

INFINERA CORP  
Form DEF 14A  
April 27, 2009  
Table of Contents

**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

**INFINERA CORPORATION**

(Name of Registrant as Specified In Its Charter)

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

Payment of Filing Fee (Check the appropriate box)

No fee required.

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

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

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(1) Amount Previously Paid:

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

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(3) Filing Party:

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**Table of Contents**

**Infinera Corporation**

169 Java Drive

Sunnyvale, CA 94089

**NOTICE OF 2009 ANNUAL MEETING OF STOCKHOLDERS**

**To Be Held On June 11, 2009**

**10:00 a.m., Pacific Time**

Dear Stockholder:

You are cordially invited to attend the 2009 Annual Meeting of Stockholders of Infinera Corporation, a Delaware corporation (the Company or Infinera ). Notice is hereby given that the meeting will be held on June 11, 2009, at 169 Java Drive, Sunnyvale, CA 94089 at 10:00 a.m., Pacific Time for the following purposes:

1. To elect two Class II directors for a term of three years or until successors have been duly elected and qualified;
2. To ratify the appointment by the Audit Committee of the Board of Directors of Ernst & Young LLP as the independent registered public accounting firm of the Company for its fiscal year ending December 26, 2009;
3. Approve a stock option exchange program that, if undertaken, would permit our eligible employees to exchange certain outstanding stock options for restricted stock units, except that executive officers would receive options with a lower exercise price rather than restricted stock units; and
4. To transact any other business properly brought before the meeting or any adjournment or postponement thereof. These items of business are more fully described in the Proxy Statement accompanying this Notice.

The record date for the 2009 Annual Meeting of Stockholders (the Annual Meeting ) is April 22, 2009. Only stockholders of record at the close of business on that date may vote at the Annual Meeting or any postponement or adjournment thereof. A list of our stockholders will be maintained and open for examination by any of our stockholders, for any purpose germane to the Annual Meeting, during regular business hours at the address listed above for ten days prior to the meeting.

We are pleased to inform you that Infinera will again be utilizing the U.S. Securities and Exchange Commission rules that allow issuers to furnish proxy materials to their stockholders via the Internet. The rules allow us to provide our stockholders with the information they need, while lowering the cost of delivery and reducing the environmental impact of our Annual Meeting. Pursuant to these rules, instead of mailing a printed copy of the Company s proxy materials to each stockholder we have elected to provide access to our proxy materials over the Internet. Accordingly, with the exception of certain of our largest stockholders who will receive printed copies of the Company s proxy materials by mail, stockholders of record at the close of business on April 22, 2009 will receive a Notice of Internet Availability of Proxy Materials and may vote at the Annual Meeting and any postponements or adjournments of the meeting. We expect to mail the Notice of Internet Availability of Proxy Materials by May 1, 2009, at least 40 calendar days prior to the Annual Meeting date.

Whether or not you expect to attend the Annual Meeting in person it is important that your shares are represented. If you do not wish to vote in person or you will not be attending the Annual Meeting you may vote by proxy. You can vote by proxy over the Internet by following the instructions provided in the Notice of Internet Availability of Proxy Materials. Alternatively, you may follow

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the procedures outlined in the Notice of Internet Availability of Proxy Materials to request a paper proxy card to submit your vote by mail; likewise, you may vote by mail or by telephone IF you are receiving these materials by mail. Even if you have voted by proxy, you may still vote in person if you attend the meeting. Please note, however, that if your shares are held of record by a broker, bank or other nominee and you wish to vote at the meeting, you must provide a valid proxy issued in your name from that record holder.

On behalf of our Board of Directors, thank you for your participation in this important annual process.

