

ACACIA RESEARCH CORP
Form 10-K/A
April 30, 2018

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-K/A
(Amendment No. 2)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

FOR THE FISCAL YEAR ENDED DECEMBER 31, 2017

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
FOR THE TRANSITION PERIOD FROM TO .

Commission File Number 0-26068

(Exact name of registrant as specified in its charter)

DELAWARE	95-4405754
(State or other jurisdiction of incorporation organization)	(I.R.S. Employer Identification No.)

520 NEWPORT CENTER DRIVE, 12TH FLOOR	
NEWPORT BEACH, CA	92660
(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code: (949) 480-8300

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	Name of Each Exchange on Which Registered
Common Stock, \$0.001 par value	The NASDAQ Stock Market, LLC

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes R No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act:

Large accelerated filer Accelerated filer
Non-accelerated filer (Do not check if a smaller reporting company) Smaller reporting company
Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes No

The aggregate market value of the registrant's voting and non-voting common stock held by non-affiliates of the registrant on June 30, 2017, the last business day of the registrant's most recently completed second fiscal quarter, computed by reference to the last sale price of the registrant's common stock as reported by The Nasdaq Global Select Market on such date, was approximately \$202,307,000. This computation assumes that all executive officers and directors are affiliates of the registrant. Such assumption should not be deemed conclusive for any other purpose. As of March 1, 2018, 50,637,882 shares of common stock were issued and outstanding.

EXPLANATORY NOTE

This Amendment No. 2 on Form 10-K/A (this “Amendment”) amends the Annual Report on Form 10-K for the fiscal year ended December 31, 2017 of Acacia Research Corporation (the “Company,” “Acacia,” “we,” “our,” and “us”), originally filed with the Securities and Exchange Commission (the “SEC”) on March 7, 2018, as amended by Amendment No. 1 filed with the SEC on April 2, 2018 (as so amended, the “Original Filing”). At the time that we filed the Original Filing, we intended to file a definitive proxy statement for our 2018 Annual Meeting of Stockholders within 120 days after the end of our fiscal year pursuant to Regulation 14A promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). We are filing this Amendment to amend Part III (Items 10 through 14) of the Original Filing to include the information required by and not included in Part III of the Original Filing because we now expect to file a definitive proxy statement for our 2018 Annual Meeting of Stockholders after such 120-day period. Part IV (Item 15) of the Original Filing is being amended solely to add as exhibits certain new certifications in accordance with Rule 13a-14 promulgated by the SEC under the Exchange Act.

Except as described above, no other changes have been made to the Original Filing. The Original Filing continues to speak as of the date of the Original Filing, and we have not updated the disclosures contained therein to reflect any events which occurred at a date subsequent to the filing of the Original Filing other than as expressly indicated in this Amendment. Accordingly, this Amendment should be read in conjunction with the Original Filing and our other filings made with the SEC subsequent to March 7, 2018.

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PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

Information Regarding Our Board of Directors

The following table sets forth information as to the persons who currently serve as our directors.¹

Name	Age	Director Since	Positions with the Company
William S. Anderson+^	59	2007	Director
Fred A. de Boom*+^	82	1995	Director
G. Louis Graziadio, III@	68	2002	Executive Chairman and Director
Frank E. Walsh, III^@	51	2016	Director
James F. Sanders^@	61	2017	Director
Joseph E. Davis*^	66	2018	Director
Paul Falzone*^+@	44	2018	Director

Edward W. Frykman, who served on the Board since April 1996, passed away on April 14, 2018. Mr. Frykman (1) served as Vice Chairman of the Compensation Committee and a member of the Audit Committee and the Nominating and Governance Committee.

* Member of the Audit Committee

+ Member of the Compensation Committee

^ Member of the Nominating and Governance Committee

@ Member of the Strategic Review Committee

Biographical information regarding the election as a director and each other person whose term of office as a director will continue after the Annual Meeting is set forth below.

