

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

Date of report (Date of earliest event reported): January 30, 2023

NIGHTFOOD HOLDINGS, INC.
(Exact Name of Registrant as Specified in Charter)

Nevada
(State or Other Jurisdiction
of Incorporation)

000-55406
(Commission File Number)

46-3885019
(I.R.S. Employer
Identification No.)

520 White Plains Road – Suite 500
Tarrytown, New York 10591
(Address of Principal Executive Offices) (Zip Code)

Registrant's telephone number, including area code: **(888) 888-6444**

(Former Name or Former Address, if Changed Since Last Report)

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 (see General Instruction A.2. below):

- ☐ 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 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

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. ☐

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Not applicable	Not applicable	Not applicable

Item 1.01 Entry Into A Material Agreement.

On January 30, 2023, Nightfood Holdings, Inc. (the "Company") entered into an Agreement For Shareholder Lock-Up And Acquisition of Warrants (the "Lock-Up Agreement"), with its Chairman, CEO and largest shareholder, Sean Folkson. For purposes of the Lock-Up Agreement, Mr. Folkson, the beneficial owner of 16,776,644 shares of the Company's common stock (the "Shares"), has agreed to not transfer, sell, or otherwise dispose of any Shares through February 4, 2024. The Lock-Up Agreement is substantially similar to, and serves as an extension of, the lock-up agreement currently in place between the Company and Mr. Folkson, which runs through February 4, 2023.

The Lock-Up Agreement further provides, in exchange for the agreement to lock up the Shares, that Mr. Folkson shall receive warrants to acquire 400,000 shares of Company common stock at an exercise price of \$.30 per share (the "Warrants"). The Warrants carry a twelve month term and a cashless provision, and will expire if not exercised within the twelve month term.

The foregoing is a brief description of the Lock-Up Agreement and the Warrants, and is qualified in its entirety by reference to the full text of the Lock-Up Agreement and the Warrants, which are included as Exhibit 10.1 and 10.2, respectively, to this Current Report on Form 8-K and incorporated herein by reference.

Item 3.02 Unregistered Sales of Equity Securities.

The disclosure set forth above in Item 1.01 of this Current Report on Form 8-K relating to the issuance of the Warrants to Mr. Folkson is incorporated by reference herein. The Warrants are, and, unless subsequently registered, the shares underlying the Warrants will be, issued in reliance on the exemption from registration provided by Section 4(a)(2) of the Securities Act of 1933, as amended, as no general solicitation was used in the offer and sale of such securities.

Item 5.02 Departure of Directors or Principal Officers; Election of Directors; Appointment of Principal Officers.

The disclosure set forth above in Item 1.01 of this Current Report on Form 8-K relating to the issuance of the Warrants to Mr. Folkson is incorporated by reference herein.

Item 8.01 Other Events.

As previously disclosed, the Company is currently in default on certain senior secured debt obligations (the “Notes”) with two lenders (the “Lenders”). The Notes, which matured on December 10, 2022, were not paid in full by their maturity date. This event of default resulted in the acceleration of the Notes, including the introduction of default interest rate, late payment penalties, and other provisions.

The Company continues to work towards an agreement with the Lenders which may include, among other things, a further extension of the maturity date under the Notes, forbearance on certain Lender rights, revised repayment terms, or a combination thereof. The Company cannot give any assurance that the Lenders, or either of them, will not elect to pursue all of the additional rights available to them under the Notes or otherwise, including but not limited to foreclosure thereunder, and the Lenders reserve any and all rights thereunder.

Furthermore, the Company is currently negotiating with a potential funding source to provide capital to apply, in part, towards the repayment of the Notes as well as some operating capital. The Company can give no assurance any such financing event will be successfully consummated or if it is consummated, on terms and conditions beneficial to the Company. Failure to so enter into a financing event could prevent the Company from successfully negotiating with the Lenders on a resolution of the events of default under the Notes.

