

NUVASIVE INC  
Form DEF 14A  
April 08, 2013

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of  
the Securities Exchange Act of 1934

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

Preliminary Proxy Statement

**Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**

Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material Pursuant to §240.14a-12

**NuVasive, Inc.**

(Name of Registrant as Specified in Its Charter)

(Name of Person(s) Filing Proxy Statement, if Other Than the Registrant)

Payment of Filing Fee (Check the appropriate box):

No fee required.

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

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1) Amount Previously Paid:

2) Form, Schedule or Registration Statement No.:

3) Filing Party:

4) Date Filed:

**NOTICE OF ANNUAL MEETING OF STOCKHOLDERS**

To Be Held May 23, 2013

The Annual Meeting of Stockholders of NuVasive, Inc. (the *Company* or *NuVasive* ) will be held on May 23, 2013, at 8:00 AM local time at NuVasive's corporate offices located at 7475 Lusk Boulevard, San Diego, California 92121 for the following purposes, as more fully described in the accompanying Proxy Statement:

1. To elect three Class III Directors to hold office until the 2016 Annual Meeting of Stockholders and until their successors are elected and qualified.
2. To vote on an advisory basis on the compensation of the Company's named executive officers.
3. To ratify the appointment of Ernst & Young LLP as the Company's independent registered public accounting firm for the fiscal year ending December 31, 2013.
4. To transact such other business as may properly come before the meeting or any adjournments or postponements thereof.

Only stockholders of record at the close of business on March 27, 2013 will be entitled to notice of, and to vote at, such meeting or any adjournments or postponements thereof.

BY ORDER OF THE BOARD OF DIRECTORS

Alexis V. Lukianov  
Chairman of the Board and Chief Executive Officer

San Diego, California

April 8, 2013

**YOUR VOTE IS IMPORTANT!**

**ALL STOCKHOLDERS ARE INVITED TO ATTEND THE ANNUAL MEETING IN PERSON. WHETHER OR NOT YOU PLAN TO ATTEND THE MEETING, WE ENCOURAGE YOU TO READ THIS PROXY STATEMENT AND SUBMIT YOUR PROXY OR VOTING INSTRUCTIONS AS SOON AS POSSIBLE. FOR SPECIFIC INSTRUCTIONS ON HOW TO VOTE YOUR SHARES, PLEASE REFER TO THE INSTRUCTIONS ON THE NOTICE OF INTERNET AVAILABILITY OF PROXY MATERIALS (THE *NOTICE* ) YOU RECEIVED IN THE MAIL, THE QUESTION HOW DO I VOTE? , OR, IF YOU REQUESTED PRINTED PROXY MATERIALS, YOUR ENCLOSED PROXY CARD. THIS WILL ENSURE THE PRESENCE OF A QUORUM AT THE MEETING. IF YOU ATTEND THE MEETING, YOU MAY VOTE IN PERSON IF YOU WISH TO DO SO EVEN IF YOU HAVE PREVIOUSLY SUBMITTED YOUR PROXY OR VOTING INSTRUCTIONS.**

**NuVasive, Inc.**

7475 Lusk Boulevard

San Diego, CA 92121

(858) 909-1800

**PROXY STATEMENT**

**ANNUAL MEETING OF STOCKHOLDERS TO BE HELD ON MAY 23, 2013**

**GENERAL**

NuVasive, Inc. (the *Company* or *NuVasive* ) made these materials available to you on the internet, or, upon your request, has delivered printed proxy materials to you, in connection with the solicitation of proxies by the Board of Directors (the *Board* ) of the Company for use at the Annual Meeting of Stockholders to be held on May 23, 2013, at 8:00 AM local time, at NuVasive's corporate offices located at 7475 Lusk Boulevard, San Diego, California 92121, and at any adjournments or postponements thereof (the *Annual Meeting* ). The proxy materials were made available to stockholders on or about April 8, 2013.

**QUESTIONS AND ANSWERS ABOUT THE PROXY MATERIALS AND THE ANNUAL MEETING**

**1. What is the purpose of the Annual Meeting?**

You will be voting on each of the following items of business: (i) the election of three Class III Directors for terms expiring in 2016; (ii) an advisory (non-binding) resolution regarding executive compensation; (iii) the ratification of the appointment of Ernst & Young LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2013; and (iv) any other business that may properly come before the Annual Meeting.

**2. Who is soliciting the proxies?**

The proxies for the Annual Meeting are being solicited by the Board.

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

In accordance with rules adopted by the Securities and Exchange Commission (the "SEC"), we may furnish proxy materials, including this Proxy Statement and our Annual Report for fiscal year 2012, to our stockholders by providing access to such documents on the internet instead of mailing printed copies. Our Annual Report for fiscal year 2012 is not incorporated into this Proxy Statement and shall not be considered a part of this Proxy Statement or soliciting materials. Most stockholders will not receive printed copies of the proxy materials unless they request them. Instead, the Notice, which was mailed to most of our stockholders, will instruct you as to how you may access and review all of the proxy materials on the internet. The Notice also instructs you as to how you may submit your proxy on the internet. If you would like to receive a paper or email copy of our proxy materials, you should follow the instructions for requesting such materials in the Notice.

