

EVOLVING SYSTEMS INC
Form DEF 14A
April 30, 2019

**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
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EVOLVING SYSTEMS, INC.

(Name of Registrant as Specified In Its Charter)

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

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**NOTICE OF ANNUAL MEETING OF STOCKHOLDERS
TO BE HELD ON JUNE 19, 2019**

To the Stockholders of Evolving Systems, Inc.:

You are invited to attend the annual meeting of the stockholders of Evolving Systems, Inc. which will be held at 9:00 a.m. local time at 9800 Pyramid Court, Suite 400, Englewood, CO 80112 Englewood, Colorado 80112, on June 19, 2019.

At the meeting, you will be asked to act on the following matters:

1. to elect the four nominees named in this Proxy Statement as directors, each for a one-year term;
2. to approve, on a non-binding, advisory basis, the compensation paid to our named executive officers;
3. to cast an advisory vote on the frequency of having an advisory vote on executive compensation;
4. to ratify the selection of Marcum LLP as our independent registered public accounting firm to audit the consolidated financial statements of Evolving Systems, Inc. for our fiscal year ending December 31, 2019; and
5. to consider such other business as may properly come before the meeting or any adjournment or postponement of the meeting.

The Proxy Statement accompanying this Notice describes these items more fully.

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Only holders of record of shares of Evolving Systems, Inc common stock at the close of business on April 22, 2019 are entitled to vote at the meeting or any postponements or adjournments of the meeting.

YOUR VOTE IS IMPORTANT. PLEASE READ THE PROXY STATEMENT AND VOTE BY FOLLOWING THE VOTING INSTRUCTIONS SENT TO YOU.

By order of the Board of Directors,

Englewood, Colorado
April 30, 2019

Mark P. Szykowski
Senior Vice President of Finance & Secretary

9800 Pyramid Court, Suite 400

Englewood, Colorado 80112

**PROXY STATEMENT
FOR ANNUAL MEETING OF STOCKHOLDERS
June 19, 2019**

This proxy statement contains information related to the annual meeting of stockholders of Evolving Systems, Inc. which will be held at 9:00 a.m. local time at 9800 Pyramid Court, Suite 400, Englewood, Colorado 80112, on June 19, 2019, and any postponements or adjournments of the meeting. Evolving Systems first mailed, or made available on the Internet, these proxy materials to stockholders on or about May 10, 2019. In this proxy statement, Company, Evolving Systems, we, us, and our each refer to Evolving Systems, Inc. and its subsidiaries.

ABOUT THE PROXY MATERIALS

We are furnishing proxy materials to our stockholders primarily via the Internet, instead of mailing printed copies of those materials to each stockholder. By doing so, we save costs and reduce the environmental impact of our Annual Meeting. This proxy is being solicited by the Board of Directors, and the cost of solicitation of the proxies will be paid by Evolving Systems. Our officers, directors and regular employees, without additional compensation, also may solicit proxies by further mailing, by telephone or personal conversations. We have no plans to retain any firms or otherwise incur any extraordinary expense in connection with the solicitation.

The proxy materials include our proxy statement for the annual meeting.

We are sending a Notice of Internet Availability of Proxy Materials (the Notice) to all stockholders of record on April 22, 2019. All stockholders of record will have the ability to access the proxy materials on a website referred to in the Notice (<https://www.evolving.com/investors>), or request to receive a printed set of the proxy materials. Instructions on how to access the proxy materials over the Internet or to request a printed copy may be found in the Notice. In addition, stockholders may request to receive proxy materials in printed form by mail or electronically by email on an ongoing basis.

The Notice will provide you with instructions regarding how to:

- View our proxy materials for the annual meeting on the Internet; and
- Instruct us to send our future proxy materials to you electronically by email.

Choosing to receive your future proxy materials by email will save us the cost of printing and mailing documents to you and will reduce the impact of our annual stockholders' meetings on the environment. If you choose to receive future proxy materials by email, you will receive an email next year with instructions containing a link to those materials and a link to the proxy voting site. Your election to receive proxy materials by email will remain in effect until you terminate it.

