

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): July 31, 2024

FRESH VINE WINE, INC.
(Exact name of registrant as specified in its charter)

Nevada
(State or Other Jurisdiction
of Incorporation)

001-41147
(Commission File Number)

87-3905007
(I.R.S. Employer
Identification No.)

P.O. Box 78984
Charlotte, NC 28271
(Address of Principal Executive Offices) (Zip Code)

(855) 766-9463
(Registrant's telephone number, including area code)

Not Applicable
(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:

- 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))

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common stock, par value \$0.001 per share	VINE	NYSE American

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 in Item 1.02 is incorporated by reference herein.

Item 1.02. Termination of a Material Definitive Agreement.

As previously disclosed, on January 29, 2024, Fresh Vine Wine, Inc. (the “Company”) entered into an Agreement and Plan of Merger (the “Merger Agreement”), by and among the Company, FVW Merger Sub, Inc., a Colorado corporation and wholly owned subsidiary of Fresh Vine (“Merger Sub”), and Notes Live, Inc., a Colorado corporation (“Notes Live”), which contemplated Merger Sub merging with and into Notes Live, with Notes Live continuing as the surviving corporation of the merger and a wholly-owned subsidiary of the Company (the “Merger”).

On July 31, 2024, the Company entered into a Termination Agreement (the “Termination Agreement”) with Notes Live, wherein the parties mutually agreed to terminate the Merger Agreement effective immediately upon execution of the Termination Agreement. No termination fees are payable by either party in connection with the termination of the Merger Agreement.

Certain officers, directors and stockholders of Fresh Vine (solely in their respective capacities as stockholders) previously entered into lock-up agreements (the “Lock-Up Agreements”) pursuant to which, subject to specified exceptions, they agreed not to transfer 95% of their shares of Fresh Vine common stock for periods ranging from six months to one-year following the closing of the Merger. In addition, certain officers, directors and stockholders of Fresh Vine (solely in their respective capacities as stockholders) and certain officers, directors and certain 10% or greater shareholders of Notes Live (solely in their respective capacities as Notes Live shareholders) have entered into voting and support agreements to vote, among other things, all of their shares of the Company or Notes Live (as applicable) in favor of adoption of the Merger Agreement and the transactions contemplated thereby, and against any alternative acquisition proposals (the “Support Agreements”).

In accordance with their respective terms, the Lock-Up Agreement and the Support Agreements terminated automatically upon the termination of the Merger Agreement, other than with respect to provisions which were deemed to survive such termination.

The foregoing descriptions of the Termination Agreement and Merger Agreement are not complete and are qualified in their entirety by the terms and conditions of the full text of the Termination Agreement, attached hereto as Exhibit 10.1, and the Merger Agreement, filed as Exhibit 2.1 to Fresh Vine’s Current Report on Form 8-K filed on January 29, 2024, which are incorporated herein by reference. The foregoing descriptions of the Support Agreements and Lock-Up Agreements are not complete and are qualified in their entirety by the terms and conditions of the full text of the Support Agreements and the Lock-Up Agreements, attached as Exhibits 10.1, 10.2 and 10.3, respectively, to Fresh Vine’s Current Report on Form 8-K filed on January 29, 2024, which are incorporated herein by reference.

Item 8.01. Other Events.

On August 1, 2024, 2024, Fresh Vine and Notes Live issued a press release announcing the termination of the Merger Agreement. A copy of the press release is filed as Exhibit 99.1 hereto and incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
10.1	Termination Agreement, dated as of July 31, 2024, by and between Fresh Vine Wine, Inc. and Notes Live, Inc.
99.1	Press Release issued by Fresh Vine Wine, Inc. on August 1, 2024
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

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.

Date: August 1, 2024

FRESH VINE WINE, INC.

By: /s/ Michael Pruitt
Michael Pruitt
Interim Chief Executive Officer

EXHIBIT INDEX

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TERMINATION AGREEMENT

This TERMINATION AGREEMENT (this "Agreement"), dated as of July 31, 2024, is made and entered into by and between Fresh Vine Wine, Inc., a Nevada corporation ("Fresh Vine") and Notes Live, Inc., a Colorado corporation (the "Company"). Capitalized terms not otherwise defined in this Agreement shall have the meanings ascribed to them in the Merger Agreement (as defined below).

