

BERRY PLASTICS GROUP INC
Form DEF 14A
January 27, 2014

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 (Amendment No.)

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- £ Preliminary Proxy Statement
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Berry Plastics Group, Inc.

(Name of Registrant as Specified In Its Charter)

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January 27, 2014

Dear Stockholder:

The directors and officers of Berry Plastics Group, Inc. join me in inviting you to attend our Annual Meeting of Stockholders on March 11, 2014, 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 10, 2014 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,

/s/ Jonathan D. Rich
Chairman of the Board of Directors and
Chief Executive Officer

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BERRY PLASTICS GROUP, INC.
EVANSVILLE, INDIANA

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS
March 11, 2014

The Annual Meeting of Stockholders of Berry Plastics Group, Inc. will be held on Tuesday, March 11, 2014, at 10:00 a.m., Central Time, at the Tropicana Executive Conference Center, 450 NW Riverside Dr., Evansville, Indiana 47708, for the following purposes:

- (1) to elect three director nominees to Berry's Board of Directors for three-year terms;
- (2) to ratify the selection of Ernst & Young LLP as Berry's independent registered public accountants for the fiscal year ending September 27, 2014; and
- (3) 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 B. Evan Bayh, Anthony M. Civale and Ronald S. Rolfe, each of whom presently serves as a director of Berry. We describe each of the foregoing proposals in more detail in the accompanying proxy statement, which you should read in its entirety before voting.

Only stockholders of record at the close of business on January 17, 2014 are entitled to notice of and to vote at this meeting and any adjournments or postponements of this meeting.

We encourage you to attend our Annual Meeting. Whether you are able to attend or not, we urge you to indicate your vote (i) FOR the election of directors, and (ii) FOR the ratification of the selection of Ernst & Young LLP as our independent registered public accountants for the fiscal year ending September 27, 2014, by completing, signing, dating and returning your proxy card or by Internet or telephone voting as described in the proxy statement. If you attend the meeting, you may vote in person even if you have previously mailed a proxy card or otherwise submitted a vote by Internet or telephone voting.

By order of the Board of Directors,

/s/ Jason K. Greene
General Counsel and Secretary

January 27, 2014
Evansville, Indiana

Important Notice Regarding the Availability of Proxy Materials for the
Annual Meeting to Be Held on Tuesday, March 11, 2014:

The proxy materials for the Annual Meeting are available at
www.proxyvote.com.

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BERRY PLASTICS GROUP, INC.
101 OAKLEY STREET
EVANSVILLE, INDIANA 47710

PROXY STATEMENT
FOR
ANNUAL MEETING OF STOCKHOLDERS
March 11, 2014

In this proxy statement, Berry Plastics Group, Inc. and its subsidiaries are collectively referred to as “we,” “us,” “our,” “our Company,” “the Company” or “Berry.”

QUESTIONS AND ANSWERS ABOUT THIS ANNUAL MEETING

Q: Why did I receive this proxy statement?

As a Berry stockholder, you received this proxy statement because our Board of Directors is soliciting your proxy to vote at its upcoming Annual Meeting of Stockholders. The Annual Meeting will be held on Tuesday, March 11, 2014, at 10:00 a.m., Central Time, at the Tropicana Executive Conference Center, 450 NW Riverside Dr., Evansville, Indiana 47708.

This proxy statement summarizes the information you need to know to vote on an informed basis at the Annual Meeting; however, you do not need to attend the Annual Meeting to vote your shares. See “How do I vote my shares before the Annual Meeting?” We will begin distributing this proxy statement, the attached notice of Annual Meeting and the proxy card(s) on or about January 27, 2014.

Q: What am I voting on?

If you hold shares of common stock, you are being asked to consider and vote on the following proposals:

a proposal to elect three director nominees to our Board of Directors for three-year terms; and

a proposal to ratify the selection of Ernst & Young LLP as our independent registered public accountants for the fiscal year ending September 27, 2014.

Q: Who is entitled to vote?

Holders of outstanding common stock as of the close of business on January 17, 2014, the record date, are entitled to vote at the Annual Meeting. As of January 17, 2014, 116,253,961 shares of common stock were issued and outstanding. Each holder of our common stock as of the record date will be entitled to one vote per share.

