

BERRY GLOBAL GROUP INC

Form PRE 14A

January 08, 2019

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UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington D.C. 20549

SCHEDULE 14A

(Rule 14a-101)

INFORMATION REQUIRED IN PROXY STATEMENT

SCHEDULE 14A INFORMATION

Proxy Statement Pursuant to Section 14(a) of the Securities
Exchange Act of 1934 (Amendment No. N/A)

Filed by 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 Rule 14a-12

Berry Global Group, Inc.

(Name of Registrant as Specified in Charter)

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

Payment of Filing Fee (Check the appropriate box):

No fee required.

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

(1)

Title of each class of securities to which transaction applies:

(2)

Aggregate number of securities to which transaction applies:

(3)

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

(4)

Proposed maximum aggregate value of transaction:

(5)

Total fee paid:

Fee paid previously with preliminary materials.

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

(1)

Amount previously paid:

(2)

Form, Schedule or Registration Statement No.:

(3)

Filing party:

(4)

Date filed:

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PRELIMINARY COPY - SUBJECT TO COMPLETION

January 8, 2019

Dear Stockholder:

The directors and officers of Berry Global Group, Inc. join me in inviting you to attend our Annual Meeting of Stockholders on March 6, 2019, at 10:00 a.m., Central Time, at the Tropicana Executive Conference Center, 450 NW Riverside Dr., Evansville, Indiana 47708. The formal notice of this Annual Meeting and the Proxy Statement appear on the following pages. After reading the Proxy Statement, please submit your proxy through the Internet or by touch-tone telephone, or complete, sign, date and promptly return the proxy card by mail in the enclosed self-addressed envelope. We must receive votes submitted via mail, the Internet (via www.proxyvote.com) or by touch-tone telephone by 11:59 p.m., Eastern Time, on March 5, 2019 in order for them to be counted at the Annual Meeting. We encourage you to vote via the Internet using the control number that appears on the front of your proxy card and to choose to view future mailings electronically rather than receiving them on paper.

We urge you to submit your proxy promptly. Even after submitting the proxy, you may, of course, vote in person on all matters brought before the meeting.

Sincerely,

Thomas E. Salmon
Chief Executive Officer

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Notice of Annual Meeting of Stockholders
Berry Global Group, Inc.
March 6, 2019
10:00 a.m., Central Time
Tropicana Executive Conference Center
450 NW Riverside Dr., Evansville, Indiana 47708

ITEMS OF BUSINESS

- (1)
To elect seven director nominees to Berry's Board of Directors for one-year terms;
- (2)
To ratify the selection of Ernst & Young LLP as Berry's independent registered public accountants for the fiscal year ending September 28, 2019;
- (3)
To approve, on an advisory, non-binding basis, our executive compensation;
- (4)
To vote, on an advisory, non-binding basis, on whether the advisory, non-binding vote on executive compensation should occur every one, two or three years;
- (5)
To approve an amendment to Berry's Amended and Restated Certificate of Incorporation to enable stockholders who hold at least 25% of our outstanding common stock to call special stockholder meetings;
- (6)
If properly presented at the Annual Meeting, to consider a stockholder proposal requesting the Board to take steps necessary to give stockholders who hold at least 15% of our outstanding common stock the right to call a special stockholder meeting; and
- (7)
To transact such other business as may properly come before the meeting or any adjournment or postponement thereof.

The nominees for election as directors are Idalene F. Kesner, Carl J. Rickertsen, Thomas E. Salmon, Paula A. Sneed, Robert A. Steele, Stephen E. Sterrett, and Scott B. Ullem, each of whom presently serves as a director of Berry. One of our current directors, Robert V. Seminara, will complete his service as a director at the Annual Meeting, and, effective as of the date of the Annual Meeting, the size of the Board of Directors will be reduced from 11 directors to 10 directors. We describe each of the foregoing proposals in more detail in the accompanying Proxy Statement, which you should read in its entirety before voting.

RECORD DATE

Only stockholders of record at the close of business on January 7, 2019, the record date, are entitled to notice of and to vote at this meeting and any adjournments or postponements of this meeting.

PROXY VOTING

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We encourage you to attend our Annual Meeting. Whether you are able to attend or not, we urge you to indicate your vote by completing, signing, dating and returning your proxy card or by Internet or telephone voting as described in the Proxy Statement.

By order of the Board of Directors,
/s/ Jason K. Greene

Chief Legal Officer and Secretary

Important Notice Regarding the Availability of Proxy Materials
for the Annual Meeting to Be Held on Wednesday, March 6, 2019:
The proxy materials for the Annual Meeting are available at www.proxyvote.com.

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PROXY STATEMENT SUMMARY

This proxy summary highlights information which may be contained elsewhere in this Proxy Statement. This summary does not contain all of the information that you should consider, and you should read the entire Proxy Statement carefully before voting. Page references are supplied to help you find further information in this Proxy Statement.

