

Ocean Power Technologies, Inc.
Form PRE 14A
January 04, 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 [X]

Filed by a Party other than the Registrant []

Check the appropriate box:

[X] 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

Ocean Power Technologies, Inc.

(Name of Registrant as Specified In Its Charter)

(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:

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(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

Fee paid previously with preliminary materials.

Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

OCEAN POWER TECHNOLOGIES, INC.
28 Engelhard Drive, Suite B

Monroe Township, NJ 08831

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS

To Be Held March 8, 2019

You are cordially invited to attend a special meeting of the stockholders of Ocean Power Technologies, Inc., which will be held at 9 a.m. Eastern time on March 8, 2019, at the Company's office at 28 Engelhard Drive, Suite B, Monroe Township, New Jersey, 08831, for the purpose of voting on proposals to (i) authorize our Board of Directors (the "Board"), in its sole and absolute discretion, without further action of the stockholders, to amend our Certificate of Incorporation to implement a reverse stock split of our common stock at a ratio of not less than 1-for-2 and not greater than 1-for-20, within one year from the date of the meeting, with the exact ratio to be determined by the Board, and (ii) approve an adjournment of the Special Meeting from time to time, if necessary or appropriate (as determined in good faith by the Board or a committee thereof), to solicit additional proxies if there are not sufficient votes in favor of the reverse split proposal.

If you were a stockholder at the close of business on January 15, 2019, you are entitled to notice of and to vote at the meeting. A stockholders list will be available at our offices, 28 Engelhard Drive, Suite B, Monroe Township, NJ 08831, for a period of ten days prior to the meeting or any adjournment or postponement of the meeting. The stockholders list will also be available for inspection at the meeting.

Your vote is important. Whether or not you plan to attend the meeting, we urge you to read the proxy statement carefully, and to use the instructions on the enclosed proxy card to vote by telephone or Internet or by signing, dating, and returning the enclosed proxy card in the postage-paid envelope provided. The prompt return of proxies will ensure a quorum and save us the expense of further solicitation.

The Board unanimously recommends that you vote "FOR" the proposal.

By Order of the Board of Directors,

/s/ John W. Lawrence

John W. Lawrence

General Counsel and Secretary

January 15, 2019

OCEAN POWER TECHNOLOGIES, INC.
28 Engelhard Drive, Suite B

Monroe Township, NJ 08831

PROXY STATEMENT

The Board is soliciting proxies for a special meeting of our stockholders (the “Special Meeting”) to be held at 9:00 am Eastern time, on March 8, 2019, and at any adjournment or postponement thereof, for the purposes set forth in the accompanying notice. This proxy statement and the accompanying proxy card are first being mailed to stockholders on or about January 22, 2019. Stockholders are urged to read carefully the material in this proxy statement.

QUESTIONS AND ANSWERS

The Proposal

Q: Why am I receiving this proxy statement?

A: We sent you this proxy statement and the enclosed proxy card because the Board is soliciting proxies for a special meeting of stockholders. You are receiving a proxy statement because you owned shares of our common stock, par value \$0.001 per share, on January 15, 2019, the record date for the Special Meeting (the “Record Date”), and that entitles you to vote at the Special Meeting. By use of a proxy, you can vote whether or not you attend the Special Meeting. This proxy statement describes the matter on which we would like you to vote and provides further information so that you can make an informed decision.

Q: What will I be voting on?

A: The two proposals are (i) to authorize the Board, in its sole and absolute discretion, without further action of the stockholders, to amend our Certificate of Incorporation to implement a reverse stock split of our common stock at a ratio of not less than 1-for-2 and not greater than 1-for-20, within one year from the date of the meeting, with the exact ratio to be determined by the Board, and (ii) to approve an adjournment of the Special Meeting from time to time, if necessary or appropriate (as determined in good faith by the Board of Directors or a committee thereof), to solicit additional proxies if there are not sufficient votes in favor of the reverse split proposal.

Q: Why are we seeking stockholder approval for the proposals?

A:

We are seeking stockholder approval as required by the Delaware General Corporation Law for any amendment to our certificate of incorporation.