Directors with Terms Expiring in 2018 (Class III)

G. Louis Graziadio, III has been a director since February 2002. Mr. Graziadio, is President and Chief Executive Officer of Second Southern Corp., the managing partner of Ginarra Partners, L.L.C., a closely-held California company involved in a wide range of investments and business ventures. Mr. Graziadio is also Chairman of the Board and Chief Executive Officer of Boss Holdings, Inc., a distributor of work and hunting gloves, rainwear, rain boots, industrial apparel, pet products, specialty merchandise, and wireless accessories for electronic and mobile devices. From 1984 to 2000, Mr. Graziadio served as a director of Imperial Bancorp, the parent company of Imperial Bank, a Los Angeles based commercial bank acquired by Comerica Bank in January 2001. Mr. Graziadio, and companies with which he is affiliated, are significant shareholders in numerous private and public companies in a number of different industries. Since 1978, Mr. Graziadio has been active in the restructurings of both private and public companies, as well as corporate spin-offs and IPOs. Mr. Graziadio also served as a director of True Religion Apparel, Inc., a publicly traded clothing company, until its sale in July 2013. Mr. Graziadio is also a member of the Board of Directors of World Point Terminals, Inc., which owns, operates, develops, and acquires terminal assets relating to the storage of light refined products and crude oil. Mr. Graziadio has also served on the Board of Directors of Veritone since August 2016. We believe that Mr. Graziadio's qualifications to serve on the Board include his extensive business experience having held senior management positions at several different companies and his experience in serving on the boards of directors of public companies.

Frank E. Walsh, III has served as a director since April 2016. Mr. Walsh is the manager of Jupiter Capital Management Partners, LLC and a founding partner of WR Capital Partners. Through Jupiter and WR Capital Partners, Mr. Walsh has extensive experience in the acquisition and financing of both public and private companies in the technology industry and many other industries. Mr. Walsh serves on the board of directors and the audit and compensation committees of 1st Constitution Bank and 1st Constitution Bancorp, as a director and audit committee

member of World Point Terminals Inc. and as a director of Veritone. Mr. Walsh also serves as a trustee for St. Benedicts Preparatory School in Newark, New Jersey and Lehigh University in Bethlehem, Pennsylvania. We believe that Mr. Walsh is qualified to serve on the Board because of his business skills and experience, executive leadership expertise and investment acumen developed during his long career at Jupiter Capital Management Partners, LLC and WR Capital Partners, LLC, and his service on other boards.

Directors with Terms Expiring in 2019 (Class I)

Fred A. de Boom has served as a director since February 1995. Mr. de Boom has been a principal in Sonfad Associates, an Orange County-based firm which is involved in mergers and acquisitions, private debt and equity placements, strategic and financial business planning, bank debt refinance and asset based financing, since 1995. Previously, Mr. de Boom served for five years as a Vice President of Tokai Bank, for eight years as a Vice President of Union Bank, and for twenty-two years as a Vice President of First Interstate Bank. Mr. de Boom received a B.A. degree from Michigan State University and an M.B.A. degree from the University of Southern California. We believe that Mr. de Boom's qualifications to serve on the Board include his 20-year tenure as a member of the Board and extensive experience in the fields of finance and business transactions.

James F. Sanders has served as a director since July 2017. Mr. Sanders is a corporate lawyer currently engaged in private practice advising both public and private companies. From 1998 to March 2017, Mr. Sanders served as corporate counsel for Apex Oil Company, Inc., a St. Louis-based, privately held company with nationwide operations in petroleum trading, bulk storage, distribution and inland marine transportation. From 2006 through July 2015, he also served as corporate counsel for FutureFuel Corporation, an NYSE-listed manufacturer and distributor of biodiesel and chemical products, with primary responsibility for corporate governance and SEC public reporting. Since October 1998, Mr. Sanders has served as secretary and general counsel of Boss Holdings, Inc., a distributor of work gloves, work apparel, pet products, wireless accessories and promotional products. From 1990 to 1998, Mr. Sanders was an associate then partner at Lewis, Rice & Fingersh in St. Louis. He holds a B.S. degree in business administration (summa cum laude) and an M.B.A. in finance from St. Louis University School of Business Administration, as well as a J.D. degree from St. Louis University School of Law. We believe Mr. Sanders experience in advising companies on corporate matters, including mergers and acquisitions, banking, real estate, antitrust and litigation management will strengthen the governance and functioning of the Board. His legal experience and financial education will help the Board's assessment of business opportunities, strategic options and risk management.