By Order of the Board of Directors,

/s/ MICHAEL O. McCARTHY, III  
**Michael O. McCarthy, III**

*Chief Legal Officer and Corporate Secretary*

Sunnyvale, California  
April 27, 2009

**Table of Contents**

|  | <b>Page</b> |
|--|-------------|
| <b><u>QUESTIONS AND ANSWERS ABOUT THE PROXY MATERIALS AND VOTING PROCEDURAL MATTERS</u></b>  |             |
| <b><u>Annual Meeting</u></b>   | 1           |
| <u>Why am I being provided access to these proxy materials?</u>  | 1           |
| <u>What is the Notice of Internet Availability of Proxy Materials?</u>   | 1           |
| <u>Where is the Annual Meeting?</u>  | 1           |
| <u>Can I attend the Annual Meeting?</u>  | 1           |
| <u>What proposals will be voted on at the Annual Meeting?</u>  | 2           |
| <u>What is the voting requirement to approve each of the proposals and how does the Board of Directors recommend that I vote?</u>        | 2           |
| <b><u>Stock Ownership</u></b>  | 3           |
| <u>What is the difference between holding shares as a stockholder of record and as a beneficial owner of shares held in street name?</u> | 3           |
| <b><u>Quorum and Voting</u></b>  | 3           |
| <u>Who is entitled to vote at the Annual Meeting?</u>  | 3           |
| <u>How many shares must be present or represented to conduct business at the Annual Meeting?</u>   | 3           |
| <u>What is a broker non-vote?</u>  | 3           |
| <u>How can I vote my shares in person at the Annual Meeting?</u>   | 4           |
| <u>How can I vote my shares without attending the Annual Meeting?</u>  | 4           |
| <u>How will my shares be voted if I submit a proxy via the Internet, by telephone or by mail and do not make specific choices?</u>       | 4           |
| <u>Can I change or revoke my vote?</u>   | 4           |
| <u>Who will bear the cost of soliciting votes for the Annual Meeting?</u>  | 5           |
| <u>Where can I find the voting results of the Annual Meeting?</u>  | 5           |
| <b><u>Additional Information</u></b>   | 5           |
| <u>What should I do if I receive more than one Notice of Internet Availability or set of proxy materials?</u>                            | 5           |
| <u>Can I access the Company's proxy materials and Annual Report on Form 10-K over the Internet?</u>                                      | 5           |
| <b><u>PROPOSAL 1 ELECTION OF DIRECTORS</u></b>   | 6           |
| <u>Nominees for Class II Directors</u>   | 6           |
| <u>Information Regarding Other Directors Continuing In Office</u>  | 7           |
| <b><u>CORPORATE GOVERNANCE</u></b>   | 9           |
| <u>Independence of the Board of Directors</u>  | 9           |
| <u>Information Regarding the Board of Directors and its Committees</u>   | 9           |
| <u>Audit Committee</u>   | 10          |
| <u>Compensation Committee</u>  | 10          |
| <u>Compensation Committee Interlocks and Insider Participation</u>   | 11          |
| <u>Nominating and Governance Committee</u>   | 12          |
| <u>Acquisition Committee</u>   | 13          |
| <u>Meetings of the Board of Directors</u>  | 13          |
| <u>Code of Business Conduct</u>  | 13          |
| <u>Stockholder Communications with our Board of Directors</u>  | 14          |
| <u>Attendance at Annual Stockholder Meetings by the Board of Directors</u>   | 14          |
| <u>Report of the Audit Committee</u>   | 15          |
| <b><u>PROPOSAL 2 RATIFICATION OF APPOINTMENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM</u></b>                                    | 16          |
| <u>Independent Registered Public Accounting Firm's Fees</u>  | 16          |
| <u>Pre-Approval Policies and Procedures</u>  | 17          |
| <b><u>PROPOSAL 3 APPROVAL OF STOCK OPTION EXCHANGE PROGRAM</u></b>   | 18          |

**Table of Contents**

|  | <b>Page</b> |
|--|-------------|
| <b><u>SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT</u></b>               | 26          |
| <b><u>SECTION 16(a) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE</u></b>                      | 29          |
| <b><u>EQUITY COMPENSATION PLAN INFORMATION</u></b>   | 30          |
| <b><u>COMPENSATION OF EXECUTIVE OFFICERS</u></b>   | 31          |
| <u>Compensation Discussion and Analysis</u>  | 31          |
| <b><u>EXECUTIVE COMPENSATION TABLES</u></b>  | 44          |
| <u>2008 Summary Compensation Table</u>   | 44          |
| <u>2008 Grants of Plan Based Awards</u>  | 45          |
| <u>Outstanding Equity Awards at Fiscal Year-End 2008</u>                                   | 46          |
| <u>2008 Option Exercises</u>   | 47          |
| <u>Change of Control and Severance Arrangements</u>  | 48          |
| <u>Compensation of Directors</u>   | 52          |
| <b><u>CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS</u></b>                         | 54          |
| <b><u>STOCKHOLDER PROPOSALS FOR 2010 ANNUAL MEETING</u></b>                                | 54          |
| <b><u>DELIVERY OF DOCUMENTS TO STOCKHOLDERS SHARING THE SAME LAST NAME AND ADDRESS</u></b> | 55          |
| <b><u>OTHER MATTERS</u></b>  | 55          |

**Table of Contents**

**Infinera Corporation**

169 Java Drive

Sunnyvale, CA 94089

**PROXY STATEMENT**

**FOR THE 2009 ANNUAL MEETING OF STOCKHOLDERS**

To be held on June 11, 2009

**QUESTIONS AND ANSWERS ABOUT THE PROXY MATERIALS AND VOTING PROCEDURAL MATTERS**

***Annual Meeting***

**Q: Why am I being provided access to these proxy materials?**

A: The Board of Directors of Infinera (the Board of Directors) is providing you access to these proxy materials in connection with the solicitation of proxies for use at the 2009 Annual Meeting of Stockholders (the Annual Meeting) to be held on Thursday, June 11, 2009 at 10:00 a.m. Pacific Time, and at any adjournment or postponement thereof, for the purpose of considering and acting upon the matters described herein.

**Q: What is the Notice of Internet Availability of Proxy Materials?**

A: In accordance with rules and regulations adopted by the U.S. Securities and Exchange Commission (the SEC), instead of mailing a printed copy of the Company's proxy materials to all stockholders entitled to vote at the Annual Meeting, the Company is furnishing the proxy materials to its stockholders over the Internet. If you received a Notice of Internet Availability of Proxy Materials (the Notice) by mail, you will not receive a printed copy of the proxy materials. Instead, the Notice will instruct you as to how you may access and review the proxy materials and submit your vote via the Internet. If you received a Notice by mail and would like to receive a printed copy of the proxy materials, please follow the instructions for requesting such materials included in the Notice.

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 our Annual Meeting on the environment. If you choose to receive future proxy materials by email, you will receive an email 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 email will remain in effect until you terminate it.

