

Avinger Inc
Form DEF 14A
April 25, 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

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 Pursuant to §240.14a-11(c) or §240.14a-2

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

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(4) Date Filed:

400 CHESAPEAKE DRIVE

REDWOOD CITY, CALIFORNIA 94063

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

To Be Held at 1:00 p.m. Pacific Time on Tuesday, June 11, 2019

Dear Stockholders of Avinger, Inc.:

We cordially invite you to attend the 2019 annual meeting of stockholders, which we refer to as the Annual Meeting, of Avinger, Inc., a Delaware corporation, which will be held on Tuesday, June 11, 2019 at 1:00 p.m. Pacific Time, in person at the offices of Dorsey & Whitney LLP at 305 Lytton Avenue, Palo Alto, California 94301, for the following purposes, as more fully described in the accompanying proxy statement:

1. To elect one Class I director to serve until the 2022 annual meeting of stockholders and until his successor is duly elected and qualified;
2. To ratify the appointment of Moss Adams LLP as our independent registered public accounting firm for our fiscal year ending December 31, 2019;
3. To approve an amendment to the Avinger, Inc. 2015 Equity Incentive Plan to (i) increase the shares reserved for issuance under the plan by 8,000,000 shares and (ii) reduce the maximum amount of the grant date fair value allowed for initial and annual grants of equity awards to non-employee directors from \$1,500,000 and \$500,000, respectively, to \$250,000 and \$250,000;
4. To approve an amendment to the Company's Amended and Restated Certificate of Incorporation to increase the number of authorized shares of common stock from 100,000,000 to 125,000,000;

5. To approve an amendment to the Company's Amended and Restated Certificate of Incorporation to effect a reverse stock split at a ratio not less than 1-for-3 and not greater than 1-for-10, with the exact ratio to be set within that range at the discretion of our board of directors before the day prior to the 2020 annual meeting of stockholders without further approval or authorization of our stockholders;

6. To approve the adjournment of the Annual Meeting, if necessary, to continue to solicit votes in favor of the foregoing proposals; and

7. To transact such other business as may properly come before the Annual Meeting or any adjournments or postponements thereof.

Our board of directors has fixed the close of business on April 15, 2019 as the record date for the Annual Meeting. Only stockholders of record on April 15, 2019 are entitled to notice of and to vote at the Annual Meeting. Further information regarding voting rights and the matters to be voted upon is presented in the accompanying proxy statement.

On or about May 2, 2019, we expect to mail to our stockholders a Notice of Internet Availability of Proxy Materials, or the Notice, containing instructions on how to access our proxy statement and our annual report. The Notice provides instructions on how to vote via the Internet or by telephone and includes instructions on how to receive a paper copy of our proxy materials by mail. The accompanying proxy statement and our annual report can be accessed directly at the following Internet address: *www.proxyvote.com*. All you have to do is enter the control number located on your Notice or proxy card.

YOUR VOTE IS IMPORTANT. Whether or not you plan to attend the Annual Meeting, we urge you to submit your vote via the Internet, telephone or mail.

We appreciate your continued support of Avinger.

By order of the Board of Directors,

Jeffrey M. Soinski
Chief Executive Officer
Redwood City, California
April 25, 2019

TABLE OF CONTENTS

	Page
QUESTIONS AND ANSWERS ABOUT THE PROXY MATERIALS AND OUR ANNUAL MEETING	1
BOARD OF DIRECTORS AND CORPORATE GOVERNANCE	8
Nominees for Director	8
Continuing Directors	8
Director Independence	9
Board Leadership Structure	10
Board Meetings and Committees	10
Considerations in Evaluating Director Nominees	12
Stockholder Recommendations for Nominations to the Board of Directors	12
Communications with the Board of Directors	13
Corporate Governance Guidelines and Code of Business Conduct	13
Risk Management	13
Director Compensation	14
PROPOSAL NO. 1 ELECTION OF DIRECTORS	16
Nominees	16
Vote Required	16
PROPOSAL NO. 2 RATIFICATION OF APPOINTMENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM	17
Fees Paid to the Independent Registered Public Accounting Firm	18
Auditor Independence	18
Audit Committee Policy on Pre-Approval of Audit and Permissible Non-Audit Services of Independent Registered Public Accounting Firm	18
Vote Required	18
REPORT OF THE AUDIT COMMITTEE	19
PROPOSAL NO. 3 APPROVAL OF THE AMENDMENT OF THE AVINGER, INC. 2015 EQUITY INCENTIVE PLAN	20
Reasons for Voting for the Proposal	20
Description of the 2015 Plan	21
2015 Plan Benefits	24
Equity Compensation Plan Information	25
Market Value	25
Certain U.S. Federal Income Tax Consequences	25
Vote Required	26
PROPOSAL NO. 4 APPROVAL OF AMENDMENT TO THE AMENDED AND RESTATED CERTIFICATE OF INCORPORATION TO INCREASE AUTHORIZED SHARES OF COMMON STOCK	27
The Proposed Amendment	27
Reasons for the Amendment	27
Number of Shares of Common Stock Currently Outstanding and Subject to Issuance	28
Effects of Increase	28
Anti-Takeover Effects	29
Effectiveness of Amendment to Amended and Restated Certificate of Incorporation	30
Vote Required	30
	31

