

BENCHMARK ELECTRONICS INC
Form SC 13D/A
February 26, 2019

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 13D

(Rule 13d-101)

INFORMATION TO BE INCLUDED IN STATEMENTS FILED PURSUANT

TO § 240.13d-1(a) AND AMENDMENTS THERETO FILED PURSUANT TO

§ 240.13d-2(a)

(Amendment No. 2)¹

Benchmark Electronics, Inc.

(Name of Issuer)

Common Stock, \$0.10 par value per share

(Title of Class of Securities)

08160H101

(CUSIP Number)

GLENN W. WELLING

ENGAGED CAPITAL, LLC

610 Newport Center Drive, Suite 250

Newport Beach, California 92660

(949) 734-7900

STEVE WOLOSKY

RYAN NEBEL

OLSHAN FROME WOLOSKY LLP

1325 Avenue of the Americas

New York, New York 10019

(212) 451-2300

(Name, Address and Telephone Number of Person

Authorized to Receive Notices and Communications)

February 25, 2019

(Date of Event Which Requires Filing of This Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of §§ 240.13d-1(e), 240.13d-1(f) or 240.13d-1(g), check the following box “.”

Note: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. *See* § 240.13d-7 for other parties to whom copies are to be sent.

1 The remainder of this cover page shall be filled out for a reporting person’s initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be “filed” for the purpose of Section 18 of the Securities Exchange Act of 1934 (“Act”) or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, *see* the *Notes*).

CUSIP NO. 08160H101

1 NAME OF REPORTING PERSON

Engaged Capital Flagship
Master Fund, LP

2 CHECK THE APPROPRIATE BOX IF A MEMBER (a) OF A GROUP (b)

3 SEC USE ONLY

4 SOURCE OF FUNDS

WC
CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH 7 CAYMAN ISLANDS SOLE VOTING POWER 1,950,408

8 SHARED VOTING POWER - 0 -

9 SOLE DISPOSITIVE POWER

10 1,950,408 SHARED DISPOSITIVE POWER

- 0 -

11 AGGREGATE AMOUNT
BENEFICIALLY OWNED BY
EACH REPORTING PERSON

1,950,408

12 CHECK BOX IF
THE AGGREGATE
AMOUNT IN ROW
(11) EXCLUDES
CERTAIN SHARES

13 PERCENT OF CLASS
REPRESENTED BY
AMOUNT IN ROW (11)

4.8%

14 TYPE OF REPORTING
PERSON

PN

CUSIP NO. 08160H101

1 NAME OF REPORTING PERSON

Engaged Capital Flagship Fund, LP

2 CHECK THE APPROPRIATE BOX IF A MEMBER (a) OF A GROUP (b)

3 SEC USE ONLY

4 SOURCE OF FUNDS

OO
CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

DELAWARE

NUMBER OF 7 SOLE VOTING POWER
SHARES BENEFICIALLY 1,950,408

OWNED BY 8 SHARED VOTING POWER
EACH REPORTING - 0 -

PERSON WITH 9 SOLE DISPOSITIVE POWER

1,950,408
10 SHARED DISPOSITIVE POWER

- 0 -

11 AGGREGATE AMOUNT
BENEFICIALLY OWNED BY
EACH REPORTING PERSON

1,950,408

12 CHECK BOX IF
THE AGGREGATE
AMOUNT IN ROW
(11) EXCLUDES
CERTAIN SHARES

13 PERCENT OF CLASS
REPRESENTED BY
AMOUNT IN ROW (11)

4.8%

14 TYPE OF REPORTING
PERSON

PN

CUSIP NO. 08160H101

1 NAME OF REPORTING PERSON

Engaged Capital Flagship Fund, Ltd.

2 CHECK THE APPROPRIATE BOX IF A MEMBER (a) OF A GROUP

(b)

3 SEC USE ONLY

4 SOURCE OF FUNDS

OO

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

CAYMAN ISLANDS

NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH

7 1,950,408

SOLE VOTING POWER

8 SHARED VOTING POWER

- 0 -

9 SOLE DISPOSITIVE POWER

1,950,408

10 SHARED DISPOSITIVE POWER

- 0 -

11 AGGREGATE AMOUNT
BENEFICIALLY OWNED BY
EACH REPORTING PERSON

1,950,408

12 CHECK BOX IF
THE AGGREGATE
AMOUNT IN ROW
(11) EXCLUDES
CERTAIN SHARES

13 PERCENT OF CLASS
REPRESENTED BY
AMOUNT IN ROW (11)

4.8%

14 TYPE OF REPORTING
PERSON

CO

CUSIP NO. 08160H101

1 NAME OF REPORTING PERSON

Engaged Capital, LLC

2 CHECK THE APPROPRIATE BOX IF A MEMBER (a) OF A GROUP

(b)