On the date of mailing of the Notice, all stockholders and beneficial owners will have the ability to access all of the Company's proxy materials on a website referred to in the Notice. These proxy materials will be available free of charge.

**Q: Where is the Annual Meeting?**

A:



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The Annual Meeting will be held at the Company's principal executive offices, located at 169 Java Drive, Sunnyvale, California 94089.

**Q: Can I attend the Annual Meeting?**

A: You are invited to attend the Annual Meeting if you were a stockholder of record or a beneficial owner as of the close of business on April 22, 2009. You should bring photo identification for entrance to the Annual Meeting. The meeting will begin promptly at 10:00 a.m. Pacific Time.

**Table of Contents**

**Q: What proposals will be voted on at the Annual Meeting?**

A: At the Annual Meeting, stockholders will be asked to vote on:

- The election of two Class II directors to serve until the 2012 annual meeting of stockholders or until successors have been duly elected and qualified;
- The ratification of the appointment of Ernst & Young LLP as the Company's independent registered public accounting firm for the fiscal year ending December 26, 2009; and
- Approval of a stock option exchange program that, if undertaken, would permit our eligible employees to exchange certain outstanding stock options for restricted stock units, except that executive officers would receive options with a lower exercise price rather than restricted stock units.

We are not currently aware of any other business to be acted upon at the Annual Meeting. If any other matters are properly submitted for consideration at the Annual Meeting, including any proposal to adjourn the Annual Meeting, the persons named as proxies will vote the shares represented thereby in their discretion. Adjournments of the Annual Meeting may be made for the purpose of, among other things, soliciting additional proxies. Any adjournment may be made from time to time by approval of the holders of common stock representing a majority of the votes present in person or by proxy at the Annual Meeting, whether or not a quorum exists, without further notice other than by an announcement at the Annual Meeting.

**Q: What is the voting requirement to approve each of the proposals and how does the Board of Directors recommend that I vote?**

A: *Proposal One* Directors are elected by a combination of the affirmative votes cast by those shares present in person, or represented by proxy, and entitled to vote at the Annual Meeting. The nominees for director receiving the highest number of affirmative votes will be elected. Abstentions and broker non-votes will not affect the outcome of the election. Stockholders may not cumulate votes in the election of directors. **The Board of Directors unanimously recommends that you vote your shares FOR the nominees listed in Proposal One.**

*Proposal Two* Ratification of the appointment of Ernst & Young LLP as the Company's independent registered public accounting firm for the fiscal year ending December 26, 2009 requires the affirmative vote of a majority of the total votes cast by holders of shares present in person or represented by proxy at the Annual Meeting and entitled to vote on this proposal.

You may vote FOR, AGAINST or ABSTAIN on this proposal. Abstentions are deemed to be votes cast and have the same effect as a vote AGAINST this proposal. Broker non-votes are not deemed to be votes cast and, therefore, are not included in the tabulation of the voting results on this proposal. **The Board of Directors unanimously recommends that you vote your shares FOR Proposal Two.**

*Proposal Three* Approval of a stock option exchange program that, if undertaken, would permit our eligible employees to exchange certain outstanding stock options for restricted stock units, except that executive officers would receive options with a lower exercise price rather than restricted stock units. To be approved, this proposal requires the affirmative vote of a majority of the total votes cast by holders of shares present in person or represented by proxy at the Annual Meeting and entitled to vote on this proposal.

You may vote FOR, AGAINST or ABSTAIN on this proposal. Abstentions are deemed to be votes cast and have the same effect as a vote AGAINST this proposal. Broker non-votes are not deemed to be votes cast and, therefore, are not included in the tabulation of the voting results on this proposal. **The Board of Directors unanimously recommends that you vote your shares FOR Proposal Three.**

## **Table of Contents**

### ***Stock Ownership***

**Q: What is the difference between holding shares as a stockholder of record and as a beneficial owner of shares held in street name?**

A: If your shares are registered directly in your name with our transfer agent, Wells Fargo Shareowner Services, you are considered the stockholder of record, with respect to those shares, and, with the exception of certain stockholders who have been solicited by mail, the Notice has been sent directly to you by the Company.

*Beneficial owners* Many stockholders hold their shares through a broker, trustee or other nominee, rather than directly in their own name. If your shares are held in a brokerage account or by a bank or other nominee, you are considered the beneficial owner of shares held in street name. The Notice has been forwarded to you by your broker, trustee or nominee who is considered, with respect to those shares, the stockholder of record. As the beneficial owner, you have the right to direct your broker, trustee or other nominee on how to vote your shares. For directions on how to vote shares beneficially held in street name, please refer to the voting instruction card provided by your broker, trustee or nominee. Because a beneficial owner is not the stockholder of record, you may not vote these shares in person at the Annual Meeting unless you obtain a legal proxy from the broker, trustee or nominee that holds your shares, giving you the right to vote the shares at the Annual Meeting.

### ***Quorum and Voting***

**Q: Who is entitled to vote at the Annual Meeting?**

A: Holders of record of the Company's common stock at the close of business on April 22, 2009 (the Record Date) are entitled to receive notice of and to vote their shares at the Annual Meeting. Such stockholders are entitled to cast one vote for each share of common stock held as of the Record Date. As of the close of business on the Record Date, there were 95,362,167 shares of common stock outstanding and entitled to vote at the Annual Meeting.