Stockholder of Record: Shares Registered in Your Name

If you are a stockholder of record, you may vote in person at the Annual Meeting, vote by proxy using the enclosed proxy card or vote by proxy on the Internet. Whether or not you plan to attend the Annual Meeting, we urge you to vote by proxy to ensure that your vote is counted. You may vote in person at the Annual Meeting only if you bring a form of personal picture identification with you. You may deliver your completed proxy card in person or you may vote by completing a ballot, which will be available at the Annual Meeting.

- To vote using the proxy card, simply complete, sign and date the enclosed proxy card and return it promptly in the envelope provided. If you return your signed proxy card to us before the Annual Meeting, we will vote your shares as you direct.
- To vote on the Internet, go to www.voteproxy.com to complete an electronic proxy card. You will be asked to provide the eleven-digit number beneath the account number on the enclosed proxy card. Your vote must be received by 11:59 p.m., Eastern Daylight Time on June 18, 2019 to be counted.

Beneficial Owner: Shares Registered in the Name of a Broker or Bank

If you are a beneficial owner of shares registered in the name of your broker, bank, or other agent, you should have received instructions for granting proxies with these proxy materials from that organization rather than from the Company. A number of brokers and banks participate in a program provided through Broadridge Financial Services which enables beneficial holders to grant proxies to vote shares via telephone or the Internet. If your shares are held by a broker or bank that participates in the Broadridge program, you may grant a proxy to vote those shares telephonically by calling the telephone number on the instructions received from your broker or bank, or via the Internet at Broadridge's website at www.proxyvote.com. To vote in person at the Annual Meeting, you must obtain a valid proxy from your broker, bank, or other agent. Follow the instructions from your broker, bank or other agent included with these proxy materials, or contact your broker, bank or other agent to request a proxy form.

What You Are Voting On

At the Annual Meeting, there are four matters scheduled for a vote of the stockholders:

- ***Election of Directors.*** Election of David J. Nicol, David S. Oros, Julian D. Singer and Matthew Stecker as members to the Company's Board of Directors to serve until the 2020 annual meeting of stockholders or until their successors have been duly elected and qualified;
- ***Advisory Vote on Executive Compensation.*** Advisory approval in a non-binding vote of the compensation of the Company's named executive officers as disclosed in this Proxy Statement, or say on pay. Even though your vote is advisory and, therefore, will not be binding on the Company, the Board's Compensation Committee will review the voting results and take them into consideration when making future decisions regarding executive compensation;
- ***Advisory Vote on the Frequency of the Advisory Vote on Executive Compensation.*** Advisory vote on the frequency of the vote on the compensation of the Company's named executive officers, or say on pay. Even though your vote is advisory and, therefore, will not be binding on the Company, the Board will review the voting results and take them into consideration when making future decisions regarding the frequency of the advisory vote on executive compensation; and
- ***Ratification of the Appointment of Independent Registered Public Accounting Firm.*** Ratification of the appointment of Marcum LLP as the Company's independent registered public accounting firm for its fiscal year ending December 31, 2019.

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You may either vote For the nominee to the Board of Directors or you may Withhold your vote for the nominee you specify. For the advisory vote on the frequency of the vote on the compensation of our named executive officers, you may vote on the preferred frequency by choosing the option of one year, two years, three years or abstaining from voting. For the other matters to be voted on, you may vote For or Against or abstain from voting. If you receive more than one proxy card, your shares are registered in more than one name or are registered in different accounts. Please complete, sign and return each proxy card to ensure that all of your shares are voted.

Quorum and Required Votes

Only holders of record of shares of Evolving Systems common stock at the close of business on April 22, 2019, the record date, are entitled to vote at the meeting or any postponements or adjournments of the meeting. As of the record date, Evolving Systems had 12,196,582 shares of common stock outstanding.

The presence at the meeting of a majority of the outstanding shares, in person or by proxy relating to any matter to be acted upon at the meeting, is necessary to constitute a quorum for the meeting. Each outstanding share of common stock is entitled to one vote.

