

NCI BUILDING SYSTEMS INC

Form PRE 14A

December 23, 2009

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
SCHEDULE 14A
(Rule 14a-101)
INFORMATION REQUIRED IN PROXY STATEMENT
SCHEDULE 14A INFORMATION
Proxy Statement Pursuant to Section 14(a) of the
Securities Exchange Act of 1934**

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

NCI BUILDING SYSTEMS, INC.

(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:

(2) Aggregate number of securities to which transaction applies:

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

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

Fee paid previously with preliminary materials:

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

(1) Amount previously paid: _____

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

(3) Filing Party: _____

(4) Date Filed: _____

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January [], 2010

Dear Stockholder:

You are cordially invited to attend the Annual Meeting of Stockholders of NCI Building Systems, Inc. to be held at 10:00 a.m. on Friday, February 19, 2010, at the NCI Conference Center located at 7313 Fairview, Houston, Texas. At this meeting you will be asked to:

- (1) *Proposal 1:* Elect the three (3) Class II directors named in the accompanying proxy statement to serve until the 2013 Annual Meeting of Stockholders or until their respective successors have been elected and shall have qualified;
- (2) *Proposal 2:* Approve the amendment and restatement of the 2003 Long-Term Stock Incentive Plan;
- (3) *Proposal 3:* Approve an amendment to the Company's Restated Certificate of Incorporation to effect a reverse stock split of the common stock of the Company;
- (4) *Proposal 4:* Approve certain other amendments to the Company's Restated Certificate of Incorporation;
- (5) *Proposal 5:* Ratify the appointment of Ernst & Young LLP as the Company's independent registered public accounting firm for fiscal 2010; and
- (6) Transact such other business as may properly come before the Annual Meeting of Stockholders or any reconvened meeting following any adjournment or postponement thereof.

It is important that your shares be represented at the Annual Meeting of Stockholders. Therefore, whether or not you expect to attend in person, please sign and date the enclosed proxy and return it in the enclosed envelope or submit your proxy using the telephone or Internet procedures that may be provided to you at your earliest convenience. Please note that using any of these methods will not prevent you from attending the meeting and voting in person.

Very truly yours,

Norman C. Chambers
*Chairman of the Board, President
and Chief Executive Officer*

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**NCI BUILDING SYSTEMS, INC.
10943 North Sam Houston Parkway West
Houston, Texas 77064**

**NOTICE OF
ANNUAL MEETING OF STOCKHOLDERS
TO BE HELD FEBRUARY 19, 2010**

The Annual Meeting of Stockholders of NCI Building Systems, Inc. will be held at the NCI Conference Center located at 7313 Fairview, Houston, Texas, on Friday, February 19, 2010, at 10:00 a.m. The Annual Meeting of Stockholders will be held for the following purposes:

1. *Proposal 1:* The election of the three (3) Class II directors named in the accompanying proxy statement to serve until the 2013 Annual Meeting of Stockholders or until their respective successors have been elected and shall have qualified;
2. *Proposal 2:* Approval of the amendment and restatement of the 2003 Long-Term Stock Incentive Plan;
3. *Proposal 3:* Approval of an amendment to the Company's Restated Certificate of Incorporation to effect a reverse stock split of the common stock of the Company;
4. *Proposal 4:* Approval of certain other amendments to the Company's Restated Certificate of Incorporation;
5. *Proposal 5:* Ratification of the appointment of Ernst & Young LLP as the Company's independent registered public accounting firm for fiscal 2010; and
6. The transaction of such other business as may properly come before the Annual Meeting of Stockholders or any reconvened meeting following any adjournment or postponement thereof.

Only stockholders of record at the close of business on January 4, 2010 are entitled to notice of, and to vote at, the meeting or any reconvened meeting following any adjournment or postponement thereof.

We believe that it is desirable that as large a proportion as possible of the stockholders' interests be represented at our Annual Meeting. **Whether or not you plan to attend our Annual Meeting request that you properly date and sign the enclosed form of proxy and promptly return it to us using the enclosed addressed and stamped envelope or submit your proxy using the telephone or Internet procedures that may be provided to you.** If you are present at the meeting and wish to do so, you may revoke the proxy and vote in person. If, however, you hold your shares through a nominee or broker, you must obtain a signed proxy from the broker in order to be able to vote in person.