**Q: How many shares must be present or represented to conduct business at the Annual Meeting?**

A: The presence of the holders of a majority of the shares of the Company's common stock entitled to vote at the Annual Meeting is necessary to constitute a quorum at the Annual Meeting. Such stockholders are counted as present at the meeting if they (i) are present in person at the Annual Meeting, or (ii) have properly submitted a proxy.

Under the General Corporation Law of the State of Delaware, as amended, abstentions and broker non-votes are counted as present and entitled to vote and are included for purposes of determining whether a quorum is present at the Annual Meeting.

**Q: What is a broker non-vote?**

A: A broker non-vote occurs when a nominee holding shares for a beneficial owner does not vote on a particular proposal because the nominee does not have discretionary voting power with respect to that item and has not received instructions from the beneficial owner. Broker non-votes will be counted towards the presence of a quorum but will not be counted towards the vote total for any proposal. For the Annual Meeting this year, all matters to be submitted to a vote of the stockholders are routine matters for which such discretionary voting power should exist. Therefore, for the Annual Meeting this year, we do not

expect any broker non-votes.

## Table of Contents

### **Q: How can I vote my shares in person at the Annual Meeting?**

**A:** *Stockholders of record* Shares held in your name as the stockholder of record may be voted in person at the Annual Meeting, even if previously voted by another method.

*Beneficial owners* Shares held beneficially in street name may be voted in person at the Annual Meeting only if you obtain a legal proxy from the broker, trustee or other nominee that holds your shares giving you the right to vote the shares.

**Even if you plan to attend the Annual Meeting, we recommend that you submit your vote as described in the Notice and below, so that your vote will be counted if you later decide not to attend the Annual Meeting.**

### **Q: How can I vote my shares without attending the Annual Meeting?**

**A:** Whether you hold shares directly as the stockholder of record or beneficially in street name, you may direct how your shares are voted without attending the Annual Meeting. If you are a stockholder of record, you may vote by submitting a proxy; please refer to the voting instructions in the Notice or below. If you hold shares beneficially in street name, you may vote by submitting voting instructions to your broker, trustee or nominee; please refer to the voting instructions provided to you by your broker, trustee or nominee.

*Internet* Stockholders of record with Internet access may submit proxies by following the instructions on the Notice. Most of the Company's stockholders who hold shares beneficially in street name may vote by accessing the website specified in the voting instructions provided by their brokers, trustees or nominees. A large number of banks and brokerage firms are participating in Broadridge Financial Solutions, Inc.'s (formerly ADP Investor Communication Services) online program. This program provides eligible stockholders the opportunity to vote over the Internet or by telephone. Voting forms will provide instructions for stockholders whose bank or brokerage firm is participating in Broadridge's program.

*Telephone* Depending on how your shares are held, you may be able to vote by telephone. If this option is available to you, you will receive information explaining this procedure.

*Mail* If you have not already received one, you may request a proxy card from the Company, and indicate your vote by completing, signing and dating the card where indicated and by returning it in the prepaid envelope that will be included with the proxy card.

### **Q: How will my shares be voted if I submit a proxy via the Internet, by telephone or by mail and do not make specific choices?**

**A:** If you submit a proxy via the Internet, by telephone or by mail and do not make voting selections, the shares represented by that proxy will be voted FOR the nominees listed in Proposal One, FOR Proposal Two, and FOR Proposal Three.

### **Q: Can I change or revoke my vote?**

**A:**

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Subject to any rules your broker, trustee or nominee may have, you may change your proxy instructions at any time before your proxy is voted at the Annual Meeting.

*Stockholders of record* If you are a stockholder of record, you may change your vote by (1) filing with the Company's General Counsel, prior to your shares being voted at the Annual Meeting, a written notice of revocation or a duly executed proxy card, in either case dated later than the prior proxy relating to the same shares, or (2) by attending the Annual Meeting and voting in person (although attendance at the Annual Meeting will not, by itself, revoke a proxy). Any written notice

## **Table of Contents**

of revocation or subsequent proxy card must be received by the Company's General Counsel prior to the taking of the vote at the Annual Meeting. Such written notice of revocation or subsequent proxy card should be hand delivered to the Company's General Counsel or should be sent so as to be delivered to the Company's principal executive offices, Attention: General Counsel.

*Beneficial owners* If you are a beneficial owner of shares held in street name, you may change your vote (1) by submitting new voting instructions to your broker, trustee or other nominee, or (2) if you have obtained a legal proxy from the broker, trustee or other nominee that holds your shares giving you the right to vote the shares, by attending the Annual Meeting and voting in person.

A stockholder of record that has voted via the Internet or by telephone may also change his or her vote by making a timely and valid later Internet or telephone vote.

### **Q: Who will bear the cost of soliciting votes for the Annual Meeting?**

A: The Company will bear all expenses of soliciting proxies for the Annual Meeting. The Company may reimburse brokerage firms, custodians, nominees, fiduciaries and other persons representing beneficial owners of Common Stock for their reasonable expenses in forwarding solicitation materials to such beneficial owners. Directors, officers and employees of the Company may also solicit proxies in person or by other means of communication. Such directors, officers and employees will not be additionally compensated but may be reimbursed for reasonable out-of-pocket expenses in connection with such solicitation. The Company may engage the services of a professional proxy solicitation firm to aid in the solicitation of proxies from certain brokers, bank nominees and other institutional owners. The Company's costs for such services, if retained, will not be significant.

