

NETLIST INC
Form DEF 14A
May 02, 2016
UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of
the Securities Exchange Act of 1934 (Amendment No.)

- Filed by the Registrant
- Filed by a Party other than the Registrant
- Check the appropriate box:
 - Preliminary Proxy Statement
 - Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
 - Definitive Proxy Statement
 - Definitive Additional Materials
 - Soliciting Material under §240.14a-12

NETLIST, INC.
(Name of Registrant as Specified In Its Charter)

N/A
(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- No fee required.
- Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

- (1) Title of each class of securities to which transaction applies:
- (2) Aggregate number of securities to which transaction applies:
- (3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):
- (4) Proposed maximum aggregate value of transaction:
- (5) Total fee paid:

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- (1) Amount Previously Paid:
- (2) Form, Schedule or Registration Statement No.:
- (3) Filing Party:
- (4) Date Filed:

NETLIST, INC.

TO OUR STOCKHOLDERS:

You are cordially invited to attend the 2016 Annual Meeting of Stockholders (the “Annual Meeting”) of Netlist, Inc., a Delaware corporation (the “Company,” “Netlist,” “we,” “us” or “our”), on Wednesday, June 8, 2016 at 10:00 a.m., Pacific Time to be held at the offices of Merrill Corporation, 2603 Main Street, Suite 100, Irvine, California 92614 for the following purposes, which are further described in the accompanying proxy statement:

- (1) to elect five directors to our Board of Directors to serve for a term of one year or until their successors are duly elected and qualified;
- (2) to re-approve the Netlist, Inc. 2006 Equity Incentive Plan, as amended in 2010 and including certain additional amendments (the “Amended Plan”);
- (3) to approve, on an advisory basis, the compensation of our named executive officers;
- (4) to ratify the appointment of KMJ Corbin & Company LLP as the Company’s independent registered public accounting firm for the fiscal year ending December 31, 2016; and
- (5) to transact other business as may properly come before the Annual Meeting or any adjournment or postponement thereof.

Your vote is important. We encourage you to sign and return your proxy before the Annual Meeting so that your shares will be represented and voted at the Annual Meeting even if you cannot attend in person.

Thank you for your ongoing support of and interest in Netlist.

Sincerely,

Gail Sasaki
Vice President, Chief Financial Officer and Secretary

May 2, 2016

NETLIST, INC.

175 Technology

Suite 150

Irvine, California 92618

(949) 435 0025

NOTICE OF 2016 ANNUAL MEETING OF STOCKHOLDERS

The 2016 Annual Meeting of Stockholders (the “Annual Meeting”) of Netlist, Inc. (the “Company,” “Netlist,” “we,” “us” or “c”) will be held on Wednesday, June 8, 2016 at 10:00 a.m., Pacific Time, at the offices of Merrill Corporation 2603 Main Street, Suite 100, Irvine, California, 92614 for the following purposes, which are further described in the accompanying proxy statement:

- (1) to elect five directors to our Board of Directors to serve for a term of one year or until their successors are duly elected and qualified;
- (2) to re-approve the Netlist, Inc. 2006 Equity Incentive Plan, as amended in 2010 and including certain additional amendments described in the accompanying proxy statement (the “Amended Plan”);
- (3) to approve, on an advisory basis, the compensation of our named executive officers;
- (4) to ratify the appointment of KMJ Corbin & Company LLP as the Company’s independent registered public accounting firm for the fiscal year ending December 31, 2016; and
- (5) to transact other business as may properly come before the Annual Meeting or any adjournment or postponement thereof.

Our Board of Directors recommends a vote “FOR” all of the director nominees (proposal (1)) and “FOR” each of the re-approval of the Amended Plan (proposal (2)), the compensation of our named executive officers (proposal (3)) and the ratification of the appointment of KMJ Corbin & Company LLP as our independent registered public accounting firm for our fiscal year ending December 31, 2016 (proposal (4)).

