

Net Element, Inc.  
Form DEF 14A  
October 31, 2014

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14A INFORMATION

**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

**Net Element, Inc.**

---

(Name of Registrant as Specified In Its Charter)

---

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

Edgar Filing: Net Element, Inc. - Form DEF 14A

Payment of Filing Fee (Check the appropriate box):

No fee required.

Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

1) Title of each class of securities to which transaction applies:

2) Aggregate number of securities to which transaction applies:

3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

4) Proposed maximum aggregate value of transaction:

5) Total fee paid:

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:

**NET ELEMENT, INC.**

**3363 NE 163rd Street, Suite 705**

**North Miami Beach, Florida 33160**

---

**Notice of Annual Meeting of Shareholders**

**to be held December 9, 2014**

---

To Our Shareholders:

The 2014 annual meeting of shareholders of Net Element, Inc. (the “Company”) will be held on December 9, 2014, 11:00 am, local time, at the Company’s offices located at 3363 NE 163rd Street, Suite 705, North Miami Beach, Florida 33160, for the following purposes:

To elect six directors of the Company, four of whom shall be independent directors as defined by applicable rules,  
1. to serve for a one-year term expiring in 2015.

To ratify Daszkal Bolton LLP as the Company’s independent registered public accounting firm for the fiscal year  
2. ending December 31, 2014.

To approve an amendment to the Company’s Amended and Restated Certificate of Incorporation to increase  
3. authorized common stock to 200 million shares.

To approve an amendment to the Company’s 2013 Equity Incentive Plan to increase the number of shares of the  
4. Company’s common stock available for issuance thereunder from 5,630,000 shares to 9,121,422 shares.

To transact such other business as may properly come before the annual meeting or any postponement or  
5. adjournment thereof.

The Board of Directors has fixed October 20, 2014 as the record date for the determination of shareholders entitled to vote at the annual meeting. Only shareholders of record at the close of business on that date will be entitled to notice

of, and to vote at, the annual meeting or any postponement or adjournment thereof.

If you elected to receive our annual report and proxy statement electronically over the Internet you will not receive a paper proxy card. The annual report and proxy statement are available at <http://www.cstproxy.com/netelement/2014>.

You are cordially invited to attend the meeting in person. Whether or not you expect to attend the meeting in person, you are urged to vote by electronic access, phone or mail.

By Order of the Board of Directors.

Oleg Firer

Chief Executive Officer

North Miami Beach, Florida

October 31, 2014

**NET ELEMENT, INC.**

**3363 NE 163rd Street, Suite 705**

**North Miami Beach, Florida 33160**

**PROXY STATEMENT**

**INTRODUCTION**

**General**

Net Element, Inc. (the “Company,” “we,” “us,” or “our”) is a Delaware corporation with its principal executive offices located at 3363 NE 163rd Street, Suite 705, North Miami Beach, Florida 33160. The Company’s telephone number is (305) 507-8808. This proxy statement, together with the accompanying proxy card, is first being mailed to our shareholders on or about November 7, 2014, and is being furnished in connection with the solicitation of proxies by our Board of Directors for use in voting at our 2014 annual meeting of shareholders, including any adjournment or postponement of the annual meeting. The 2014 annual meeting of shareholders will be held on December 9, 2014, at 11:00 am, local time, at the Company’s offices located at 3363 NE 163rd Street, Suite 705, North Miami Beach, Florida 33160.

We are paying the cost of this solicitation. In addition to solicitation by mail, proxies may be solicited in person or by telephone, e-mail, facsimile or other means by our officers or regular employees, without paying them any additional compensation or remuneration. Arrangements have also been made with brokers, dealers, banks, voting trustees and other custodians, nominees and fiduciaries to forward proxy materials and annual reports to the beneficial owners of the shares held of record by such persons, and we will, upon request, reimburse them for their reasonable expenses in so doing.

A copy of our annual report for the fiscal year ended December 31, 2013 (which includes our audited financial statements for the two fiscal years ended December 31, 2013) is being mailed, or a link to an Internet Web page containing such materials is being sent via email, to our shareholders together with this proxy statement. Such annual report is not, however, incorporated into this proxy statement and it is not to be deemed a part of the proxy soliciting material.