WHEREAS, pursuant to that certain Agreement and Plan of Merger (the "Merger Agreement"), made and entered into as of January 25, 2024, by and among Fresh Vine, FVW Merger Sub, Inc., a Colorado corporation and wholly owned subsidiary of Fresh Vine ("Merger Sub") and the Company, Merger Sub agreed to merge with and into the Company, with the Company to survive as the surviving entity and an indirect, wholly-owned subsidiary of Fresh Vine, which was to change its name to Notes Live Holding Corp.; and

WHEREAS, Section 10.1(a) of the Merger Agreement provides that the Merger Agreement may be terminated prior to the Effective Time by mutual written consent of Fresh Vine and the Company;

WHEREAS, Fresh Vine and the Company desire to terminate the Merger Agreement.

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. Merger Agreement and Related Matters.

(a) Termination. Fresh Vine and the Company mutually agree that the Merger Agreement is hereby terminated, effective immediately upon the execution of this Agreement by each of the parties hereto.

(b) Survival of Certain Provisions. Notwithstanding Section 1(a), Section 5.7 (Section 5.7 Public Announcements) and Section 1 (Definitions and Interpretative Provisions) and Article 11 (Miscellaneous Provisions) of the Merger Agreement shall survive the termination of the Merger Agreement.

(c) Mutual Releases.

(i) To the fullest extent permitted by applicable law, Fresh Vine, on behalf of itself, its subsidiaries and affiliates and their respective future, present and former directors, officers, shareholders, partners, members, employees, agents, attorneys, successors and assigns (collectively, the “Fresh Vine Releasing Parties”), hereby unequivocally, knowingly, voluntarily, unconditionally and irrevocably waives, fully and finally releases, remises, exculpates, acquits and forever discharges each Notes Live Party, each Notes Live Party’s subsidiaries and affiliates and their respective future, present and former directors, officers, shareholders, partners, members, employees, agents, attorneys, successors and assigns (collectively, the “Notes Live Released Parties”) from any and all actions, causes of action, suits, debts, accounts, bonds, bills, covenants, contracts, controversies, obligations, claims, counterclaims, setoffs, debts, demands, damages, costs, expenses, compensation and liabilities of every kind and any nature whatsoever, in each case whether absolute or contingent, liquidated or unliquidated, known or unknown, and whether arising at law or in equity, which such Fresh Vine Releasing Party had, has, or may have based upon, arising from, in connection with or relating to the Merger Agreement, any agreement or instrument delivered in connection therewith or the transactions contemplated thereby; provided, however, that the foregoing shall not limit the rights and obligations of the parties hereto (i) under this Agreement, (ii) under the Merger Agreement which survive the termination thereof as provided in Section 1(b) of this Agreement, or (iii) under the Confidentiality Agreement, dated as of December 1, 2024, between Fresh Vine and the Company (the “Confidentiality Agreement”). Each Fresh Vine Releasing Party shall refrain from, directly or indirectly, asserting any claim or demand or commencing, instituting, maintaining, facilitating, aiding or causing to be commenced, instituted or maintained, any legal or arbitral proceeding of any kind against any Notes Live Released Party based upon any matter released under this Section 1(c)(i).

(ii) To the fullest extent permitted by applicable law, each Notes Live Party, on behalf of itself, its subsidiaries and affiliates and their respective future, present and former directors, officers, shareholders, partners, members, employees, agents, attorneys, successors and assigns (collectively, the “Notes Live Releasing Parties”), hereby unequivocally, knowingly, voluntarily, unconditionally and irrevocably waives, fully and finally releases, remises, exculpates, acquits and forever discharges Fresh Vine, each of Fresh Vine’s subsidiaries and affiliates and their respective future, present and former directors, officers, shareholders, partners, members, employees, agents, attorneys, successors and assigns (collectively, the “Fresh Vine Released Parties”) from any and all actions, causes of action, suits, debts, accounts, bonds, bills, covenants, contracts, controversies, obligations, claims, counterclaims, setoffs, debts, demands, damages, costs, expenses, compensation and liabilities of every kind and any nature whatsoever, in each case whether absolute or contingent, liquidated or unliquidated, known or unknown, and whether arising at law or in equity, which such Notes Live Releasing Party had, has, or may have based upon, arising from, in connection with or relating to the Merger Agreement, any agreement or instrument delivered in connection therewith or the transactions contemplated thereby; provided, however, that the foregoing shall not limit the rights and obligations of the parties hereto (i) under this Agreement, (ii) under the Merger Agreement which survive the termination thereof as provided in Section 1(b) of this Agreement, or (iii) under the Confidentiality Agreement. Each Notes Live Releasing Party shall refrain from, directly or indirectly, asserting any claim or demand or commencing, instituting, maintaining, facilitating, aiding or causing to be commenced, instituted or maintained, any legal or arbitral proceeding of any kind against any Fresh Vine Released Party based upon any matter released under this Section 1(c)(ii).