By order of the Board of Directors,

Todd R. Moore
*Executive Vice President, General Counsel
and Secretary*

**Important Notice Regarding the Availability of
Proxy Materials for the Annual Stockholder Meeting to be Held February 19, 2010**

The proxy statement and annual report to shareholders are available at www.ncilp.com/proxy.

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FOR
ANNUAL MEETING OF STOCKHOLDERS
To Be Held February 19, 2010**

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**NCI BUILDING SYSTEMS, INC.
10943 North Sam Houston Parkway West
Houston, Texas 77064
(281) 897-7788**

**PROXY STATEMENT
FOR
ANNUAL MEETING OF STOCKHOLDERS
TO BE HELD FEBRUARY 19, 2010**

This proxy statement is furnished to stockholders of NCI Building Systems, Inc. (NCI, the Company, we, and us) in connection with the solicitation of proxies to be used at our Annual Meeting of Stockholders (the Annual Meeting) to be held Friday, February 19, 2010. Your proxy in the form enclosed will be voted at the meeting if properly executed by you, returned to us and not revoked by you before the Annual Meeting. If you give a proxy on the enclosed form, or by telephone or the Internet, you may revoke it at any time before it is voted by delivering written notice of revocation to the Secretary of NCI, by delivering a later dated proxy or by attending the Annual Meeting, withdrawing your proxy and voting your shares personally. Your attendance at the Annual Meeting will not constitute automatic revocation of your proxy. If you hold your shares through a nominee or broker, you must obtain a signed proxy from the broker in order to be able to vote in person.

We are first sending this proxy statement and the enclosed proxy form to stockholders on or about January [], 2010.

ACTION TO BE TAKEN AT ANNUAL MEETING

When you have appropriately specified how your proxy should be voted, the proxy will be voted accordingly. Unless you otherwise specify in your proxy, your proxy will be voted (1) **FOR** Proposal 1, the election as directors of the nominees listed under Election of Directors ; (2) **FOR** Proposal 2, the approval of the amendment and restatement of our 2003 Long-Term Stock Incentive Plan; (3) **FOR** Proposal 3, the amendment to the Company s Restated Certificate of Incorporation (the Certificate of Incorporation) to effect a reverse stock split of the common stock of the Company, par value \$0.01 (the Common Stock); (4) **FOR** Proposal 4A; (5) **FOR** Proposal 4B; (6) **FOR** Proposal 4C; (7) **FOR** Proposal 4D; (8) **FOR** Proposal 4E; (9) **FOR** Proposal 4F; (10) **FOR** Proposal 4G; (11); **FOR** Proposal 5, the ratification of Ernst & Young LLP as the Company s independent registered public accountants for the fiscal year scheduled to end on October 31, 2010 (Fiscal 2010); and (12) at the discretion of the proxy holders, either **FOR** or **AGAINST** any other matter or business that may properly come before the Annual Meeting. Our board of directors is not currently aware of any other such matter or business.

PERSONS MAKING THE SOLICITATION

Our board of directors is soliciting the accompanying proxy. We will bear the entire cost of soliciting proxies and no other person or persons will bear those costs either directly or indirectly. We hired Morrow & Co., LLC to assist in the solicitation of proxies from stockholders at a fee of approximately \$22,000 plus reimbursement of reasonable out-of-pocket expenses. In addition to the use of the mails, proxies may be solicited by personal interview, telephone and email by our directors, officers and employees, none of whom will receive additional compensation. We will also reimburse brokerage houses and other nominees for their reasonable expenses in forwarding proxy materials to beneficial owners of our Common Stock.

INTEREST OF CERTAIN PERSONS IN MATTERS TO BE ACTED UPON

Amendments to Certificate of Incorporation

Affiliates of certain of our directors have an interest in Proposal 3, which would amend our Certificate of Incorporation to effect a reverse stock split of the Common Stock of the Company. James G. Berges, Nathan K.