**4. How do I get electronic access to the proxy materials?**

The Notice will provide you with instructions regarding how to:

View our proxy materials for the Annual Meeting on the internet; and

Instruct us to send our future proxy materials to you electronically by e-mail.

Choosing to receive your future proxy materials by e-mail will save us the cost of printing and mailing documents to you and will reduce the impact of printing and mailing these materials on the environment. If you choose to receive future proxy materials by e-mail, you will receive an e-mail next year with instructions containing a link to those materials and a link to the proxy voting site. Your election to receive proxy materials by e-mail will remain in effect until you terminate it.

**5. Who is entitled to vote?**

Only holders of record of outstanding shares of the Company's common stock at the close of business on March 27, 2013, are entitled to notice of and to vote at the Annual Meeting. At the close of business on March 27, 2013, there were 44,205,838 outstanding shares of our common stock. Each share of common stock is entitled to one vote.

In accordance with Delaware law, a list of stockholders entitled to vote at the Annual Meeting will be available at the Annual Meeting, and for ten days prior to the Annual Meeting at 7475 Lusk Boulevard, San Diego, California 92121, Monday through Friday between the hours of 9 a.m. and 4 p.m. Pacific time.

**6. Is cumulative voting permitted for the election of directors?**

No. You may not cumulate your votes for the election of directors.

**7. How do I vote?**

If you have shares for which you are the stockholder of record, you may vote those shares by proxy. You may also vote by proxy over the internet by following the instructions provided in the Notice, or, if you requested to receive printed proxy materials, you may also vote by mail or telephone pursuant to instructions provided on the proxy card. Additionally, shares held in your name as the stockholder of record may be voted by you in person at the Annual Meeting.

Most of our stockholders hold their shares as a beneficial owner through a broker or other nominee rather than directly in their own name. If you are the beneficial owner of shares held in street name, you may also vote by proxy over the internet by following the instructions provided in the Notice, or, if you requested to

receive printed proxy materials, you may also vote by telephone or mail by following the voting instruction card provided to you by your broker or other nominee. If you do not give instructions to your broker, your shares may constitute broker non-votes. Under the rules that govern brokers who are voting shares held in street name, brokers have the discretion to vote those shares on routine matters but not on non-routine matters. Routine matters include, for example, the ratification of independent public accountants. Non-routine matters include, for example, the election of directors, actions on stock plans, stockholder proposals, and advisory votes on the approval of executive compensation. If your shares are held in street name, you may not vote your shares in person at the Annual Meeting unless you obtain a legal proxy from the broker or nominee that holds the shares giving you the right to vote the shares at the Annual Meeting.

Even if you plan to attend the Annual Meeting, we recommend that you also submit your proxy or voting instructions as described below so that your vote will be counted if you later decide not to attend the Annual Meeting.

**8. Can I change my vote after I submit my proxy?**

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

**9. How are the votes counted?**

In the election of directors and for each other item, you may vote FOR, AGAINST or ABSTAIN. A vote of ABSTAIN with respect to any such matter will not be voted, although it will be counted for purposes of determining whether there is a quorum. Accordingly, an abstention will have the effect of a negative vote.

If you provide specific instructions with regard to certain items, your shares will be voted as you instruct on such items. If no instructions are indicated, the shares will be voted as recommended by the Board (i.e. FOR the nominees to the Board listed in these materials; FOR the Company's executive pay program and policies; and FOR the ratification of the appointment of Ernst & Young LLP as the Company's independent registered public accounting firm for the fiscal year ending December 31, 2013), unless you submit your proxy card through a broker and your broker does not indicate a vote on a particular matter because your broker has not received voting instructions from you (See Question 7 above). If the Company receives a proxy card with a broker non-vote, your proxy will be voted FOR the ratification of the appointment of Ernst & Young LLP and it will not be included as a vote with respect to the election of directors and the approval of the Company's executive compensation.

**10. What vote is needed to approve each of the proposals?**

For the election of directors, the nominees receiving the most FOR votes from the holders of shares represented in person or by proxy and entitled to vote on the election of directors will be elected. However, if the number of votes FOR any of the nominees does not exceed fifty percent (50%) of the total number of votes cast with respect to such nominee's election (from the holders of votes of shares either present in person or represented by proxy and entitled to vote), such nominee will promptly tender his resignation as a director, and the Nominating and Corporate Governance Committee of the Board will make a recommendation to the Board as to whether it is appropriate to accept such director's resignation. Only votes FOR or AGAINST will affect the outcome of the election of directors.

Each other item requires the affirmative vote of the holders of a majority of the shares represented in person or by proxy and entitled to vote on the item.