## **Purpose of the Annual Meeting**

The following matters are being submitted for a vote at the annual meeting

To elect six directors of the Company, four of whom shall be independent directors as defined by applicable rules,  
1. to serve for a one-year term expiring in 2015.

To ratify Daszkal Bolton LLP as the Company's independent registered public accounting firm for the fiscal year  
2. ending December 31, 2014.

To approve an amendment to the Company's Amended and Restated Certificate of Incorporation to increase  
3. authorized common stock to 200 million shares.

To approve an amendment to the Company's 2013 Equity Incentive Plan to increase the number of shares of the  
4. Company's common stock available for issuance thereunder from 5,630,000 shares to 9,121,422 shares.

To transact such other business as may properly come before the annual meeting or any postponement or  
5. adjournment thereof.

## Voting Procedures

Proxies in the form enclosed, if properly executed and received in time for voting and not revoked, will be voted as directed in accordance with the instructions on the form. In voting by proxy with regard to the election of six directors to serve until the 2015 annual meeting of shareholders, shareholders may vote in favor of all nominees or withhold their votes as to all or any specific nominees. In voting by proxy in regard to (i) the ratification of the selection of Daszkal Bolton LLP as the Company's independent registered public accounting firm, (ii) the approval of an amendment to the Company's Amended and Restated Certificate of Incorporation to increase authorized common stock to 200 million shares, and (iii) the approval of an amendment to the Company's 2013 Equity Incentive Plan to increase the number of shares of the Company's common stock available for issuance thereunder from 5,630,000 shares to 9,121,422 shares, shareholders may vote for or against or abstain from voting. Any properly executed and timely received proxy not so directing or instructing to the contrary will be voted (i) **FOR** each of the Company's director nominees, (ii) **FOR** ratification of the selection of Daszkal Bolton LLP, (iii) **FOR** approval of an amendment to the Company's Amended and Restated Certificate of Incorporation to increase authorized common stock to 200 million shares, and (iv) **FOR** approval of an amendment to the Company's 2013 Equity Incentive Plan to increase the number of shares of the Company's common stock available for issuance thereunder from 5,630,000 shares to 9,121,422 shares. Please see Proposals 1, 2, 3 and 4 set forth later in this proxy statement. Sending in a signed proxy will not affect a shareholder's right to attend the meeting and vote in person, since the proxy is revocable. Any shareholder giving a proxy may revoke it at any time before it is voted at the annual meeting by, among other methods, giving notice of such revocation to the Secretary of the Company, attending the annual meeting and voting in person, or by duly executing and returning a proxy bearing a later date.

We know of no other matters to be presented for action at the annual meeting other than as mentioned. However, if any other matters properly come before the annual meeting in accordance with the bylaws of the Company, the holders of the proxies intend to vote in such manner as they decide in their sole discretion.

## Voting Securities

At the close of business on October 20, 2014, the record date for the determination of shareholders entitled to receive notice of, and to vote at, the annual meeting, the Company's outstanding voting securities consisted of shares of common stock, par value \$0.0001 per share ("Common Stock"). Holders of Common Stock are entitled to one vote per share.

## CORPORATE GOVERNANCE

## **Director Independence**

Our Board of Directors currently includes four nonemployee, independent members – David P. Kelley II, William Healy, Drew Freeman and James Caan. Each of Messrs. Kelley, Healy, Freeman and Caan is an “independent director” as defined under NASDAQ Listing Rule 5605(a)(2). A majority of our Board members are independent directors, as four out of the six members of the Board qualify as independent under the NASDAQ listing standards and the rules of the Securities and Exchange Commission (the “Commission”). No director is considered independent unless the Board affirmatively determines that the director has no material relationship with us (directly, or as a partner, shareholder or officer of an organization that has a relationship with us) that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. Also, all members of the Board’s audit committee, compensation committee and nominating and governance committee are independent directors.

## **Code of Ethics**

We have adopted a Code of Ethics and Business Conduct that applies to all of our directors, officers and employees, including our principal executive officer and our principal financial and accounting officer. A copy of our Code of Ethics and Business Conduct has been posted to the “About Us—Corporate Governance” section of our Internet website at <http://www.netelement.com/>. We will provide a copy of our Code of Ethics and Business Conduct to any person without charge, upon written request to our Secretary, 3363 NE 163rd Street, Suite 705, North Miami Beach, Florida 33160, fax number (305) 508-5497, e-mail address [investors@netelement.com](mailto:investors@netelement.com).