Joseph E. Davis has served as a director since March 30, 2018. Mr. Davis currently serves as the Chief Executive Officer of ETONIEN, LLC, a financial consulting firm that he co-founded in July 2008. Prior to co-founding ETONIEN, Mr. Davis was the Managing Partner of the Los Angeles practice for Tatum LLC, an executive services and consulting firm, from December 2004 to July 2008. Prior to joining Tatum, Mr. Davis was a partner with KPMG for 27 years. Mr. Davis is currently a Board Member for the Los Angeles Regional Food Bank. He also served as the Chairman of the Finance Committee for The Los Angeles Regional Food Bank from 2011 to 2018. From 2005 to 2011, Mr. Davis served as a Board Member and Audit Committee Chair for Dorado Network Systems Corporation, a venture capital backed, Silicon Valley company in the software applications market space. Mr. Davis is a CPA in California, New York and Ohio. He also holds a B.A. in History/ Political Science from Butler University, a B.S. in Accounting from Arizona State University and a Master's in Business Taxation from the University of Southern California. We believe Mr. Davis' qualifications to serve on the Board include his extensive experience in the fields of accounting and finance and his experience in holding senior management positions at several different companies.

Directors with Terms Expiring in 2020 (Class II)

William S. Anderson has served as a director since August 2007. Mr. Anderson currently serves as Founder and Chief Executive Officer of First Beverage Group, a privately held company founded by Mr. Anderson in 2005 which provides financial services to the beverage industry. Mr. Anderson also now serves as Chairman of Topa Equities, Ltd. and Topa Insurance Group. Mr. Anderson served as Executive Vice-President of Topa Equities, Ltd., a diversified holding company and beer distributor group, from 1991 to 2004. Prior to joining Topa, Mr. Anderson was an attorney with O'Melveny & Myers in Los Angeles. Mr. Anderson has served on the board of directors of Topa Equities, Ltd. since 2008, on the board of directors of Topa Insurance Group since 2013, on the board of directors of Purity Organic, LLC, an organic fruit juice company, since 2011, on the board of directors of Health-Ade Kombucha

since 2013, and on the boards of directors of GEM&BOLT and Experience Camps since 2017. Mr. Anderson received his B.A. degree from Bowdoin College in Brunswick, Maine and his J.D. from the University of California, Los Angeles School of Law. We believe Mr. Anderson's qualifications to serve on the Board include his legal training and experience and extensive business experience having held senior management positions at several different companies.

Paul Falzone has served as a director since March 30, 2018. Mr. Falzone is currently the Managing Partner of Manifest Investment Partners, a growth equity fund focused on tech-enabled services and business-to-business software companies. Prior to joining Manifest, Mr. Falzone was President and Chief Growth Officer of Brand Networks, a large global pure-play social media software company, from 2012 to 2016. From 2007 to 2010, Mr. Falzone was President of SDI Media, a language localization software and services company. Prior to joining SDI, Mr. Falzone was President of MediaMix Marketing, an Internet marketing company, from 1998 to 2002. Mr. Falzone serves as Vice Chairman on the board of directors for Brand

Network. He also serves on the boards of directors of several of Manifest’s portfolio companies and MPI Cognition, an innovative healthcare practice focused on reversing the effects of the Alzheimer’s disease. Mr. Falzone received a B.A. and graduated with honors from Northwestern University. We believe Mr. Falzone’s qualifications to serve on the Board include his extensive experience having held senior management positions at various software and media companies.

Audit Committee

The Audit Committee currently consists of Messrs. de Boom, Davis and Falzone, each of whom is independent under the listing standards of the Nasdaq Stock Market. Mr. de Boom currently serves as the Chairman of the Audit Committee. Mr. Walsh, who served on the Audit Committee during the fiscal year ended December 31, 2017, stepped down from the Audit Committee on March 30, 2018. Mr. Frykman served on the Audit Committee until his death on April 14, 2018. Mr. Davis was appointed to the Audit Committee on March 30, 2018. Mr. Falzone was appointed to the Audit Committee on April 18, 2018, following the death of Mr. Frykman. The Audit Committee held four meetings during the fiscal year ended December 31, 2017.

The Audit Committee is responsible for retaining, evaluating and, if appropriate, recommending the termination of our independent registered public accounting firm and is primarily responsible for approving the services performed by our independent registered public accounting firm and for reviewing and evaluating our accounting principles, financial reporting practices and system of internal accounting controls. The Audit Committee is also responsible for maintaining communication between the Board and our independent registered public accounting firm.

The Board has determined that each of Mr. de Boom and Mr. Davis is an “audit committee financial expert,” as defined by Item 407(d)(5)(ii) of Regulation S-K.

Executive Officers

The table below provides information concerning our executive officers as of the date of this Amendment⁽¹⁾.