Section 2. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

Section 3. Entire Agreement; Third Party Beneficiaries. This Agreement and the Confidentiality Agreement constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, among or between any of the Parties with respect to the subject matter hereof and thereof. Other than Section 1(c) (i) and Section 1(c)(ii) of this Agreement, which are intended to benefit, and be enforceable by, the Fresh Vine Released Parties and the Notes Live Released Parties, respectively, this Agreement is not intended to confer upon any person or entity not a party hereto (and their successors and assigns permitted by Section 2) any rights or remedies hereunder.

Section 4. Applicable Law; Jurisdiction. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Colorado, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws. In any action or proceeding between any of the Parties arising out of or relating to this Agreement or any of the Contemplated Transactions, each of the Parties (a) irrevocably and unconditionally consents and submits to the exclusive jurisdiction and venue of the state courts of the State of Colorado sitting in El Paso County or the United States District Court for the District of Colorado, (b) agrees that all claims in respect of such action or proceeding shall be heard and determined exclusively in accordance with clause (a) of this Section 11.5, (c) waives any objection to laying venue in any such action or proceeding in such courts, (d) waives any objection that such courts are an inconvenient forum or do not have jurisdiction over any Party, (e) agrees that service of process upon such Party in any such action or proceeding shall be effective if notice is given in accordance with Section 11.7 of this Agreement and (f) irrevocably and unconditionally waives the right to trial by jury.

Section 5. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The exchange of a fully executed Agreement (in counterparts or otherwise) by all Parties by facsimile or electronic transmission in .PDF format shall be sufficient to bind the Parties to the terms and conditions of this Agreement

Section 6. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly delivered and received hereunder (a) one (1) Business Day after being sent for next Business Day delivery, fees prepaid, via a reputable international overnight courier service, (b) upon delivery in the case of delivery by hand or (c) on the date delivered in the place of delivery if sent by email or facsimile (with a written or electronic confirmation of delivery) prior to 6:00 p.m. (Colorado Springs time), otherwise on the next succeeding Business Day, in each case to the intended recipient as set forth below (or to such other address, facsimile number or email address as such Party shall have specified in a written notice to the other parties):

(a) if to Fresh Vine:

Fresh Vine Wine, Inc.
P.O. Box 78984
Charlotte, NC 28271
Attention: Michael Pruitt
Email: mp@avenelfinancial.com:

(b) if to the Company:

Notes Live, Inc.
1755 Telstar Dr., Suite 501
Colorado Springs, CO 80920
Attention: J.W. Roth
Email: jwroth@noteslive.vip

with a copy to (which shall not constitute notice):

Dykema Gossett PLLC
111 East Kilbourn Avenue, Suite 1050
Milwaukee, Wisconsin 53202
Attention Peter F. Waltz, Esq.
email: Pwaltz@Dykema.com

Section 7. Amendments and Waivers. This Agreement may not be modified or amended except by an instrument or instruments in writing signed by the party against whom enforcement of any such modification or amendment is sought. No failure on the part of any Party to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of any Party in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy. Any provision hereof may be waived by the waiving Party solely on such Party's own behalf, without the consent of any other Party. No Party shall be deemed to have waived any claim arising out of this Agreement, or any power, right, privilege or remedy under this Agreement, unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such Party and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.

Section 8. Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions of this Agreement or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If a final judgment of a court of competent jurisdiction declares that any term or provision of this Agreement is invalid or unenforceable, the Parties agree that the court making such determination shall have the power to limit such term or provision, to delete specific words or phrases or to replace such term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be valid and enforceable as so modified. In the event such court does not exercise the power granted to it in the prior sentence, the Parties agree to replace such invalid or unenforceable term or provision with a valid and enforceable term or provision that will achieve, to the extent possible, the economic, business and other purposes of such invalid or unenforceable term or provision.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first above written.

FRESH VINE WINE, INC.

By: /s/ Michael Pruitt

Name: Michael Pruitt

Title: Chief Executive Officer

NOTES LIVE, INC.