**SECURITY OWNERSHIP OF CERTAIN****BENEFICIAL OWNERS AND MANAGEMENT**

The table below contains information regarding the beneficial ownership of our common stock as of October 14, 2014 by (i) each person who is known to us to beneficially own more than 5% of our common stock, (ii) each of our directors, (iii) each of our named executive officers and (iv) all of our directors and named executive officers as a group. Except as otherwise noted below, each person or entity named in the following table has the sole voting and investment power with respect to all shares of our common stock that he, she or it beneficially owns. Unless otherwise indicated, the address of each beneficial owner listed below is c/o Net Element, Inc., 3363 NE 163rd Street, Suite 705, North Miami Beach FL 33160.

Name and address of beneficial owner	Amount and nature of beneficial ownership (number of shares of common stock beneficially owned) (1)	Percent of class (1)
Mike Zoi		
4100 NE 2nd Ave, Suite 302,  Miami, FL 33137 MZ Capital, LLC (Delaware)	6,538,688	(2) 14.34 %
4100 NE 2nd Ave, Suite 302,  Miami, FL 33137 TGR Capital, LLC	1,102,029	(2) 2.42 %
4100 NE 2nd Ave, Suite 302,  Miami, FL 33137 MTZ Fund, LLC	3,659,171	(2) 8.02 %
4100 NE 2nd Ave, Suite 302,  Miami, FL 33137 Kenges Rakishev c/o SAT & Company 241 Mukanova Street	1,777,344	(2) 3.90 %
Almaty Kazakhstan 050008	7,677,835	(3) 16.83 %
	7,320,751	(3) 16.05 %

Novatus Holding PTE. Ltd.  
 22B Duxton Hill  
 Singapore 089605, Republic of Singapore  
 Oleg Firer

c/o Net Element, Inc.	2,849,272	6.25	%
3363 NE 163rd Street, Suite 705,			
North Miami Beach, Florida 33160			
Steven Wolberg			

c/o Net Element, Inc.	627,171	1.38	%
3363 NE 163rd Street, Suite 705,			

North Miami Beach, Florida 33160			
James Caan			
2791 Hutton Drive	150,131	0.33	%
Beverly Hills, CA 90210			

Jonathan New

c/o Net Element, Inc.

21,968 (4) 0.05 %

3363 NE 163rd Street, Suite 705,

North Miami Beach, Florida 33160

David P. Kelley II

BBVA Building, P1

37,750 (5) 0.08 %

254 Munoz Rivera Avenue

San Juan, PR 00918

William Healy

16W281 83rd Street, Suite B

75,200 0.16 %

Burr Ridge, IL 60527

Drew Freeman

2542 Nassau Lane

0 0 %

Fort Lauderdale, FL 33312

Beno Distribution, Ltd.

P.O. Box 146, Road Town,

4,538,737 (6) 9.95 %

Tortola, British Virgin Islands VG 1110

Cayman Invest S.A.

A Little Denmark Complex

5,569,158 (7) 12.21 %

147 Main Street P.O. Box 4473

Road Town, Tortola, D8 VG 1110

Crede CG III, Ltd.

11601 Wilshire Blvd, Suite 950

3,904,761 (8) 8.56 %

Los Angeles, CA 90025

K 1 Holding Limited

2,518,688 (9) 5.52 %

P.O. Box 146, Road Town,

Tortola, British Virgin Islands VG 1110

All directors and executive officers as a group (8 persons)	11,439,327	25.00%
--	------------	--------

\* Less than 1%.

Applicable percentage ownership is based on 45,607,111 shares of common stock outstanding as of October 14, 2014, together with securities exercisable or convertible into shares of common stock within 60 days of October 14, 2014 for each stockholder. Beneficial ownership is determined in accordance with the rules of the Commission and generally includes voting or investment power with respect to securities. The shares issuable pursuant to the (1) exercise or conversion of such securities are deemed outstanding for the purpose of computing the percentage of ownership of the security holder, but are not treated as outstanding for the purpose of computing the percentage of ownership of any other person.