Name	Age	Positions with the Company
Robert B. Stewart, Jr.	52	President
Clayton J. Haynes	48	Chief Financial Officer, Treasurer and Senior Vice President, Finance
Edward J. Treska	52	Executive Vice President, General Counsel and Secretary

(1) Marvin Key resigned as Interim Chief Executive Officer on April 19, 2017.

Robert B. Stewart, Jr. joined Acacia Research Corporation in August 1997 as Vice President. In August 2004, Mr. Stewart was appointed our Senior Vice President. On April 19, 2017, Mr. Stewart was appointed our President upon the resignation of Mr. Key. Mr. Stewart received a B.S. degree from the University of Colorado at Boulder. Clayton J. Haynes joined Acacia Research Corporation in April 2001 as Treasurer and Senior Vice President, Finance. In November 2001, Mr. Haynes was appointed our Chief Financial Officer. From 1992 to March 2001, Mr. Haynes was employed by PricewaterhouseCoopers LLP, ultimately serving as a Manager in the Audit and Business Advisory Services practice. Mr. Haynes received a B.A. degree from the University of California at Los Angeles, an M.B.A from the University of California at Irvine Paul Merage School of Business and is a Certified Public Accountant (Inactive).

Edward J. Treska joined Acacia Research Corporation in April 2004 as Vice President. He was appointed Secretary in March 2007, General Counsel in March 2010 and Senior Vice President in October 2011. On April 19, 2017 Mr. Treska was appointed Executive Vice President upon the resignation of Mr. Key. Prior to joining us, Mr. Treska served as General Counsel, Director of Patents and Licensing for SRS Labs, Inc., a technology licensing company specializing in audio enhancement, between 1996 and 2004. Prior to joining SRS Labs, Mr. Treska practiced law at the intellectual property law firm of Knobbe, Martens, Olson & Bear and prior to law school was a design engineer with the former TRW Space & Technology Group. Mr. Treska is a registered patent attorney who received a B.S. degree in Electrical Engineering from Colorado State University and a J.D. degree from the University of San Diego School of Law. Mr. Treska has also served on the Board of Directors of Veritone, Inc. since August 2016.

Codes of Conduct

We have adopted a corporate Code of Conduct and a Board of Directors Code of Conduct, both of which may be viewed on our website at www.acaciaresearch.com. The corporate Code of Conduct applies to all of our officers, directors and employees, including our principal executive officer, principal financial and accounting officer and controller, or persons performing similar functions. The Board of Directors Code of Conduct specifically applies to the Board. Any waiver of these Codes of Conduct for any of our executive officers or directors may be made only by the Board and must be promptly disclosed to stockholders in the manner required by applicable law.

Section 16(a) Beneficial Ownership Reporting Compliance

Section 16(a) of the Exchange Act requires our directors, executive officers and holders of more than 10% of our common stock to file with the SEC initial reports of ownership and reports of changes in ownership of our common stock. We believe that, based on the written representations of our directors and officers, and the copies of reports filed with the SEC during the fiscal year ended December 31, 2017, our directors, officers and holders of more than 10% of our common stock complied with the requirements of Section 16(a).

ITEM 11. EXECUTIVE COMPENSATION

Executive Summary

For the 2017 fiscal year, our named executive officers were as follows:

- Robert B. Stewart, Jr., our President and our Principal Executive Officer until a Chief Executive Officer is identified and appointed by the Board.
- Clayton J. Haynes, our Chief Financial Officer, Senior Vice President of Finance and Treasurer.
- Edward J. Treska, our Executive Vice President, General Counsel and Secretary.
- Marvin Key, our former Interim Chief Executive Officer (resigned effective April 19, 2017).

This compensation discussion and analysis summarizes and discusses our executive compensation programs and policies and the factors relevant to an analysis of these programs and policies. We provide an overall description of our executive compensation program and an analysis of the components of compensation provided to our named executive officers. This compensation discussion and analysis provides qualitative information regarding the manner and context in which compensation is awarded to, and earned by, our principal executive officer, our principal financial officer, the three most highly compensated executive officers of our company other than our principal executive officer and principal financial officer, and any additional individuals for whom disclosure would have been provided but for the fact that the individual was not serving as an executive officer of our company at the end of the last completed fiscal year. We refer to these executive officers herein collectively as our named executive officers. Our named executive officers for fiscal year 2017 include all of our executive officers. This compensation discussion and analysis should be read together with the compensation tables and related disclosures set forth in the definitive proxy statement when filed with the SEC.