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Sleeper and Jonathan L. Zrebiec are directors of the Company and employees of Clayton, Dubilier & Rice, LLC (CD&R, LLC), a private equity fund that is the manager and an affiliate of Clayton, Dubilier & Rice Fund VIII, L.P. and CD&R Friends & Family Fund VIII, L.P. (together, the Investors). The Investors own 250,000 shares of a class of convertible preferred stock, par value \$1.00 per share, of the Company, designated the Series B Cumulative Convertible Participating Preferred Stock (the Preferred Stock and shares thereof the Preferred Shares). As of December 8, 2009, the Preferred Shares are fully convertible into 196,109,194 shares of Common Stock, but there are only 100,000,000 shares of Common Stock authorized under our Restated Certificate of Incorporation, of which 90,419,147 are already issued and outstanding. In connection with the Investors acquisition of the Preferred Shares, the Investors entered into the Stockholders Agreement, dated as of October 20, 2009 (the Stockholders Agreement), with the Company, which includes a requirement that we seek stockholder approval to make available a number of shares of Common Stock that is sufficient to permit the Investors to fully convert the Preferred Shares. If Proposal 3 is approved, we may undertake a reverse stock split that will increase the number of available shares of Common Stock and permit the Investors to fully convert the Preferred Shares. The current conversion price per share of the Preferred Stock is \$1.2748. If Proposal 3 is not approved, beginning June 30, 2010 and continuing until we receive stockholder approval for an increase in the number of shares available for conversion of the Preferred Shares, the Investors will receive a higher dividend rate per share of Preferred Stock owned by them than the rate that is currently payable on the Preferred Stock.

Article TENTH of our Restated Certificate of Incorporation requires that certain business combinations between the Company and an interested stockholder (which generally is defined to include the beneficial owner of 10% or more of the voting power of the Company) receive one of several special approvals. One such approval is the approval of a majority of the disinterested directors on our board of directors. Disinterested directors are defined as members of the board of directors who are unaffiliated with the interested stockholder who were either members of the board of directors immediately before the time that the interested stockholder became an interested stockholder or unaffiliated successors of such directors recommended by a majority of disinterested directors in office prior to the taking of office by the successor director.

The reverse stock split may be a business combination under Article TENTH of our Restated Certificate of Incorporation. Pursuant to Article TENTH of our Restated Certificate of Incorporation, a committee of disinterested directors has unanimously approved the reverse stock split.

The Investors also have an interest in the following proposals, which benefit them as the beneficial owners of 68.4% of our voting power and the holders of Preferred Stock:

Proposal 4A, which would amend our Certificate of Incorporation to permit the holders of a majority of our capital stock to approve proposals increasing or decreasing the number of authorized shares of Common Stock;

Proposal 4B, which would amend our Certificate of Incorporation to permit the removal of any director or the board of directors of the Company with or without cause upon a vote of 80% of the outstanding voting power of the Company;

Proposal 4C, which would amend our Certificate of Incorporation to permit the holder of at least 25% of the outstanding voting power of the Company to call a special meeting of stockholders;

Proposal 4D, which would amend our Certificate of Incorporation to permit stockholder action by written consent;

Proposal 4F, which would amend our Certificate of Incorporation to remove the requirement of (1) approval of a majority of disinterested directors or compliance with certain minimum price criteria and procedures, or

(2) the affirmative vote of holders of at least 80% of the voting power of the Company for business combinations with interested stockholders (which are defined as persons that are holders of 10% or more of the outstanding voting power of the Company, or that within the past two years were holders of 10% or more of the outstanding voting power of the Company); and

Proposal 4G, which would amend our Certificate of Incorporation to provide for automatic adjustment in the number of votes held by each director to reflect increases and decreases in the Investors' voting interest and right to appoint designees to our board of directors.

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At the Annual Meeting, stockholders are being asked to approve the amendment and restatement of our 2003 Long-Term Stock Incentive Plan, pursuant to which directors and employees may be granted different types of awards, including stock options and restricted stock awards. As a result, senior executives and directors have personal interests in the outcome of this proposal that are different from the interests of other stockholders.

OUTSTANDING CAPITAL STOCK

The record date for stockholders entitled to notice of, and to vote at, the Annual Meeting is January 4, 2010. At the close of business on that date we had [] shares of Common Stock and 250,000 shares of Preferred Stock issued and outstanding and entitled to be voted at the Annual Meeting. Each of the 250,000 shares of Preferred Stock is entitled to vote on an as-converted basis, and the Preferred Shares together have a number of votes equivalent to 196,109,194 shares of Common Stock.