Forward Looking Statements:

This Current Report on Form 8-K contains “forward-looking statements.” Statements in this Form 8-K which are not purely historical (including, but not limited to statements that contain words such as “will,” “believes,” “plans,” “anticipates,” “expects,” “intends,” “would,” “could” and “estimates”) are forward-looking statements and include any statements regarding beliefs, plans, expectations or intentions regarding the future, including but not limited to, sales projections, potential customers, any products sold or cash flow from operations.

Actual results could differ from those projected in any forward-looking statements due to numerous factors. Such factors include, among others, difficulties associated with obtaining financing on acceptable terms and successfully negotiating repayment terms with the Lenders. These forward-looking statements are made as of the date of this Form 8-K, and the Company assumes no obligation to update the forward-looking statements, or to update the reasons why actual results could differ from those projected in the forward-looking statements, except as required by law. Although the Company believes that the beliefs, plans, expectations and intentions contained in this Form 8-K are reasonable, there can be no assurance that such beliefs, plans, expectations or intentions will prove to be accurate. Investors should consult all of the information set forth herein and should also refer to the risk factors disclosure outlined in the Company’s most recent annual report for its last fiscal year, its quarterly reports, and other periodic reports filed from time-to-time with the Securities and Exchange Commission.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit Number	Description
10.1	Lock-Up Agreement
10.2	Warrant Agreement
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

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 thereunto duly authorized.

Date: January 31, 2023

NIGHTFOOD HOLDINGS, INC.

By: /s/ Sean Folkson
Name: Sean Folkson
Title: Chief Executive Officer

AGREEMENT FOR SHAREHOLDER LOCK-UP AND ACQUISITION OF WARRANTS

THIS AGREEMENT FOR SHAREHOLDER LOCK-UP AND ACQUISITION OF WARRANTS (the "Agreement") is entered into as of January 30, 2023 and will be in effect as of February 4, 2023 between Sean Folkson ("Shareholder") and Nightfood Holdings Inc., a Nevada corporation ("Company").

WHEREAS, the Shareholder desires the opportunity to establish a larger equity position in the Company;

WHEREAS, the Company believes there is benefit to the Shareholder agreeing to lock up 100% of the shares of NGTF common stock (the "Shares") held by the Shareholder for a period of twelve (12) months from the date of this agreement;

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained in this Agreement, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, Company and the Shareholder agree as follows:

1. **Lock Up.** The Shareholder and the Company have agreed that the Shareholder will not transfer, sell, or otherwise dispose of any shares of their NGTF stock for at least twelve (12) months from the date of this Agreement. As of the date of this agreement, the Shareholder owns 16,776,644 shares of NGTF stock (a portion of these shares are considered indirectly owned, and/or owned through trusts). Any shares acquired by the Shareholder during the term of this Agreement in any manner shall be subject to the same lock-up through February 4, 2023. The Shareholder has not disposed of any shares in any way since November of 2015.

2. **Issuance of Warrants.** In exchange for the agreement to lock up their Shares, Shareholder will receive warrants to acquire 400,000 shares of NGTF stock at a strike price of \$.30, and with a term of twelve (12) months from the date of this agreement. The Warrants include a provision for cashless exercise and will expire if not exercised within the twelve month term.

3. **Governing Law.** All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in New York County, New York, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is improper. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Each party irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby. If any party shall commence an action or proceeding to enforce any provisions of the documents contemplated herein, then the prevailing party in such action or proceeding shall be reimbursed by the party determined not to have prevailed for his or its attorney's fees and other costs and expenses incurred with the investigation, preparation and prosecution of such action or proceeding.

IN WITNESS WHEREOF, the parties hereto have caused this Lock-Up Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

COMPANY

Nightfood Holdings Inc.

/s/ Sean Folkson

By: Sean Folkson
Its: CEO

SHAREHOLDER

/s/ Sean Folkson

THIS WARRANT AND THE SHARES OF CAPITAL STOCK ISSUED UPON ANY EXERCISE HEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY APPLICABLE STATE SECURITIES LAWS AND MAY NOT BE SOLD OR OTHERWISE TRANSFERRED BY ANY PERSON, INCLUDING A PLEDGEE, UNLESS (1) EITHER (A) A REGISTRATION WITH RESPECT THERETO SHALL BE EFFECTIVE UNDER THE SECURITIES ACT, OR (B) THE COMPANY SHALL HAVE RECEIVED AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT IS AVAILABLE, AND (2) THERE SHALL HAVE BEEN COMPLIANCE WITH ALL APPLICABLE STATE SECURITIES OR "BLUE SKY" LAWS.