Only stockholders of record at the close of business on April 19, 2016 are entitled to receive notice of and to vote at the Annual Meeting. A list of stockholders entitled to vote will be available for examination at the Annual Meeting by

any stockholder for any purpose germane to the meeting. The list will also be available for the same purpose for ten days prior to the Annual Meeting at our principal executive offices at 175 Technology, Suite 150, Irvine, California 92618.

To obtain directions to attend the Annual Meeting and vote in person, please call Investors Relations at (212) 986 6667. We have enclosed our 2015 annual report, including financial statements, and the proxy statement with this notice of the Annual Meeting.

WHETHER OR NOT YOU PLAN TO ATTEND THE ANNUAL MEETING, YOU ARE ENCOURAGED TO SIGN, DATE AND RETURN THE ENCLOSED PROXY AS PROMPTLY AS POSSIBLE IN THE ENCLOSED POSTAGE PREPAID ENVELOPE. YOUR PROXY IS BEING SOLICITED BY THE COMPANY'S BOARD OF DIRECTORS.

By order of the Netlist Board of Directors,

Gail Sasaki
Vice President, Chief Financial Officer and Secretary

Irvine, California

May 2, 2016

NETLIST, INC.

175 Technology

Suite 150

Irvine, California 92618

PROXY STATEMENT

GENERAL INFORMATION

We are sending you this proxy statement in connection with the solicitation of proxies by our Board of Directors (the “Board of Directors” or the “Board”) for use at the 2016 Annual Meeting of Stockholders (the “Annual Meeting”) of Netlist, Inc., a Delaware corporation (the “Company,” “Netlist,” “we,” “us” or “our”), which we will hold on Wednesday, June 2, 2016 at 10:00 a.m., Pacific Time, at the offices of Merrill Corporation, 2603 Main Street, Suite 100, Irvine, California 92614. The record date for the Annual Meeting is April 19, 2016. All holders of record of our common stock on the record date are entitled to notice of and to vote at the Annual Meeting and any adjournment or postponement thereof. This proxy statement is being initially distributed to our stockholders on or about May 2, 2016.

Whether or not you plan to attend the Annual Meeting in person, please date, sign and return the enclosed proxy as promptly as possible, in the postage prepaid envelope provided, to ensure that your shares will be voted at the Annual Meeting. Unless you instruct otherwise in the proxy, any proxy that is not revoked will be voted at the Annual Meeting:

- (1) for each nominee to our Board of Directors;
- (2) to re-approve the Netlist, Inc. 2006 Equity Incentive Plan, as amended in 2010 and including certain additional amendments described in the accompanying proxy statement (the “Amended Plan”);
- (3) to approve on an advisory basis, the compensation of our named executive officers;
- (4) to ratify the appointment of KMJ Corbin & Company LLP as the Company’s independent registered public accounting firm for the fiscal year ending December 31, 2016; and
- (5) as recommended by our Board of Directors, in its discretion, with regard to all other matters as may properly come before the Annual Meeting or any adjournment or postponement thereof.

Voting Information

At the Annual Meeting, votes will be counted by written ballot. The presence, in person or by a proxy relating to any matter to be acted upon at the Annual Meeting, of the holders of a majority of the outstanding shares of common stock will constitute a quorum for purposes of the Annual Meeting. Abstentions, broker non votes, which are explained below, and shares as to which authority to vote on any proposal is withheld, are each included in the determination of the number of shares present at the Annual Meeting for purposes of obtaining a quorum.

Under our Amended and Restated Bylaws (our “Bylaws”), when a quorum is present at any meeting, directors are elected by a plurality of the votes cast by the stockholders entitled to vote in the election of directors and all other matters are determined by a majority of the votes cast affirmatively or negatively on the proposal, except when a different vote is required by law, the national securities exchange on which we are listed, our Restated Certificate of Incorporation or our Bylaws. As a result, abstentions and broker non votes are not considered votes cast on any of the proposals presented at the Annual Meeting and will have no effect on the voting results for such proposals.