Q: Has the Board of Directors made any recommendation with respect to each proposal?

The Board of Directors recommends that holders of common stock vote FOR the election of all director nominees, and FOR the ratification of Ernst & Young LLP as our independent registered public accountants for the fiscal year ending September 27, 2014.

Q: What does it mean if I get more than one proxy card?

If you receive more than one proxy card, it means you hold shares registered in more than one account. Sign and return ALL proxy cards to ensure that all your shares are voted.

Q: How do I vote my shares before the Annual Meeting?

Each holder of record of common stock on the record date will be entitled to one vote for each share held on all matters to be voted upon at the Annual Meeting.

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If you hold your shares in your own name, you may submit a proxy by one of several methods:

Submitting a Proxy by Mail: If you choose to submit a proxy by mail, simply mark the appropriate proxy card, date and sign it, and return it in the postage paid envelope provided or to the address shown on the proxy card. The proxy card must be received by March 10, 2014.

Submitting a Proxy by Telephone or via the Internet: If you choose to submit a proxy by telephone or via the Internet, follow the instructions provided on the proxy card. If you submit your proxy by telephone or via the Internet, you do not need to return a proxy card by mail. Internet and telephone proxy submission is available 24 hours a day. Proxies submitted by telephone or the Internet must be received by 11:59 p.m., Eastern Time, on March 10, 2014.

Submitting a Proxy in Person at the Annual Meeting: You may vote your shares in person at the Annual Meeting. Even if you plan to attend the Annual Meeting in person, we recommend that you also submit your proxy by telephone or via the Internet, or by completing, signing, dating, and returning the attached proxy card by the applicable deadline so that your vote will be counted if you later decide not to, or are unable to, attend the meeting.

By casting your vote, you are authorizing the individuals listed on the proxy to vote your shares in accordance with your instructions.

If your shares are held in the name of a bank, broker or other nominee, you will receive instructions from the holder of record that you must follow for your shares to be voted. Please check with your bank or broker and follow the voting procedures your bank or broker provides to vote your shares. Also, please note that if the holder of record of your shares is a broker, bank or other nominee and you wish to vote in person at the Annual Meeting, you must request a legal proxy from your bank, broker or other nominee that holds your shares and present that proxy and proof of identification at the Annual Meeting.

Q: If I am the beneficial owner of shares held in "street name" by my broker, will my broker automatically vote my shares for me?

Shares held in street name are shares held electronically in the account of a broker. The actual stockholder is referred to as the beneficial owner. Stock exchange rules applicable to brokers grant your broker discretionary authority to vote your shares without receiving your instructions on certain matters. Your broker has discretionary voting authority under these rules to vote your shares on the ratification of Ernst & Young LLP as our independent registered public accountants for the fiscal year ending September 27, 2014. However, unless you provide voting instructions to your broker, your broker does not have authority to vote on the election of directors. Therefore, it is particularly important that beneficial owners instruct their brokers how they wish to vote their shares.

Q: How will my shares be voted if I give my proxy but do not specify how my shares should be voted?

If you provide specific voting instructions, your shares will be voted at the Annual Meeting in accordance with your instructions. If you return your signed proxy card but do not indicate your voting preferences, we will vote on your behalf FOR the election of all director nominees, and FOR the ratification of Ernst & Young LLP as our independent registered public accountants for the fiscal year ending September 27, 2014. If any other matter properly comes before the Annual Meeting, the designated proxies will vote on that matter in their discretion as well.

Q: What is an "abstention" or a broker "non-vote" and how do they affect the vote?

An "abstention" occurs when a stockholder sends in a proxy with explicit instructions to decline to vote regarding a particular matter. Abstentions are counted as present for purposes of determining a quorum. An abstention with respect

to the election of directors is neither a vote cast “for” a nominee or a vote cast “against” the nominee and, therefore, will have no effect on the outcome of the vote. Abstentions with respect to the approval of the ratification of Ernst & Young LLP as our independent registered public accountants for the fiscal year ending September 27, 2014 will act as a vote against this proposal.