Proxies marked Abstain and broker non-votes will be treated as shares that are present for purposes of determining the presence of a quorum. An abstention occurs when a stockholder sends in a proxy with explicit instructions to decline to vote regarding a particular matter. A broker non-vote occurs when a broker or other nominee who holds shares for another person does not vote on a particular proposal because that holder does not have the discretionary voting power for the proposal and has not received voting instructions from the beneficial owner of the shares; as a result, the broker or other nominee is unable to vote those uninstructed shares. Abstentions and broker non-votes, while included for quorum purposes, will not be counted as votes cast for or against any proposal.

The following table summarizes the votes required for passage of each proposal and the effect of abstentions and uninstructed shares held by brokers. **Please note that brokers may not vote your shares on the election of directors or any other non-routine matters (Proposals 2 and 3) if you have not given your broker specific instructions as to how to vote. Please be sure to give specific voting instructions to your broker so that your vote can be counted.**

Proposal Number	Description	Votes Required for Approval	Abstentions	Uninstructed Shares
1	Election of Directors	Nominees receiving highest number of votes	Not voted	Not voted
2	Advisory vote on executive compensation (Say on Pay)	Majority of shares cast	Not voted	Not voted
3	Advisory vote on frequency of Say on Pay	Alternative (every 1, 2 or 3 years) receiving the highest number of votes	Not voted	Not voted
4	Ratification of Independent Registered Public Accounting Firm	Majority of votes cast	Not voted	Discretionary vote brokers may vote

Recommendation of Board of Directors

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Unless you instruct otherwise on your proxy card, the persons named as proxy holders on the proxy card will vote in accordance with the recommendations of the Board of Directors. Specifically, the Board's recommendations are as follows:

- **FOR** the election of each of the four nominees for director;
- **FOR** the approval, on a non-binding, advisory basis, of the compensation paid to our named executive officers;
- To hold an advisory vote on executive compensation every two years; and

- **FOR** the ratification of the selection of Marcum LLP as our independent registered public accounting firm to audit the consolidated financial statements of Evolving Systems for our fiscal year ending December 31, 2019.

The proxy holders will vote as recommended by the Board of Directors with respect to any other matter that properly comes before the annual meeting, including any postponements or adjournments thereof. If the Board of Directors on any such matter gives no recommendation, the proxy holders will vote in their own discretion.

Revocation of Proxies

After you have submitted your proxy, you may change your vote at any time before the proxy is exercised by filing with the Secretary of Evolving Systems either a notice of revocation or a duly executed proxy bearing a later date. The powers of the proxy holders will be suspended if you attend the annual meeting in person and request to recast your vote. Attendance at the annual meeting will not, by itself, revoke a previously granted proxy.

Householding

To reduce costs and reduce the environmental impact of our Annual Meeting a single proxy statement and annual report, along with individual proxy cards or individual Notices of Internet Availability, will be delivered in one envelope to certain stockholders having the same last name and address and to individuals with more than one account registered at our transfer agent with the same address. This process, which is commonly referred to as **householding**, potentially means extra convenience for security holders and cost savings for Evolving Systems. Once you have received notice from your broker or us that they will be **householding** communications to your address, **householding** will continue until you are notified otherwise or until you revoke your consent. If, at any time, you no longer wish to participate in **householding** and would prefer to receive a separate proxy statement, please notify your broker, or direct your written request to Evolving Systems, Inc., Mark P. Szykowski, Secretary, 9800 Pyramid Court, Suite 400, Englewood, Colorado 80112, or contact Mark P. Szykowski at 303-802-1000.

Stockholders who currently receive multiple copies of the proxy statement at their address and would like to request **householding** of their communications should contact their broker.

We encourage you to access and review all of the important information contained in the proxy materials before voting.

Voting Procedures and Tabulation of Votes

Our independent election inspector will tabulate votes cast by proxy or in person at the meeting. We will also report the results in a Form 8-K filed with the Securities and Exchange Commission (SEC) within four business days of the Annual Meeting.

