

NUVASIVE INC
Form DEF 14A
April 05, 2017
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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-12

NuVasive, Inc.

(Name of Registrant as Specified in its Charter)

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

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**NOTICE OF ANNUAL MEETING OF STOCKHOLDERS
OF NUVASIVE, INC.**

To Be Held May 18, 2017

The NuVasive, Inc. 2017 Annual Meeting of Stockholders will be held on May 18, 2017 at 8:00 AM local time at the Company's corporate headquarters located at 7475 Lusk Boulevard, San Diego, California 92121 for the following purposes, each as more fully described in the accompanying Proxy Statement:

1. to elect three Class I Directors to hold office until the Company's 2020 Annual Meeting of Stockholders and until their successors are elected and qualified;
2. to ratify the appointment of Ernst & Young LLP as the Company's independent registered public accounting firm for the fiscal year ending December 31, 2017;
3. to hold a non-binding advisory vote on the compensation of the Company's named executive officers for the fiscal year ended December 31, 2016;
4. to hold a non-binding advisory vote on the frequency of the stockholders' advisory vote on the compensation of the Company's named executive officers in the future; and
5. to transact such other business as may properly come before the meeting or any adjournments or postponements thereof.

Our Board of Directors recommends a vote **FOR** each of the Director nominees, **FOR** Proposals 2 and 3 and **ONE YEAR** for Proposal 4. Only stockholders of record at the close of business on March 23, 2017 will be entitled to notice of, and to vote at, the Annual Meeting. For ten days prior to the Annual Meeting, a complete list of the stockholders of record on March 23, 2017, will be available at our corporate headquarters, located at 7475 Lusk Boulevard, San Diego, CA 92121, for examination during ordinary business hours by any stockholder for any purpose relating to the Annual Meeting.

Your vote is important. Whether or not you plan to attend the Annual Meeting in person, we encourage you to vote your shares. After reading the accompanying Proxy Statement, please make sure to vote your shares: (i) by promptly voting electronically or telephonically as described in the accompanying Proxy Statement; (ii) if you received a paper copy of the proxy card, by completing, dating, signing and returning your proxy card; or (iii) by attending the Annual Meeting in person. Instructions regarding all three methods of voting are provided on the proxy card. If you hold shares through an account with a brokerage firm, bank or other nominee, please follow the instructions you receive from such firm, bank or other nominee to vote your shares.

I look forward to seeing you at the Annual Meeting.

BY ORDER OF THE BOARD OF DIRECTORS

Gregory T. Lucier

Chairman of the Board and Chief Executive Officer

San Diego, California

April 5, 2017

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**SOLICITATION OF PROXIES FOR THE
NUVASIVE, INC.**

2017 ANNUAL MEETING OF STOCKHOLDERS

The accompanying proxy is being solicited by the Board of Directors of NuVasive, Inc. (the Company) and contains information related to the Company's 2017 Annual Meeting of Stockholders. The 2017 Annual Meeting of Stockholders will be held on May 18, 2017 at 8:00 AM local time at the Company's corporate headquarters located at 7475 Lusk Boulevard, San Diego, California 92121, or any adjournments or postponements thereof, for the purposes described in the accompanying Notice of Annual Meeting of Stockholders. The Board of Directors has made proxy materials available on the Internet, or, upon your request, has delivered printed proxy materials to you, in connection with the solicitation of proxies by the Board of Directors for use at the Company's 2017 Annual Meeting of Stockholders. The Proxy Statement for the Company's 2017 Annual Meeting of Stockholders was filed with the U.S. Securities and Exchange Commission on April 5, 2017, which is also the approximate date on which the Proxy Statement and the accompanying proxy were first sent or made available to stockholders.

**IMPORTANT NOTICE REGARDING THE AVAILABILITY OF PROXY MATERIALS FOR THE
NUVASIVE, INC. 2017 ANNUAL MEETING OF STOCKHOLDERS**

The NuVasive, Inc. Proxy Statement and Annual Report for the fiscal year ended December 31, 2016 are available electronically at www.proxydocs.com/NUVA

YOUR VOTE IS IMPORTANT!