The Company started 2016 with key changes in executive management that reflected both changes in the Company's traditional patent licensing landscape and changes to the Company's approach for securing, obtaining, and enforcing newly-sourced intellectual property. These management changes brought about a complete review of our existing patent licensing and enforcement programs, including associated external litigation teams, vendors, third party costs and consultants, as well as a thorough review of internal costs, actual and potential liabilities, along with a complete review of personnel resources. We renewed our focus on maximizing our licensing revenue and margin from our existing programs while decreasing liabilities and reducing costs throughout much of our organization. We finished 2016 as one of our highest grossing years and one of the most profitable in our history. Though profitable, 2016 was a challenging year for securing new intellectual property which we felt confident could generate substantial returns in a patent landscape where enforcement had grown increasingly difficult.

During 2017, the Company and Compensation Committee were faced with additional executive management changes as the Company continued to reduce operating expenses and reduce personnel, while managing a sizable array of

active patent litigation and corresponding licensing activity. Throughout 2016 and 2017, the Company actively sought to diversify its business operations while leveraging the intellectual property expertise it had gained and for which it was well known. Specifically, the Company invested in both Veritone, now publicly traded on Nasdaq, and Miso Robotics during this period. Continuing throughout 2017, the Compensation Committee made decisions to maintain stability and retain important executives at an important time for the company which required not only the continued management of our vast licensing

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portfolios but also the continued diversification of our business into partnering with companies in the emerging growth and disruptive technology areas. These changes in 2017 occurred during a period of declining revenues as several of our major licensing programs began to mature and proceeded towards long-awaited trial dates. As a result, the Compensation Committee sought to ensure that our executive officers focused on existing business execution and business diversification that would lead to improved financial results on a short-term and long-term basis.

Historical Practices, Stockholder Engagement and Compensation Consultant

We have engaged in extensive stockholder outreach since 2015 to specifically discuss our compensation philosophy, programs and policies. The Compensation Committee directed our management and investor relations personnel to actively engage our stockholders to obtain feedback on the specific issue of executive compensation. This engagement includes in-person meetings and conference calls with our key institutional stockholders. The initial feedback that we received from our key institutional stockholders noted our need for specific performance milestones and targets in our compensation programs, including our incentive cash and equity compensation programs, and a desire to see closer alignment of executive compensation with corporate performance.

In 2016, our Compensation Committee engaged Pearl Meyer, a prominent compensation advisory firm, as an independent compensation consultant to provide advice with respect to compensation decisions for our executive officers. The Compensation Committee believes that the use of an independent compensation consultant provides additional assurance that our executive compensation programs are consistent with our objectives and with our industry generally. Among other things, Pearl Meyer compiled a list of our peer group companies within our size range at the time, with input from our management, based upon revenue, market capitalization, headcount and industry focus. The Compensation Committee reviewed and approved the final list of our peer group companies. Pearl Meyer gathered market data on base salary, short-term and long-term incentives and total compensation at the 25th, 50th and 75th percentiles. Additionally, information on compensation program structures were also collected to help inform decisions on the appropriate compensation structure for our executives. Where possible, Pearl Meyer blended size-appropriate survey market data with peer company data. The peer group companies used for our 2016 compensation assessment consisted of the following fifteen publicly-traded companies:

CEVA, Inc.	InterDigital, Inc.	RPX Corporation
Digimarc Corporation	Marathon Patent Group, Inc.	Tessera Technologies Inc.
Epiq Systems, Inc.	Pendrell Corporation	Theravance Inc.
Exponent Inc.	Rambus Inc.	VirnetX Holding Corp
Immersion Corporation	Rovi Corporation	Wi-Lan Inc.

The Compensation Committee assessed the independence of Pearl Meyer, taking into consideration the following factors: (a) the provision of other services to us by Pearl Meyer; (b) the amount of fees received from us by Pearl Meyer, as a percentage of the total revenue of Pearl Meyer; (c) the policies and procedures of Pearl Meyer that are designed to prevent conflicts of interest; (d) any business or personal relationship of the compensation consultants with a member of the Compensation Committee; (e) any stock of our company owned by the compensation consultants; and (f) any business or personal relationship of the compensation consultants or Pearl Meyer with an executive officer of our company. The Compensation Committee determined, based on its analysis of the above factors, that Pearl Meyer's services have not created any conflict of interest, and the Compensation Committee was satisfied with the independence of Pearl Meyer. In addition, our Compensation Committee has the authority to direct, terminate or continue the services of Pearl Meyer.