### **Q: Where can I find the voting results of the Annual Meeting?**

A: The Company intends to announce preliminary voting results at the Annual Meeting and will publish final results in the Company's quarterly report on Form 10-Q for the second quarter of fiscal 2009, which ends on June 27, 2009.

### ***Additional Information***

### **Q: What should I do if I receive more than one Notice of Internet Availability or set of proxy materials?**

A: If you received more than one Notice or set of proxy materials, your shares likely are registered in more than one name or brokerage account. Please follow the voting instructions on **each** Notice or voting instruction card that you receive to ensure that all of your shares are voted.

### **Q: Can I access the Company's proxy materials and Annual Report on Form 10-K over the Internet?**

A: The Company's proxy materials will be available on the Company's website at [http://www.infinera.com/annual\\_meeting](http://www.infinera.com/annual_meeting), and all stockholders and beneficial owners will have the ability to vote free of charge on-line with their control number referred to in the Notice at <http://www.proxyvote.com>. The Company's Annual Report on Form 10-K for the fiscal year ended December 27, 2008 (the 2008 Annual Report) is also available on the Internet as indicated in the Notice. In addition, you can access this Proxy Statement and the 2008 Annual Report by going to the Company's website at [http://www.infinera.com/annual\\_meeting](http://www.infinera.com/annual_meeting).



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The 2008 Annual Report is not incorporated into this Proxy Statement and is not considered proxy soliciting material.

**Table of Contents**

**PROPOSALS TO BE VOTED ON**

**PROPOSAL 1**

**ELECTION OF DIRECTORS**

There are two nominees for election to Class II of the Board of Directors this year, Dan Maydan and Jagdeep Singh. Nomination of the Class II directors to stand for election at the Annual Meeting was recommended by the Nominating & Governance Committee and approved by the Board of Directors. Information regarding the business experience of Messrs. Maydan and Singh, and the other members of the Board of Directors is included below. If elected, Messrs. Maydan and Singh shall serve a three-year term until the Company's Annual Meeting of Stockholders in 2012 and until their successors are duly elected and qualified.

In February 2009, Mr. Martin informed the Board of Directors that he will not be standing for re-election to the Board of Directors when his term expires at the Annual Meeting. In order to assure a smooth transition, Mr. Martin will continue to serve on the Board of Directors and the Audit Committee and Compensation Committee of the Board of Directors through the 2009 Annual Meeting.

Votes may not be cast in person or by proxy at the Annual Meeting for more than two nominees to the Board of Directors.

If you sign your proxy or voting instruction card but do not give instructions with respect to the voting of directors, your shares will be voted for the persons recommended by the Board of Directors. If you wish to give specific instructions with respect to the voting for directors, you may do so by indicating your instructions on your proxy or voting instruction card.

**Our Board of Directors unanimously recommends a vote FOR the election to the Board of Directors of the named nominees.**

The nominees receiving the highest number of affirmative votes of the shares entitled to vote at the Annual Meeting will be elected as directors of Infinera. Abstentions and broker non-votes will not be counted toward an individual's total. Proxies cannot be voted for more than two individuals. In the event that a nominee is unable or declines to serve as a director at the time of the Annual Meeting, the proxies will be voted for any nominees who may be designated by the then current Board of Directors to fill the vacancy.

**Nominees for Class II Directors Term Expires in 2012**

**Dan Maydan, Ph.D.**

**Director since 2001**

**Age 73**

**Dan Maydan, Ph.D.**, has been a member of our Board of Directors since September 2001. From December 1993 to April 2003, Dr. Maydan served as President of Applied Materials Inc., a company that manufactures semiconductor equipment, and was appointed President Emeritus of the company in April 2003. Dr. Maydan was a member of the board of directors of Applied Materials Inc. from June 1992 until March 2006. Dr. Maydan serves on the board of directors of Electronics for Imaging, Inc., a digital imaging and print management solutions company. Dr. Maydan holds a B.S. and M.S. in Electrical Engineering from the Israel Institute of Technology and a Ph.D. in Physics from Edinburgh University of Scotland.

**Table of Contents**

**Jagdeep Singh**

**Jagdeep Singh**, co-founded Infinera and has served as the President and Chief Executive Officer since January 2001, and as Chairman of the Board of Directors since March 2001. From December 1999 to December 2000, Mr. Singh served as a co-founder and Chief Executive Officer of OnFiber Communications, Inc., an optical telecommunications carrier. Mr. Singh holds a B.S. in Computer Science from the University of Maryland, an M.S. in Computer Science from Stanford University and an M.B.A. from the University of California, Berkeley.

**Director since 2001**

**Age 41**

**Information Regarding Other Directors Continuing In Office**

Set forth below is information regarding each of our continuing directors, including their ages as of March 6, 2009, the periods during which they have served as a director, and certain information as to principal occupations and directorships held by them in corporations whose shares are publicly registered.