ALL STOCKHOLDERS OF RECORD AT THE CLOSE OF BUSINESS ON MARCH 23, 2017 ARE INVITED TO ATTEND AND VOTE THEIR SHARES AT THE NUVASIVE, INC. 2017 ANNUAL MEETING OF STOCKHOLDERS. WHETHER OR NOT YOU PLAN TO ATTEND THE ANNUAL MEETING IN PERSON, WE ENCOURAGE YOU TO READ THE ACCOMPANYING PROXY STATEMENT AND SUBMIT YOUR PROXY OR VOTING INSTRUCTIONS AS SOON AS POSSIBLE TO VOTE YOUR

SHARES. FOR SPECIFIC INSTRUCTIONS ON HOW TO VOTE YOUR SHARES, PLEASE REFER TO THE INSTRUCTIONS ON THE NOTICE OF INTERNET AVAILABILITY OF PROXY MATERIALS YOU RECEIVED IN THE MAIL, THE QUESTION HOW DO I VOTE? IN THE ACCOMPANYING PROXY STATEMENT, OR, IF YOU REQUESTED PRINTED PROXY MATERIALS BY MAIL, YOUR ENCLOSED PROXY CARD. THIS WILL ENSURE THE PRESENCE OF A QUORUM AT THE ANNUAL MEETING. IF YOU ATTEND THE ANNUAL MEETING, YOU MAY VOTE IN PERSON IF YOU WISH TO DO SO, EVEN IF YOU HAVE PREVIOUSLY SUBMITTED YOUR PROXY OR VOTING INSTRUCTIONS.

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PROXY STATEMENT SUMMARY

2017 ANNUAL MEETING OF STOCKHOLDERS

To assist you in reviewing the Proxy Statement for the 2017 Annual Meeting of Stockholders (the Annual Meeting), we call your attention to the following summary information. This summary does not contain all of the information that you should consider, and you should read the entire Proxy Statement carefully before voting.

Annual Meeting of Stockholders

Date and Time	May 18, 2017 at 8:00 AM (local time)
Place	NuVasive, Inc. Corporate Headquarters 7475 Lusk Boulevard, San Diego, CA 92121
Record Date	March 23, 2017
Voting	Stockholders as of the Record Date are entitled to vote their shares at the Annual Meeting. Each share of common stock is entitled to one vote for each Director nominee and one vote for each of the other proposals to be voted on at the Annual Meeting.

Proposals and Voting Recommendations

Proposal 1 - Election of three Class I Directors to hold office until the Company's 2020 Annual Meeting of Stockholders and until their successors are elected and qualified.	The Board Recommends a vote FOR
<i>For more information, see page 6 of the accompanying Proxy Statement.</i>	Each Nominee
Proposal 2 - Ratification of the appointment of Ernst & Young LLP as the Company's independent registered public accounting firm for the fiscal year ending December 31, 2017.	The Board Recommends a vote FOR
<i>For more information, see page 24 of the accompanying Proxy Statement.</i>	Proposal 2
Proposal 3 - Non-binding advisory vote on the compensation of the Company's named executive officers for the fiscal year ended December 31, 2016.	The Board Recommends a vote FOR

For more information, see page 27 of the accompanying Proxy Statement.

Proposal 4 - Non-binding advisory vote on the frequency of the stockholders' advisory vote on the compensation of the Company's named executive officers in the future.

**Proposal 3
The Board**

Recommends a vote

for

ONE YEAR

For more information, see page 29 of the accompanying Proxy Statement

Nominees for Election as Directors

Gregory T. Lucier

Principal Occupation: Chief Executive Officer, NuVasive, Inc.

Chairman of the Board and Chief Executive Officer since May 2015

Leslie V. Norwalk

Board member since December 2013

Principal Occupation: Strategic Counsel to Epstein Becker & Green, P.C., EBG Advisors and National Health Advisors

Independent Director; Board member since May 2014

Member of NuVasive Audit Committee and Nominating and Corporate

Governance Committee

Michael D. O Halleran

Principal Occupation: Senior Executive Vice President, Aon PLC

Independent Director; Board member since August 2016

Member of NuVasive Audit Committee

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Size of Board	Ten
Independent Directors	Eight of our ten current Directors are independent
Chairman and CEO	Combined leadership structure
Lead Independent Director	Yes
Board Self-Evaluation	Annual
Retirement Age Policy	Yes (<i>Directors may not stand for re-election after age 72</i>)
Voting Standard	Majority vote (<i>in uncontested elections</i>)
Corporate Governance Guidelines	Yes

Fiscal 2016 Financial and Business Highlights

Financial Results - We exceeded our global revenue target by posting 2016 total global revenue of \$962.1 million, an increase of approximately 18.6% compared to 2015, and exceeded our profitability targets.

Total Shareholder Return - We realized total shareholder return (TSR) during 2016 of 24.5%, a result only achieved by those in the 73rd percentile of the S&P 500. Over a three-year period ending in 2016, we realized total TSR of 108.4%, a result only achieved by those in the 97th percentile of the S&P 500.