Meeting Procedures

Q: Who can attend and vote at the Special Meeting?

A: You can attend and vote at the Special Meeting if you were a stockholder at the close of business on the record date, January 15, 2019.

Q: How do I cast my vote?

If your shares are registered directly in your name with our transfer agent, you are considered the registered stockholder for those shares. As the registered stockholder, you have the right to vote those shares and we will send you the proxy materials and a proxy card. You may vote by marking, signing, dating and returning the enclosed proxy card in the enclosed prepaid envelope. Alternatively, you may vote by telephone, via the Internet, or in person by attending the Special Meeting. Instructions on how to vote by phone or via the Internet are set forth on the enclosed proxy card. In the event that you return a signed proxy card on which no directions are specified, your shares will be voted as recommended by the Board.

If your shares are registered in the name of a broker, bank or other nominee (typically referred to as being held in "street name"), you will receive instructions from your broker, bank or other nominee that must be followed in order for your broker, bank or other nominee to vote your shares per your instructions. Many brokerage firms and banks have a process for their beneficial holders to provide instructions via the Internet or over the telephone. If Internet or telephone voting is unavailable from your broker, bank or other nominee, please complete and return the enclosed voting instruction card in the addressed, postage paid envelope provided.

Under the rules that govern brokers who are voting with respect to shares that are held in street name, brokers have the discretion to vote such shares on routine matters, but not on non-routine matters. Approval of the reverse split proposal and the related adjournment proposal would be considered a routine matter.

Because this is a routine matter, if you hold your shares through a broker, bank, trustee or other nominee and you do not instruct them how to vote on this proposal, your broker may have authority to vote your shares. As a result, a failure to instruct your broker, bank or other nominee on how to vote your shares will not necessarily count as a vote against this proposal, and your broker may have discretion to vote for or against the proposal without your instruction. See “Vote Required” following the proposals for further information.

If you hold shares through a broker, bank or other nominee and wish to be able to vote in person at the Special Meeting, you must obtain a legal proxy from your broker, bank or other nominee and present it to the inspector of election with your ballot at the Special Meeting.

Q: What voting methods are available?

A: We send proxy cards to all registered stockholders to enable them to vote their shares. Instructions on how to vote by phone or via the Internet are set forth on the enclosed proxy card. Stockholders who submit a proxy card, or vote by phone or via the Internet, need not vote at the Special Meeting. However, we will pass out written ballots to any registered stockholder or holder of a legal proxy who wishes to vote in person at the Special Meeting.

Q: Are the proxy materials available on the Internet?

A: Pursuant to the rules promulgated by the Securities and Exchange Commission (the “SEC”), we are providing access to our proxy materials both by sending you this full set of proxy materials, including a proxy card, and by notifying you of the availability of our proxy materials on the Internet. This proxy statement is available on the home page of our web site at www.oceanpowertechnologies.com. Additionally, and in accordance with new SEC rules, we maintain the proxy materials on our website in a manner that will not infringe on your anonymity if you access them.

Q: How does the Board recommend I vote on the proposals?

A: The Board recommends you vote “FOR” approval of each of the proposals.

Q: Can I revoke my proxy?

A: Yes. If you are a registered stockholder, you can revoke your proxy at any time before it is exercised by:

submitting a properly signed proxy card with a more recent date, which must be received by 11:59 p.m., Eastern Time, on March 7, 2019;

voting again via the Internet, if you have previously voted via the Internet;

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giving written notice of your revocation before the Special Meeting to John W. Lawrence, our General Counsel and Secretary at our offices, 28 Engelhard Drive, Suite B, Monroe Township, NJ 08831, which we must receive by 11:59 p.m., Eastern Time, on March 7, 2019; or

attending the Special Meeting and voting your shares in person.

If you are a beneficial owner, please refer to the voting instructions provided by your individual broker, bank, trustee or other nominee for their procedures for revoking or changing your vote.

Q: Who will count the votes?

A: A representative of the company will act as the inspector of the election and will count the votes.

Q: Why is my proxy being solicited and who pays the cost for such solicitation?