**11. How does the Board recommend that I vote?**

**THE BOARD RECOMMENDS THAT YOU VOTE FOR THE PROPOSED NOMINEES FOR ELECTION TO THE BOARD, FOR THE ENDORSEMENT OF THE COMPENSATION OF THE COMPANY'S NAMED EXECUTIVE OFFICERS AND FOR THE RATIFICATION OF THE APPOINTMENT BY THE AUDIT COMMITTEE OF ERNST & YOUNG LLP.**

**12. How many shares must be present to hold the Annual Meeting?**

A majority of the outstanding shares of common stock entitled to vote at the Annual Meeting must be present in person or by proxy in order for there to be a quorum at the Annual Meeting. Both broker non-votes (discussed in Question 7) and stockholders of record who are present at the Annual Meeting in person or by proxy and who abstain from voting, including brokers holding customers' shares of record who cause abstentions to be recorded at the Annual Meeting, will be included in the number of stockholders present at the Annual Meeting for purposes of determining whether a quorum is present.

**13. Who pays the costs of the proxy solicitation?**

The Company will pay all of the costs of soliciting proxies. In addition to solicitation by mail, officers, directors and shareowners of the Company may solicit proxies personally, or by telephone, without receiving additional compensation. The Company, if requested, will also pay brokers and other fiduciaries that hold shares of common stock for beneficial owners for their reasonable out-of-pocket expenses of forwarding these materials to stockholders. The Company may retain a firm to assist in the solicitation of proxies in connection with the Annual Meeting. The Company would pay such firm, if any, customary fees, expected to be no more than \$20,000 plus expenses.

**14. Could other matters be decided in the Annual Meeting?**

The Company is not aware, as of the date hereof, of any matters to be voted upon at the Annual Meeting other than those stated in this Proxy Statement. If any other matters are properly brought before the Annual Meeting, the persons named as proxy holders (Keith C. Valentine, Michael J. Lambert and Jason M. Hannon) will have the discretionary authority to vote the shares represented by the proxy card on those matters. If for any reason any of the nominees are not available as a candidate for director, the persons named as proxy holders will vote your proxy for such other candidate or candidates as may be nominated by the Board.

**15. Where can I find the voting results of the Annual Meeting?**

We intend to announce the final voting results at the Annual Meeting and publish the final results in our Current Report on Form 8-K within four business days of the Annual Meeting, unless final results are unavailable in which case we will publish the preliminary results in such Current Report on Form 8-K. If final results are not filed with our Current Report on Form 8-K to be filed within four business days of the Annual Meeting, the final results will be published in an amendment to our Current Report on Form 8-K within four business days after the final voting results are known.

**16. How do I make a stockholder proposal or nominate an individual to serve as a director for the fiscal year 2013 annual meeting of stockholders occurring in 2014?**

The Company's Bylaws state the procedures for a stockholder to bring a stockholder proposal or nominate an individual to serve as a director of the Board. The Company's Bylaws provide that advance notice of a

stockholder's proposal or nomination of an individual to serve as a director must be delivered to the Secretary of the Company at the Company's principal executive offices not earlier than the one hundred twentieth (120th) day, nor later than the close of business on the ninetieth (90th) day prior to the anniversary of the previous year's annual meeting of stockholders. However, the Bylaws also provide that in the event that no annual meeting was held in the previous year or the date of the annual meeting is changed by more than thirty (30) days from the previous year's annual meeting as specified in the Company's notice of meeting, this advance notice must be given not earlier than the one hundred twentieth (120th) day, nor later than the close of business on the later of the ninetieth (90th) day prior to the date of such annual meeting or, if the first public announcement of the date of such annual meeting is less than one hundred (100) days prior to the date of such annual meeting, the tenth (10th) day following the day on which public announcement of the date of such annual meeting is first made by the Company.

In addition to meeting the advance notice provisions mentioned above, the stockholder in its notice must provide the information required by our Bylaws to bring a stockholder proposal or nominate an individual to serve as a director of the Board.

A copy of the full text of the provisions of the Company's Bylaws dealing with stockholder nominations and proposals is available to stockholders from the Secretary of the Company upon written request.

Under the rules of the SEC, stockholders who wish to submit proposals for inclusion in the Proxy Statement of the Board for the annual meeting of stockholders to be held in 2014 must submit such proposals so as to be received by the Company at 7475 Lusk Boulevard, San Diego, CA 92121, on or before December 9, 2013; provided, however, that in the event that the Company holds the annual meeting of stockholders to be held in 2014 more than 30 days before or after the one-year anniversary date of the Annual Meeting, the Company will disclose the new deadline by which stockholders proposals must be received under Item 5 of our earliest possible quarterly report on Form 10-Q or, if impracticable, by any means reasonably calculated to inform stockholders. In addition, stockholder proposals must otherwise comply with the requirements of Rule 14a-8 of the Securities Exchange Act of 1934, as amended. Such proposals also must comply with SEC regulations under Rule 14a-8 regarding the inclusion of stockholder proposals in company-sponsored proxy materials.

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**IMPORTANT NOTICE REGARDING THE AVAILABILITY OF PROXY MATERIALS FOR THE  
STOCKHOLDER MEETING TO BE HELD ON MAY 23, 2013**

**This Proxy Statement and the Company's 2012 Annual Report are both available at [www.proxydocs.com/nuva](http://www.proxydocs.com/nuva).**

**PROPOSAL 1 ELECTION OF DIRECTORS**

At the Annual Meeting, the stockholders will vote on the election of three Class III directors, each to serve for a three-year term until the annual meeting of stockholders in 2016 and until their successors are elected and qualified.