Unless otherwise noted, the following tables set forth, as of December 8, 2009 (the Ownership Date), the number of shares of our equity securities beneficially owned by (1) each person or group known by us to own beneficially more than 5% of the outstanding shares of any class of our equity securities, (2) each director and nominee for director including all directors in office during and after the fiscal year ended November 1, 2009 (Fiscal 2009), (3) each of our executive officers identified under the caption Executive Compensation and (4) all directors and director nominees including all directors in office during and after Fiscal 2009 and executive officers as a group. Except as otherwise indicated, each of the persons or groups named below has sole voting power and investment power with respect to the Common Stock and Preferred Stock.

Name of Beneficial Owner or Group	Beneficial Ownership(1)	
	Number of Shares	Percent
	Preferred Stock	
Clayton Dubilier & Rice Fund VIII, L.P.(2)	249,651	99.86
CD&R Friends & Family Fund VIII, L.P.(2)	349	.14
Investment Funds Associated With or Designated by Clayton, Dubilier, & Rice, LLC(2)	250,000	100.00
	Common Stock	
Norman C. Chambers(3)	334,033	*
Kathleen J. Affeldt(3)	1,500	*
James G. Berges(3)(4)	0	*
William Breedlove(3)(5)	25,909	*
Larry Edwards(3)(5)	9,227	*
Gary L. Forbes(3)	60,909	*
Phillip Hawk(3)(5)	15,167	*
John J. Holland(3)	1,500	*
Lawrence J. Kremer(3)	1,500	*
Max Lukens(3)(5)	16,093	*
George Martinez(3)	38,019	*

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Ed Phipps(3)(5)	9,227	*
Bernard Pieper(3)(5)	13,478	*
Nathan K. Sleeper(3)(4)	0	*
John Sterling(3)(5)	29,325	*
Jonathan L. Zrebiec(3)(4)	0	*
Charles W. Dickinson(3)	119,974	*
Mark W. Dobbins(3)	142,780	*
Keith E. Fischer(3)(6)	66,044	*
Mark E. Johnson(3)	31,379	*
Bradley D. Robeson(3)	30,942	*
All directors and executive officers as a group (26 persons)(7)	1,173,202	

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* Less than 1%.

- (1) Includes shares beneficially owned by the listed persons, including shares owned under our 401(k) Profit Sharing Plan. The numbers of shares listed do not include the rights to restricted shares granted on December 11, 2009, which are subject to shareholder approval. If a person has the right to acquire beneficial ownership of any shares by exercise of options previously granted within 60 days after the Ownership Date, those shares are deemed beneficially owned by that person as of the Ownership Date and are deemed to be outstanding solely for the purpose of determining the percentage of the Common Stock that he or she owns. Those shares are not included in the computations for any other person. Please see the table accompanying footnote 3 below for additional information regarding equity compensation awards held by the listed persons.
- (2) Does not include 4,500 shares of Common Stock issued to Clayton, Dubilier & Rice, LLC, as assignee of director compensation payable to Messrs. Berges, Sleeper and Zrebiec. The Investors have the right to vote with the holders of Common Stock on an as-converted basis (without taking into account any limitations on convertibility that may then be applicable). At an initial conversion price of \$1.2748, the 250,000 shares of Preferred Stock held by the Investors are convertible into 196,109,194 shares of Common Stock, broken down as follows: (i) 195,835,426 shares of Common Stock into which 249,651 shares of Preferred Stock held by Clayton, Dubilier & Rice Fund VIII, L.P. are convertible; and (ii) 273,768 shares of Common Stock into which 349 shares of Preferred Stock held by CD&R Friends & Family Fund VIII, L.P. are convertible. The Investors hold approximately 68.4% of the voting power of the Company. However, because of the limited number of authorized, unissued and unallocated shares of Common Stock of the Company, the number of shares of Common Stock available into which the Investors may convert their shares of Preferred Stock is 8,374,521.

The general partner of the Investors is CD&R Associates VIII, Ltd., whose sole shareholder is CD&R Associates VIII, L.P. The general partner of CD&R Associates VIII, L.P. is CD&R Investment Associates VIII, Ltd.

CD&R Investment Associates VIII, Ltd. is managed by a three person board of directors, and all board action relating to the voting or disposition of these shares of Common Stock and Preferred Stock requires approval of a majority of the board. Joseph L. Rice, III, Donald J. Gogel and Kevin J. Conway, as the directors of CD&R Investment Associates VIII, Ltd. may be deemed to share beneficial ownership of the shares of Common Stock and Preferred Stock shown as beneficially owned by the Investors. Such persons expressly disclaim such beneficial ownership.