International Growth - We generated 2016 international revenue of \$138.7 million, an increase of approximately 31.7% compared to 2015, driven by growth across geographies primarily in Germany, Italy and the United Kingdom.

Strategic Acquisitions - We expanded our market share and added technology platforms through four acquisitions completed in 2016: (i) Ellipse Technologies (magnetic expandable-rod technology to treat pediatric, adolescent and adult spinal deformity patients); (ii) Biotronic NeuroNetwork (intraoperative neurophysiological monitoring services); (iii) Mega Surgical (our exclusive distributor in Brazil); and (iv) the LessRay software technology suite (low-dose radiation imaging enhancement technology).

Product Innovation - We continued our product and technology innovation, with product launches and key regulatory clearances in 2016 including iGA for Cervical Spine, the launch of iGA in select International markets, MAGEC® NTAP approval, MAGEC® MR clearance, AttraX® Putty synthetic biologic, and CoRoent® Small Interlock Hyperlordotic.

Global Revenue**\$962.1 million****Total Shareholder Return****73rd percentile of****S&P 500****31.7% International****Revenue Growth Deployed****~\$490 million for****Four Strategic****Acquisitions New Products,****Including iGA for****Cervical Spine**

Executive Compensation Best Practices

Clawback Policy	Yes (<i>for incentive compensation, if material restatement of financials</i>)
Tax Gross-Ups	No tax gross-ups for change-in-control payments
Compensation Consultant	Yes (<i>independent consultant engaged by Compensation Committee</i>)
Stock Ownership Guidelines	Yes (<i>applies to Directors and senior management</i>)
Compensation Risk	Compensation risk assessment conducted annually
Hedging Activities	Hedging transactions are prohibited by officers, Directors and employees under the Company's Insider Trading Policy

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NuVasive has a long-standing stockholder outreach program and routinely interacts with stockholders on a number of matters, including executive compensation (see page 35). In 2015, there were several key leadership changes that had an impact on executive compensation, including a transition in our CEO.

At the 2016 Annual Meeting, approximately 52% of the votes cast were in favor of the advisory vote to approve the compensation of our named executive officers for 2015. While this result was disappointing, we believe the lower support was due in large part to one-time events related to the CEO transition in 2015 as evidenced by (i) commentary from well-known proxy advisory firms about the departing package for the former CEO and sign-on compensation package for the new CEO and (ii) by dialog with our top investors about the CEO leadership transition during our stockholder outreach efforts. During 2016, we reached out to our top stockholders and had conversations with corporate governance contacts representing approximately 50% of our shares outstanding. The chart below summarizes the key points we heard, what action the Board has taken and when the changes are effective.

What We Heard	What We Did	When Effective
The primary elements and core design features of our executive compensation program are solid, although some investors prefer a long-term incentive (LTI) program that is more heavily linked to internal performance metrics that drive our strategy as compared to stock price or TSR.	Retained core executive compensation design features in 2016 (see pages 37-39)	2016 compensation program
	Undertook review of LTI award design and for 2017, incorporated financial metrics that drive our strategy by using 3-year revenue and 3-year non-GAAP Operating Margin) as core performance metrics, while still incorporating relative TSR as a modifier (see page 56)	2017 LTI awards
The responsible share usage under our LTI program is recognized as a positive, with an annual share usage rate below 2% since stockholders approved the 2014 Equity Incentive Plan.	Retained current mix of long-term incentive awards, which includes delivering annual LTI awards 50% in RSUs; 25% in PRSUs, and 25% in performance cash (see pages 47-49 and 56)	2016 / 2017 LTI awards
There is an interest in the Board's approach to succession planning	Continued to emphasize pay-for-performance by not increasing the CEO's fixed compensation (base	2016 compensation actions

and how it was executed during the CEO transition in 2015, as well as interest in the one-time LTI awards associated with the CEO new hire compensation package in 2015 and how it would normalize in 2016.

salary) for 2016, but rather increased the CEO's annual incentive bonus target percentage to 130% of base salary for 2016 to motivate the achievement of the Company's 2016 business plan (see pages 44-46)

2017 compensation actions

Determined that the Board would have the ultimate responsibility and decision-making authority over all aspects of CEO compensation (as compared to the Committee in previous years) (see page 40)

Additional detail regarding how annual bonus payouts are determined would provide helpful clarity and better visibility.

