second Option calculated as set forth in this clause (i) above, (ii) the number of such shares of Common Stock and Second Option issuable to Mr. Rakishev shall be adjusted to be equal to, in each case, the quotient determined by dividing (I) \$910,000 by (II) \$0.3201, or (iii) the Second Option shall not be issued and Mr. Rakishev

shall only be issued 4,664,275 shares of Common Stock as originally contemplated by the Second Investment Agreement. Mr. Rakishev's election to pay the additional consideration described in the immediately preceding clause (i) above would result in the purchase price per share of the shares of Common Stock and Second Option issuable to Mr. Rakishev pursuant to the Second Investment Agreement being increased from \$0.1951 to \$0.3201 and Mr. Rakishev being required to pay an additional \$583,034.4275 to the Issuer to receive the 4,664,275 shares of Common Stock and Second Option as originally contemplated by the Second Investment Agreement. The adjustment described in the immediately preceding clause (ii) would result in the purchase price per share of the shares of Common Stock and Second Option issuable to Mr. Rakishev pursuant to the Second Investment Agreement being increased from \$0.1951 to \$0.3201 and (x) Mr. Rakishev being issued 2,842,862 shares of Common Stock instead of the 4,664,275 shares of Common Stock originally contemplated by the Second Investment Agreement and (y) the Second Option would be exercisable for up to 2,842,862 shares of Common Stock instead of 4,664,275 shares of Common Stock originally contemplated by the Second Investment Agreement.

The foregoing description is qualified in its entirety by reference to the Second Investment Agreement and the Second Option. Copies of the Second Investment Agreement and form of Second Option are attached hereto as Exhibits 99.9 and 99.10, respectively, and the terms thereof are incorporated herein by reference.

Each Reporting Person expects to evaluate on an ongoing basis the Issuer's financial condition and prospects and its interest in, and intentions with respect to, the Issuer and their investment in the securities of the Issuer, which review may be based on various factors, including, without limitation, the Issuer's business and financial condition, results of operations and prospects, general economic and industry conditions, the price and availability of shares of the Issuer's capital stock, the conditions of the securities markets in general and those for the Issuer's securities in particular, as well as other developments and other investment opportunities. Accordingly, each Reporting Person reserves the right to change its intentions, as it deems appropriate. In particular, each Reporting Person may at any time and from time to time, in the open market, in privately negotiated transactions or otherwise, increase their investment in securities of the Issuer or dispose of all or a portion of the securities of the Issuer that the Reporting Persons now own or may hereafter. In addition, the Reporting Persons may engage in discussions with management and members of the Board of Directors of the Issuer regarding the Issuer, including, but not limited to, the Issuer's business and financial condition, results of operations and prospects. The Reporting Persons may take positions with respect to and seek to influence the Issuer regarding the matters discussed above. Such suggestions or positions may include one or more plans or proposals that relate to or would result in any of the actions required to be reported herein. The Reporting Persons also reserve the right, in each case subject to applicable law, to (i) cause any of the Reporting Persons to distribute (or pay a dividend in kind to their respective partners, members, or stockholders, as the case may be) shares of Common Stock or other securities owned by such Reporting Persons, (ii) enter into privately negotiated derivative transactions with institutional counterparties to hedge the market risk of some or all of their positions in the shares of Common Stock or other securities and (iii) consider participating in a business combination transaction that would result in an acquisition of all of the Issuer's outstanding shares of Common Stock. To the knowledge of each Reporting Person, each of the persons listed on **Schedule I** to the Schedule 13D may make similar evaluations from time to time or on an ongoing basis.