The Board has unanimously nominated Alexis V. Lukianov, Jack R. Blair and Peter M. Leddy, Ph.D. for election to the Board as Class III directors. The nominees have indicated that they are willing and able to serve as directors. If Alexis V. Lukianov, Jack R. Blair or Peter M. Leddy, Ph.D. becomes unable or unwilling to serve, the accompanying proxy may be voted for the election of such other person as shall be designated by the Board.

The three nominees for election as Class III directors receiving the most FOR votes from the holders of shares present in person or represented by proxy and entitled to vote on the election of directors will be elected. However, if the number of votes FOR any of the three nominees does not exceed fifty percent (50%) of the total number of votes cast with respect to such nominee's election (from the holders of votes of shares either present in person or represented by proxy and entitled to vote), such nominee will promptly tender his resignation as a director and the Nominating and Corporate Governance Committee of the Board will make a recommendation to the Board as to whether it is appropriate to accept such director's resignation. Stockholders do not have cumulative voting rights in the election of directors.

**BOARD OF DIRECTORS**

The name, age and certain other information of each member of the Board, as of March 27, 2013, is set forth below:

Name	Age	Committee Memberships			Term Expires on Annual Meeting held in the Year	Director Class
		Audit	Compensation	Nominating & Corporate Governance		
Alexis V. Lukianov	57				2013	III
Jack R. Blair	70		C		2013	III
Peter C. Farrell, Ph.D., AM	70			C	2015	II
Lesley H. Howe	68	C	X		2015	II
Robert J. Hunt	64	X		X	2014	I
Peter M. Leddy, Ph.D.	49		X		2013	III
Eileen M. More, CFA	66	X		X	2015	II
Richard W. Treharne, Ph.D.	63		X	X	2014	I

C = Chair

X = Member

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**NOMINEES AND CONTINUING DIRECTORS**

Pursuant to a resolution adopted by a majority of the authorized number of directors, the authorized number of members of the Board has been set at eight. The following individuals have been nominated for election to the Board or will continue to serve on the Board after the Annual Meeting:

**Nominees**

**Alexis V. Lukianov**

Alexis V. Lukianov has served as our Chief Executive Officer and a director since July 1999 and as Chairman of our Board of Directors since February 2004. He also served as our President from July 1999 until December 2004. Mr. Lukianov has over 25 years of experience in the orthopaedic industry with more than 20 years in senior management. Prior to joining NuVasive, Mr. Lukianov was a founder of and served as Chairman of the Board and Chief Executive Officer of BackCare Group, Inc., a spine physician practice management company. Mr. Lukianov also held various executive positions with Medtronic Sofamor Danek, Inc., including President of USA. He also directed a business unit at Smith & Nephew Orthopaedics and managed an orthopaedic joint venture between Stryker and Meadox Medical. Mr. Lukianov attended Rutgers University and served in the U.S. Navy. Mr. Lukianov serves on the boards and the executive committees of BIOCOM and Medical Device Manufacturers Association, and is on the board of Volcano Corporation, a publicly traded company that develops products that aid in the diagnosis and treatment of vascular and structural heart disease. Mr. Lukianov, with his experience in the orthopaedic industry and years in senior management as described above, provides invaluable experience to our Board and the entire organization at NuVasive.

**Jack R. Blair**

Jack R. Blair has served as a member of our Board since August 2001. During his 18 year career with Smith & Nephew plc ending in 1998, Mr. Blair served in various capacities with Smith & Nephew plc and Richards Medical Company, which was acquired by Smith & Nephew in 1986, most recently as group president of its North and South America and Japan operations. He held the position of President of Richards Medical Company. Until November 2007, when the company was sold, Mr. Blair served as chairman of the board of directors of DJO, Inc., an orthopaedic medical device company. He also serves as a director of a privately-held orthopaedic company and a privately-held specialty chemicals company. Mr. Blair holds a B.A. in Government from Miami University and an M.B.A. from the University of California, Los Angeles. Mr. Blair's service with prior companies has provided him with valuable international and operational experience, and together with his extensive knowledge of the medical device industry, he brings extensive management and board of director experience to our Board.

**Peter M. Leddy, Ph.D.**

Peter M. Leddy, Ph.D., has served as a member of our Board since July 2011. Since 2005, Dr. Leddy has served as Senior Vice President of Global Human Resources at Life Technologies, a biotechnology company. From 2000 to 2005, Dr. Leddy held several senior management positions with Dell Incorporated, where he was responsible for leading global talent and human resources in the Americas, overseeing 7,500 employees. From 1999 to 2000, Dr. Leddy served as the Executive Vice President for Human Resources at Promus Hotel Corporation (Doubletree, Embassy Suites), and from 1989 to 1999, he held a variety of executive and human resource positions at PepsiCo, Inc. Dr. Leddy received his B.A. in Psychology from Creighton University and his M.S. and Ph.D. degrees in industrial/organizational psychology from the Illinois Institute of Technology. Dr. Leddy's extensive knowledge in evolving human resource practices and executive compensation provides valuable insight and guidance to our Board.