Expanded disclosure regarding how individual performance is considered in annual bonus payouts and included chart of individual performance achievements (see pages 45-46)

2016 CD&A narrative and annually thereafter

At the 2017 Annual Meeting, the Company will again hold an annual advisory vote to approve the compensation of our named executive officers (see page 27). The Company will continue to engage with our stockholders throughout the year and consider the results from this year's and future advisory votes on executive compensation, as well as feedback from stockholders.

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NUVASIVE, INC.

7475 Lusk Boulevard, San Diego, CA 92121

Telephone: (858) 909-1800

PROXY STATEMENT FOR THE 2017 ANNUAL MEETING OF STOCKHOLDERS

May 18, 2017 at 8:00 AM (local time)

GENERAL INFORMATION ABOUT THE ANNUAL MEETING AND VOTING

1. Why am I receiving these materials?

We have made this proxy statement (the *Proxy Statement*) and the accompanying proxy materials available to you in connection with the solicitation by the Board of Directors (the *Board*) of NuVasive, Inc. (the *Company* or *NuVasive*) of proxies to be voted at the Company's 2017 Annual Meeting of Stockholders to be held on May 18, 2017 (the *Annual Meeting*), and at any postponements or adjournments of the Annual Meeting.

2. What is the purpose of the Annual Meeting?

Stockholders are being asked to vote on each of the following items of business at the Annual Meeting: (i) the election of three Class I Directors for terms expiring at the 2020 Annual Meeting of Stockholders; (ii) the ratification of the appointment of Ernst & Young LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2017; (iii) non-binding advisory approval of the compensation of the Company's named executive officers (the *Named Executive Officers*) for the fiscal year ended December 31, 2016; (iv) to hold a non-binding advisory vote on the frequency of the stockholders' advisory vote on the compensation of the Named Executive Officers in the future; and (v) any other business that may properly come before the Annual Meeting.

3. Why did I receive a notice in the mail regarding the Internet availability of proxy materials instead of a full set of proxy materials?

In accordance with rules adopted by the Securities and Exchange Commission (the *SEC*), we may furnish proxy materials, including this Proxy Statement and our Annual Report on Form 10-K for fiscal year ended December 31, 2016 (the *2016 Annual Report*), to our stockholders by providing access to such documents on the Internet instead of mailing printed copies. Most stockholders will not receive printed copies of the proxy materials unless they request them. Instead, the Notice of Internet Availability of Proxy Materials (the *Notice*) (which was mailed to most of our stockholders) will instruct you as to how you may access and review all of the proxy materials on the Internet, as well as how you may submit your proxy on the Internet. All stockholders will have the ability to access the proxy materials

on the website referred to in the Notice or your proxy card and to download printable versions of the proxy materials. If you would like to receive a paper or email copy of our proxy materials, you should follow the instructions for requesting such materials in the Notice.

4. How do I access electronic copies of the proxy materials?

The proxy materials for the Annual Meeting are available electronically at www.proxydocs.com/NUVA. If you received a Notice, the Notice will provide you with instructions regarding how to access electronic copies of our proxy materials and how to vote your shares. The Notice will also indicate how you can elect to receive future proxy materials electronically. We encourage stockholders to consider

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choosing to receive future proxy materials electronically, as it will save us the cost of printing and mailing documents to you and will reduce the impact of printing and mailing these materials on the environment.

5. Who is entitled to vote at the Annual Meeting?

If you were a holder of shares of the Company's common stock at the close of business on March 23, 2017 (the *Record Date*), you are entitled to notice of and to vote at the Annual Meeting. At the close of business on the Record Date, there were 50,660,272 shares of our common stock outstanding. Each share of common stock is entitled to one vote. As summarized below, there are some distinctions between shares owned by stockholders of record and shares owned beneficially in street name. In accordance with Delaware law, a list of stockholders entitled to vote at the Annual Meeting will be available at the Annual Meeting and for 10 days prior to the Annual Meeting, Monday through Friday between the hours of 9:00 AM and 4:00 PM local time at our corporate headquarters located at 7475 Lusk Boulevard, San Diego, CA 92121.

6. What does it mean to be a stockholder of record ?

You are a stockholder of record if your shares are registered directly in your name with our transfer agent, Computershare Trust Company, N.A. As a stockholder of record, you may vote in person at the Annual Meeting (subject to the satisfying the admission criteria) or vote by proxy. If you requested to receive printed proxy materials, we have enclosed or sent a proxy card for you to use. You may also vote by Internet or telephone, as described in the Notice and below under the heading *How do I vote my shares?*

7. What does it mean to beneficially own shares in street name ?

You are deemed to beneficially own your shares in street name if your shares are held in an account at a brokerage firm, bank, broker-dealer, trust, or other similar organization (we will refer to those organizations collectively as *broker*). If this is the case, the Notice was forwarded to you by your broker. As the beneficial owner, you have the right to direct your broker on how to vote the shares in your account, and you are invited to attend the Annual Meeting; however, since you are not a stockholder of record, you may not vote your shares in person at the Annual Meeting unless you request and obtain a valid legal proxy from your broker giving you the right to vote the shares at the meeting.