PROPOSAL NO. 5 APPROVAL OF AMENDMENT TO THE AMENDED AND RESTATED CERTIFICATE OF INCORPORATION TO EFFECT A REVERSE STOCK SPLIT	
Reasons for the Reverse Stock Split	32
Possible Effects of the Reverse Stock Split	33
Effectiveness of Reverse Stock Split	37
Exchange Procedures	37
No Appraisal Rights	38
Vote Required	38
PROPOSAL NO. 6 ADJOURNMENT OF THE ANNUAL MEETING, IF NECESSARY, TO CONTINUE TO SOLICIT VOTES IN FAVOR OF THE FOREGOING PROPOSALS	39
Overview	39
Vote Required	39

EXECUTIVE OFFICERS	40
EXECUTIVE COMPENSATION	41
Processes and Procedures for Compensation Decisions	41
Summary Compensation Table	41
Executive Employment Letters	42
401(k) Plan	42
Pension Benefits and Nonqualified Deferred Compensation	42
Outstanding Equity Awards at Fiscal Year-End	43
Potential Payments upon Termination or Change of Control	44
Executive Incentive Compensation Plan	44
SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT	46
RELATED PERSON TRANSACTIONS	47
Master Consulting Agreement	47
Master Services Agreement	47
Employment of Related Persons	47
Other Transactions	47
Policies and Procedures for Related Party Transactions	47
OTHER MATTERS	48
Section 16(a) Beneficial Ownership Reporting Compliance	48
Fiscal Year 2018 Annual Report and SEC Filings	48

AVINGER, INC.

PROXY STATEMENT

FOR 2019 ANNUAL MEETING OF STOCKHOLDERS

To Be Held at 1:00 p.m. Pacific Time on Tuesday, June 11, 2019

This proxy statement and the enclosed form of proxy are furnished in connection with the solicitation of proxies by our board of directors for use at the 2019 annual meeting of stockholders of Avinger, Inc., a Delaware corporation, and any postponements, adjournments or continuations thereof, which we refer to as the Annual Meeting. The Annual Meeting will be held on Tuesday, June 11, 2019 at 1:00 p.m. Pacific Time, at the offices of Dorsey & Whitney LLP at 305 Lytton Avenue, Palo Alto, California 94301. The Notice of Internet Availability of Proxy Materials, which we refer to as the “Notice,” containing instructions on how to access this proxy statement and our annual report is first being mailed on or about May 2, 2019 to all stockholders entitled to vote at the Annual Meeting.

The information provided in the “question and answer” format below is for your convenience only and is merely a summary of the information contained in this proxy statement. You should read this entire proxy statement carefully. Information contained on, or that can be accessed through, our website is not intended to be incorporated by reference into this proxy statement and references to our website address in this proxy statement are inactive textual references only.

What matters am I voting on?

You will be voting on:

the election of one Class I director to serve until our 2022 annual meeting of stockholders and until his successor is duly elected and qualified;

a proposal to ratify the appointment of Moss Adams LLP as our independent registered public accounting firm for our fiscal year ending December 31, 2019;

a proposal to amend the Avinger, Inc. 2015 Equity Incentive Plan to (i) increase the number of shares reserved for issuance under the plan by 8,000,000 shares and (ii) reduce the maximum amount of the grant date fair value allowed for initial and annual grants of equity awards to non-employee directors from \$1,500,000 and \$500,000, respectively, to \$250,000 and \$250,000;

a proposal to amend the Company's Amended and Restated Certificate of Incorporation to increase the number of authorized shares of common stock from 100,000,000 to 125,000,000;

a proposal to amend the Company's Amended and Restated Certificate of Incorporation to effect a reverse stock split at a ratio not less than 1-for-3 and not greater than 1-for-10, with the exact ratio to be set within that range at the discretion of our board of directors before the day prior to the 2020 annual meeting of stockholders without further approval or authorization of our stockholders;

a proposal to approve the adjournment of the Annual Meeting, if necessary, to continue to solicit votes in favor of the foregoing proposals; and

any other business as may properly come before the Annual Meeting.