Proxy Voting Matters

	Our Board's Recommendation
<p>Proposal 1 – Election of Directors (page <u>31</u>) The Board and the Nominating and Governance Committee believe that the seven director nominees possess the necessary qualifications to provide effective oversight of the Company's business.</p>	FOR each Director Nominee
<p>Proposal 2 – Ratification of the Appointment of Ernst & Young LLP as Independent Auditors (page <u>31</u>) The Audit Committee and the Board believe that the continued retention of Ernst & Young LLP to serve as the Independent Auditors for the fiscal year ending September 28, 2019 is in the best interests of the Company and its stockholders. As a matter of good corporate governance, stockholders are being asked to ratify the Audit Committee's selection of the Independent Auditors.</p>	FOR
<p>Proposal 3 – Executive Compensation (page <u>32</u>) The Board recommends that stockholders approve, on an advisory, non-binding basis, our executive compensation.</p>	FOR
<p>Proposal 4 – Frequency of Advisory Vote on Executive Compensation (page <u>32</u>) The Board recommends that stockholders vote to conduct an advisory vote on executive compensation every "Three Years".</p>	FOR Three Years
<p>Proposal 5 – Special Meeting Amendment to the Certificate of Incorporation (page <u>32</u>) The Board recommends that stockholders approve an amendment to the Amended and Restated Certificate of Incorporation to enable stockholders who hold at least 25% of our outstanding common stock to call special stockholder meetings because the Board and the Nominating and Governance Committee believe that an ownership threshold of at least 25%, along with appropriate procedural requirements, would achieve a reasonable balance between enhancing stockholder rights and adequately protecting the long-term interests of the Company and its stockholders.</p>	FOR
<p>Proposal 6 – Stockholder Proposal requesting the Board to take steps necessary to give stockholders the right to call a special stockholder meeting (page <u>34</u>) The Board recommends that stockholders vote against this stockholder proposal because the Board and the Nominating and Governance Committee believe the 15% ownership threshold will unduly risk giving a stockholder or small group of stockholders a disproportionate amount of influence over the Company's affairs.</p>	AGAINST

How to Cast Your Vote

- Submitting a Proxy by Mail: Return your completed and signed proxy card in the postage paid envelope provided or to the address shown on the proxy card. The proxy card must be received by March 5, 2019.

- Submitting a Proxy via the Internet: www.proxyvote.com by 11:59 p.m., Eastern Time, on March 5, 2019.

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Submitting a Proxy by Telephone: Call the number shown on your proxy card or voter instruction form by 11:59 p.m., Eastern Time, on March 5, 2019.

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Submitting a Proxy in Person at the Annual Meeting: You may vote your shares in person at the Annual Meeting.

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Name	Age	Occupation	Committee Membership	Independent	Other Public Company Boards
Idalene F. Kesner	60	Dean of Indiana University's Kelley School of Business	NGC		Olympic Steel, Inc. (NASDAQ: ZEUS)
Carl J. (Rick) Rickertsen	58	Managing Partner of Pine Creek Partners	AC CC (Chair)		None
Thomas E. Salmon	55	Berry Chairman of the Board and Chief Executive Officer			Old National Bank (NASDAQ: ONB)
Paula A. Sneed	71	Chairperson and CEO of Phelps Prescott Group LLC	NGC		Charles Schwab Corporation (NYSE: SCHW) and TE Connectivity Ltd. (NYSE: TEL)
Robert A. Steele	63	Retired Procter & Gamble Vice Chairman Global Health and Well-being	NGC		LSI Industries, Inc. (NASDAQ: LYTS); BJ's Wholesale Club Holdings, Inc. (NYSE: BJ); and Newell Brands Inc. (NYSE: NWL)
Stephen E. Sterrett	63	Former Sr. Executive Vice President and Chief Financial Officer of Simon Property Group, Inc.	AC (Chair)		Equity Residential (NYSE: EQR) and Realty Income Corporation (NYSE: O)
Scott B. Ullem	52	Chief Financial Officer of Edwards Lifesciences Corporation	CC		None

AC = Audit Committee

CC = Compensation Committee

NGC = Nominating and Governance Committee

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PROXY STATEMENT SUMMARY

Governance Highlights

We are committed to good corporate governance, which promotes the long-term interests of stockholders, strengthens Board and management accountability and helps build public trust in the Company. The Corporate Governance section beginning on page 13 describes our governance framework, which includes the following highlights:

- 10 of our 11 current directors are independent.
- Board Independence Mr. Salmon is the only management director.
- There are regular executive sessions for independent directors and any independent director may raise matters for discussion at these executive sessions.
- Lead Independent Director Our Corporate Governance Guidelines require a Lead Independent Director position with specific responsibilities to ensure independent oversight of management whenever our CEO is also the Chairman of the Board. The Lead Independent Director is elected annually by the independent directors.
- The Board has fixed the number of directors at 10 as of the Annual Meeting.
- Board Composition We regularly assess our Board performance and can adjust the number of directors according to our needs.
- Our Board has a diverse mix of skills, experience and backgrounds.
- Our director attendance for Board and committee meetings was in excess of 75% in fiscal 2018.
- Accountability to Stockholders Proxy Access. Our Bylaws provide proxy access, allowing a stockholder or group of up to 20 stockholders continuously owning an aggregate of 3% or more of our outstanding common stock for at least three years to nominate and include in our proxy materials director nominees constituting up to the greater of 20% of the number of directors then in office or two nominees, provided the stockholders and nominees otherwise satisfy the requirements of our Bylaws.
- Majority Voting/Director Resignation Policy. Our Bylaws provide that in uncontested director elections each director shall be elected by the vote of the majority of the votes cast. Our Corporate Governance Guidelines provide that any incumbent director nominee in an uncontested election who receives a greater number of votes “against” than votes “for” such nominee’s election shall promptly tender his or her resignation to the Board for the Board’s consideration.

- Board Declassification. Our Amended and Restated Certificate of Incorporation (the “Certificate of Incorporation”) provides for the annual election of directors after a transition period.

- We do not have a poison pill.

Independent
Board
Committees

- We have three Board committees – Audit, Nominating and Governance, and Compensation.

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