Our management discussed the feedback from our stockholders regarding our executive compensation programs and reviewed current peer group practices in executive compensation with the Compensation Committee and Pearl Meyer. The Compensation Committee and the Board had extensive discussions with our management about the 2015 Say-on-Pay vote results and stockholder feedback relating to executive compensation sentiment. With a desire to align our executive compensation plan with the perspectives held by our stockholders, the Compensation Committee engaged in routine discussions with its independent compensation consultant outside the presence of our management. The Compensation Committee took key measures to address stockholder concerns, and create a compensation program with more specific quantitative measurements of the performance of our named executive officers that are

closely aligned with the overall performance of our company.

Following the rigorous review conducted by the Board, the Compensation Committee, Pearl Meyer, and our management, the Board followed the recommendations of the Compensation Committee and adopted a comprehensive new and objective executive compensation program for 2016 focused on aligning executive compensation with company performance.

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Our stockholders approved by advisory vote the compensation of our named executive officers at our 2017 annual stockholders meeting, approving the proposal with 97% of the outstanding shares present in person or by proxy and entitled to vote. The Compensation Committee used the feedback and information it received from its stockholder outreach endeavors and from Pearl Meyer to continue to guide its executive compensation decisions for the fiscal year 2017.

2017 Compensation Discussion & Analysis

Overview and Objectives of Our Executive Compensation Programs. Our compensation policies for executive officers seek to align our executive officer's interests and motivations with those of our stockholders by rewarding both short and long-term objectives. The Compensation Committee believes that compensation of executive officers should be linked to objectives that can be expected to increase stockholder value. Overall compensation of our executive officers should provide a competitive level of total compensation that enables us to attract, retain and incentivize highly qualified executive officers with the background and experience necessary to lead the company and achieve its business goals. For our business, we rely on qualified, highly skilled and talented executives who have experience in the legal, intellectual property licensing and enforcement, and other technology-related industries needed to execute our business model and achieve our business objectives. Thus, our compensation program is patterned in a manner similar to companies in these industries in order to attract and retain talented executives who may have other opportunities in these industry areas. Our Compensation Committee continues to engage Pearl Meyer as an independent compensation consultant to provide advice with respect to compensation decisions for our executive officers. The Compensation Committee believes that the use of an independent compensation consultant provides additional assurance that our executive compensation programs are consistent with our objectives and with our industry generally. Upon the advice of Pearl Meyer, the peer group analysis and assessment performed in 2016 was maintained for 2017 resulting in the same companies used for our 2017 compensation assessment as those used in 2016.

2017 Compensation Elements. Executive officer compensation for the 2017 fiscal year had five primary components, each of which is designed to fulfill one or more of the principles and objectives described herein:

Base Salary. In 2016, we evaluated base salaries against an independently determined peer group with a goal of normalizing towards the median of the peer group. In 2017, base salaries from 2016 were re-evaluated against market-based levels commensurate with each executive's experience and level of responsibility. The Compensation Committee reviews the base salaries of our executive officers annually in accordance with the factors described in more detail below.

Annual Incentive Compensation. This component contains the following sub elements:

Target Award: The target award levels for each participant were based upon a percentage of the participant's base salary set by the Compensation Committee.

Performance Metrics: In 2016, the performance metrics evaluated included revenue goals and operating income goals. In 2017, to reflect the diversification and transformation of certain aspects of our business, performance metrics were adjusted to include operating income goals, decreases in corporate liabilities and objectives associated with our organizational restructuring.

Targeted Metric Payouts: 90% of target performance resulted in a 50% award payment and 150% of target performance resulted in a maximum 200% award payment. We did not make any annual incentive payments for target performance below the 90% level. Award payments were interpolated for actual performance between percentages set forth above.

Payment Period: Award payments were made on an annual basis.

Equity Compensation. This component contains the following sub elements:

50% of the value of an equity award pool consisted of stock options with an exercise price equal to fair market value of our common stock on the date of grant.

50% of the value of the equity award pool consisted of stock options granted with an exercise price that is at least 25% above the fair market value of our common stock on the date of grant.