How does the board of directors recommend I vote on these proposals?

Our board of directors recommends a vote:

“FOR” the election of Jeffrey M. Soinski as the Class I director;

“FOR” the ratification of the appointment of Moss Adams LLP as our independent registered public accounting firm for our fiscal year ending December 31, 2019.

“FOR” the amendment of the Avinger, Inc. 2015 Equity Incentive Plan to (i) increase the number of shares reserved for issuance under the plan by 8,000,000 shares and (ii) reduce the maximum amount of the grant date fair value allowed for initial and annual grants of equity awards to non-employee directors from \$1,500,000 and \$500,000, respectively, to \$250,000 and \$250,000.

“FOR” the amendment to the Company’s Amended and Restated Certificate of Incorporation to increase the number of authorized shares of common stock from 100,000,000 to 125,000,000.

“FOR” the amendment to the Company’s Amended and Restated Certificate of Incorporation to effect a reverse stock split at a ratio not less than 1-for-3 and not greater than 1-for-10, with the exact ratio to be set within that range at the discretion of our board of directors before the day prior to the 2020 annual meeting of stockholders without further approval or authorization of our stockholders.

“FOR” the adjournment of the Annual Meeting, if necessary, to continue to solicit votes in favor of the foregoing proposals.

Who is entitled to vote?

Holders of our common stock as of the close of business on April 15, 2019, the record date for the Annual Meeting, may vote at the Annual Meeting. Holders of our Series A Convertible Preferred Stock, par value \$0.001 per share, or Series A Preferred Stock, and Series B Convertible Preferred Stock, par value \$0.001 per share, or Series B Preferred Stock, are not entitled to notice of or a vote upon any matters to be presented at the Annual Meeting. As of the record date, there were 64,186,127 shares of our common stock outstanding. In deciding all matters at the Annual Meeting, each stockholder will be entitled to one vote for each share of our common stock held by them on the record date. Stockholders are not permitted to cumulate votes with respect to the election of directors.

Registered Stockholders. If shares of our common stock are registered directly in your name with our transfer agent, you are considered the stockholder of record with respect to those shares and the Notice was provided to you directly by us. As the stockholder of record, you have the right to grant your voting proxy directly to the individuals listed on the proxy card or vote in person at the Annual Meeting. Throughout this proxy statement, we refer to these registered stockholders as “stockholders of record.”

Street Name Stockholders. If shares of our common stock are held on your behalf in a brokerage account or by a bank or other nominee, you are considered to be the beneficial owner of shares that are held in “street name,” and the Notice was forwarded to you by your broker or nominee, who is considered the stockholder of record with respect to those shares. As the beneficial owner, you have the right to direct your broker, bank or other nominee as to how to vote your shares. Beneficial owners are also invited to attend the Annual Meeting. However, since a beneficial owner is not the stockholder of record, you may not vote your shares of our common stock in person at the Annual Meeting unless you follow your broker’s procedures for obtaining a legal proxy. If you request a printed copy of our proxy materials by mail, your broker, bank or other nominee will provide a voting instruction form for you to use. Throughout this proxy statement, we refer to stockholders who hold their shares through a broker, bank or other

nominee as “street name stockholders.”

How many votes are needed for approval of each proposal?

Proposal No. 1: The election of directors requires a plurality vote of the shares of our common stock present in person or by proxy at the Annual Meeting and entitled to vote thereon to be approved. “Plurality” means that the nominees who receive the largest number of votes cast “for” are elected as directors. As a result, any shares not voted “for” a particular nominee (whether as a result of stockholder abstention or a broker non-vote) will not be counted in such nominee’s favor and will have no effect on the outcome of the election. You may vote “for” or “withhold” on each of the nominees for election as a director.