A “broker non vote” occurs when a broker or other nominee holding shares for a beneficial owner does not vote on a particular proposal because the nominee does not have discretionary voting power with respect to that proposal and has not received instructions from the beneficial owner. Broker non votes are not deemed to be votes cast on a proposal. Under applicable rules, brokers or other nominees have discretionary voting power with respect to matters that are considered routine, but not with respect to non routine matters. Proposal No. 1 (the election of directors), Proposal No. 2

(re-approval of the Amended Plan) and Proposal No. 3 (approval, on an advisory basis, of the compensation of our named executive officers) are considered non-routine matters and Proposal No. 4 (ratification of independent registered public accounting firm) is considered a routine matter. As a result, a broker or other nominee cannot vote without instructions on Proposal Nos. 1, 2 or 3 but is entitled to vote without instructions on Proposal No. 4. The voting requirement for each of the proposals to be considered at the Annual Meeting is described under the discussion of each proposal in this proxy statement.

If any other matters are properly presented at the Annual Meeting for consideration, including, among other things, consideration of a motion to postpone or adjourn the Annual Meeting to another time or place, the individuals named as proxies and acting thereunder will have discretion to vote on those matters according to their best judgment to the same extent as the person delivering the proxy would be entitled to vote. If the Annual Meeting is postponed or adjourned, a stockholder's proxy may remain valid and may be voted at the postponed or adjourned meeting, but a stockholder will still be able to revoke the stockholder's proxy until it is actually voted. As of the date of this proxy statement, the Board of Directors does not know of any matters other than those described in this proxy statement that will be presented at the Annual Meeting.

Proxies properly executed and received by us prior to the Annual Meeting and not revoked will be voted as directed therein on all matters presented at the Annual Meeting. In the absence of specific direction from a stockholder, proxies will be voted "FOR" the election of all named director nominees and "FOR" Proposal Nos. 2, 3 and 4.

Record Date and Shares Outstanding

Only holders of record of shares of our common stock at the close of business on the record date, April 19, 2016, will be entitled to notice of and to vote at the Annual Meeting and any adjournment or postponement thereof. At the close of business on April 19, 2016, the Company had (i) 51,085,832 shares of common stock outstanding and entitled to vote and (ii) 7 stockholders of record. Each holder of record of shares of our common stock on the record date will be entitled to one vote for each share held on all matters to be voted upon at the Annual Meeting.

How to Vote

If you are a stockholder of record, meaning that at the close of business on the record date your shares were registered directly in your name with Computershare Trust Company, N.A., our transfer agent, then you may vote your shares by attending the Annual Meeting and voting in person or by submitting a proxy. If you hold your shares of common stock in "street name," meaning that you are the beneficial owner of your shares but a broker or other nominee is the stockholder of record of your shares, then you will receive a notice from your broker or other nominee that includes instructions on how to vote your shares. Your broker or other nominee may allow you to deliver your voting instructions via the Internet or by phone.

If you plan to attend the Annual Meeting and wish to vote in person, you will be given a ballot at the Annual Meeting. Please note that if you hold your shares in street name and you decide to attend and vote at the Annual Meeting in person, you will not be able to gain entry to or vote at the Annual Meeting unless you present a legal proxy issued in your name from your broker or other nominee. Even if you plan to attend the Annual Meeting in person, we encourage you to submit your proxy or otherwise vote your shares in advance of the Annual Meeting to ensure that your vote will be counted.

Revocation of Proxies

If you are a stockholder of record and submit your proxy, you may revoke it at any time before its use by taking any of the following actions:

- (1) revoking it in person at the Annual Meeting (although note that your presence at the Annual Meeting will not in itself revoke your proxy, but if you attend the Annual Meeting and cast a ballot, your proxy will be revoked as to the matters on which the ballot is cast);

- (2) delivering written instructions to our Secretary at the address of our principal executive offices before the proxy is used; or
- (3) delivering a later dated proxy to us at the address of our principal executive offices before the proxy is used.

If you hold your shares in street name, please follow the instructions provided by your broker or other nominee as to how you may change your vote, or obtain a legal proxy to vote your shares if you wish to attend and cast your vote in person at the Annual Meeting.