Because many stockholders are unable to attend the Special Meeting, the Board solicits proxies to ensure that each stockholder has an opportunity to vote on all matters scheduled to come before the Special Meeting. In addition to A: the solicitation by the Board, we have retained Regan & Associates, Inc., a proxy soliciting firm, to assist with the solicitation of proxies for a fee not to exceed \$45,000, plus reimbursement for out-of-pocket expenses and the possible payment of certain other supplemental fees. We will bear the costs of the proxy solicitation.

Q: What is a “quorum?”

A: A quorum is the presence at the Special Meeting, in person or by proxy, of the holders of a majority of the outstanding shares of our common stock as of the record date. There must be a quorum for the Special Meeting to be held. If you submit a valid proxy card or attend the Special Meeting, your shares will be counted to determine whether there is a quorum. Abstentions and broker non-votes will be counted toward the quorum.

Q: What happens if there is not a quorum at the Special Meeting?

A: Pursuant to our bylaws, the Special Meeting may be adjourned by the chairman of the Special Meeting to reconvene at the same or some other place. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjournment shall be given to each stockholder of record entitled to vote at the Special Meeting.

Q: What vote is required to approve the proposals?

A: The approval of the reverse split proposal requires the affirmative vote of the holders of a majority of the outstanding shares entitled to vote at the Special Meeting, in person or by proxy. The approval of the adjournment proposal requires the affirmative vote of the holders of a majority of shares of common stock represented at the Special Meeting, in person or by proxy, and entitled to vote.

Q: What shares are included on my proxy card?

A: Your proxy card represents all shares registered to your account with the same social security number and address.

Q: What does it mean if I get more than one proxy card?

A: Your shares are probably registered in more than one account. You should vote each proxy card you receive. We encourage you to consolidate all your accounts by registering them in the same name, social security number and address. This can be accomplished by contacting your stock broker.

Q: How many votes can I cast?

A: On all matters, you are entitled to one vote per share of common stock.

Q: Where can I find the voting results of the Special Meeting?

A: The preliminary voting results will be announced at the Special Meeting. The final results will be published in a current report on Form 8-K to be filed promptly after the Special Meeting.

Q: Who can help answer my questions?

A: If you have any questions or if you need additional copies of this proxy statement or the enclosed proxy card, you should contact Regan & Associates, Inc., our proxy solicitor, at (212) 587-3005.

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Cautionary Note regarding Forward-Looking Statements

This proxy statement includes “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended (the “Securities Act”), and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). All statements other than statements of historical fact are forward-looking statements.

Forward-looking statements are subject to certain risks, trends and uncertainties that could cause actual results to differ materially from those projected. Among those risks, trends and uncertainties are:

our ability to commercialize our PowerBuoys™, and achieve and sustain profitability;

our continued development of our proprietary technologies, and expected continued use of cash from operating activities unless or until we achieve positive cash flow from the commercialization of our products and services;

our ability to obtain additional funding, as and if needed which will be subject to a number of factors, including market conditions, and our operating performance;

our estimates regarding expenses, future revenues and capital requirements;

the adequacy of our cash balances and our need for additional financings;

our ability to develop and manufacture a commercially viable PowerBuoy™ product;

that we will be successful in our efforts to commercialize our PowerBuoy™ or the timetable upon which commercialization can be achieved, if at all;

our ability to successfully develop and market and develop new products, such as a hybrid PowerBuoy™ or subsea battery solutions;

our ability to identify and penetrate markets for our PowerBuoys™ and our wave energy technology;

the reliability of our technology and our PowerBuoys™;

our ability to improve the power output, survivability and reliability of our PowerBuoys™;

our ability to implement our commercialization strategy as planned, or at all;

our ability to maintain the listing of our common stock on the NASDAQ Capital Market;

the impact of pending and threatened litigation on our business, financial condition and liquidity;

changes in current legislation, regulations and economic conditions that affect the demand for renewable energy;

our ability to compete effectively in our target markets;

our limited operating history and history of operating losses;

our sales and marketing capabilities and strategy in the United States and internationally; and