February 4, 2023

**NIGHTFOOD HOLDINGS, INC.
WARRANT TO PURCHASE STOCK**

Nightfood Holdings, Inc., a Nevada corporation (the "Company"), hereby certifies that, for value received, Sean Folkson (the "Holder") is entitled, subject to the terms set forth in this warrant agreement (this "Warrant"), to purchase from the Company up to **Four Hundred Thousand (400,000)** fully paid and nonassessable shares (the "Shares") of its Common Stock, par value \$0.001 per share (the "Common Stock"), at a purchase price per Share equal to \$0.30 (as adjusted from time to time as provided herein, the "Exercise Price").

1. Defined Terms. For purposes of this Warrant, the following terms shall have the meanings ascribed thereto:

(a) "**Board**" means the board of directors of the Company.

(b) "**Exercise Period**" means the time period commencing on the date of this Warrant and ending on the Expiration Time.

(c) "**Expiration Time**" means 5:00 p.m. Eastern time on October, 2027, unless earlier canceled in accordance with the terms hereof.

(d) "**Fair Market Value**" means on any date in question the closing sale price of a share of Common Stock on the principal stock exchange or stock market or the average of the high and low closing bid and ask prices of the Common Stock on any over-the-counter market on which the Common Stock is traded on the business day immediately preceding such date (or if there is not trading on such date, on the next preceding business day on which there was trading in the Common Stock), as quoted in The Wall Street Journal. If the Common Stock is not listed or qualified for trading on a stock exchange or stock market at such time, then the Fair Market Value shall be determined in good faith by the members of the Board.

2. Exercise of Warrant. (a) Subject to Section 2(b) below, this Warrant may be exercised in full or in part at any time or from time to time during the Exercise Period by the Holder hereof by surrender of this Warrant and the exercise notice annexed hereto as Exhibit A (duly executed) by the Holder, to the Company at its principal office, accompanied by payment, in cash, wire transfer of immediately available funds or by certified check payable to the order of the Company in the amount obtained by multiplying (a) the number of shares of Common Stock designated by the holder in the notice of exercise by (b) the Exercise Price then in effect. On any partial exercise, the Company at its expense will forthwith issue and deliver to or upon the order of the Holder hereof a new Warrant of like tenor, in the name of the Holder hereof or as the Holder (upon payment by the Holder of any applicable transfer taxes and subject to applicable securities laws) may request, providing in the aggregate on the face thereof for the number of Shares for which such Warrant may still be exercised.

3. No Fractional Shares. Notwithstanding anything to the contrary contained in this Warrant, no fraction of a share of capital stock of the Company shall be issued upon exercise of this Warrant. In lieu of receiving from the Company any fraction of a share of capital stock of the Company resulting from the exercise of this Warrant, the Holder shall receive cash in an amount equal to such fraction multiplied by the then Fair Market Value of such share of capital stock.

4. Delivery of Stock Certificates, etc., on Exercise. As soon as practicable after the exercise of this Warrant, the Company at its expense (including the payment by it of any applicable issue or stamp taxes) shall cause to be issued in the name of and delivered to the Holder, or as the Holder (upon payment by the Holder of any applicable transfer taxes and subject to applicable securities laws) may direct, a certificate or certificates (or evidence of book-entry) for the number of fully paid and nonassessable Shares that the Holder shall be entitled to receive on such exercise, in such denominations as may be requested by the Holder.

5. Covenants as to Common Stock. The Company covenants that all Shares which may be issued upon the exercise of this Warrant, shall, upon issuance, be validly issued, fully paid and non-assessable and free from all taxes, liens and charges with respect to the issuance thereof, except for such encumbrances as to which the Holder may have otherwise agreed. The Company shall at all times have authorized and reserved, free from preemptive rights, a sufficient number of shares of Common Stock to permit the exercise of this Warrant in full.