All information regarding shares that may be beneficially owned by Mr. Zoi is based on information disclosed in Forms 3 and 4 filed by Mr. Zoi. Represents: (i) 144 shares of common stock held directly by Mr. Zoi; (ii) 1,102,029 shares of common stock held by MZ Capital, LLC (Delaware); (iii) 3,659,171 shares of common stock (2) held by TGR Capital, LLC; and (iv) 1,777,344 shares of common stock held by MTZ Fund, LLC. Mike Zoi shares with each of Enerfund, LLC, TGR Capital, LLC, MZ Capital LLC (Delaware) and MTZ Fund, LLC the power to vote or direct the vote, and to dispose or direct the disposition of, the respective shares of common stock beneficially owned by those entities.

All information regarding shares that may be beneficially owned by Kenges Rakishev is based on information disclosed in a Schedule 13D/A filed jointly by Mr. Rakishev, Mark Global Corporation and Novatus Holding PTE. Ltd. with the Commission on June 11, 2013 and on the information available to us. Mr. Rakishev may be deemed (3) to have beneficial ownership of 7,677,835 shares of Common Stock consisting of (i) 357,084 shares of Common Stock held directly by Mr. Rakishev and (ii) 7,320,751 shares of common stock held directly by Novatus Holding PTE. Ltd. Mr. Rakishev has sole voting power and sole dispositive power over 357,084 shares of common stock and shared voting power and shared dispositive power over 7,320,751 shares of common stock.

(4) Includes 5,749 shares of Common Stock held by Mr. New's spouse and 5,749 shares of common stock held by Mr. New's son.

(5) Includes (a) 23,750 shares of common stock for serving as a director of the Company; and (b) 14,000 shares of common stock issuable upon exercise of warrants with an exercise price of \$7.50 per share and an expiration date of October 2, 2017.

(6) Mr. Nurlan Abduov may be deemed to share beneficial ownership of the security held by Beno Distribution, Ltd. by virtue of his status as the sole shareholder of Beno Distribution, Ltd. All information regarding shares that may be beneficially owned by Mr. Abduov is based on information disclosed in Schedule 13D filed jointly by Mr. Abduov, Beno Distribution, Ltd. and K 1 Holding Limited. Mr. Abduov disclaimed beneficial ownership of such shares, except to the extent of his pecuniary interest therein.

(7) Mr. Anvar Mametov may be deemed to share beneficial ownership of the security held by Cayman Invest S.A. by virtue of his status as the sole director and shareholder of Cayman Invest S.A. All information regarding shares that may be beneficially owned by Mr. Mametov is based on information disclosed in Schedule 13D/A filed by Mr. Mametov. Mr. Mametov disclaimed beneficial ownership of such shares, except to the extent of his pecuniary interest therein.

(8) Directly owned by Crede CG III, Ltd. As of September 15, 2014, each of Crede CG III, Ltd., Crede Capital Group, LLC, Acuitas Financial Group, LLC, and Terren S. Peizer (collectively, the "Reporting Persons") may be deemed to have beneficial ownership of 3,904,761 shares of common stock. All information regarding shares that may be beneficially owned by the Reporting Persons is based on information disclosed in a Schedule 13G filed jointly by the Reporting Persons with the Commission on September 15, 2014.

(9) Mr. Nurlan Abduov may be deemed to share beneficial ownership of the security held by K 1 Holding Limited by virtue of his status as the sole shareholder of K 1 Holding Limited. All information regarding shares that may be beneficially owned by Mr. Abduov is based on information disclosed in Schedule 13D filed jointly by Mr. Abduov, Beno Distribution, Ltd. and K 1 Holding Limited. Mr. Abduov disclaimed beneficial ownership of such shares, except to the extent of his pecuniary interest therein.

## **DIRECTORS AND EXECUTIVE OFFICERS**

The directors and executive officers of the Company and their respective ages, and positions with the Company and certain business experience as of October 14, 2014 are set forth below. There are no family relationships among any of the directors or executive officers.

Edgar Filing: Net Element, Inc. - Form DEF 14A

There are no material legal proceedings to which any director or executive officer of the Company, or any associate of any director or executive officer of the Company, is a party adverse to the Company or any of its subsidiaries or has a material interest adverse to the Company or any of its subsidiaries.