Proposal No. 2: The ratification of the appointment of Moss Adams LLP requires the affirmative vote of a majority of the shares of our common stock present in person or by proxy at the Annual Meeting and entitled to vote thereon to be approved. Abstentions are considered votes present and entitled to vote on this proposal, and thus, will have the same effect as a vote “against” the proposal. Because this proposal is considered a “routine” matter under applicable stock exchange rules, we do not expect to receive any broker non-votes on this proposal.

Proposal No. 3: The approval of the amendment of the Avinger, Inc. 2015 Equity Incentive Plan requires the affirmative vote of a majority of the shares of our common stock present in person or by proxy at the Annual Meeting and entitled to vote thereon. Abstentions are considered votes present and entitled to vote on this proposal, and thus, will have the same effect as a vote “against” the proposal. Broker non-votes will have no effect on the outcome of this proposal.

Proposal No. 4: The approval of the amendment to the Company’s Amended and Restated Certificate of Incorporation to increase the number of authorized shares of common stock from 100,000,000 to 125,000,000 requires the affirmative vote of holders of a majority of the outstanding shares of the Company’s common stock. Because the affirmative vote of holders of a majority of the outstanding shares of the Company’s common stock is required for this proposal, abstentions and broker non-votes will have the same effect as votes against this proposal.

Proposal No. 5: The approval of the amendment to the Company’s Amended and Restated Certificate of Incorporation to effect a reverse stock split at a ratio not less than 1-for-3 and not greater than 1-for-10, with the exact ratio to be set within that range at the discretion of our board of directors before the day prior to the 2020 annual meeting of stockholders, without further approval or authorization of our stockholders, requires the affirmative vote of holders of a majority of the outstanding shares of the Company’s common stock. Because the affirmative vote of holders of a majority of the outstanding shares of the Company’s common stock is required for this proposal, abstentions will have the same effect as votes against this proposal. Because this proposal is considered a “routine” matter under applicable stock exchange rules, we do not expect to receive any broker non-votes on this proposal.

Proposal No. 6: The approval of the adjournment of the Annual Meeting, if necessary, to continue to solicit votes in favor of the foregoing proposals requires the affirmative vote of a majority of the shares of our common stock present in person or by proxy at the Annual Meeting and entitled to vote thereon to be approved. Abstentions are considered votes present and entitled to vote on this proposal, and thus, will have the same effect as a vote “against” the proposal. Because this proposal is considered a “routine” matter under applicable stock exchange rules, we do not expect to receive any broker non-votes on this proposal.

What is the quorum?

A quorum is the minimum number of shares required to be present at the Annual Meeting for the Annual Meeting to be properly held under our amended and restated bylaws and Delaware law. The presence, in person or by proxy, of a majority of all issued and outstanding shares of our common stock entitled to vote at the Annual Meeting will constitute a quorum at the Annual Meeting. Abstentions, withhold votes and broker non-votes are counted as shares present and entitled to vote for purposes of determining a quorum.

How do I vote?

If you are a stockholder of record, there are four ways to vote:

by Internet at www.proxyvote.com, 24 hours a day, seven days a week, until 11:59 p.m. Eastern Time on June 11, 2019 (have your Notice or proxy card in hand when you visit the website);

by toll-free telephone at 1-800-690-6903 (have your Notice or proxy card in hand when you call);

by completing and mailing your proxy card (if you received printed proxy materials); or

by written ballot at the Annual Meeting.

Even if you plan to attend the Annual Meeting in person, we recommend that you also vote by proxy so that your vote will be counted if you later decide not to attend.

If you are a street name stockholder, you will receive voting instructions from your broker, bank or other nominee. You must follow the voting instructions provided by your broker, bank or other nominee in order to instruct your broker, bank or other nominee on how to vote your shares. Street name stockholders should generally be able to vote by returning an instruction card, or by telephone or on the Internet. However, the availability of telephone and Internet voting will depend on the voting process of your broker, bank or other nominee. As discussed above, if you are a street name stockholder, you may not vote your shares in person at the Annual Meeting unless you obtain a legal proxy from your broker, bank or other nominee.

Can I change my vote?

Yes. If you are a stockholder of record, you can change your vote or revoke your proxy any time before the Annual Meeting by:

entering a new vote by Internet or by telephone;

completing and mailing a later-dated proxy card;

notifying the Secretary of Avinger, Inc., in writing, at 400 Chesapeake Drive, Redwood City, California 94063; or

completing a written ballot at the Annual Meeting.

If you are a street name stockholder, your broker, bank or other nominee can provide you with instructions on how to change your vote.

What do I need to do to attend the Annual Meeting in person?