6. No Stockholder Rights. This Warrant shall not entitle the Holder to any voting rights or other rights as a stockholder of the Company.

7. Adjustments to Shares and Exercise Price.

(a) Adjustments for Subdivisions, Combinations, Dividends and Distributions of Common Stock. If, at any time after the date of this Warrant, (x) the then outstanding shares of Common Stock shall be subdivided (by stock-split, reclassification or otherwise) or (y) the Company shall issue or make, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution of additional shares of Common Stock payable on then outstanding shares of Common Stock, then, concurrently with, in the case of clause (x), the effectiveness of such subdivision, and, in the case of clause (y), the issuance or the making of such dividend or other distribution or as of the close of business on such record date (whichever is earlier), the number of Shares (then in effect) shall be increased, and the Exercise Price (then in effect) shall be decreased, in proportion to the increase in the number of then outstanding shares of Common Stock as a result of such subdivision, dividend or distribution of Common Stock, as the case may be. Notwithstanding the foregoing, if, in the case of clause (y), a dividend is not issued or a distribution is not made on the record date fixed therefor, then the number of Shares (then in effect) and the Exercise Price (then in effect) shall be readjusted to such number and such amount, respectively, as existed immediately prior to the fixing of such record date. If at any time after the date of this Warrant the then outstanding shares of Common Stock shall be combined (by consolidation, reclassification or otherwise), then, concurrently with the effectiveness of such combination, the number of Shares (then in effect) shall be decreased, and the Exercise Price (then in effect) shall be increased, in proportion to the decrease in the number of then outstanding shares of Common Stock as a result of such combination.

(b) Adjustments for Reorganization, Reclassification, Exchange and Substitution. If the Common Stock shall be converted into or exchanged for the same number or a different number of shares of any class or series of capital stock of the Company other than Common Stock or for other securities or property (whether by reorganization, reclassification or otherwise), then, concurrently with the effectiveness of such conversion or exchange:

(i) this Warrant shall be exercisable for, in lieu of the Shares, such other class or series of capital stock or other securities or property into which or for which the Common Stock was so converted or exchanged, and in such number of shares of such other class or series of capital stock or such amount of other securities or property, as the case may be, that is equivalent to the number of shares of such other class or series of capital stock or such amount of other securities or property into which or for which the Shares would have otherwise been converted or exchanged had they been outstanding at the time of such conversion or exchange;

(ii) the Exercise Price shall be adjusted to equal the quotient obtained from dividing (x) the product of the Shares and the Exercise Price (each as in effect immediately prior to such conversion or exchange) by (y) the number of shares of such other class or series of capital stock or such amount of other securities or property for which this Warrant shall be exercisable pursuant to clause (i) above; and

(iii) appropriate adjustment (as determined in good faith by the Board) shall be made in the application of the terms of this Warrant with respect to the rights and interests of the Holder, to the end that the provisions set forth herein shall be applicable, as nearly as they reasonably may be, in relation to any shares of capital stock or other securities or property deliverable upon the exercise of this Warrant.

(c) Certificate of Adjustment. The Company shall, within thirty (30) days of a written request thereof from the Holder, prepare and furnish to the Holder a certificate setting forth (x) the number of Shares and the Exercise Price, each as then in effect, (y) each adjustment (showing in detail the facts upon which such adjustment is based) made to the number of Shares and the Exercise Price since the date of this Warrant and (z) to the extent this Warrant is no longer exercisable for Common Stock, the kind and amount of securities, assets or property for which the Warrant may be exercisable.

8. Exchange of Warrant. This Warrant may be exchangeable at any time upon the surrender hereof by the Holder at the principal office or an agent of the Company for a new warrant of like tenor, which new warrant shall provide on its face the Shares and the Exercise Price as in effect at the time of surrender of this Warrant, or the kind and amount of securities, assets or property for which this Warrant is exercisable at the time of such surrender.