By: /s/ JW Roth

Name: JW Roth

Title: CEO

[Signature Page to Termination Agreement]

Fresh Vine Wine, Inc. and Notes Live, Inc. Mutually Agree to Terminate Merger Agreement

CHARLOTTE, N.C., August 1, 2024 -- Fresh Vine Wine Inc. (NYSE American: VINE) (“Fresh Vine”) today announced it has agreed with Notes Live, Inc. to terminate their previously announced merger agreement, originally announced on January 29, 2024, pursuant to which Notes Live would have combined with, and become a wholly-owned subsidiary of, Fresh Vine. The merger agreement provided for termination rights, subject to certain exceptions, in favor of either party if the merger contemplated by the merger agreement was not consummated by a July 31, 2024 end date. Conditions to the closing of the merger were not satisfied as of the end date and Notes Live indicated its desire to terminate the transaction. Following discussions between Fresh Vine and Notes Live, the parties mutually agreed to terminate the merger agreement. Fresh Vine continues to hold the shares of Notes Live’s stock that it acquired earlier this year.

“While today’s announcement is unfortunate, I want to thank the Notes Live management team for their partnership over the last several months and, as a continuing shareholder of Notes Live, we wish them success for the future,” stated Michael Pruitt, CEO of Fresh Vine. “We intend to investigate our range of strategic options in a continued effort to seek to maximize value for Fresh Vine stockholders, which may include seeking to identify another combination opportunity.”

About Fresh Vine Wine, Inc.

Fresh Vine Wine, Inc. (NYSE American: VINE) is a producer of lower carb, lower calorie premium wines in the United States. Fresh Vine Wine positions its core brand lineup as an affordable luxury, retailing between \$14.99 - \$24.99 per bottle. Fresh Vine Wine’s varietals currently include its Cabernet Sauvignon, Chardonnay, Pinot Noir, Rosé, Sauvignon Blanc, Sparkling Rosé, and a limited Reserve Napa Cabernet Sauvignon. All varietals have been produced and bottled in Napa, California.

Note on Forward-looking Statements

This press release contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. These forward-looking statements generally can be identified using words such as “anticipate,” “expect,” “plan,” “could,” “may,” “will,” “believe,” “estimate,” “forecast,” “goal,” “project,” and other words of similar meaning. These forward-looking statements address various matters including statements regarding the timing or nature of future operating or financial performance or other events. Forward-looking statements are subject to risks and uncertainties that could cause actual results to differ materially from those expressed or implied by such statements. Among these risks and uncertainties are those set forth in Fresh Vine’s annual report on Form 10-K for the year ended December 31, 2023, and subsequently filed documents with the SEC. In addition to such risks and uncertainties, risks and uncertainties related to forward-looking statements contained in this press release include statements relating to Fresh Vine’s business and the pursuit of Fresh Vine’s strategic options, including seeking to identify another combination opportunity. Actual results may differ materially from those indicated by such forward-looking statements as a result of various factors, including without limitation: (i) uncertainties relating to Fresh Vine’s ability to identify a suitable combination partner within an appropriate timeline or at all, (ii) risks related to Fresh Vine’s continued listing on the NYSE American; (iii) the effect of the announcement of the termination of the merger agreement on Fresh Vine’s business relationships, operating results, business generally and reputation; (iv) the sufficiency of Fresh Vine’s cash and working capital to support continuing operations and efforts to pursue another strategic transaction; (v) uncertainties regarding other events and unanticipated spending and costs that could reduce Fresh Vine’s cash resources; (vi) Fresh Vine’s ability to obtain additional financing when and if needed to do so, and the dilutive impact of any such financing; (vii) the existence and outcome of any legal proceedings that may be instituted against Fresh Vine or its directors or officers related to the proposed merger transaction and the termination of the merger agreement; and (viii) the value or benefits that may be realized by Fresh Vine’s investment in Notes Live, Inc. A further description of the risks and uncertainties relating to the business of Fresh Vine is contained in Fresh Vine’s most recent Annual Report on Form 10-K and its Quarterly Reports on Form 10-Q, as well as any amendments thereto reflected in subsequent filings with the SEC. Fresh Vine cautions investors not to place considerable reliance on the forward-looking statements contained in this press release. You are encouraged to read Fresh Vine’s filings with the SEC, available at www.sec.gov, for a discussion of these and other risks and uncertainties. The forward-looking statements in this press release speak only as of the date of this document, and Fresh Vine undertakes no obligation to update or revise any forward-looking statements as a result of new information, future events or changes in its expectations.