PROPOSAL 1

ELECTION OF DIRECTORS

Our Board of Directors is currently composed of 6 members, with each member elected annually for a term of one year. In accordance with our Company's Bylaws, our Board of Directors adopted a resolution on April 11, 2019, to reduce the size of the Board from six to four members, effective as of the date of the Annual Stockholders' meeting.

Vacancies on the Board may be filled only by persons elected by a majority of the remaining directors. A director elected by the Board to fill a vacancy (including a vacancy created by an increase in the Board of Directors) will serve for the remainder of the full term of the director for which the vacancy occurred and until the director's successor is elected and qualified.

Under the director independence guidelines, the Board of Directors must affirmatively determine a director has no relationship that would interfere with the exercise of independent judgment in carrying out his responsibilities as a director in order to qualify as independent. To facilitate this determination, annually each director completes a

questionnaire that provides information about relationships that might affect the determination of independence. Management provides the Governance and Nominating Committee and our Board with relevant facts and circumstances of any relationship bearing on the independence of a director or nominee that is outside the categories permitted under the director independence guidelines.

Based on the review and recommendation by the Governance and Nominating Committee, the Board of Directors analyzed the independence of each director and determined that three of our directors (Messrs. Nicol, Oros and Singer) are independent under NASDAQ's current listing standards and that each of them is free of any relationship that would interfere with his individual exercise of independent judgment. Mr. Stecker, who was previously independent under NASDAQ's listing standard, was appointed Executive Chairman in April 2018 and CEO in July 2018 and, as a result, is not considered independent.

The Board has nominated Messrs. Nicol, Oros, Singer and Stecker for re-election. As noted above, the Board adopted a resolution to reduce the size of the Board from six to four members. Mr. Thekkethala, the Company's former Chief Executive Officer (CEO) and current member of the Board, is not being nominated for re-election to the Board and Mr. Ramlall has decided not to run for re-election. Proxies cannot be voted for a greater number of persons than the number of nominees named. If elected at the annual meeting, each of the nominees would serve until the 2020 annual meeting of stockholders.

Required Vote and Recommendation of the Board of Directors

Directors are elected by a plurality of the votes present in person or represented by proxy and entitled to vote at the meeting. Shares represented by executed proxies will be voted, if authority to do so is not withheld, FOR the election of the nominees named below. The persons nominated for election have agreed to serve if elected, and management has no reason to believe that the nominees will be unable to serve. The Board of Directors expects that each of the nominees will be available for election, but if any of them is unable to serve at the time the election occurs, the proxy will be voted for the election of another nominee designated by our Board.

Set forth below is biographical information for the persons nominated for election as a director at the annual meeting. Ages are as of April 30, 2019.

THE BOARD OF DIRECTORS RECOMMENDS A VOTE FOR EACH NOMINEE.

Nominees for Election for a One-Year Term Expiring at the 2020 Annual Meeting

David J. Nicol

David J. Nicol, 73, became a member of the Board of Directors in March 2004. Since February 2018, Mr. Nicol also serves on the board of CCUR Holdings, Inc. (OTCQB:CCUR), where he is a member of the Nominating /Governance Committee and the Audit Committee, which he also Chairs. He also is a board member of PropertyTrak, Inc, a privately-held provider of facilities management SaaS services. A member of the National Association of Corporate Directors (since 2004) and Financial Executives International, since August 2015 he has served on the faculty in the Finance Department at the Bloch School of Management at UMKC. From February 2012 through March 2014, Mr. Nicol was

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President/COO of Strongwatch Corporation, a security innovation company since acquired. In prior assignments, Mr. Nicol held senior-level executive positions with both public companies (Verisign, Illuminet, and Sprint/United Telecom), as well as early-stage, private companies: Solutionary (IT network security), Sipera (VOIP security), ITN (network signaling), International Micronet (LAN/WAN systems) and iLAN (LAN systems & consulting). Beyond P&L responsibilities, his leadership roles have included strategic planning, business development, acquisitions, business planning, operations planning, product management, product development/support, financial planning, and fund raising/IR.