<b>Name</b>	<b>Age</b>	<b>Position</b>
Oleg Firer	37	Chief Executive Officer & Director
Steven Wolberg	54	Chief Legal Officer & Secretary
Jonathan New	54	Chief Financial Officer
Kenges Rakishev	35	Chairman
William Healy	49	Director
David P. Kelley II	57	Director
James Caan	75	Director
Drew Freeman	56	Director

Each of our directors will hold office until our next annual meeting of shareholders at which directors are elected or until his successor is duly elected and qualified. Executive officers serve at the discretion of the Board of Directors.

**Oleg Firer, Chief Executive Officer and Director.** Mr. Firer has served as Chief Executive Officer and a director of the Company since April 16, 2013. Previously, Mr. Firer served as Executive Chairman of Unified Payments, LLC from January 2011 until its acquisition by the Company's subsidiary, TOT Group, Inc., on April 16, 2013. From July 2004 until December 2012, Mr. Firer served as President, Chief Executive Officer and Secretary (and from May 2006 until December 2012 as Treasurer and from May 2008 until December 2012 as Chief Financial Officer) of Acies Corporation, a provider of payment processing solutions to small and medium size merchants across the United States. Mr. Firer also served as a director of Acies Corporation from May 2005 until December 2012. Mr. Firer served as the President of GM Merchant Solution, Inc. (from August 2002) and Managing Partner of GMS Worldwide, LLC (from August 2003) until their assets were acquired by Acies Corporation in June 2004. From November 2002 to December 2003, Mr. Firer served as the Chief Operating Officer of Digital Wireless Universe, Inc. From December 2001 to November 2002, Mr. Firer served as the Managing Partner of CELLCELLCELL, LLC. From March 1998 to December 2001, Mr. Firer served as Vice President of SpeedUS Corp. Mr. Firer studied Computer Science at New York Technical College from 1993 to 1995. The Company believes that Mr. Firer's leadership roles in various payment processing companies makes him qualified to serve as a director of the Company.

**Steven Wolberg, Chief Legal Officer and Secretary.** Mr. Wolberg has been Chief Legal Officer and Secretary of the Company since April 16, 2013. Previously, Mr. Wolberg served in various capacities with Acies Corporation from approximately January 2009 until December 2012, including as a consultant from approximately January 2009 until October 2009, as a director from October 30, 2009 until December 2012 and as Chief Strategy Officer from March 1, 2010 until December 2012. Mr. Wolberg currently operates a solo law practice in Newton, Massachusetts, Attorney Steven Wolberg, which he has operated since January 1997. Mr. Wolberg served as Chief Counsel and Vice President of Corporate Development for Mascot Networks in Cambridge, Massachusetts from January 2000 to September 2001. Since September 1996, Mr. Wolberg has served as president of Oakland Properties, Inc., a real estate development company. From February 1993 to December 1994, Mr. Wolberg served as an attorney in the real estate and corporate divisions of Brown and Rudnick in Boston, Massachusetts. From March 1988 to November 1991, Mr. Wolberg was a partner with the law firm of Jordaan and Wolberg in Johannesburg, South Africa. From January 1986 to February 1988, Mr. Wolberg was employed as an attorney with Goodman and North in Johannesburg, South Africa. Mr. Wolberg also currently owns and serves as the Managing Member of Prime Portfolios, LLC, which holds a private investment portfolio of payment processing companies. Mr. Wolberg received his Bachelor of Arts from the University of Witwatersrand in Johannesburg, South Africa, his Bachelors of Laws from the University of Witwatersrand, in Johannesburg, South Africa, and his Juris Doctorate from the New England School of Law in Boston, Massachusetts. Mr. Wolberg is a member of the Massachusetts Bar Association.

**Jonathan New, Chief Financial Officer.** Mr. New has been Chief Financial Officer of the Company since October 2, 2012. Mr. New was Chief Financial Officer of the Company's predecessor, Net Element, from March 10, 2008 until October 2, 2012. From 2001 to 2003, Mr. New was Chief Operating Officer of Ener1, Inc. From 2004 until it was sold in 2006, Mr. New owned and operated Wholesale Salon Furniture Corp.com, which imported and distributed salon

equipment. Thereafter, until joining Net Element, Mr. New provided services to public companies on a variety of corporate accounting, reporting and audit related issues. Prior to joining Ener1, Inc. in 2001, Mr. New held controller and chief financial officer positions with companies including Häagen-Dazs, Virtacon (a web development company), RAI Credit Corporation and Prudential of Florida. Mr. New obtained his BS in Accounting from Florida State University and began his career with Accenture. He is a member of the Florida Institute of Certified Public Accountants and the American Institute of Certified Public Accountants.