Proxy Solicitation Costs

We will pay for the cost of preparing, assembling, printing and mailing these proxy materials to our stockholders, as well as the cost of soliciting proxies relating to the Annual Meeting. We may request brokers or other nominees to solicit their customers who beneficially own shares of our common stock held of record by the broker or other nominee. We will reimburse these brokers or other nominees for their reasonable out of pocket expenses regarding these solicitations. Our officers, directors and employees may supplement the original solicitation by mail of proxies by telephone, facsimile, e mail and personal solicitation. We will pay no additional compensation to our officers, directors or employees for these activities. We have not engaged, but could elect to engage and pay the cost of, a proxy solicitation firm to assist us in soliciting proxies.

PROPOSAL NO. 1

ELECTION OF DIRECTORS

Structure

Our Board of Directors currently consists of five members, four of whom have been determined to be independent under the rules and listing requirements of The Nasdaq Capital Market, referred to herein as the Nasdaq rules. Please see the section titled “Director Independence” below for more information. Currently, Chun K. Hong, Charles F. Cargile, Jun S. Cho, Vincent Sheeran, and Blake A. Welcher serve as our directors.

No arrangement or understanding exists between any nominee and any other person or persons pursuant to which any nominee was or is to be selected as a director or director nominee of the Company. There are no familial relationships between any of our directors or our executive officers and any other director or executive officer.

Nominees for Election at the Annual Meeting

The Nominating and Corporate Governance Committee of our Board of Directors has recommended, and our Board of Directors has nominated, Chun K. Hong, Charles F. Cargile, Jun S. Cho, Vincent Sheeran and Blake A. Welcher for election as our directors. All of these individuals are currently members of our Board of Directors. Each nominee has consented to being named in this proxy statement as a nominee and has agreed to serve as a director if elected.

Unless the proxy indicates otherwise, the persons named as proxies in the accompanying proxy have advised us that they intend to vote the shares covered by the proxies for the election of the nominees named above at the Annual Meeting. The accompanying proxy contains a discretionary grant of authority with respect to this matter, so that if one or more of the nominees are unable or not willing to serve, the persons named as proxies may vote for the election of the substitute nominees that our Board of Directors may propose. However, the persons named as proxies may not vote for a greater number of persons than the number of nominees named above.

The table and narrative set forth below provide information regarding each director nominee’s age, service as a director of our Company, business experience, other director positions held currently or at any time during the last five years, information regarding involvement in certain legal or administrative proceedings, if applicable, and the experiences, qualifications, attributes and skills that caused the Nominating and Corporate Governance Committee and the Board to determine that the nominee should serve as a director for the Company. In addition to each nominee’s specific qualifications and skills described below, we believe that each nominee brings a strong and unique background and set of skills to the Board of Directors, giving the Board competence and experience in a wide variety of areas, including corporate governance and board service, executive management, financial reporting, law and regulation, experience in

the memory systems market and experience with manufacturers.

Director Nominees

Name	Age	Board Committees	Positions	Board Member Since
Chun K. Hong	55		President, Chief Executive Officer and Chairman	2000
Charles F. Cargile	51	Audit (Chair), Compensation	Lead Independent Director	2013
Jun S. Cho	56	Compensation, (Chair)	Director	2014
Vincent Sheeran	58	Audit, Nominating and Corporate Governance	Director	2014
Blake A. Welcher	54	Nominating and Corporate Governance (Chair) and Audit	Director	2013

Chun K. Hong is one of the founders of Netlist and has been our President and Chief Executive Officer and a director since our inception. Mr. C.K. Hong assumed the title of Chairman of the Board of Directors in January 2004. Prior to his tenure at Netlist, Mr. C.K. Hong has served in various other executive positions including President and

Chief Operating Officer of Infinilink Corporation, a DSL equipment company, as Executive Vice President of Viking Components, Inc., a memory subsystems manufacturing company, and as General Manager of Sales at LG Semicon Co., Ltd., a public semiconductor manufacturing company in South Korea. Mr. C. K. Hong received his Bachelor of Science degree in economics from Virginia Commonwealth University and his Master of Science degree in technology management from Pepperdine University's Graduate School of Management. As one of our founders and as our Chief Executive Officer, Mr. C.K. Hong brings to the Board extensive knowledge of our organization and our market.