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A broker “non-vote” occurs when a broker or other nominee who holds shares for the beneficial owner is unable to vote those shares for the beneficial owner because the broker or other nominee does not have discretionary voting power for the proposal and has not received voting instructions from the beneficial owner of the shares. Brokers will have discretionary voting power to vote shares for which no voting instructions have been provided by the beneficial owner only with respect to the ratification of Ernst & Young LLP as our independent registered public accountants for the fiscal year ending September 27, 2014. Brokers will not have such discretionary voting power to vote shares with respect to the election of directors. Shares that are the subject of a broker non-vote are included for quorum purposes, but a broker non-vote with respect to a proposal will not be counted as a vote represented at the meeting and entitled to vote and, consequently, as a general matter, will have no effect on the outcome of the vote.

Q: How can I change my vote?

You may revoke your proxy at any time before it is exercised by:

Delivering to the Secretary a written notice of revocation, dated later than the proxy, before the vote is taken at the Annual Meeting;

Delivering to the Secretary an executed proxy bearing a later date, before the vote is taken at the Annual Meeting; or

Attending the Annual Meeting and voting in person (your attendance at the Annual Meeting, in and of itself, will not revoke the proxy).

Any written notice of revocation, or later dated proxy, should be delivered to:

Berry Plastics Group, Inc.
101 Oakley Street
Evansville, Indiana 47710
Attention: Jason K. Greene, General Counsel and Secretary

Alternatively, you may hand deliver a written revocation notice, or a later dated proxy, to the Secretary at the Annual Meeting before we begin voting.

If your shares are held by a bank, broker or other nominee, you must follow the instructions provided by the bank, broker or other nominee if you wish to change your vote.

Q: What constitutes a quorum?

Holders of a majority of the outstanding shares of our common stock entitled to vote at the Annual Meeting as of the record date must be present in person or represented by proxy at the Annual Meeting to constitute a quorum for the conduct of business at the Annual Meeting. Proxies marked as abstaining and “broker non-votes” will be treated as shares present for purposes of determining the presence of a quorum.

Q: How many votes are needed for approval of each proposal?

Directors to be elected by the holders of common stock for a three-year term will be elected by a plurality of the votes cast with respect to such positions by the holders of outstanding common stock entitled to vote in the election who are present, in person or by proxy, at the meeting. Consequently, the director nominees receiving the most votes of the holders of common stock, voting together, will be elected to fill three director positions for three-year terms. Only votes cast FOR a nominee will be counted.

The affirmative vote of a majority of the shares present in person or by proxy and entitled to vote on the matter is required to ratify the appointment of Ernst & Young LLP as our independent registered public accountants for the fiscal year ending September 27, 2014.

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Q: What percentage of stock does our largest stockholder own and how does our largest stockholder intend to vote?

Certain investment vehicles affiliated with Apollo Management V, L.P. or Apollo Management VI, L.P. (collectively, the "Apollo Funds") beneficially owned 29% of our common stock (not including the potential voting power of unexercised options) as of January 17, 2014. The Apollo Funds have informed us that they intend to vote for each of the nominees for director and in favor of the ratification of the selection of Ernst & Young LLP as our independent registered public accountants for the fiscal year ending September 27, 2014.

Q: Does Berry offer an opportunity to receive future proxy materials electronically?

Yes. If you are a stockholder of record, you may, if you wish, receive future proxy statements and annual reports online. If you elect this feature, you will receive either a proxy card or an e-mail message notifying you when the materials are available, along with a web address for viewing the materials. You may sign up for electronic delivery by marking and signing the appropriate spaces on your proxy card or by contacting our Investor Relations Department by e-mail at ir@berryplastics.com or by phone at (812) 306-2964. If you received these materials electronically, you do not need to do anything to continue receiving materials electronically in the future.

If you hold your shares in a brokerage account, you may also have the opportunity to receive proxy materials electronically. Please follow the instructions of your broker.

Electronic delivery saves Berry money by reducing printing and mailing costs. It will also make it convenient for you to receive your proxy materials online. Berry charges nothing for electronic delivery. You may, of course, incur the usual expenses associated with Internet access, such as telephone charges or charges from your Internet service provider.