**Kenges Rakishev, Director.** Mr. Rakishev has been a director of the Company and Chairman of the Company's Board of Directors since October 2, 2012. Mr. Rakishev served as a director of the Company's predecessor, Net Element, from April 23, 2012 until October 2, 2012. Mr. Rakishev has been Chairman of SAT & Company JSC since November 2008. Since August 2011, he has been a non-executive director and Chairman of SAT & Co Netherlands N.V. and, since September 2011, Mr. Rakishev has been a director of SatFerro Limited. Since December 2010, Mr. Rakishev has been a Chairman of several companies including: Jinsheng SAT (Tianjin) Commercial and Trading Co., Ltd.; Ulanhot Jinyuanda Heavy Chemical Industry Co., Ltd; Baicheng Jinsheng Nickel Industry Co., Ltd.; and Taonan City Jinsheng Metallurgical Products Co. From October 2004 through the present Mr. Rakishev has served as a Vice-President of the Union of Chambers of Commerce of the Republic of Kazakhstan. Since 2010, Mr. Rakishev has been the Vice-President of The Boxing Association of Republic of Kazakhstan and, since 2011, he has been the Vice-President of Asian Boxing Confederation. Mr. Rakishev holds a B.A. (Law) from the Kazakh State Law Academy and a B.A (International Economics) from the Kazakh Economic University. Mr. Rakishev also has a AMP Diploma from Oxford University. We believe that Mr. Rakishev's international business leadership and relationships, combined with his extensive knowledge and unique perspectives of global business opportunities, qualifies him to serve as a director of the Company.



**William Healy, Director.** Mr. Healy is an accomplished financial services industry veteran with more than 24 years of merchant financing and electronic payments industry experience. Mr. Healy is currently the President of Funds4Growth, a leading investment firm focused on financing of payment service providers in the United States. Since launching Funds4Growth, Mr. Healy has successfully structured and financed in excess of \$150 million in merchant base loans. Prior to his tenure at Funds4Growth, Mr. Healy founded MBF Leasing, LLC in November of 2003, where he was responsible for strategic planning along with the financial and operational management of MBF Leasing. Prior to that, Mr. Healy spent 13 years with the CIT Group, Inc., where he was the President of CIT's Lease Finance Group out of Chicago, Illinois, overseeing more than 150 employees involved in over 225,000 leasing transactions, and in excess of \$125 million in merchant base financings. Prior to joining CIT, Mr. Healy held several senior level positions with NewCourt Financial, including Chief Operating Officer of the Specialty Finance Division. He is a graduate of the University of Notre Dame with a Bachelor's degree in Accounting. We believe that Mr. Healy's extensive knowledge in the payments industry qualifies him to serve as a director of the Company.

**David P. Kelley II, Director.** Mr. Kelley has served as a director of the Company since August 2010. Mr. Kelley is a partner of Zenith Capital Partners, LLC, a private equity firm located in New York, where he has served since 2006, and a founding partner of Andover Partners Strategic Security Solutions, LLC (AP-S3, LLC), a security and intelligence consulting firm, where he has served since December 2009. From 1985 to 1988, Mr. Kelley was a tax lawyer in the law firm of Brown and Wood located in New York. From 1988 to 1991, Mr. Kelley worked at Merrill Lynch in New York, where he was promoted to a Director of the Global Swap Group. From 1991 to 1994, Mr. Kelley was a Managing Director at UBS Securities in New York, in charge of the U.S. Structured Products Group. From 1994 to 1998, Mr. Kelley was a Managing Director and Head of the Global Structured Products Group at Deutsche Bank Securities in New York. From 1998 to 2006, Mr. Kelley was a Managing Director of Integrated Capital Associates, a private equity firm located in New York. Mr. Kelley is currently a Director of the Apex-Guotai Junan Greater China Fund, headquartered in Hong Kong. Mr. Kelley graduated from Emory University with a BA degree in 1979. He graduated with a J.D. degree from Temple University School of Law in 1983, and he received an L.L.M. in Taxation from New York University School of Law in 1985. We believe that Mr. Kelley's experience as a consultant and member of multiple different oversight bodies provides him with the necessary skills to be qualified to serve as a director of the Company.

