

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

FORM 8-K

CURRENT REPORT

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

September 26, 2017

*Date of Report (Date of earliest event reported)*



**EMCORE CORPORATION**

*Exact Name of Registrant as Specified in its Charter*

**New Jersey**

*State of Incorporation*

**001-36632**

*Commission File Number*

**22-2746503**

*IRS Employer Identification Number*

**2015 W. Chestnut Street, Alhambra, CA 91803**

*Address of principal executive offices, including zip code*

**(626) 293-3400**

*Registrant's telephone number, including area code*

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. ☐

**Item 1.01 Entry into a Material Definitive Agreement.**

The information set forth under “Item 3.03 Material Modification to Rights of Security Holders” of this Current Report on Form 8-K is incorporated into this Item 1.01 by reference.

**Item 3.03 Material Modification to Rights of Security Holders.**

On September 26, 2017, EMCORE Corporation (the “Company”) entered into an amendment (the “Amendment”) to its Tax Benefits Preservation Plan, dated as of September 17, 2014 (the “Original Plan”, and together with the Amendment, the “Plan”), between the Company and American Stock Transfer & Trust Company, LLC, as Rights Agent, to extend the final expiration date of the rights contained therein (the “Rights”) from October 3, 2017 to October 3, 2018 (subject to earlier expiration as described in the Plan). The Company expects to submit the extension of the Plan to shareholders for approval at the Company’s 2018 annual meeting of shareholders.

The Company maintains the Plan in order to protect the Company’s ability to carry forward its net operating losses and other tax assets (the “Tax Benefits”) to offset future income. The Company’s use of the Tax Benefits in the future could be significantly limited if it experiences an “ownership change” for U.S. federal income tax purposes. Generally, there is a change in ownership if, at any time, one or more “5-percent shareholders” (as defined under U.S. federal income tax laws) have aggregate increases in their ownership of the Company of more than 50 percentage points looking back over the prior three-year period. The Plan is designed to reduce the likelihood of a change in ownership by, among other things, discouraging any person or group from becoming a 5-percent shareholder and dissuading existing 5-percent shareholders from acquiring additional Company equity securities. There is no guarantee, however, that the Plan will prevent the Company from experiencing an ownership change.

As a result of the Amendment, the Rights will expire, unless earlier redeemed or exchanged by the Company or terminated, on the earliest to occur of: (i) 5:00 P.M., New York City time, on October 3, 2018, or such later date as may be established by the Company’s Board of Directors (the “Board”) prior to the expiration of the Rights, (ii) the time at which the Rights are redeemed or exchanged as provided in Section 23 of the Plan, (iii) the time at which the Rights may be exchanged as provided in Section 24 of the Plan, (iv) the close of business on the effective date of the repeal of Section 382 of the Internal Revenue Code of 1986, as amended, if the Board determines that the Plan is no longer necessary or desirable for the preservation of the Tax Benefits, (v) the close of business on the first day of a taxable year of the Company to which the Board determines that no Tax Benefits may be carried forward, or (vi) immediately following the final adjournment of the 2018 annual meeting of the shareholders of the Company if shareholder approval of the Plan has not been received prior to such time.

The foregoing summary of the Amendment is qualified in its entirety by reference to the full text of the Amendment, which is filed as Exhibit 4.1 hereto and is incorporated herein by reference. A copy of the Original Plan and a summary of its material terms were included with the Company’s Form 8-K filed with the Securities and Exchange Commission on September 18, 2014.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits

<b><u>Exhibit Number</u></b>	<b><u>Description</u></b>
<a href="#"><u>4.1</u></a>	<a href="#"><u>Amendment No. 1 to Tax Benefits Preservation Plan, dated September 26, 2017, by and between EMCORE Corporation and American Stock Transfer &amp; Trust Company, LLC.</u></a>

**SIGNATURE**

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.

**EMCORE CORPORATION**

By: **/s/ Jikun Kim**

Name: Jikun Kim

Title: Chief Financial Officer

Dated: **September 29, 2017**

## AMENDMENT NO. 1 TO TAX BENEFITS PRESERVATION PLAN

This AMENDMENT NO.1 TO TAX BENEFITS PRESERVATION PLAN (this "Amendment") is dated as of September 26, 2017 (the "Effective Date") and amends that certain Tax Benefits Preservation Plan, dated as of September 14, 2014 (the "Rights Agreement"), by and between EMCORE Corporation, a New Jersey corporation (the "Company"), and American Stock Transfer & Trust Company, LLC, a New York limited liability trust company (the "Rights Agent"). All capitalized terms used herein, but not defined, shall have the meaning given to such terms in the Rights Agreement.