**Incumbent Class III Directors whose Terms Expire in 2010**

**Kenneth A. Goldman**, age 59, has been a member of our Board of Directors since February 2005. Mr. Goldman has been the Senior Vice President Finance and Administration and Chief Financial Officer of Fortinet Inc., a provider of unified threat management solutions since September 2007. From November 2006 to August 2007, Mr. Goldman served as Executive Vice President and Chief Financial Officer of Dexterra, Inc., a provider of mobile enterprise software. From August 2000 until March 2006, Mr. Goldman served as Senior Vice President, Finance and Administration and Chief Financial Officer of Siebel Systems, Inc., a supplier of customer software solutions and services. From December 1999 to December 2003, Mr. Goldman served as an advisory council member of the Financial Accounting Standards Board Advisory Council. Mr. Goldman serves on the boards of directors of BigBand Networks, Inc., a provider of broadband multimedia infrastructure and Starent Networks Corp., a provider of networking solutions. Mr. Goldman also acts as a senior advisor to Greenhill & Co., Inc., a leading independent investment bank. Mr. Goldman served on the board of directors of Juniper Networks, Inc., an IP network solutions company, until his resignation from the position in January 2008. Mr. Goldman is currently on the board of trustees of Cornell University and was formerly a member of the Treasury Advisory Committee on the Auditing Profession, a public committee that made recommendations in September 2008 to encourage a more sustainable auditing profession. Mr. Goldman holds a B.S. in Electrical Engineering from Cornell University and an M.B.A. from the Harvard Business School.

**Reed E. Hundt**, age 61, has been a member of our Board of Directors since February 2007. Since 1998, he has acted as Co-Chairman of the Forum on Communications and Society at The Aspen Institute, a public policy organization, and as an independent advisor on information industries to McKinsey & Company, Inc., a management consulting firm. Mr. Hundt served as Chairman of the Federal Communications Commission from 1993 to 1997. Mr. Hundt currently serves on the board of directors of Intel Corporation, a semiconductor company and Data Domain, Inc., a storage and networking company. Mr. Hundt holds a B.A. in History from Yale University and a J.D. from Yale Law School.

**Carl Redfield**, age 61, has been a member of our Board of Directors since August 2006. From September 2004 to his retirement in May 2008, Mr. Redfield served as Senior Vice President, New England executive sponsor, of Cisco Systems, Inc., a networking and telecommunications company. From February 1997 through September 2004, Mr. Redfield served as Cisco's Senior Vice President, Manufacturing and Logistics. In December 2008, Mr. Redfield was appointed to the board of directors

**Table of Contents**

of Nanosolar Inc., a solar cell power company. Mr. Redfield holds a B.S. in Materials Engineering from Rensselaer Polytechnic Institute and has completed post-graduate studies at the Harvard Business School.

**Incumbent Class I Director whose Term Expires in 2011**

**Alexandre Balkanski**, Ph.D., age 48, has been a member of our Board of Directors since October 2001. Dr. Balkanski has been a General Partner at Benchmark Capital, a venture capital firm, since April 2000. From August 1988 to April 2000, Dr. Balkanski was a co-founder and Chief Executive Officer of C-Cube Microsystems Inc., a digital video company. Dr. Balkanski holds a B.S. from Harvard College and an M.A. and a Ph.D. from Harvard University.

**Table of Contents****CORPORATE GOVERNANCE****Independence of the Board of Directors**

The Board of Directors is currently composed of seven members although we expect the number to be reduced to six at the expiration of Mr. Martin's term (which concludes at the Annual Meeting, as a result of Mr. Martin's decision not to stand for re-election). Our Board of Directors has determined that Messrs. Goldman, Hundt, Martin and Redfield and Drs. Balkanski and Maydan qualify as independent directors in accordance with the published listing requirements of the NASDAQ Stock Market (NASDAQ). The NASDAQ independence definition includes a series of objective tests, such as that the director is not, and has not been for at least three years, one of our employees and that neither the director nor any of his family members has engaged in various types of business dealings with us. In addition, as further required by the NASDAQ rules, the Board of Directors has made a subjective determination as to each independent director that no relationships exist which, in the opinion of the Board of Directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. In making these determinations, the directors reviewed and discussed information provided by the directors and us with regard to each director's business and personal activities as they may relate to us and our management. There are no family relationships among our executive officers and directors. The directors hold office until their successors have been duly elected and qualified or their earlier death, resignation or removal.

The Company's amended and restated certificate of incorporation (the Charter) and Amended and Restated Bylaws provide for a classified board of directors. As of March 6, 2009, our Board of Directors had 7 directors divided into three classes of directors Class I, Class II and Class III with each class of directors serving three-year terms that end in successive years. As of March 6, 2009, the classes were comprised as follows:

| Class I   | Class II   | Class III  |
|---|--|--|
| (term expires 2011)<br>Alexandre Balkanski, Ph.D. | (term expires in 2012)<br>Hugh Martin*<br>Dan Maydan, Ph.D.<br>Jagdeep Singh | (term expires in 2010)<br>Kenneth A. Goldman<br>Reed E. Hundt<br>Carl Redfield |

\* In February 2009, Mr. Martin decided not to stand for re-election when his term expires at the Annual Meeting.