With his years of executive experience at Sprint/United Telecom, ITN, Illuminet, Verisign and Solutionary, Mr. Nicol brings to the Board senior-level, functionally broad management ability, with deep experience in telecom, IT services and technology, both domestic and international. Complimenting his appointment to the Finance faculty at the UMKC Bloch School, his experience as CFO at Solutionary gives him an in-depth understanding of financial strategy and operations. Mr. Nicol is able to draw upon, among other things, his knowledge of raising capital and investor communications, having served as a member of the roadshow team that took Illuminet public (NASDAQ), as well as having raised significant debt and equity funding for Solutionary and several other early-stage companies. In addition, Mr. Nicol has a Ph.D. in corporate finance and has taught corporate finance at the MBA level at the Weatherhead School of Management of Case Western Reserve University and elsewhere.

David S. Oros

David S. Oros, 59, joined our Board of Directors in March 2008. Since March 2013, he has been a founding partner of Gamma 3 LLC, a Baltimore, Maryland based investment initiative focused on acquiring, building and incubating advanced technical intellectual property and providing early stage funding to advanced technology companies. Over the last ten years, Mr. Oros has started over eight companies primarily in the technology field. He is currently the Chairman and founder of Terbium Labs, an information security company that runs Matchlight, a data intelligence system, and he is also Chairman of Gemstone Biotherapeutics LLC, a leader in the field of tissue engineering and regenerative medicine. From June 2006 to February 2013, Mr. Oros was the managing partner of Global Domain Partners, LLC, a managed futures company that uses advanced optimization modeling as a predictive tool for worldwide markets, currencies and commodities. From 2006 to 2010, Mr. Oros served as Chairman of the Board of NexCen Brands, Inc., a leading vertically integrated brand acquisition and management firm focused on brand management. From 1996 until June 2006, Mr. Oros was the Chairman of the Board and CEO of Aether Systems, Inc., a leading provider of wireless and mobile data solutions for the transportation, fleet management and public safety industries. From 1994 until 1996, Mr. Oros was President of NexGen Technologies, L.L.C., a wireless software development company. From 1992 until 1994, he was President of the Wireless Data Group at Westinghouse Electric. Prior to that, from 1982 until 1992, Mr. Oros was at Westinghouse Electric directing internal research and managing large programs in advanced airborne radar design and development. Mr. Oros received a B.S. in mathematics and physics from the University of Maryland and holds a U.S. patent for a multi-function radar system. Mr. Oros currently serves on the Board of Visitors for the University of Maryland Baltimore County and the Board of Directors for Health Care for the Homeless.

Mr. Oros has had front line exposure to many of the issues facing public companies, particularly on operational, financial and corporate governance matters, from his former role as Managing Partner of Global Domain Partners and previously having served as Chairman of NexCen Brands, CEO of Aether Systems, President of NexGen Technologies, LLC and President of the Wireless Data Group of Westinghouse Electric. With his knowledge of the complex issues facing global companies and his understanding of what makes businesses work effectively and efficiently, Mr. Oros is a skilled advisor. His formal education and his experience in directing large research and development programs while at Westinghouse Electric also provides him with the background and expertise to assist the Board with technology-related issues.

Julian D. Singer

Julian D. Singer, 35, became a member of the Board of Directors in January 2015. Prior to that, he served as a nonvoting observer to the Board of Directors from July 2014 until December 2014. Since May 2013 Mr. Singer has been engaged as an independent investment advisor. Prior to that, from April 2006 through June 2011, Mr. Singer served as an assistant trader and an analyst with York Capital Management where he evaluated potential mergers and acquisitions. Mr. Singer currently serves on the Board of Directors of Live MicroSystems, Inc., which sold its operating assets in 2013, and Fiber Span, a privately held company providing distributed antenna systems (DAS) technology primarily for public safety projects. Mr. Singer has a B.S. in Finance from Lehigh University and an M.B.A. from the NYU Stern School of Business.