CD&R Associates VIII, L.P., CD&R Associates VIII, Ltd. and CD&R Investment Associates VIII, Ltd. expressly disclaim beneficial ownership of the shares held by the Investors and by Clayton, Dubilier & Rice, LLC. The Investors expressly disclaim beneficial ownership of the shares held by Clayton, Dubilier & Rice, LLC.

The address for the Investors, CD&R Associates VIII, L.P., CD&R Associates VIII, Ltd. and CD&R Investment Associates VIII, Ltd. is c/o M&C Corporate Services Limited, P.O. Box 309, Uglund House, South Church Street, George Town, Grand Cayman, KY1-1104, Cayman Islands, British West Indies. The address for Clayton, Dubilier & Rice, LLC is 375 Park Avenue, 18th Floor, New York, NY 10152.

- (3) The number of shares of Common Stock beneficially owned by each person includes options exercisable on the Ownership Date but excludes options not exercisable within 60 days after the Ownership Date. No currently unexercisable options would become exercisable within 60 days after the Ownership Date. The number of shares of Common Stock beneficially owned by each person also includes unvested shares of restricted stock but excludes rights to awards of restricted stock granted on December 11, 2009 subject to stockholder approval of

Proposal 2. Each owner of shares of issued restricted stock has the right to vote his or her shares but may not transfer them until they have vested.

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	Options		Restricted Stock	
	Exercisable (Included in the Table Above)	Not Exercisable Within 60 Days (Not Included in the Table Above)	December 11, 2009 Grants of Rights to Restricted Stock (Not Included in the Table Above)	Unvested Restricted Stock (Included in the Table Above)
Norman C. Chambers	151,500	3,045,685	1,035,477	64,516
Kathleen J. Affeldt				1,500
James G. Berges(4)				
William D. Breedlove(5)	12,431			
Larry Edwards(5)				
Gary L. Forbes	12,431			
Phillip Hawk(5)	3,000			
John J. Holland				1,500
Lawrence J. Kremer				1,500
Max Lukens(5)	3,000			
George Martinez	6,855			
Ed Phipps(5)				
Bernard Pieper(5)				
Nathan K. Sleeper(4)				
John Sterling(5)				
Jonathan L. Zrebiec(4)				
Mark W. Dobbins	31,875	1,269,036	564,111	25,000
Charles W. Dickinson	11,882	761,421	440,033	25,000
Keith E. Fischer(6)	28,901			
Mark E. Johnson		1,751,269	640,253	
Bradley D. Robeson	3,032	761,421	440,033	

(4) Does not include 250,000 shares of Preferred Stock held by investment funds associated with or designated by Clayton, Dubilier & Rice, LLC, or 4,500 shares of Common Stock issued to Clayton, Dubilier & Rice, LLC, as assignee of compensation payable to Messrs. Berges, Sleeper and Zrebiec. Messrs. Berges, Sleeper and Zrebiec are directors of the Company and executives of Clayton, Dubilier & Rice, LLC. Messrs. Berges, Sleeper and Zrebiec disclaim beneficial ownership of the shares held by Clayton, Dubilier & Rice, LLC and by investment funds associated with or designated by Clayton, Dubilier & Rice, LLC.

(5) Pursuant to the Stockholders Agreement, effective as of the closing of the Equity Investment (as defined in Change of Control below), on October 20, 2009, Messrs. Breedlove, Edwards, Hawk, Lukens, Phipps, Pieper, and Sterling resigned from our board of directors.

(6) Effective as of October 26, 2009, Mr. Fischer resigned his position as President of the Robertson-Ceco Buildings Division.

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- (7) The number of shares of Common Stock beneficially owned by each director and executive officer as a group includes beneficial ownership of the additional officers listed in the table below. As with the officers and directors listed individually, the number of shares of Common Stock beneficially owned by each person includes options exercisable on the Ownership Date or within 60 days after the Ownership Date and excludes options not exercisable within 60 days after the Ownership Date. The number of shares of Common Stock beneficially owned by each person also includes unvested shares of restricted stock. Each owner of restricted stock has the right to vote his or her shares but may not transfer them until they have vested.

	Options	Restricted Stock	
		December 11, 2009	
	Not	grants of	Unvested
	Exercisable	rights to	Restricted
	within 60 days	restricted	Stock
Exercisable	(not included	stock	Stock
(included	in	(not included	(included in the
in the	in	in	in the