### RECITALS

WHEREAS, in accordance with Section 27 of the Rights Agreement, prior to the Distribution Time, the Company may amend the Rights Agreement in any respect without the approval of any holders of Rights, and

WHEREAS, the Rights Agent is hereby directed to join in and execute this Amendment.

### AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual agreements set forth herein, the parties hereby agree as follows:

1. Amendments of the Rights Agreement. The Rights Agreement is hereby amended as follows:

- (a) Section 7(a) of the Rights Agreement is hereby amended and restated in its entirety as follows:

"(a) Subject to Section 7(e) hereof; at any time after the Distribution Date the registered holder of any Rights Certificate may exercise the Rights evidenced thereby (except as otherwise provided herein including, without limitation, the restrictions on exercisability set forth in Section 9(c), Section II (a)(iii) and Section 23(a) hereof) in whole or in part upon surrender of the Rights Certificate, with the form of election to purchase and the certificate on the reverse side thereof duly executed, to the Rights Agent at the principal office or offices of the Rights Agent designated for such purpose, together with payment of the aggregate Purchase Price with respect to the total number of one ten-thousandths of a share (or other securities, cash or other assets, as the case may be) as to which such surrendered Rights are then exercisable at or prior to the earlier of (i) 5.00 P.M. New York City time, on October 3, 2018, or such later date as may be established by the Board prior to the expiration of the Rights (such date, as it may be extended by the Board, the "Final Expiration Date"), (ii) the time at which the Rights are redeemed or exchanged as provided in Section 23 hereof, (iii) the time at which the Rights may be exchanged as provided in Section 24 hereof, (iv) the close of business on the effective date of the repeal of Section 382 of the Code if the Board determines that this Agreement is no longer necessary or desirable for the preservation of the Tax Benefits, (v) the close of business on the first day of a taxable year of the Company to which the Board determines that no Tax Benefits may be carried forward, or (vi) immediately following the final adjournment of the 2018 meeting of the shareholders of the Company if

shareholder approval of this Agreement has not been received prior to such time (the earliest being herein referred to as the "Expiration Date")."

2. Amendment of Exhibits. The exhibits to the Rights Agreement shall be deemed to be restated to reflect this Amendment, including all conforming changes.

3. Other Amendment; Effect of Amendment. This Amendment will be deemed an amendment to the Rights Agreement and will become effective on the Effective Date. In the event of a conflict or inconsistency between this Amendment and the Rights Agreement and the exhibits thereto, the provisions of this Amendment will govern.

4. Counterparts. This Amendment may be executed in any number of counterparts and each of such counterparts will for all purposes be deemed to be an original, and all such counterparts will together constitute one and the same instrument, it being understood that all parties need not sign the same counterpart. A signature to this Amendment transmitted electronically (including by fax and .pdf) will have the same authority, effect and enforceability as an original signature. No party hereto may raise the use of such electronic transmission to deliver a signature, or the fact that any signature or agreement or instrument was transmitted or communicated through such electronic transmission, as a defense to the formation of a contract, and each party forever waives any such defense, except to the extent such defense relates to a lack of authenticity.

5. Severability. If any term, provision, covenant or restriction of this Amendment is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Amendment will remain in full force and effect and will in no way be affected, impaired or invalidated.

6. Descriptive Headings. The descriptive headings of the several Sections of this Amendment are inserted for convenience only and will not control or affect the meaning or construction of any of the provisions hereof.

7. Further Assurances. Each of the parties to this Amendment will cooperate and take such action as may be reasonably requested by the other party in order to carry out the provisions and purposes of this Amendment, the Rights Agreement and the transactions contemplated hereunder and thereunder.

8. Governing Law. This Amendment shall be deemed to be a contract made under the laws of the State of New Jersey and for all purposes shall be governed by and construed in accordance with the laws of such state applicable to contracts to be made and performed entirely within such state.

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

EMCORE CORPORATION

By: /s/ **Jikun Kim**

Name: Jikun Kim

Title: CFO

AMERICAN STOCK TRANSFER & TRUST COMPANY, LLC

By: /s/ **Paula Caroppoli**

Name: Paula Caroppoli

Title: Senior Vice President, Director

Relationship Management