

FIREEYE, INC.

FORM 8-K (Current report filing)

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Address	1440 MCCARTHY BLVD MILPITAS, CA 95035
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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 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 14, 2016

FireEye, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-36067
(Commission
File Number)

20-1548921
(IRS Employer
Identification No.)

1440 McCarthy Blvd.
Milpitas, CA 95035
(Address of principal executive offices, including zip code)

(408) 321-6300
(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 (see General Instruction A.2. below):

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

On June 14, 2016, FireEye, Inc. (the “Company”) held its 2016 Annual Meeting of Stockholders (the “Annual Meeting”). At the Annual Meeting, there were represented, either in person or by proxy, 133,563,977 shares of the Company’s common stock, or approximately 80.32% of the total shares entitled to vote, constituting a quorum. The Company’s stockholders voted on five proposals, each of which is described in more detail in the Company’s definitive proxy statement filed with the Securities and Exchange Commission on April 25, 2016. The voting results are set forth below.

Proposal 1: Election of Class III Directors

<u>Nominee</u>	<u>Votes For</u>	<u>Votes Withheld</u>	<u>Broker Non-Votes</u>
Ronald E. F. Codd	74,398,283	1,378,002	57,787,692
Kevin R. Mandia	74,707,482	1,068,803	57,787,692
Enrique Salem	74,707,686	1,068,599	57,787,692

Ronald E. F. Codd, Kevin R. Mandia and Enrique Salem were duly elected as Class III directors of the Company.

Proposal 2: Ratification of Appointment of Independent Registered Public Accounting Firm

<u>Votes For</u>	<u>Votes Against</u>	<u>Abstentions</u>	<u>Broker Non-Votes</u>
131,990,986	1,126,795	446,196	–

The appointment of Deloitte & Touche LLP as the Company’s independent registered public accounting firm for the fiscal year ending December 31, 2016 was ratified.

Proposal 3: Advisory Vote to Approve Named Executive Officer Compensation

<u>Votes For</u>	<u>Votes Against</u>	<u>Abstentions</u>	<u>Broker Non-Votes</u>
40,459,039	35,036,246	281,000	57,787,692

The advisory vote to approve the compensation paid to the Company’s named executive officers for the fiscal year ended December 31, 2015 was approved.

Proposal 4: Advisory Vote on the Frequency of Future Advisory Votes to Approve Named Executive Officer Compensation

<u>1 Year</u>	<u>2 Years</u>	<u>3 Years</u>	<u>Abstentions</u>	<u>Broker Non-Votes</u>
71,148,871	252,236	4,065,681	309,497	57,787,692

The frequency of future advisory votes to approve named executive officer compensation that received the highest number of votes was 1 Year. In accordance with the recommendation of the Company’s Board of Directors and the voting results of the Company’s stockholders, the Company will hold an advisory vote to approve named executive officer compensation every year until the next stockholder advisory vote on the frequency of holding future advisory votes on named executive officer compensation.

Proposal 5: Stockholder Proposal Requesting Majority Voting in Uncontested Elections of Directors

<u>Votes For</u>	<u>Votes Against</u>	<u>Abstentions</u>	<u>Broker Non-Votes</u>
45,390,027	12,345,524	18,040,734	57,787,692

The stockholder proposal requesting majority voting in uncontested elections of directors was approved.

Item 5.02 Compensatory Arrangements of Certain Officers.

The Company and David DeWalt entered into a new employment offer letter dated June 15, 2016 (the “New Offer Letter”) which relates to his service as the Company’s Executive Chairman of the Board effective June 15, 2016 and supersedes his former employment offer letter dated November 19, 2012, as amended.

Pursuant to the terms of the New Offer Letter, Mr. DeWalt’s annual base salary remains unchanged at \$350,000 and his target opportunity to earn an annual cash incentive bonus under the Company’s Employee Incentive Plan remains unchanged at \$350,000. The New Offer Letter has no specific term and provides that Mr. DeWalt is an at-will employee. In addition, Mr. DeWalt remains eligible for severance benefits under the Company’s Change of Control Severance Policy for Officers.