Except as set forth above and in Item 4 of the Schedule 13D, none of the Reporting Persons nor, to the best of their knowledge, any person listed in **Schedule I** to the Schedule 13D, has any plans or proposals which relate to or would result in: (a) the acquisition by any person of additional securities of the Issuer, or the disposition of securities of the Issuer; (b) an extraordinary corporate transaction, such as a merger, reorganization or liquidation, involving the Issuer or any of its subsidiaries; (c) a sale or transfer

of a material amount of assets of the Issuer or any of its subsidiaries; (d) any change in the present Board of Directors or management of the Issuer, including any plans or proposals to change the number or term of directors or to fill any existing vacancies on the Issuer's Board of Directors; (e) any material change in the present capitalization or dividend policy of the Issuer; (f) any other material change in the Issuer's business or corporate structure; (g) any changes in the Issuer's charter, bylaws or instruments corresponding thereto or other actions which may impede the acquisition of control of the Issuer by any person; (h) causing a class of securities of the Issuer to be delisted from a national securities exchange or to cease to be authorized to be quoted in an inter-dealer quotation system of a registered national securities association; (i) a class of equity securities of the Issuer becoming eligible for termination of registration pursuant to Section 12(g)(4) of the Exchange Act; or (j) any action similar to any of those enumerated above.

Item 5. Interest in Securities of Issuer

Item 5 of the Schedule 13D is hereby amended to add the following information for updating:

(a) (i) Immediately following the execution of the Second Investment Agreement on January 21, 2016, Novatus was deemed to have beneficial ownership of 7,320,751 shares of Common Stock, and all such shares of Common Stock represented beneficial ownership of approximately 6.5% of the Common Stock, based on 112,334,601 shares of Common Stock issued and outstanding as of January 6, 2016, as disclosed in the Form S-1 filed by the Issuer with the SEC on January 7, 2016.

(ii) Immediately following the execution of the Second Investment Agreement on January 21, 2016, Mr. Rakishev was deemed to have beneficial ownership of 21,986,049 shares of Common Stock consisting of (1) 7,522,441 shares of Common Stock held directly by Mr. Rakishev, (2) 7,320,751 shares of Common Stock held directly by Novatus and (3) 7,142,857 shares of Common Stock issuable upon exercise of the Amended Option, and all such shares of Common Stock represent beneficial ownership of approximately 18.4% of the Common Stock, based on (x) 112,334,601 shares of Common Stock issued and outstanding as of January 6, 2016, as disclosed in the Form S-1 filed by the Issuer with the SEC on January 7, 2016, plus (y) 7,142,857 shares of Common Stock issuable upon exercise of the Amended Option. The foregoing excludes: (I) 4,664,275 shares of Common Stock to be issued to Mr. Rakishev pursuant to the Second Investment Agreement because Mr. Rakishev does not have the right to acquire such shares of Common stock within 60 days of the date hereof, and (II) 4,664,275 shares of Common Stock issuable upon exercise of the Second Option because the Second Option will not be issued and will not be exercisable until and unless (i) Stockholder Approval is obtained or (ii) NASDAQ had provided a waiver of Listing Rule 5635. Assuming that the Second Option was issued and exercisable and Mr. Rakishev had the right to acquire the shares of Common Stock issuable pursuant to the Second Investment Agreement within 60 days, Mr. Rakishev would have been deemed to have beneficial ownership of 31,314,599 shares of Common Stock.

(b) Each Reporting Person has sole or shared power to vote or direct the vote and to dispose or direct the disposition of shares of Common Stock beneficially owned by such Reporting Person as indicated herein.

(c) The information set forth in Item 4 is hereby incorporated herein by reference.

Item 6. Contracts, Arrangements, Understandings or Relationships With Respect to Securities of the Issuer.

Item 6 of the Schedule 13D is hereby amended to add the following information for updating:

The information set forth in Item 4 is hereby incorporated herein by reference.

Item 7. Material to be Filed as Exhibits

Item 7 of the Schedule 13D is hereby amended to add the following information for updating:

Exhibit

No.	Description
Exhibit 99.9	Letter Agreement, dated January 21, 2016, by and between the Issuer and Kenges Rakishev.
Exhibit 99.10	Form of Option to Purchase Shares of Restricted Common Stock.

SIGNATURE

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Dated: January 22, 2016

NOVATUS HOLDING PTE. LTD.

By: /s/ Thomas Haeusler
Name: Thomas Haeusler
Title: Director

/s/ Kenges Rakishev
Kenges Rakishev

EXHIBIT INDEX

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