**Continuing Directors**

**Robert J. Hunt**

Robert J. Hunt has served as a member of our Board since January 2005. Mr. Hunt is the co-founder of the Mercury Investment Group, an investment advisory firm established in 2002. Mr. Hunt also oversaw the finance team at AutoZone, Inc., for eight years, serving as Executive Vice President and Chief Financial Officer and director. Mr. Hunt previously held senior financial management positions at The Price Company, Malone & Hyde, Inc. and PepsiCo, Inc. He has also served as a director of SCB Computer Technology, Inc. Mr. Hunt holds bachelor and masters degrees from Columbia University and is a certified public accountant. Mr. Hunt's extensive public company background provides valuable financial and accounting expertise and his background as an executive contributes management and auditing expertise to our Board.

**Richard W. Treharne, Ph.D.**

Richard W. Treharne, Ph.D., has served as a member of our Board since August 2009. Dr. Treharne has over 30 years of experience in the orthopaedic industry with over 15 years in senior management. From August 2006 to the present, Dr. Treharne has held the position of Vice President, Orthopaedic Research at Active Implants Corporation, a privately held orthopaedic company focused on innovative technologies for degenerative conditions of the joints. During his sixteen years at Medtronic Sofamor Danek, from November 1990 to August 2006, he served as a Group Director - Regulatory and Clinical Affairs for three months and then various Vice President positions for the remainder of his tenure, most recently as Vice President - Regulatory Affairs. He also held several director level positions at Smith & Nephew plc prior to working at Medtronic. Dr. Treharne holds an M.B.A. from the University of Memphis, a Ph.D. and a M.S.E. from The University of Pennsylvania, and a B.S. in Metallurgical Engineering from The Ohio State University. Dr. Treharne's experience in senior management and the orthopaedic industry provide strategic and practical knowledge to our Board related to regulatory, clinical research and other operational areas in our industry.

**Peter C. Farrell, Ph.D., AM**

Peter C. Farrell, Ph.D., AM, has served as a member of our Board since January 2005. Dr. Farrell is founding Chairman of ResMed, Inc. a leading developer and manufacturer of medical equipment for the diagnosis and treatment of sleep-disordered breathing, and was its Chief Executive Officer from 1989 to 2007 and again from February 2011 until March 2013. Dr. Farrell serves as a director of California Healthcare Institute. Dr. Farrell holds bachelor and masters degrees in chemical engineering from the University of Sydney and the Massachusetts Institute of Technology, a Ph.D. in bioengineering from the University of Washington, Seattle and a Doctor of Science from the University of New South Wales for research related to dialysis and renal medicine. Dr. Farrell's broad management experience and responsibilities, through his experience as a founding executive of ResMed, Inc., provide relevant experience to our Board in a number of strategic and operational areas.

**Lesley H. Howe**

Lesley H. Howe has served as a member of our Board since February 2004. Mr. Howe has over 40 years of experience in accounting, finance and business management within a variety of industries. From December 2001 to May 2007, he served as Chief Executive Officer of Consumer Networks LLC, a San Diego-based Internet marketing and promotions company. Mr. Howe had a 30 year career with KPMG Peat Marwick LLP, an international accounting and auditing firm, in which he was an audit partner for 23 years and an area managing partner/managing partner of the Los Angeles office of KPMG for three years. Mr. Howe currently serves on the board of directors of Jamba, Inc., the leading retailer of quality blended fruit beverages; and Volcano Corporation, a developer of products that aid in the diagnosis and treatment of vascular and structural heart disease. He previously served on the board and was chair of the Audit Committee of DJ Orthopedics Inc. from 2002 through 2008. Mr. Howe received a B.S. in business administration from the University of Arkansas.

Mr. Howe's extensive public accounting, financial and executive management background provide valuable financial and accounting experience and expertise to our Board.

**Eileen M. More, CFA**

Eileen M. More, CFA, has served as a member of our Board since June 2007. Ms. More was a General Partner at Oak Investments, one of the largest venture capital funds in the United States, for over 20 years. Ms. More founded Oak Partner's healthcare investment practice, and was also an active investor in information technology, with early stage investments in dozens of successful healthcare and technology companies. Her investments include leadership roles with Genzyme Corporation, Alexion Pharmaceuticals, OraPharma, Inc., Osteotech, Inc. and Compaq Computer. Ms. More retired from Oak in 2002. She currently serves on the board of directors of Ophtherion, Inc., a privately held company. She formerly served on the board of directors of KBL Healthcare Acquisition Corp. III, a publicly owned blank check corporation. Ms. More was formerly the Chairman Emeritus of the Connecticut Venture Group and a board member of the University of Connecticut Research and Development Corporation. Ms. More attended the University of Bridgeport and has been awarded a Chartered Financial Analyst (CFA) charter. Ms. More's investment and leadership experience in the healthcare industry provides relevant experience in strategic areas, as well as in-depth knowledge of the healthcare industry, providing valuable insight and guidance to our Board for matters such as, among others, corporate strategy and risk management.

There are no family relationships among any of the Company's directors or executive officers.