Mr. Singer has a background in finance and investing in various industries, including software and telecommunications, as well as mergers and acquisitions. Drawing from his experience in these areas, Mr. Singer provides valuable strategic and financing advice to the Company's management and the Board.

Matthew Stecker

Matthew Stecker, 50, joined our Board of Directors in March 2016, was named Chairman of the Board in August 2016, Executive Chairman in April 2018 and President & CEO on July 16, 2018. He served as a Senior Policy Advisor to the United States Department of Commerce from 2014 to 2017. In that capacity, Mr. Stecker was part of the senior team that launched FirstENet. Mr. Stecker currently serves on the board of

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Live Microsystems, Inc. (OTC:LMSC). He previously served on the boards of MRV Communications from April 2013 to June 2016 and HealthWarehouse.com Inc. from December 2010 to August 2013, where he also served on the compensation committee. From January to November 2014, Mr. Stecker served as the Vice President of Mobile Entertainment for RealNetworks (NASDAQ:RNWK). From November 2009 to December 2013, he served as CEO of Live MicroSystems, Inc., and from April 2005 to November 2009 he was a senior executive in both Telecom Operations and Strategy at Cartesian, Inc. (NASDAQ:CRTN). He received his BA in Political Science and Computer Science from Duke University, and his JD from the University of North Carolina at Chapel Hill School of Law.

Mr. Stecker brings to our Board over twenty years of experience as a public company executive in the telecommunications and wireless industries, which are highly relevant to the Company's business and will assist the Company in developing, executing and evaluating business strategies and industry partnerships.

INFORMATION REGARDING THE BOARD AND ITS COMMITTEES

Board Leadership Structure

Our Board believes it is important to retain flexibility in allocating the responsibilities of the CEO and Chairman of the Board in any way that is in the best interests of our Company based on the circumstances existing at a particular point in time. Accordingly, we do not have a strict policy on whether these roles should be served independently or jointly. Currently, we have an Executive Chairman of the Board with Mr. Stecker serving in that role as well as the CEO.

We do not have a separate Lead Independent Director.

The Board's Role in Risk Oversight

The Board as a whole actively oversees management of the Company's risks and looks to its committees, as well as senior management, to support the Board's oversight role. The Company's Compensation Committee provides information about risks relating to the Company's compensation plans and arrangements. The Audit Committee assists with oversight of financial risks, and the Nominating and Governance Committee focuses on risks associated with the independence of the Board of Directors and potential conflicts of interest. While each committee is responsible for evaluating certain risks, the full Board regularly receives information through committee reports and from members of senior management on areas of material risk to the Company, including operational, financial, legal and regulatory, technical and strategic risks.

Meetings and Committees of the Board of Directors

Our business, property and affairs are managed under the direction of our Board of Directors and its committees. Our Board of Directors provides management oversight, helps guide the Company on strategic planning, approves the Company's operating budgets and meets regularly in executive sessions. Members of our Board are kept informed of our business through discussions with our Chief Executive Officer and other officers and employees, by reviewing materials provided to them, by visiting our offices and by participating in meetings of the Board and its committees.

Our Board holds regularly scheduled quarterly meetings. In addition to the quarterly meetings, typically there is at least one other regularly scheduled meeting and several special meetings each year. At least twice a year, time is set aside for the independent directors to meet without management present. Our Board met formally four times in 2018 in addition to conference calls throughout the year. In fiscal year 2018 each director, with the exception of Thomas Thekkethala, attended at least 75% of all Board meetings held during such director's tenure on the Board.

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The Board has an Audit Committee, a Compensation Committee, a Nominating and Governance Committee and a Strategic Initiatives Committee. Below is a table that provides membership and meeting information for each of the Board committees as of December 31, 2018. In fiscal year 2018 each committee member attended at least 75% of the meetings of each applicable committee.