The New Offer Letter provides that, notwithstanding anything to the contrary contained in any of Mr. DeWalt’s stock option agreements or related documentation with the Company, all of his unvested Company stock options and unvested shares of Company common stock issued upon the exercise of his Company stock options, in each case as of immediately prior to Mr. DeWalt becoming the Company’s Executive Chairman of the Board (the “Transition”), will continue to vest on the applicable vesting dates set forth in such agreements provided Mr. DeWalt serves as the Company’s Executive Chairman of the Board and does not serve as an employee of any company other than the Company (such conditions being referred to as “Qualifying Service”). The New Offer Letter also provides that, notwithstanding anything to the contrary contained in any of Mr. DeWalt’s restricted stock unit agreements or related documentation with the Company, (i) with respect to Mr. DeWalt’s award of time-based Company restricted stock units granted to him on February 10, 2015, 16/22 of the restricted stock units that remain eligible to vest thereunder as of the Transition (rounded to the nearest whole share) will continue to vest on December 31, 2016 provided he remains in continuous Qualifying Service through such date, and the remaining portion of such award will be forfeited, cancelled and terminated effective as of the Transition, (ii) with respect to Mr. DeWalt’s award of restricted stock units with performance-based vesting granted to him on February 10, 2015, 16/22 of the restricted stock units that remain eligible to vest thereunder as of the Transition (rounded to the nearest whole share) will continue to vest on December 31, 2016 provided he remains in continuous Qualifying Service through such date, and the remaining portion of such award shall be forfeited, cancelled and terminated effective as of the Transition, (iii) with respect to Mr. DeWalt’s award of time-based Company restricted stock units granted to him on February 9, 2016, all of the restricted stock units that remain eligible to vest thereunder as of the Transition will be forfeited, cancelled and terminated effective as of the Transition, and (iv) with respect to Mr. DeWalt’s award of restricted stock units with performance-based vesting granted to him on February 9, 2016, all of the restricted stock units that remain eligible to vest thereunder as of the Transition will be forfeited, cancelled and terminated effective as of the Transition.

A copy of the New Offer Letter is filed herewith as Exhibit 10.1. The foregoing description of the New Offer Letter is a summary only and is qualified in its entirety by the full text of the New Offer Letter, which is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
10.1	Offer Letter between the Registrant and David DeWalt, dated June 15, 2016

SIGNATURES

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.

FIREEYE, INC.

Date: June 20, 2016

By: /s/ Alexa King

Alexa King

Executive Vice President, General Counsel and Secretary

EXHIBIT INDEX

Exhibit No.	Description
10.1	Offer Letter between the Registrant and David DeWalt, dated June 15, 2016

FIREEYE, INC.

June 15, 2016

David DeWalt
c/o FireEye, Inc.
1440 McCarthy Blvd.
Milpitas, CA 95035

Dear Dave:

This letter agreement (the “*Agreement*”) is entered into between FireEye, Inc. (the “*Company*” or “*we*”) and David DeWalt (“*you*”). The purpose of this Agreement is to confirm the current terms and conditions of your employment.

1. **Position** . Effective June 15, 2016, your title will be Executive Chairman of the Board, and you will continue to report to the Company’s Board of Directors. This is a full-time position. While you render services to the Company, you will not engage in any other employment, consulting or other business activity (whether full-time or part-time) that would create a conflict of interest with the Company. By signing this Agreement, you confirm to the Company that you have no contractual commitments or other legal obligations that would prohibit you from performing your duties for the Company.

2. **Cash Compensation** . Your current salary is \$350,000 per year, payable in accordance with the Company’s standard payroll schedule. This salary will be subject to adjustment pursuant to the Company’s employee compensation policies in effect from time to time. In addition, you will be eligible to be considered for an incentive bonus for each fiscal year of the Company under the Company’s Employee Incentive Plan (the “*Incentive Plan*”) or any successor plan. The bonus (if any) will be awarded based on objective or subjective criteria established by the Company’s Board of Directors (the “*Board*”). Your current annual target bonus is equal to \$350,000. The terms and conditions of your bonus will be set forth in the Incentive Plan. The determinations of the Board with respect to your bonus will be final and binding.

3. **Employee Benefits** . As a regular employee of the Company, you will continue to be eligible to participate in a number of Company-sponsored benefits. In addition, you will be entitled to paid vacation in accordance with the Company’s vacation policy, as in effect from time to time.

4. **Equity Awards** . You have received a number of equity awards of different types from the Company, certain of which are amended or cancelled below. Notwithstanding anything to the contrary contained in any of your Company stock option agreements or any related documentation, all of your unvested Company stock options and unvested shares of Company common stock issued upon the exercise of your Company stock options, in each case as of immediately prior to becoming the Company’s Executive Chairman of the Board (the