You may discontinue electronic delivery at any time. For more information, contact our Investor Relations Department by e-mail at ir@berryplastics.com or by phone at (812) 306-2964.

Q: Who can attend the Annual Meeting?

All stockholders as of January 17, 2014 can attend.

Q: What do I do if I have additional questions?

If you have any questions prior to the Annual Meeting, please contact our Investor Relations Department by e-mail at ir@berryplastics.com or by phone at (812) 306-2964.

DIRECTORS AND EXECUTIVE OFFICERS

The following table provides information regarding the executive officers and members of the Board of Directors of Berry Plastics Group, Inc. as of January 20, 2014.

Name	Age	Director Term Expiration	Title
Jonathan D. Rich	58	2015	Chairman, Chief Executive Officer and Director
Mark W. Miles	42	—	Chief Financial Officer
Curtis L. Begle	38	—	President, Rigid Closed Top Division
Lawrence A. Goldstein	51	—	President, Flexible Packaging Division
William J. Norman	42	—	President, Rigid Open Top Division
Thomas E. Salmon	50	—	President, Engineered Materials Division
Jason K. Greene	43	—	Executive Vice President and General Counsel
Jeffrey D. Thompson	42	—	Executive Vice President, International Business Development
James M. Till	36	—	Executive Vice President and Controller
B. Evan Bayh	58	2014	Director
Anthony M. Civale	39	2014	Director
Donald C. Graham	80	2016	Director
Joshua J. Harris	49	2015	Director
David B. Heller	46	2016	Director
Carl J. (Rick) Rickertsen	53	2016	Director
Ronald S. Rolfe	68	2014	Director
Robert V. Seminara	42	2015	Director

Jonathan D. Rich assumed the role of Chairman and Chief Executive Officer of Berry Plastics Group, Inc. in October 2010. Prior to becoming CEO, Dr. Rich served as President and Chief Executive Officer of Momentive Performance Materials, Inc. from June 2007 until October 2010. Prior to Momentive, Dr. Rich held executive positions at Goodyear Tire and Rubber from 2000 until 2007, including President of Goodyear North American Tire and President of Goodyear Chemical. Dr. Rich began his career at General Electric in 1982, where he was employed for 18 years in a variety of R&D, operational and executive roles. Dr. Rich's position as Chief Executive Officer, his extensive management experience and his skills in business leadership and strategy qualify him to serve as a director of the Company.

Mark W. Miles was named Chief Financial Officer effective January 2, 2014. Mr. Miles previously had been Berry's Executive Vice President, Controller and Treasurer since 2005. Mr. Miles is a Certified Public Accountant and started with the Company as Corporate Controller in 1997.

Curtis L. Begle has been President of Berry's Rigid Closed Top Division since December 2009. Mr. Begle has spent his entire 14 year career with Berry, during which he has held multiple positions of increasing responsibility.

Lawrence A. Goldstein has been President of Berry's Flexible Packaging Division since January 1, 2012. Mr. Goldstein joined Berry in 1997 as the East Coast Regional Sales Manager for the container division. Since then he has held a number of positions of increasing responsibility.

William Norman was named President of Berry's Rigid Open Top Division in October 2013. Mr. Norman has spent the last 20 years with Berry during which time he held multiple positions of increasing responsibility.

Thomas E. Salmon has been President of Berry's Engineered Materials Division since 2003. Mr. Salmon previously served as General Manager for Honeywell Plastics for the two years prior thereto. He was the Global Sales Director for Allied Signal's Engineering Plastics and Films business from 1999 to 2001. Prior to joining Honeywell/Allied Signal, Mr. Salmon held several positions at GE Plastics and GE Lighting, divisions within General Electric.

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Jason K. Greene was named Executive Vice President and General Counsel of Berry Plastics Group, Inc. on January 1, 2013. He was hired in December 2010 as the Company's Deputy General Counsel. Prior to joining the Company, Mr. Greene was Business Transactions and Tax Counsel at Taylor English Duma LLP in Atlanta. From 1998 until 2007, Mr. Greene held a similar position at Powell Goldstein LLP. Mr. Greene began his career in Arthur Andersen's tax practice