**James Caan, Director.** Mr. Caan has been a director of the Company since October 2, 2012. Mr. Caan served as a director of the Company's predecessor, Net Element, from January 1, 2011 until October 2, 2012. Mr. Caan also has been Chairman of the Advisory Board of Openfilm since October 12, 2009. Mr. Caan is an actor and director, having worked in the film and television industries for over 40 years, and he is one of the entertainment industry's most renowned talents, having starred in over 80 films. We believe that Mr. Caan's position with Openfilm, as well as his tenure working as an actor and director in the film and television industry, qualifies him to serve as a director of the Company.

**Drew J. Freeman, Director.** Mr. Freeman is an accomplished industry veteran with more than 30 years of electronic payments industry experience. Mr. Freeman is currently the President of Freeman Consulting, Inc., a payments consulting firm that works with private equity and ISOs. Prior to that, Mr. Freeman served as President of Merchant

Edgar Filing: Net Element, Inc. - Form DEF 14A

Data Systems from 2009 to 2013, Group Executive at Chase Paymentech from 2006 to 2007, and Executive Vice President at JP Morgan Chase-First Data JV (Chase Merchant Services) from 2000 to 2006. Mr. Freeman earned a business degree from the University of Miami in 1980. We believe that Mr. Freeman's extensive knowledge in the payments industry qualifies him to serve as a director of the Company.

## **Board Leadership Structure**

While the Board does not currently have a policy on whether or not the roles of Chairman of the Board and Chief Executive Officer should be separate, two individuals currently separately serve as Chairman of the Board and Chief Executive Officer of the Company. The Board believes that it should be free to decide from time to time in any manner that is in the best interests of the Company and its shareholders whether or not the roles of Chairman of the Board and Chief Executive Officer should be separate.

## **Risk Oversight Functions**

The Board, in fulfilling its oversight role, focuses on the adequacy of our enterprise-wide risk management policies and procedures. The audit committee has been designated to take the lead in overseeing risk management at the Board level. The audit committee is responsible for discussing guidelines and policies to govern the processes by which risk assessment and management is undertaken and handled, and discussing with management the Company's major financial risk exposures and the steps management takes to monitor and control such exposures. Although the Board's primary risk oversight has been assigned to the audit committee, the full Board also receives information about the most significant risks that the Company faces.

## **Board Meetings and Committees of the Board**

The Board of Directors held six meetings and acted by unanimous written consent in lieu of a meeting five times during the fiscal year ended December 31, 2013. All directors attended 75% or more of all of the meetings of the Board of Directors in 2013. The Board currently includes four nonemployee, independent members – David P. Kelley II, William Healy, Drew Freeman, and James Caan. Each of Messrs. Kelley, Healy, Freeman, and Caan is an “independent director” as defined under NASDAQ Listing Rule 5605(a)(2). A majority of our Board members are independent directors, as four out of the six members of the Board qualify as independent under the NASDAQ listing standards and the rules of the Commission.

On November 26, 2012, the Board established its audit committee, compensation committee and nominating and governance committee, the composition and responsibilities of which are described below. Each committee operates pursuant to a written charter, which is reviewed each year. All committee charters are available in the “About Us—Corporate Governance” section of our Internet website at <http://www.netelement.com/>. The audit committee held four meetings during the fiscal year ended December 31, 2013. The compensation committee acted by unanimous written consent in lieu of a meeting one time during the fiscal year ended December 31, 2013. The nominating and governance committee acted by unanimous written consent in lieu of a meeting one time during the fiscal year ended December 31, 2013.

The Board has a separately-designated standing audit committee established in accordance with Section 3(a)(58)(A) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), which is currently comprised of David P. Kelley II (audit committee chairman), Drew Freeman, William Healy, and James Caan. The audit committee’s responsibilities and other matters related to the audit committee are discussed below under “Audit Committee Report.”