3 SEC USE ONLY

4 SOURCE OF FUNDS

OO
CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

DELAWARE

NUMBER OF 7 SOLE VOTING POWER
SHARES BENEFICIALLY 2,116,559

OWNED BY 8 SHARED VOTING POWER
EACH REPORTING - 0 -

PERSON WITH 9 SOLE DISPOSITIVE POWER

2,116,559
10 SHARED DISPOSITIVE POWER

- 0 -

11 AGGREGATE AMOUNT
BENEFICIALLY OWNED BY
EACH REPORTING PERSON

2,116,559

12 CHECK BOX IF
THE AGGREGATE
AMOUNT IN ROW
(11) EXCLUDES
CERTAIN SHARES

13 PERCENT OF CLASS
REPRESENTED BY
AMOUNT IN ROW (11)

5.2%

14 TYPE OF REPORTING
PERSON

OO

CUSIP NO. 08160H101

1 NAME OF REPORTING PERSON

Engaged Capital Holdings, LLC

2 CHECK THE APPROPRIATE BOX IF A MEMBER (a) OF A GROUP

(b)

3 SEC USE ONLY

4 SOURCE OF FUNDS

OO

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e)

6 CITIZENSHIP OR PLACE OF ORGANIZATION

DELAWARE

NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH

7 SOLE VOTING POWER

2,116,559

8 SHARED VOTING POWER

- 0 -

9 SOLE DISPOSITIVE POWER

2,116,559

10 SHARED DISPOSITIVE POWER

- 0 -

11 AGGREGATE AMOUNT
BENEFICIALLY OWNED BY
EACH REPORTING PERSON

2,116,559

12 CHECK BOX IF
THE AGGREGATE
AMOUNT IN ROW
(11) EXCLUDES
CERTAIN SHARES

13 PERCENT OF CLASS
REPRESENTED BY
AMOUNT IN ROW (11)

5.2%

14 TYPE OF REPORTING
PERSON

OO

CUSIP NO. 08160H101

1	NAME OF REPORTING PERSON	
	Glenn W. Welling	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP	(a)
		(b)
3	SEC USE ONLY	
4	SOURCE OF FUNDS	
	OO	
5	CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e)	
6	CITIZENSHIP OR PLACE OF ORGANIZATION	
	USA	
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	7	SOLE VOTING POWER
		2,116,559
OWNED BY EACH REPORTING PERSON WITH	8	SHARED VOTING POWER
		- 0 -
PERSON WITH	9	SOLE DISPOSITIVE POWER
		2,116,559
	10	SHARED DISPOSITIVE POWER

- 0 -

11 AGGREGATE AMOUNT
BENEFICIALLY OWNED BY
EACH REPORTING PERSON

2,116,559

12 CHECK BOX IF
THE AGGREGATE
AMOUNT IN ROW
(11) EXCLUDES
CERTAIN SHARES

13 PERCENT OF CLASS
REPRESENTED BY
AMOUNT IN ROW (11)

5.2%

14 TYPE OF REPORTING
PERSON

IN

7

CUSIP NO. 08160H101

1	NAME OF REPORTING PERSON	
	Joseph V. Lash	
2	CHECK THE APPROPRIATE BOX IF A MEMBER (a) OF A GROUP (b)	
3	SEC USE ONLY	
4	SOURCE OF FUNDS	
5	CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e)	
6	CITIZENSHIP OR PLACE OF ORGANIZATION	
	USA	
7	NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	SOLE VOTING POWER
		- 0 -
8	OWNED BY EACH REPORTING PERSON WITH	SHARED VOTING POWER
		- 0 -
9	PERSON WITH	SOLE DISPOSITIVE POWER
		- 0 -
10		SHARED DISPOSITIVE POWER