Space for the Annual Meeting is limited. Therefore, admission will be on a first-come, first-served basis. Registration will open at 12:40 p.m. Pacific Time and the Annual Meeting will begin at 1:00 p.m. Pacific Time. Each stockholder should be prepared to present:

valid government photo identification, such as a driver's license or passport; and

if you are a street name stockholder, proof of beneficial ownership as of April 15, 2019, the record date, such as your most recent account statement reflecting your stock ownership prior to April 15, 2019, along with a copy of the voting instruction card provided by your broker, bank, trustee or other nominee or similar evidence of ownership.

Use of cameras, recording devices, computers and other electronic devices, such as smart phones and tablets, will not be permitted at the Annual Meeting. Please allow ample time for check-in. Parking is limited.

What is the effect of giving a proxy?

Proxies are solicited by and on behalf of our board of directors. Jeffrey M. Soinski and Mark Weinswig have been designated as proxy holders by our board of directors. When proxies are properly dated, executed and returned, the shares represented by such proxies will be voted at the Annual Meeting in accordance with the instructions of the stockholder. If no specific instructions are given, however, the shares will be voted in accordance with the recommendations of our board of directors as described above. If any matters not described in this proxy statement are properly presented at the Annual Meeting, the proxy holders will use their own judgment to determine how to vote the shares. If the Annual Meeting is adjourned, the proxy holders can vote the shares on the new Annual Meeting date as well, unless you have properly revoked your proxy instructions, as described above.

Why did I receive a Notice of Internet Availability of Proxy Materials instead of a full set of proxy materials?

In accordance with the rules of the Securities and Exchange Commission, or SEC, we have elected to furnish our proxy materials, including this proxy statement and our annual report, primarily via the Internet. The Notice containing instructions on how to access our proxy materials is first being mailed on or about May 2, 2019 to all stockholders entitled to vote at the Annual Meeting. Stockholders may request to receive all future proxy materials in printed form by mail or electronically by e-mail by following the instructions contained in the Notice. We encourage stockholders to take advantage of the availability of our proxy materials on the Internet to help reduce the environmental impact of our annual meetings of stockholders.

How are proxies solicited for the Annual Meeting?

Our board of directors is soliciting proxies for use at the Annual Meeting. All expenses associated with this solicitation will be borne by us. We will reimburse brokers or other nominees for reasonable expenses that they incur in sending our proxy materials to you if a broker, bank or other nominee holds shares of our common stock on your behalf. In addition, our directors and employees may also solicit proxies in person, by telephone, or by other means of communication. Our directors and employees will not be paid any additional compensation for soliciting proxies. In addition, the Company has engaged The Proxy Advisory Group, LLC, or PAG, to assist in the solicitation of proxies and provide related advice and informational support, for which PAG will receive a base services fee of \$10,000 that includes the cost of customary disbursements. The cost of any additional services that PAG may perform pursuant to this engagement are capped not to exceed \$10,000 in total.

How may my brokerage firm or other intermediary vote my shares if I fail to provide timely directions?

Brokerage firms and other intermediaries holding shares of our common stock in street name for their customers are generally required to vote such shares in the manner directed by their customers. In the absence of timely directions, your broker will have discretion to vote your shares on “routine” matters: the proposal to ratify the appointment of Moss Adams LLP as our independent registered public accounting firm, the approval of the amendment to the Company’s Amended and Restated Certificate of Incorporation to effect a reverse stock split or the approval of the adjournment of the Annual Meeting, if necessary, to continue to solicit votes in favor of the foregoing proposals. Your broker will not have discretion to vote on the election of directors, the approval of the amendment of the Avinger, Inc. 2015 Equity Incentive Plan or the approval of the amendment to the Company’s Amended and Restated Certificate of Incorporation to increase the number of authorized shares of common stock, each of which is a “non-routine” matter, absent direction from you.

Where can I find the voting results of the Annual Meeting?

We will announce preliminary voting results at the Annual Meeting. We will also disclose voting results on a Current Report on Form 8-K that we will file with the SEC within four business days after the Annual Meeting. If final voting results are not available to us in time to file a Current Report on Form 8-K within four business days after the Annual Meeting, we will file a Current Report on Form 8-K to publish preliminary results and will provide the final results in an amendment to the Current Report on Form 8-K as soon as they become available.

I share an address with another stockholder, and we received only one paper copy of the proxy materials. How may I obtain an additional copy of the proxy materials?