**The Board recommends a vote FOR the election of each of Alexis V. Lukianov, Jack R. Blair and Peter M. Leddy, Ph.D. as Class III directors.**

**INFORMATION REGARDING THE BOARD OF DIRECTORS, NOMINATIONS**

**AND CORPORATE GOVERNANCE**

*Criteria for Board Membership.* In selecting candidates for appointment or re-election to the Board, the Nominating and Corporate Governance Committee (the *Nominating Committee*) considers the appropriate balance of experience, skills and characteristics required of the Board, seeks to ensure that at least a majority of the directors are independent under the rules of the NASDAQ Stock Market (*NASDAQ*), and that members of the Company's Audit Committee meet the financial literacy and sophistication requirements under NASDAQ rules (including that at least one of them qualifies as an audit committee financial expert under the rules of the SEC). Nominees for director are selected on the basis of their depth and breadth of experience, integrity, ability to make independent analytical inquiries, understanding of the Company's business environment, and willingness to devote adequate time to Board duties. Additionally, the Nominating Committee will consider diversity in personal and professional backgrounds and seeks diverse individuals, such as women and individuals from minority groups, to include in the pool of candidates for Board nomination; however, there is no formal policy with respect to diversity considerations in identifying director nominees.

*Stockholder Nominees.* The Nominating Committee will consider written proposals from stockholders for nominees for director. Any such nominations should be submitted to the Nominating Committee, care of the Secretary of the Company and should include the following information: (a) all information relating to such nominee that is required to be disclosed pursuant to Regulation 14A under the Securities Exchange Act of 1934 (including such person's written consent to being named in the Proxy Statement as a nominee and to serving as a director if elected); and (b) all information required by the Company's Bylaws (including the names and addresses of the stockholders making the nomination and the appropriate biographical information and a statement as to the qualification of the nominee), and should be submitted in the time frame described in the Bylaws of the Company and under the question, "How do I make a stockholder proposal or nominate an individual to serve as a director for the fiscal year 2013 annual meeting of stockholders occurring in 2014?" above.

*Process for Identifying and Evaluating Nominees.* The Nominating Committee believes the Company is well served by its current directors. In the ordinary course, absent special circumstances or a material change in the criteria for Board membership, the Nominating Committee will re-nominate incumbent directors who continue to be qualified for Board service and are willing to continue as directors. If an incumbent director is not standing for re-election, or if a vacancy on the Board occurs between annual stockholder meetings, the Nominating Committee will seek out potential candidates for Board appointment who meet the criteria for selection as a nominee and have the specific qualities or skills being sought. Director candidates will be selected based on input from members of the Board, senior management of the Company and, if the Nominating Committee deems appropriate, a third-party search firm. The Nominating Committee will evaluate each candidate's qualifications and check relevant references; in addition, such candidates will be interviewed by at least one member of the Nominating Committee. Candidates meriting serious consideration will meet with all members of the Board. Based on this input, the Nominating Committee will evaluate which of the prospective candidates is qualified to serve as a director and whether the Nominating Committee should recommend to the Board that this candidate be appointed to fill a current vacancy on the Board, or presented for approval of the stockholders, as appropriate.

The Company has never received a proposal from a stockholder to nominate a director. Although the Nominating Committee has not adopted a formal policy with respect to stockholder nominees, the Nominating Committee expects that the evaluation process for a stockholder nominee would be similar to the process outlined above.

*Board Nominees for the 2013 Annual Meeting.* Each of the nominees listed in this Proxy Statement are current directors standing for re-election. Our current director and nominee, Jack R. Blair, was named, on December 10, 2012, along with seven other individuals, as respondents in an administrative proceeding filed by the SEC. This administrative proceeding relates to his service in 2007 as a member of the board of certain investment companies managed by an affiliate of Morgan Keegan and Co.

The order instituting the public administrative proceedings alleges the respondents caused certain Morgan Keegan funds to violate three administrative rules relating to the calculation of the fair value of net asset values, including the maintenance of compliance procedures and internal controls as they relate to valuation of certain types of securities.

Mr. Blair's service on this board ended December 31, 2007. The public administrative proceeding is seeking an order requiring respondents to cease and desist from future violations of the rules and unspecified monetary penalties. The Nominating and Corporate Governance Committee has closely reviewed this situation and has determined that Mr. Blair's extensive knowledge of the medical device industry and his excellent and valued service on NuVasive's Board outweigh any potential issues caused by these allegations.

#### **CORPORATE GOVERNANCE**

The Board met five times during fiscal 2012 and action was taken via unanimous written consent once. The Audit Committee met ten times. The Compensation Committee of the Board of Directors (the *Compensation Committee*) met eight times and frequently met in executive session. Action was taken by the Compensation Committee via unanimous written consent four times. The Nominating Committee met four times and took action by unanimous written consent once. Each member of the Board attended 75% or more of the Board meetings during fiscal 2012. Each member of the Board who served on the Audit, Compensation or Nominating Committees attended at least 75% of the respective committee meetings during fiscal 2012.

### **Board Independence**

The Board has determined that the following directors are independent under current NASDAQ listing standards:

Jack R. Blair

Peter C. Farrell, Ph.D., AM

Lesley H. Howe

Robert J. Hunt

Peter M. Leddy, Ph.D.

Eileen M. More, CFA

Richard W. Treharne, Ph.D.