If you hold your shares in street name and do not provide voting instructions to your broker, your shares will not be voted on any proposals on which your broker does not have discretionary authority to vote (a *broker non-vote*). Under the rules that govern brokers, brokers have the discretion to vote on routine matters, but not on non-routine matters. The ratification of the appointment of the Company's independent registered public accounting firm is a matter considered routine under applicable rules. Non-routine matters include the election of Directors, the advisory vote on the compensation of our Named Executive Officers and the advisory vote on the frequency of future advisory votes on the compensation of our Named Executive Officers.

8. How do I vote my shares?

If you are a stockholder of record, you may vote your shares by one of the following three methods:

Vote via the Internet. Go to the web address www.proxypush.com/NUVA and follow the instructions for Internet voting as shown on the proxy card mailed to you. If you vote via the Internet, you should be aware that there may be incidental costs associated with electronic access, such as your usage charges from your Internet access providers and telephone companies, for which you will be responsible.

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Vote by Telephone. Dial 1-866-217-7017 and follow the instructions for telephone voting shown on the proxy card mailed to you.

Vote by Proxy Card Mailed to You. If you do not wish to vote via the Internet or by telephone, please complete, sign, date and mail the proxy card in the envelope provided. If you vote via the Internet or by telephone, please do not mail your proxy card.

The Internet and telephone voting procedures are designed to authenticate your identity and to allow you to vote your shares for the matters before our stockholders as described in the proxy materials and confirm that your voting instructions have been properly recorded.

If your shares are held through a broker (typically referred to as being held in street name), you will receive separate voting instructions from your broker. In these cases, you may provide your voting instructions by Internet, telephone or mail by submitting a voting instruction form. Your broker may vote your shares on the proposal to ratify our independent auditors, but will not be permitted to vote your shares with respect to the other proposals before our stockholders as described in this Proxy Statement unless you provide instructions to your broker as to how to vote your shares for such other proposals.

Votes submitted via the Internet or by telephone for the matters before our stockholders as described in this Proxy Statement must be received by 11:59 PM Eastern Time on May 17, 2017.

9. How does the Board recommend that I vote my shares?

THE BOARD RECOMMENDS THAT YOU VOTE YOUR SHARES FOR THE ELECTION OF EACH OF THE CLASS I DIRECTOR NOMINEES, FOR THE RATIFICATION OF THE APPOINTMENT OF ERNST & YOUNG LLP AS THE COMPANY'S INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM, FOR THE NON-BINDING ADVISORY RESOLUTION ON THE COMPENSATION OF THE COMPANY'S NAMED EXECUTIVE OFFICERS, AND FOR THE APPROVAL (ON A NON-BINDING ADVISORY BASIS) OF ONE YEAR (AN ANNUAL VOTE) WITH RESPECT TO THE FREQUENCY OF FUTURE ADVISORY VOTES ON THE COMPENSATION OF THE COMPANY'S NAMED EXECUTIVE OFFICERS, IN EACH CASE AS FURTHER DESCRIBED IN THIS PROXY STATEMENT.

10. Can I change my vote after I submit my proxy?

Yes. If you are a stockholder of record, you may revoke a proxy at any time before it is voted at the Annual Meeting by (a) delivering a proxy revocation or another duly executed proxy bearing a later date to the Secretary of the Company at 7475 Lusk Boulevard, San Diego, CA 92121, or (b) attending the Annual Meeting and voting in person. Attendance at the Annual Meeting will not revoke a proxy unless you actually vote in person at the Annual Meeting. If you beneficially hold shares in street name, you may change your vote by submitting new voting instructions to your broker following the instructions provided by your broker, or, if you have obtained a legal proxy from your broker or other nominee giving you the right to vote your shares, by attending the Annual Meeting and voting in

person.

11. How are the votes counted?

The Company's Restated Bylaws, as amended (the *Bylaws*) provide that a majority of all the outstanding shares of stock entitled to vote constitutes a quorum for the transaction of business at the Annual Meeting. Votes for and against, abstentions, and broker non-votes will be counted for purposes of determining the presence or absence of a quorum. A broker non-vote occurs when your broker submits a proxy card for your shares of common stock held in street name, but does not vote on