Messrs. Kelley, Healy and Caan serve on the compensation committee of the Board of Directors. The Board has adopted a written compensation committee charter, which is reviewed each year. The compensation committee is responsible for determining, or recommending to the Board for determination, the compensation of the executive officers and directors of the Company.

Messrs. Kelley, Healy and Caan serve on the nominating and governance committee of the Board of Directors. The nominating and governance committee’s responsibilities and other matters related to the nominating and governance committee are discussed below under “Director Nominations.”

## **Director Nominations**

The nominating and governance committee of the Board operates pursuant to a written charter, which is reviewed each year. The nominating and governance committee is responsible for the identification of individuals qualified to become members of the Board, the selection or recommendation of the director nominees for annual meetings of shareholders, the selection of director candidates to fill any vacancies on the Board, recommendation of corporate governance principles and related responsibilities. Criteria considered by the nominating and governance committee in identifying and evaluating director nominees include experience in corporate governance, experience in, or relationships within, the Company's industries, academic or professional expertise, reputation for high moral and ethical standards, business and professional standing that will add to the Board's stature, business experience, skills and time availability, and the diversity of the skills, background and experience of Board members as a whole. In addition, it is a primary objective of the nominating and governance committee to assure that the Board and its committees satisfy the independence requirements of NASDAQ and any other applicable self-regulatory or regulatory requirements. The nominating and governance committee's policy with regard to the consideration of diversity in identifying director nominees requires the committee to consider the diversity of the skills, background and experience of Board members as a whole as one of many other criteria that may be considered in recommending candidates for election or appointment to the Board; however, this policy does not require that the composition of the Board be diverse in any manner or that persons identified as director nominees must promote or enhance the diversity of the Board.

The nominating and governance committee will consider director candidates recommended by shareholders and will evaluate such candidates on the same basis as candidates recommended by other sources. Shareholder recommendations must meet the requirements set forth in the Company's bylaws, including providing all of the information specified in the bylaws. The notice must be submitted to the Secretary of the Company, at the principal executive offices of the Company, 3363 NE 163rd Street, Suite 705, North Miami Beach, Florida 33160. In order to ensure review and consideration of any shareholder's recommendation, the notice generally must be received not less than 60 days nor more than 90 days prior to the first anniversary of this year's annual meeting. However, if next year's annual meeting is to be held more than 30 days before or 60 days after the anniversary of this year's annual meeting, notice must be received no later than the later of 70 days prior to the date of the meeting or the 10th day following the Company's public announcement of next year's annual meeting date. The Secretary will present such recommendations to the nominating and governance committee. The nominating and governance committee will identify potential candidates through recommendations from the Company's officers, directors, shareholders and other appropriate third parties.

In 2013, the Company did not pay a fee to any third party to identify or evaluate or assist in identifying or evaluating potential nominees. Although the Company is not currently paying a fee to any third party to identify or evaluate or assist in identifying or evaluating potential nominees, the Company may engage a third-party search firm in the future.

## **Executive Compensation**

The following table further summarizes the compensation paid to the Company's directors for service as a director during 2013:

<b>Director Name</b>	<b>Fees earned or paid in cash (\$)</b>	<b>Stock awards (\$)</b>	<b>Option awards (\$)</b>	<b>Non-equity incentive plan compensation (\$)</b>	<b>Non-qualified deferred compensation earnings (\$)</b>	<b>All other compensation (\$)</b>	<b>Total (\$)</b>
Dmitry Kozko	\$—	\$—	\$	—\$	— \$	— \$	— \$—
Kenges Rakishev	\$22,500	\$75,000	\$	—\$	— \$	— \$	— \$97,500
Mike Zoi	\$—	\$—	\$	—\$	— \$	— \$	— \$—
David P. Kelley II	\$47,500	\$75,000	\$	—\$	— \$	— \$	— \$122,500
James Caan	\$5,000	\$75,000	\$	—\$	— \$	— \$	— \$80,000
Felix Vulis	\$5,000	\$75,000	\$	—\$	— \$	— \$	— \$80,000

The following table sets forth information for the fiscal years ended December 31, 2013 and 2012 with respect to all compensation paid to or earned by our Chief Executive Officer and our two most highly compensated executive officers other than our Chief Executive Officer who were serving as executive officers at the end of the last completed fiscal year. We refer to these individuals as the “named executive officers.”

Stock Option All Other