Under applicable SEC and NASDAQ rules, the existence of certain related party transactions between a director and the Company with dollar amounts above certain thresholds are required to be disclosed and preclude a finding by the Board that the director is independent. In addition to transactions required to be disclosed under SEC and NASDAQ rules, the Board considered certain other relationships in making its independence determinations, and determined, in each case, that such other relationships did not impair the director's ability to exercise independent judgment on behalf of the Company.

### **Board Leadership Structure**

The position of Chairman of the Board and CEO of the Company has been combined and, in 2012, the Company appointed a lead independent director. The Board believes that Mr. Lukianov's service as both Chairman and CEO, is in the best interest of the Company and its stockholders. Mr. Lukianov possesses detailed and in-depth knowledge of the issues, opportunities and challenges facing the Company and its businesses and is thus best positioned to develop agendas that ensure that the Board's time and attention are focused on the most critical matters. Although the Company believes that the combination of the Chairman and CEO roles is appropriate at this time based upon the current circumstances, the Company's Corporate Governance Guidelines does not establish this approach as a policy.

His combined role enables decisive leadership, ensures clear accountability, and enhances the Company's ability to communicate its message and strategy clearly and consistently to the Company's shareowners, investors, customers and suppliers, particularly during times of turbulent economic and industry conditions. This has been beneficial in driving a unified approach to core operating processes across a global organization that has experienced significant growth from year-to-year.

In 2012, the Board selected one independent director to serve a two-year term as the Lead Independent Director for all meetings of the non-management directors held in executive session in order to further balance the power amongst the Board. The Lead Independent Director is also responsible for presiding at all meetings of the Board in the absence of or at the request of the Chairman; serving as liaison between the Chairman and the other independent directors; and calling meetings of the independent directors as needed or appropriate. The Lead Independent Director also has other authority and responsibilities that are described in the charter of the Lead Independent Director. Peter C. Farrell, Ph.D., AM currently serves as the Lead Independent Director.

Each of the directors other than Mr. Lukianov is independent and the Board believes that the independent directors provide effective oversight of management. Moreover, in addition to feedback provided during the course of Board meetings, the independent directors have regular executive sessions. Following an executive session of independent directors, the independent directors communicate with the Chairman directly regarding any specific feedback or issues, provide the Chairman with input regarding agenda items for Board and Committee meetings, and coordinate with the Chairman regarding information to be provided to the independent

directors in performing their duties. The Board believes that this approach appropriately and effectively complements the combined CEO/Chairman structure.

### **Role of Board in Risk Oversight Process**

The responsibility for the day-to-day management of risk lies with the Company's management, while the Board is responsible for overseeing the risk management process to ensure that it is properly designed, well-functioning and consistent with the Company's overall corporate strategy. Each year, the Company's management identifies what it believes are the top individual risks facing the Company. These risks are then discussed and analyzed with the Board. This enables the Board to coordinate the risk oversight role, particularly with respect to risk interrelationships. However, in addition to the Board, the committees of the Board consider the risks within their areas of responsibility. The Audit Committee oversees the risks associated with the Company's financial reporting and internal controls, as well as the Company's corporate compliance policies (for example, policies addressing relationships with health care professionals and compliance with anti-kickback laws). The Nominating Committee oversees the risks associated with the Company's overall governance and its succession planning process to understand that the Company has a slate of future candidates that are qualified for key management positions. In addition, the Compensation Committee determines whether any compensation practices create risk-taking incentives that are reasonably likely to have a material adverse effect on the Company.

The Board's risk oversight function complements the Company's leadership structure. The Company's CEO and Chairman of the Board, is able to promote open communication between management and directors relating to risk as well as combine the operational focus of management with the risk oversight capabilities of the Board.

### **Board Committees**

The Board has standing Audit, Compensation and Nominating Committees.

*Audit Committee.* The Audit Committee currently consists of Lesley H. Howe (Chair), Robert J. Hunt and Eileen M. More, CFA. The Board has determined that all members of the Audit Committee are independent directors under the NASDAQ listing standards and each of them is able to read and fundamentally understand financial statements. The Board has determined that Lesley H. Howe qualifies as an audit committee financial expert as defined by the rules of the SEC. The purpose of the Audit Committee is to oversee both the accounting and financial reporting processes of the Company as well as audits of its financial statements. The responsibilities of the Audit Committee include appointing and approving the compensation of the independent registered public accounting firm selected to conduct the annual audit of our accounts, reviewing the scope and results of the independent audit, reviewing and evaluating internal accounting policies, and approving all professional services to be provided to the Company by its independent registered public accounting firm. The Audit Committee is governed by a written charter approved by the Board. The Audit Committee is governed by a written charter approved by the Board. The Audit Committee report is included in this Proxy Statement under the caption Report of the Audit Committee.

