

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

**FORM 8-K
Current Report**

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): June 10, 2021



ENERGY RECOVERY, INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware

(State or Other Jurisdiction of Incorporation)

001-34112

(Commission File Number)

01-0616867

(I.R.S. Employer Identification No.)

1717 Doolittle Drive, San Leandro, California 94577

(Address of Principal Executive Offices) (Zip Code)

(510) 483-7370

(Registrant's telephone number, including area code)

Not applicable

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.001 par value	ERII	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 or Rule 12b-2 of the Securities Exchange Act of 1934.

Emerging growth company

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

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

On and effective as of June 10, 2021, the stockholders of Energy Recovery, Inc. (the "Company") approved the resolutions of the Company's Board of Directors (the "Board") to amend the Company's Amended and Restated Certificate of Incorporation (the "Certificate of Incorporation") to effect the declassification of the Company's Board (the "Declassification Amendment").

The Declassification Amendment had previously been approved, subject to stockholder approval, by the Company's Board and will become effective upon the filing of a Certificate of Amendment to the Certificate of Incorporation with the Secretary of State of the State of Delaware.

A detailed discussion of the Certificate of Amendment is set forth in the Company's definitive proxy statement on Schedule 14A filed with the U.S. Securities and Exchange Commission on April 26, 2021 and a copy thereof is filed as Exhibit 3.1 hereto and is incorporated herein by reference.

Item 5.07 Submission of Matters to a Vote of Security Holders.

The Company held its 2021 Annual Meeting of Stockholders (the "Annual Meeting") on June 10, 2021, at the Company's offices in San Leandro, California to (i) amend the Certificate of Incorporation, (ii) elect one Class I member of the Board, (iii) ratify the appointment of Deloitte & Touche LLP as the Company's independent registered public accounting firm; and (iv) approve, on a non-binding advisory basis, the compensation of the Company's named executive officers.

As of April 12, 2021, the record date for the Annual Meeting, there were 57,422,485 shares of common stock outstanding and entitled to vote. At the Annual Meeting, 49,027,453 shares of common stock, or approximately 85% of the shares outstanding as of the record date, were represented in person or by proxy, constituting a quorum.

The final results for the proposals voted on at the Annual Meeting are set forth below:

Proposal 1 – Amendment of Certificate of Incorporation to Effect a Declassification of the Board of Directors.

This proposal was approved. The following table shows the results of the stockholders' vote:

Votes For	Votes Against	Abstentions	Broker Non-Votes
42,690,086	14,987	3,632	6,318,748

Proposal 2 – Election of Class I Director

The stockholders elected one Class I Director of the Board to serve for a one-year term until the 2022 Annual Meeting or a respective successor is elected and qualified or until the director's earlier death, resignation, or removal. The following table shows the results of the stockholders' vote:

Nominee for Class I Director	Votes For	Votes Withheld	Broker Non-Votes
Olav Fjell	39,659,251	3,049,454	6,318,748

Proposal 3 – Ratification of the appointment of Deloitte & Touche LLP as the Company’s independent registered public accounting firm for the year ending December 31, 2021.

This proposal was approved. The following table shows the results of the stockholders’ vote:

Votes For	Votes Withheld	Abstentions
49,021,584	1,769	4,100

Proposal 4 – Non-Binding Advisory Vote on Executive Compensation.

This proposal was approved. The following table shows the results of the stockholders’ vote:

Votes For	Votes Withheld	Abstentions	Broker Non-Votes
40,166,702	1,005,412	1,536,591	6,318,748

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit Number	Description
3.1	Amended and Restated Certificate of Incorporation of Energy Recovery, Inc.
104	Cover Page Interactive Data File - the cover page XBRL tags are embedded within the Inline XBRL document

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Energy Recovery, Inc.

Date: June 10, 2021

By: /s/ William Yeung _____
William Yeung
Chief Legal Officer

**CERTIFICATE OF AMENDMENT
TO THE
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF ENERGY RECOVERY, INC.**

June 10, 2021

Energy Recovery, Inc. (the “Corporation”), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the “**DGCL**”), does hereby certify:

- FIRST: That the name of the Corporation is Energy Recovery, Inc. The original certificate of incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on March 8, 2001 under the name ERI Acquisition Corp. An amended and restated certificate of incorporation was filed with the Secretary of State of the State of Delaware on March 27, 2009 under the name Energy Recovery, Inc. (the “Amended and Restated Certificate”).
- SECOND: That this Amendment to the Amended and Restated Certificate (this “Amendment”) amends the Amended and Restated Certificate.
- THIRD: That a majority of the board of directors of the Corporation has duly adopted resolutions approving this Amendment and declaring this Amendment to be advisable and recommended for approval and adoption by the stockholders of the Corporation.
- FOURTH: That this Amendment was duly adopted and approved by the affirmative vote of sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the then outstanding voting securities of the Corporation in accordance with the applicable provisions of Section 242 of the DGCL and ARTICLE XI of the Amended and Restated Certificate.
- FIFTH: That this Amendment shall become effective on the date of filing with the Secretary of State of the State of Delaware.
-

SIXTH: That upon the effectiveness of this Amendment, Section 2 of ARTICLE V of the Amended and Restated Certificate is hereby amended and restated to read in its entirety as follows:

“Section 5.2 The directors of the Corporation shall be divided into three classes as nearly equal in size as is practicable, hereby designated Class I, Class II and Class III. Directors shall be assigned to each class in accordance with a resolution or resolutions adopted by the Board of Directors. Notwithstanding the foregoing, (1) at the 2021 annual meeting of stockholders, the Class I directors whose terms expire at that meeting shall be elected to hold office for a one-year term expiring at the 2022 annual meeting of stockholders; (2) at the 2022 annual meeting of stockholders, the Class I and Class II directors whose terms expire at that meeting shall be elected to hold office for a one-year term expiring at the 2023 annual meeting of stockholders; and (3) at the 2023 annual meeting of stockholders and each annual meeting of stockholders thereafter, all directors shall be elected for a one-year term expiring at the next annual meeting of stockholders. At and after the annual meeting of stockholders to be held in 2023, the directors shall no longer be classified with respect to the time for which they hold office.”

SEVENTH: That upon the effectiveness of this Amendment, Section 1 of ARTICLE VI of the Amended and Restated Certificate is hereby amended and restated to read in its entirety as follows:

“Section 6.1 Any director or the entire Board of Directors may be removed from office at any time, but with respect to any director who has been elected for a term in excess of one year, only for cause, and only by the affirmative vote of the holders of at least a majority of the voting power of the issued and outstanding capital stock of the Corporation entitled to vote in the election of directors.”

[Signature Page Follows]

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to the Amended and Restated Certificate of Incorporation to be duly executed and acknowledged in its name and on its behalf by an authorized officer as of the date first set forth above.

ENERGY RECOVERY, INC.

By: /s/ Robert Yu Lang Mao
Name: Robert Yu Lang Mao
Title: President and Chief Executive Officer

[Signature Page to Amendment to the Amended and Restated Certificate]