**Information Regarding the Board of Directors and its Committees**

Our independent directors meet in executive sessions, without management present, at least two times per year. The Board of Directors has four standing committees, an Audit Committee, a Compensation Committee, a Nominating and Governance Committee and an Acquisition Committee. The following table provides membership and meeting information for the Board of Directors and each of the committees of the Board of Directors during 2008:

| Name                               | Board | Audit | Compensation | Nominating/<br>Governance | Acquisition |
|------------------------------------|-------|-------|--------------|---------------------------|-------------|
| Alexandre Balkanski, Ph.D.         | M     |       |              | M                         | M           |
| Kenneth A. Goldman                 | M     | C     |              |                           | M           |
| Reed E. Hundt                      | M     |       | C            | M                         |             |
| Hugh C. Martin                     | M     | M     | M            |                           |             |
| Dan Maydan, Ph.D.                  | M     | M     |              |                           |             |
| Carl Redfield                      | M     |       | M            | C                         |             |
| Jagdeep Singh                      | C     |       |              |                           | C           |
| Total meetings in fiscal year 2008 | 7     | 10    | 9            | 5                         | 0           |

## **Table of Contents**

C Chairperson  
M Member

Below is a description of each standing committee of the Board of Directors. The Board of Directors has determined that each member of the Audit, Compensation and Nominating and Governance Committees meets the applicable rules and regulations regarding independence and that each such member is free of any relationship that would interfere with his individual exercise of independent judgment with regard to Infinera. Each committee of the Board of Directors has a written charter approved by the Board of Directors. Copies of each charter are posted on our website at <http://www.infinera.com> in the Investor Relations section and a copy of our Audit Committee charter was attached as Appendix A to our Proxy Statement for our 2008 Annual Meeting of Stockholders filed with the SEC on March 21, 2008.

### **Audit Committee**

The Audit Committee reviews and monitors our corporate financial statements and reporting and our external audits, including, among other things, our internal controls and audit functions, the results and scope of the annual audit and other services provided by our independent registered public accounting firm and our compliance with legal matters that have a significant impact on our financial statements. Our Audit Committee also consults with our management and our independent registered public accounting firm prior to the presentation of financial statements to stockholders and, as appropriate, initiates inquiries into aspects of our financial affairs. Our Audit Committee is responsible for establishing procedures for the receipt, retention and treatment of complaints regarding accounting, internal accounting controls or auditing matters, and for the confidential, anonymous submission by our employees of concerns regarding questionable accounting or auditing matters. In addition, our Audit Committee is directly responsible for the appointment, retention, compensation and oversight of the work of our independent registered public accounting firm, including approving services and fee arrangements. All related party transactions are subject to approval by our Audit Committee. The Audit Committee charter was attached as Appendix A to our Proxy Statement for our 2008 Annual Meeting of Stockholders filed with the SEC on March 21, 2008.

The current members of the Audit Committee are Messrs. Goldman, Martin and Maydan, each of whom is independent for Audit Committee purposes under the rules and regulations of the SEC and the listing standards of NASDAQ. In addition to qualifying as independent under the NASDAQ rules, each member of our Audit Committee can read and understand fundamental financial statements in accordance with NASDAQ Audit Committee requirements. Mr. Goldman chairs the Audit Committee. The Audit Committee met ten times during the fiscal year ended December 27, 2008. The Audit Committee also acted by written consent once during the fiscal year ended December 27, 2008.

The Board of Directors has determined that Mr. Goldman is an Audit Committee financial expert as defined in Item 407(d)(5)(ii) of Regulation S-K. The designation does not impose on Mr. Goldman any duties, obligations or liability that are greater than are generally imposed on him as a member of the Audit Committee and the Board of Directors.

### **Compensation Committee**

The Compensation Committee has authority for reviewing and determining salaries and performance based incentives and other matters related to our executive officers and for administering the Company's equity plans, including reviewing and granting stock options to our executive officers and other individuals eligible for such grants (excluding our non-employee members of the Board of Directors). The Compensation Committee also reviews and determines various compensation policies

## **Table of Contents**

and matters including, among other things, annual salaries, bonuses, equity, severance arrangements, change-of-control protections and any other compensatory arrangements (including, without limitation, perquisites and any other form of compensation). The Compensation Committee also oversees, reviews and administers all of our material employee benefit plans, including our 401(k) plan, and reviews and approves various other compensation policies and matters. Among the committee's responsibilities are the preparation of the Compensation Discussion and Analysis and Compensation Committee Report required by the rules of the SEC. Each member of our Compensation Committee is a non-employee director, as defined in Rule 16b-3 promulgated under the Securities Exchange Act of 1934, as amended (the Exchange Act), an outside director, as defined pursuant to Section 162(m) of the Internal Revenue Code and satisfies the NASDAQ independence requirements. A more detailed description of the Compensation Committee's functions can be found in our Compensation Committee charter. A copy of the Compensation Committee charter is available on the investor relations page of our website at <http://www.infinera.com>.

The Compensation Committee currently consists of Messrs. Hundt, Martin and Redfield. Mr. Hundt chairs the Compensation Committee. The Compensation Committee met nine times during the fiscal year ended December 27, 2008. Our Chief Executive Officer is asked by the Compensation Committee to provide his assessment of the performance of executive officers, other than himself, to the advisor of the Compensation Committee, but does not participate in the determination of his own compensation. He is assisted by our Vice President of Human Resources in making the assessments of the performance of the executive officers to the advisor of the Compensation Committee. No other executive officers participate in the determination of the amount or form of the compensation of executive officers.