Charles F. Cargile joined the Netlist Board in August 2013. He currently serves as Senior Vice President, Chief Financial Officer and Treasurer of Newport Corporation, a publicly traded global supplier of advanced technology products and systems. Mr. Cargile has been the Chief Financial Officer at Newport for 16 years and has been responsible for all aspects of finance, accounting, information technology and strategic planning, including acquisitions and divestitures. Prior to his tenure at Newport, Mr. Cargile held a number of executive positions at York International Corporation and Flowserve Corporation. Mr. Cargile holds a Bachelor of Science degree in Accounting from Oklahoma State University and a Master's degree in Business Administration from the Marshall School of Business at the University of Southern California. Mr. Cargile brings more than 25 years of industry experience to Netlist's Board of Directors and has an extensive background in strategic development, capital structures and international operations.

Jun S. Cho joined the Netlist Board in November 2014. He brings a considerable legal background to Netlist's Board of Directors, as General Counsel to Fiat Chrysler Asia Pacific and Vice President and Assistant General Counsel to FCA US LLC (formerly called, Chrysler Group LLC), a global company engaged in the design, engineering, manufacturing, distribution and sale of automobiles. He has more than 17 years of experience as legal counsel for the FCA Group and over 11 years of experience in the Asia Pacific region heading up FCA's initiatives in technology licensing, product distribution, mergers and acquisitions transactions and joint ventures from his bases in Beijing and Shanghai, China. Prior to his tenure at FCA, Mr. Cho specialized in international financing and corporate transactions working for global law firms including Debevoise & Plimpton in New York, Kim & Chang in Seoul, Korea and Arnold & Porter in Washington, D.C. Mr. Cho holds a Juris Doctor degree from the New York University School of Law and is admitted to the bar in the state of New York and in Washington, D.C. He received his undergraduate degree in economics from the College of William and Mary.

Vince Sheeran joined the Netlist Board in November 2014. He is the Chief Executive Officer of MarginPoint, an indirect materials management software company, and has served in this position since September 2012. Prior to his tenure at MarginPoint, Mr. Sheeran held multiple Chief Executive Officer positions, including at UltraLink, Inc., a services and technology solutions provider in the Employee Benefit Administration outsourcing market, and Wherify Wireless, a developer of wireless location products and services. Prior to his Chief Executive Officer roles he held various management positions with software industry leaders including Epicor Software, a provider of industry specific business software, where he served as VP of Marketing and Senior Vice President of Worldwide Sales & Operations. Mr. Sheeran holds a Bachelor of Science degree in Management and Management Information Sciences from the Moore School of Business at the University of South Carolina. Mr. Sheeran brings to the Board over 30 years of experience in the software and business services industries, during which he has built global organizations through both acquisition and organic growth and developed a track record of building sales and marketing organizations that can successfully sell complex technology to companies seeking cutting edge marketplace advantages.

Blake A. Welcher has served as a member of our Board of Directors since August 2013. He currently serves as Executive Vice President, General Counsel and Corporate Secretary of DTS, Inc., a consumer electronics company and has been a member of DTS's executive team since March 2000. As General Counsel at DTS, he manages the licensing operations and was instrumental in building key assets that have led to DTS' success. Mr. Welcher leads DTS' legal licensing functions and collaborates with key partners. Mr. Welcher holds a Bachelor of Science degree in Aeronautical Engineering from California Polytechnic State University at San Luis Obispo, a Juris Doctor degree and Masters of Intellectual Property degree from Franklin Pierce Law Center and is a U.S. licensed patent attorney. Mr. Welcher brings more than 20 years of industry experience to Netlist's Board of Directors with his extensive background in worldwide licensing operations, corporate governance, risk management, intellectual property and legal affairs.

Required Vote

Directors will be elected by a plurality of the votes cast on this proposal at a meeting at which a quorum is present, meaning that the five nominees receiving the highest number of votes will be duly elected as directors. Abstentions and broker non-votes will have no effect on the outcome of the election of directors.

The Board of Directors recommends that you vote "FOR" the election of all of the named director nominees.