AIP Profits Interest Units. On February 16, 2017, we granted profits interest units in AIP Operation LLC to each of our named executive officers, who have been making significant contributions to the success of our investment

in Veritone. The AIP profits interest units were granted pursuant to the recommendation by our independent compensation consultant, Pearl Meyer. (See “AIP Profits Interest Units” beginning on page 11 of this Amendment).

Severance Benefits. On July 14, 2017, the Board eliminated our Executive Severance Policy. Since that time and going forward, our executive officers are covered under their specific employment agreement. We provide our executive officers with severance and change of control arrangements in order to mitigate some of the risk that exists for those executive officers. Our severance and change of control arrangements are intended to attract and retain qualified executives who have alternatives that may appear to them to be less risky absent these arrangements.

Employee Benefits and Perquisites. Our executive officers participate in employee benefits that are provided to all of our employees generally, including medical, dental, vision, life, and disability insurance, to the same extent made available to other employees, subject to applicable law.

Role of Compensation Committee, Management and Compensation Consultants. The Compensation Committee, our compensation consultant, and management all participate in the process of setting executive compensation. The Compensation Committee has the primary responsibility for reviewing, approving and determining the compensation of the named executive officers. In making its determinations, the Compensation Committee receives information and advice from Pearl Meyer, our independent compensation consultant, and from management. Once the Compensation Committee develops a recommendation, it presents the recommendation to the full Board for approval. Our named executive officers are also involved in the process of reviewing executive compensation and recommend to the Compensation Committee performance goals and objectives related to performance based compensation. However, our named executive officers are not present during, and do not otherwise participate in, any voting or deliberations on their compensation.

Tax Deductibility of Compensation. Section 162(m) of the Internal Revenue Code of 1986, as amended, or the Code, imposes a \$1.0 million limit on the amount that a public company may deduct for total compensation paid (including salaries, annual incentive payments and equity-based awards) to its chief executive officer, principal financial officer and the company’s three other most highly compensated executive officers whose compensation is required to be disclosed in the company’s annual proxy statement (referred to as covered employees). Although, certain of our named executive officers earned total non-“qualifying performance-based” compensation in excess of \$1.0 million in 2017, the Compensation Committee did not modify the basic method of determining executive compensation. Generally, while we seek to maximize the deduction for compensation paid to our named executive officers, because we compensate our named executive officers in a manner designed to promote our varying corporate goals, the Compensation Committee has not adopted a policy requiring all compensation to be deductible. Consequently, we will not be able to deduct for federal income tax purposes certain compensation earned by our named executive officers in 2017 in excess of \$1.0 million each. Historically, there has been an exception to this \$1.0 million limitation for performance-based compensation that meets certain requirements, and the principal financial officer has been excluded from the definition of a covered employee. Effective January 1, 2018, under the recently enacted Tax Cuts and Jobs Act, the exception for performance-based compensation has been eliminated, and compensation paid to the principal financial officer is now subject to the \$1.0 million deduction limitation. The amendments to Section 162(m) include a grandfather clause applicable to compensation paid pursuant to a written binding contract in effect on November 2, 2017 that is not materially modified after such date. The 2013 Plan and the 2016 Plan contain certain provisions designed to facilitate the deductibility of performance-based compensation in accordance with Section 162(m). The Company generally believes its stock option and performance-based restricted stock awards granted before November 2, 2017 have met those requirements and, as such, are deductible. With respect to compensation provided on and after November 2, 2017 (including 2018 compensation), the Compensation Committee will work with Pearl Meyer to assess the appropriate market supported response to the change to Section 162(m).

Base Salary

We pay base salaries to reward our named executive officers for performing the core responsibilities of their positions and to provide them with a level of security with respect to a portion of their compensation. The base salaries of all of

our named executive officers are approved by the Compensation Committee, and are competitive with our peer group. The primary quantitative factors considered by the Compensation Committee in establishing or adjusting base salaries are individual performance goals, overall company performance and the extent to which achievement of those goals impacted company performance;

• company performance is measured by a number of factors, including revenue on an annual basis as compared with the prior year, improvement in operating income on an annual basis as compared with the prior year,

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investment activity, decrease in overall corporate liabilities, and strategic accomplishments;
• individual performance is measured in part by company performance and the percentage by which annual revenues and operating income increased or decreased as compared with the prior year;
• executive compensation levels at peer group companies and other similar companies.

The primary qualitative factors considered by the Compensation Committee in establishing or adjusting base salaries are:

• experience, position criticality and overall responsibility of the named executive officer including specific subject matter and personnel;