During 2008, the Compensation Committee continued to engage the services of Professor Brian Hall of Harvard Business School to advise the Compensation Committee with respect to executive compensation philosophy, cash incentive design, and the amount of cash and equity compensation awarded to executives officers. The Compensation Committee expects to continue to utilize the services of Professor Hall during 2009 to advise it with regard to executive compensation programs. The Compensation Committee selected Professor Hall who reports directly to the Compensation Committee and interacts with management at the direction of the Compensation Committee. Professor Hall has not performed work for the Company other than pursuant to his engagement by the Compensation Committee. The Company also has engaged the services of Compensia to assist the Company with gathering market data information, including data about the compensation paid by a peer group of companies and other companies that may compete with us for executives and develop recommendations for structuring the Company's compensation programs.

### *Non-Executive Equity Award Committee*

The equity grant level for new hire grants and annual retention grants are reviewed and approved by the Compensation Committee on an annual basis. The Compensation Committee has delegated to the Non-Executive Equity Award Committee, consisting of the Chief Executive Officer, the Chief Legal Officer and the Vice President of Human Resources, the authority to formally approve equity incentive awards to employees pursuant to these guidelines. The delegation does not include the authority to make equity incentive awards to new employees who are or are reasonably expected to become Section 16 officers of the Company. This delegation of authority is not exclusive and the Board of Directors and Compensation Committee have retained the right to approve such equity incentive awards.

### **Compensation Committee Interlocks and Insider Participation**

The Compensation Committee of the Board of Directors currently consists of Messrs. Hundt, Martin and Redfield. None of these individuals was at any time during fiscal year 2008, or at any other

## **Table of Contents**

time, an officer or employee of the Company. None of our executive officers has ever served as a member of the board of directors or compensation committee of any other entity that has or has had one or more executive officers serving as a member of our Board of Directors or our Compensation Committee.

### **Nominating and Governance Committee**

The Nominating and Governance Committee assists in the nomination of directors, including, among other things, identifying, evaluating and making recommendations of nominees to the Board of Directors and evaluates the performance of the Board of Directors and individual directors, including those eligible for re-election at the annual meeting of stockholders and annual director compensation. The Nominating and Governance Committee is responsible for recommending the compensation of the non-employee members of the Board of Directors. The Nominating and Governance Committee is also responsible for reviewing developments in corporate governance practices, evaluating, making recommendations to the Board of Directors concerning corporate governance matters and overseeing the evaluation of the management. A more detailed description of the Nominating and Governance Committee's functions can be found in our Nominating and Governance Committee charter. A copy of our Nominating and Governance Committee charter is available on the investor relations page of our website at <http://www.infinera.com>.

The current members of our Nominating and Governance Committee are Messrs. Balkanski, Hundt and Redfield, each of whom is independent under the listing standards of NASDAQ. Mr. Redfield chairs the Nominating and Governance Committee. The Nominating and Governance Committee met five times during the fiscal year ended December 27, 2008.

The Nominating and Governance Committee reviews and reports to our Board of Directors on a periodic basis with regard to matters of corporate governance, and reviews, assesses and makes recommendations on the effectiveness of our corporate governance policies. In addition, our Nominating and Governance Committee reviews and makes recommendations to our Board of Directors regarding the size and composition of our Board of Directors and the appropriate qualities and skills required of our directors in the context of the then-current make-up of our Board of Directors. This includes an assessment of each candidate's independence, personal and professional integrity, financial literacy or other professional or business experience relevant to an understanding of our business, ability to think and act independently and with sound judgment, and ability to serve our stockholders long-term interests. These factors, and others as considered useful by our Nominating and Governance Committee, are reviewed in the context of an assessment of the perceived needs of our Board of Directors at a particular point in time. As a result, the priorities and emphasis of our Nominating and Governance Committee and of our Board of Directors may change from time to time to take into account changes in business and other trends, as well as the portfolio of skills and experience of current and prospective directors.

Our Nominating and Governance Committee leads the search for, selects and recommends candidates for election to our Board of Directors. Consideration of new director candidates typically involves a series of committee discussions, review of information concerning candidates and interviews with selected candidates. Candidates for nomination to our Board of Directors typically have been suggested by other members of our Board of Directors or by our executive officers. From time to time, our Nominating and Governance Committee may engage the services of a third-party search firm to identify director candidates. Our Nominating and Governance Committee considers candidates proposed in writing by stockholders, provided such proposal meets the eligibility requirements for submitting stockholder proposals for inclusion in our next Proxy Statement and is accompanied by the required information about the candidate specified in our bylaws. Candidates proposed by stockholders are evaluated by our Nominating and Governance Committee using the same criteria as for all other candidates.



**Table of Contents**

If a stockholder of the Company wishes to recommend a director candidate for consideration by the Nominating and Governance Committee, pursuant to the Company's Corporate Governance Guidelines, the stockholder must have held 1,000 shares of our common stock for at least six (6) months and must notify the Nominating and Governance Committee by writing to the General Counsel of Infinera at the Company's main address, and must include:

To the extent reasonably available, information relating to such director candidate that would be required to be disclosed in a Proxy Statement pursuant to Regulation 14A under the Exchange Act, in which such individual is a nominee for election to the Board of Directors;