“ **Transition** ”), shall continue to vest on the applicable vesting dates set forth in those agreements *provided* you remain in continuous Qualifying Service through the applicable vesting dates. For purposes of this Agreement, the term “ **Qualifying Service** ” shall mean both (1) your service as the Company’s Executive Chairman of the Board and (2) you not serving as an employee of any company other than the Company. For the absence of doubt, you may continue with your pre-existing Board Directorships with Delta Airlines, ForeScout Technologies and Five9, and these directorships shall not be deemed to preclude your Qualifying Service. Notwithstanding anything to the contrary contained in any of your Company restricted stock unit agreements or any related documentation, (i) with respect to your award of time-based Company restricted stock units granted to you on February 10, 2015 (RSU ID Number: RS3061), 16/22 of the restricted stock units that remain eligible to vest thereunder as of the Transition (rounded to the nearest whole share) shall continue to vest on December 31, 2016 *provided* you remain in continuous Qualifying Service through such date, and the remaining portion of such award shall be forfeited, cancelled and terminated effective as of the Transition, (ii) with respect to your award of restricted stock units with performance-based vesting granted to you on February 10, 2015 (RSU ID Number: P00243), 16/22 of the restricted stock units that remain eligible to vest thereunder as of the Transition (rounded to the nearest whole share) shall continue to vest on December 31, 2016 *provided* you remain in continuous Qualifying Service through such date, and the remaining portion of such award shall be forfeited, cancelled and terminated effective as of the Transition, (iii) with respect to your award of time-based Company restricted stock units granted to you on February 9, 2016 (RSU ID Number: RS8506), all of the restricted stock units that remain eligible to vest thereunder as of the Transition shall be forfeited, cancelled and terminated effective as of the Transition, and (iv) with respect to your award of restricted stock units with performance-based vesting granted to you on February 9, 2016 (RSU ID Number: P02784), all of the restricted stock units that remain eligible to vest thereunder as of the Transition shall be forfeited, cancelled and terminated effective as of the Transition.

5. **Severance & Change of Control Benefits** . As an executive officer of the Company, you will continue to be eligible for benefits in the Company’s Change of Control Severance Policy for Officers and your participation agreement thereunder (the “ **Severance Policy** ”). Accordingly, your potential severance and change of control benefits and the terms and conditions thereof shall be set forth in the Severance Policy.

6. **Proprietary Information and Inventions Agreement** . As an employee of the Company, you will continue to have access to certain confidential information of the Company and you may, during the course of your employment, develop certain information or inventions that will be the property of the Company. To protect the interests of the Company, your acceptance of this Agreement reaffirms that the terms of the Company’s Proprietary Information and Inventions Agreement that you executed in connection with your hire (the “ **PIAA** ”) continue to be in effect.

7. **Employment Relationship** . Employment with the Company is for no specific period of time. Your employment with the Company continues to be “at will,” meaning that either you or the Company may terminate your employment at any time and for any reason, with or without cause. Any contrary representations that may have been made to you are superseded by this Agreement. This is the full and complete Agreement between you and the Company on this term.

Although your job duties, title, compensation and benefits, as well as the Company's personnel policies and procedures, may change from time to time, the "at will" nature of your employment may only be changed in an express written agreement signed by you and a duly authorized officer of the Company (other than you).

8. **Tax Matters .**

(a) **Withholding .** All forms of compensation referred to in this Agreement are subject to reduction to reflect applicable withholding and payroll taxes and other deductions required by law.

(b) **Section 409A .** The parties intend that the benefits and payments provided under this Agreement shall be exempt from, or comply with, the requirements of Section 409A of the Code (as it has been and may be amended from time to time) and any regulations and guidance that has been promulgated or may be promulgated from time to time thereunder ("**Section 409A**"), and any ambiguities or ambiguous terms herein will be interpreted to so comply. Each payment and benefit payable under this Agreement is intended to constitute a separate payment for purposes of Section 1.409A-2(b)(2) of the Treasury Regulations. The Company shall in no event be obligated to indemnify you for any taxes or interest that may be assessed under Section 409A.

(c) **Tax Advice .** You are encouraged to obtain your own tax advice regarding your compensation from the Company. You agree that the Company does not have a duty to design its compensation policies in a manner that minimizes your tax liabilities, and you will not make any claim against the Company or its Board or the Compensation Committee of the Board related to tax liabilities arising from your compensation.

9. **Interpretation, Amendment and Enforcement .** This Agreement, together with the PIAA, the Severance Policy and your Company equity award agreements (after giving effect to the provisions described herein), supersede and replace any prior agreements, representations or understandings (whether written, oral, implied or otherwise) between you and the Company, including, but not limited to, your offer letter with the Company dated November 19, 2012, as amended, and constitute the complete agreement between you and the Company regarding the subject matter set forth herein. This Agreement may not be amended or modified, except by an express written agreement signed by both you and a duly authorized officer of the Company. The terms of this Agreement and the resolution of any disputes as to the meaning, effect, performance or validity of this Agreement or arising out of, related to, or in any way connected with, this Agreement, your employment with the Company or any other relationship between you and the Company (the "**Disputes** ") will be governed by California law, excluding laws relating to conflicts or choice of law. You and the Company submit to the exclusive personal jurisdiction of the federal and state courts located in California in connection with any Dispute or any claim related to any Dispute.

* * * * *

We are extremely excited about your continued employment with FireEye!

Please indicate your acceptance of this Agreement, and confirmation that it contains our complete agreement regarding the terms and conditions of your employment, by signing the bottom portion of this Agreement and returning a copy to me.

Very truly yours,

FIREEYE, INC.

By: /s/ Enrique Salem
Lead Independent Director

I have read and accept this employment offer:

/s/ David DeWalt
David DeWalt

Dated: June 15, 2016