Name	Audit	Compensation	Nominating & Governance	Strategic Initiatives
Mr. Nicol	X*	X*		X
Mr. Oros	X	X	X	
Mr. Ramlall (1)	X	X	X*	
Mr. Singer				X*
Mr. Stecker				X
Mr. Thekkethala (2)				
Total meetings in fiscal year 2018	4	**	**	**

* Denotes Committee Chair as of December 31, 2018. Mr. Stecker resigned from the Audit Committee on January 31, 2018 and the Board appointed Mr. Ramlall to serve on the Committee. Mr. Stecker also resigned as Chairman of the Nominating & Governance Committee on January 31, 2018 and the Board appointed Mr. Ramlall to serve as the Chairman of the Nominating & Governance Committee and appointed Mr. Oros to serve on the Committee.

** The Committee members met informally several times during the year, following which they acted formally through unanimous consent resolutions.

- (1) Mr. Ramlall has decided not to run for re-election to the Board.

- (2) The Board is not nominating Mr. Thekkethala for re-election.

Below is a description of each committee of the Board of Directors. Each of the committees has authority to engage legal counsel or other experts or consultants as it deems appropriate to carry out its responsibilities. The Board of Directors has determined that each member of the Audit Committee, Compensation Committee and Nominating & Governance Committee meet the independence requirements under the NASDAQ's current listing standards and each member is free of any relationship that would interfere with his individual exercise of independent judgment.

The Audit Committee. The Audit Committee assists the Board of Directors in its oversight of the integrity of the Company's accounting, auditing, and reporting practices. The Audit Committee meets with our independent registered public accounting firm at least annually to review the results of the annual audit and discuss the financial statements. The Committee also meets with our independent registered public accounting firm quarterly to discuss the results of the accountants' quarterly reviews as well as quarterly results and quarterly earnings releases; recommends to the Board the registered public accounting firm to be retained; and receives and considers the accountants' comments as to internal controls and procedures in connection with audit and financial controls. The Audit Committee reviews all financial reports prior to filing with the Securities and Exchange Commission (SEC) and reviews all financial press releases prior to release. The specific responsibilities in carrying out the Audit Committee's oversight role are set forth in the Audit Committee's Charter, a copy of which is posted on the Company's website, www.evolving.com, under Investor Relations - Corporate Governance. The Audit Committee currently consists of Messrs. Nicol, Oros and Ramlall, all of whom are independent directors as required under the Securities Exchange Act of 1934, as amended (the Exchange Act), Section 10A(m)(3) and NASDAQ listing standards. Following Mr. Ramlall's departure from the Board, the Board intends to appoint Mr. Singer, who is independent under NASDAQ listing standards, to serve on the Audit Committee. The Board of Directors has determined that Mr. Nicol is an audit committee financial expert as defined by the rules of the Securities and Exchange Commission. For more information concerning the Audit Committee see the Report of the Audit Committee contained in this proxy statement.

The Compensation Committee. The primary responsibilities of the Compensation Committee are to review and recommend to the Board the compensation of our executive officers, to review and recommend an incentive compensation plan, approve grants of stock awards to employees and consultants under our stock incentive plan and otherwise determine compensation levels and perform such other functions regarding compensation as the Board may

delegate. The Compensation Committee currently consists of Messrs. Nicol, Oros and Ramlall, all of whom are independent directors under NASDAQ listing standards. Following Mr. Ramlall's departure from the Board, the Board intends to appoint Mr. Singer, who is independent under NASDAQ listing standards, to serve on the Compensation Committee.

The Compensation Committee meets outside the presence of all of our executive officers to consider appropriate compensation for our chief executive officer, or CEO. The Compensation Committee annually analyzes our CEO's performance and determines his base salary and incentive compensation and stock awards, based on its assessment of his performance and other considerations described in the Compensation Discussion and Analysis. For our other named executive officer, the Compensation Committee meets separately with our CEO. Our CEO annually reviews our other named executive officer's performance with the Compensation Committee and makes recommendations to the Compensation Committee with respect to the appropriate base salary, payments to be made under our incentive compensation plan and equity incentive awards for all officers, excluding himself. Based in part on these recommendations from our CEO and other considerations described in the Compensation Discussion and Analysis, the Compensation Committee approves the annual compensation package of our other executive officer.