*Compensation Committee.* The Compensation Committee currently consists of Jack R. Blair (Chair), Lesley H. Howe, Peter Leddy, Ph.D. and Richard W. Treharne. The Board has determined that all members of the Compensation Committee are independent directors under the NASDAQ listing standards. The Compensation Committee administers the Company's benefit and stock plans, reviews and administers all compensation arrangements for executive officers, and establishes and reviews general policies relating to the compensation and benefits of our executive officers and shareowners. The Compensation Committee meets several times a year and consults with independent compensation consultants, as it deems appropriate, to review, analyze and set compensation packages for our executive officers, which include our Chairman and CEO, our Presidents, our Executive Vice President and Chief Financial Officer and each of our other executive officers. The Compensation Committee determines the CEO's compensation following discussions with him and, as it

deems appropriate, an independent compensation consultant. The Compensation Committee is solely responsible for determining the CEO's compensation. For the other executive officers, the CEO prepares and presents to the Compensation Committee performance assessments and compensation recommendations. Following consideration of the CEO's presentation, the Compensation Committee may accept or adjust the CEO's recommendations. The other executive officers are not present during this process.

In addition, the Compensation Committee determines whether any compensation policies create risk-taking incentives that are reasonably likely to have a material adverse effect on the Company. The Compensation Committee has determined that the risks arising from our compensation policies and practices are not reasonably likely to have a material adverse effect on the Company.

For more information, please see below under Compensation Discussion and Analysis. The Compensation Committee is governed by a written charter approved by the Board. The Compensation Committee report is included in this Proxy Statement under the caption Report of the Compensation Committee.

*Nominating and Corporate Governance Committee.* The Nominating Committee currently consists of Peter C. Farrell (Chair), Robert J. Hunt and Richard W. Treharne. The Board has determined that all of the members of the Nominating Committee are independent directors under the NASDAQ listing standards. The Nominating Committee's responsibilities include recommending to the Board nominees for possible election to the Board and providing oversight with respect to corporate governance and succession planning matters. The Nominating Committee is governed by a written charter approved by the Board.

Charters for the Company's Audit, Compensation, and Nominating Governance Committees, as well as the charter of the Lead Independent Director are available to the public at the Company's website at [www.nuvasive.com](http://www.nuvasive.com).

#### COMMUNICATIONS WITH DIRECTORS

Any stockholder who desires to contact any member of the Board or management can send an e-mail to [investorrelations@nuvasive.com](mailto:investorrelations@nuvasive.com) or write to:

NuVasive, Inc.

Attn: Investor Relations

7475 Lusk Boulevard

San Diego, CA 92121

Your correspondence should indicate that you are a stockholder of the Company. Comments or questions regarding the Company's accounting, internal controls or auditing matters will be referred to members of the Audit Committee. Comments or questions regarding the nomination of directors and other corporate governance matters will be referred to members of the Nominating Committee. For all other matters, our investor relations personnel will, depending on the subject matter:

forward the communication to the director or directors to whom it is addressed;

forward the communication to the appropriate management personnel;

attempt to handle the inquiry directly, for example where it is a request for information about the Company, or it is a stock-related matter; or

not forward the communication if it is primarily commercial in nature or if it relates to an improper or irrelevant topic.

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**CODE OF ETHICAL BUSINESS CONDUCT**

The Company has adopted a code of ethical business conduct that applies to all officers, employees and directors, including its principal executive officer, principal financial officer and controller. This Code of Ethical Business Conduct is posted on the Company's website at [www.nuvasive.com](http://www.nuvasive.com).

Amendments to or waivers of our Code of Ethical Business Conduct granted to any of our directors or executive officers will be published promptly on our web site.

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

The following table sets forth information regarding ownership of our common stock as of March 27, 2013 (or such other date as provided below) based on information available to us and filings with the SEC by (a) each person known to the Company to own more than 5% of the outstanding shares of our common stock, (b) each director and nominee for director of the Company, (c) the Company's Chief Executive Officer, Chief Financial Officer and each other named executive officer and (d) all directors and executive officers as a group. Each stockholder's percentage ownership is based on 44,205,838 shares of our common stock outstanding as of the record date of March 27, 2013 for the Annual Meeting.

Name and Address of Beneficial Owner(1)	Amount and Nature of Beneficial Ownership(2)	Percent of Class (%)
<b>Principal Stockholders</b>		
BlackRock, Inc.(3) 40 East 52nd Street New York, NY 10022	4,762,085	10.77
Capital Research Global Investors(4) 333 South Hope Street Los Angeles, CA 90071	3,831,522	8.67
Deerfield Mgmt, L.P.(5) 780 Third Avenue, 37th Floor New York, NY 10017	3,765,956	8.52
The Vanguard Group(6) 100 Vanguard Blvd. Malvern, PA 19355	2,552,550	5.77
<b>Directors and Executive Officers</b>		
Alexis V. Lukianov(7)	1,929,929	4.19
Jack R. Blair(8)	114,990	*
Peter C. Farrell, Ph.D., AM(9)	98,794	*
Lesley H. Howe(10)	61,000	*
Robert J. Hunt(11)	84,500	*
Peter M. Leddy, Ph.D.(12)	672	*
Eileen M. More(13)	82,000	*
Richard W. Treharne, Ph.D.(14)	57,500	*
Keith C. Valentine(15)	926,084	2.05
Patrick Miles(17)	578,127	1.29
Michael J. Lambert(16)	63,129	*
Jeffrey P. Rydin (18)	349,598	*
All Directors and Execut		