9. Lost, Stolen, Mutilated or Destroyed Warrant. If this Warrant is lost, stolen, mutilated or destroyed, the Company shall, upon request of the Holder, issue a new warrant of like tenor, provided that the Holder (i) submits an affidavit made to the Company that this Warrant has been lost, stolen or destroyed, as the case may be, (ii) executes an agreement to indemnify the Company from any loss incurred by the Company in connection with this Warrant and (iii) in the case of a mutilated Warrant, surrenders to the Company such mutilated Warrant.

10. Notice of Certain Events. If any capital reorganization, reclassification of the capital stock of the Company, consolidation or merger of the Company with another corporation in which the Company is not the survivor, or sale, transfer or other disposition of all or substantially all of the Company's assets to another corporation (each, an "Extraordinary Event") shall be effected, then, if not expressly exercised pursuant to Section 2 prior to such Extraordinary Event, this Warrant shall be canceled without any payment therefor immediately prior to the consummation of such Extraordinary Event. The Company shall provide or cause to be provided to the Holder written notice of such event no less than thirty (30) days prior to the consummation of such Extraordinary Event (or the maximum number of days if such event is expected to be consummated in less than thirty (30) days from the date the Company is obligated or bound (with or without conditions) to consummate such Extraordinary Event).

11. Notices. All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed electronic mail if sent during normal business hours of the recipient; if not, then on the next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the respective parties at the addresses set forth on the signature pages attached hereto (or at such other addresses as shall be specified by notice given in accordance with this Section 11).

12. No Impairment. The Company shall not, by amendment of its certificate of incorporation or through any reclassification, recapitalization event, consolidation, merger, sale or conveyance of assets, dissolution, liquidation, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant, but will at all times in good faith assist in the carrying out of all such terms and in the taking of all such action as may be necessary or appropriate in order to protect the rights of the Holder.

13. Miscellaneous.

(a) Governing Law. This Warrant shall be governed by and construed under the laws of the State of New York as applied to agreements among New York residents entered into and to be performed entirely within New York.

(b) Entire Agreement; Amendment; Waiver. This Warrant (including any exhibits attached hereto) constitutes the entire understanding between the Company and the Holder with respect to the subject matter hereof. No modification or amendment to this Warrant, nor any waiver of any rights under this Warrant, shall be effective unless done in writing and signed by the Company and the Holder.

(c) Tax Consequences. The Holder acknowledges that the Company has made no representation regarding the potential or actual tax consequences for the Holder which will result from the issuance of this Warrant. The Holder acknowledges that the Holder bears complete responsibility for obtaining adequate tax advice regarding this Warrant.

(d) Severability. If one or more provisions of this Warrant are held to be unenforceable under applicable law, such provision shall be excluded from this Warrant and the balance of the Warrant shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

(e) Counterparts; Facsimile. This Warrant may be executed and delivered by facsimile or electronic signature and in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one (1) and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including .pdf) or other transmission method, and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

(f) Titles and Subtitles. The titles and subtitles used in this Warrant are used for convenience only and are not to be considered in construing or interpreting this Warrant.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned have executed this Warrant to Purchase Stock as of the date first above written.

COMPANY:

NIGHTFOOD HOLDINGS, INC.
a Nevada corporation

By: _____

Name: Sean Folkson
Title: Chief Executive Officer

HOLDER:

Name: **Sean Folkson**

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EXHIBIT A

EXERCISE FORM

(To be signed only on exercise of Warrant)

Nightfood Holdings, Inc.
520 White Plains Road
Suite 500
Tarrytown, NY 10591

The undersigned hereby irrevocably elects to exercise the right to purchase represented by the within Warrant for, and to purchase thereunder, _____ shares of the stock provided for therein, herewith pays the Exercise Price in accordance with the terms of this Warrant and requests that certificates for such shares be issued in the name of:

(Please print name, address, and tax identification number)

and, if said number of shares shall not be all the shares purchasable thereunder, that a new Warrant for the balance remaining of the shares purchasable under the within Warrant be registered in the name of the undersigned holder of the within Warrant or his Assignee as below indicated and delivered to the address stated below.

NAME OF HOLDER OR ASSIGNEE: _____
(Please print)

ADDRESS OF HOLDER
OR ASSIGNEE: _____

SIGNATURE OF HOLDER: _____

DATED: _____