- 0 -

11 AGGREGATE AMOUNT
BENEFICIALLY OWNED
BY EACH REPORTING
PERSON

- 0 -

12 CHECK BOX IF
THE AGGREGATE
AMOUNT IN ROW
(11) EXCLUDES
CERTAIN SHARES

13 PERCENT OF CLASS
REPRESENTED BY
AMOUNT IN ROW (11)

14 0%
TYPE OF REPORTING
PERSON

IN

CUSIP NO. 08160H101

1	NAME OF REPORTING PERSON	
	Tonia Pankopf	
2	CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP	(a)
		(b)
3	SEC USE ONLY	
4	SOURCE OF FUNDS	
5	CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEM 2(d) OR 2(e)	
6	CITIZENSHIP OR PLACE OF ORGANIZATION	
	USA	
NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH	7	SOLE VOTING POWER
		- 0 -
OWNED BY EACH REPORTING PERSON WITH	8	SHARED VOTING POWER
		- 0 -
PERSON WITH	9	SOLE DISPOSITIVE POWER
		- 0 -
	10	SHARED DISPOSITIVE POWER

- 0 -

11 AGGREGATE AMOUNT
BENEFICIALLY OWNED
BY EACH REPORTING
PERSON

- 0 -

12 CHECK BOX IF
THE AGGREGATE
AMOUNT IN ROW
(11) EXCLUDES
CERTAIN SHARES

13 PERCENT OF CLASS
REPRESENTED BY
AMOUNT IN ROW (11)

14 0%
TYPE OF REPORTING
PERSON

IN

CUSIP NO. 08160H101

The following constitutes Amendment No. 2 to the Schedule 13D filed by the undersigned (“Amendment No. 2”). This Amendment No. 2 amends the Schedule 13D as specifically set forth herein.

Item 2.

Identity and Background.

Item 2 is hereby amended to add the following:

In connection with the Cooperation Agreement, as defined and described in Item 4 below, Joseph V. Lash and Tonia Pankopf are no longer members of the Section 13(d) group and shall cease to be Reporting Persons immediately upon the filing of this Amendment No. 2 to the Schedule 13D. The remaining Reporting Persons will continue filing statements on Schedule 13D with respect to their beneficial ownership of securities of the Issuer to the extent required by applicable law. Each of the remaining Reporting Persons is party to the Joint Filing Agreement, as further described in Item 6 below.

Item 3.

Source and Amount of Funds or Other Consideration.

Item 3 is hereby amended and restated to read as follows:

The Shares purchased by Engaged Capital Flagship Master and held in the Engaged Capital Account were purchased with working capital (which may, at any given time, include margin loans made by brokerage firms in the ordinary course of business). The aggregate purchase price of the 1,950,408 Shares beneficially owned by Engaged Capital Flagship Master is approximately \$51,699,556, including brokerage commissions. The aggregate purchase price of the 166,151 Shares held in the Engaged Capital Account is approximately \$4,319,512, including brokerage commissions.

Item 4.

Purpose of Transaction.

Item 4 is hereby amended to add the following:

On February 25, 2019, Engaged Capital and certain of its affiliates (collectively, “Engaged”) entered into a Cooperation Agreement (the “Cooperation Agreement”) with the Issuer. Pursuant to the Cooperation Agreement, Glenn W. Welling has the option to join the Issuer’s Board of Directors (the “Board”) until the date which is fifteen days before the advance notice deadline for the Issuer’s 2020 annual meeting of shareholders (the “2020 Annual Meeting”), provided that Engaged continues to beneficially own at least the lesser of (i) 2.5% of the outstanding Shares and (2) 1,092,759 Shares.

CUSIP NO. 08160H101

Pursuant to the Cooperation Agreement, Engaged withdrew its nomination of director candidates for election to the Board at the Issuer's 2019 annual meeting of shareholders (the "2019 Annual Meeting") and is subject to certain customary standstill restrictions from the date of the Cooperation Agreement until the later of (x) the day that is the earlier to occur of (i) the date that is fifteen calendar days prior to the first anniversary of the deadline for submission of shareholder nominations of director candidates for the 2019 Annual Meeting and (ii) the date that is fifteen calendar days prior to the deadline for submission of shareholder nominations of director candidates for the 2020 Annual Meeting and (y) if Mr. Welling has joined the Board, the date that Mr. Welling no longer serves on the Board (the "Standstill Period"). During the Standstill Period, Engaged also agreed to vote its Shares (a) in favor of the election of the Issuer's slate of director nominees, (b) against any shareholder nominations for director that are not approved and recommended by the Board, and (c) in accordance with the Board's recommendations with respect to any other matter presented to shareholders of the Issuer; provided, however, that in the event that Institutional Shareholder Services Inc. ("ISS") recommends otherwise with respect to any proposals (other than the election of directors), Engaged shall be permitted to vote in accordance with ISS's recommendation; provided, further, that Engaged shall be permitted to vote in its sole discretion with respect to any publicly announced proposals relating to an Extraordinary Transaction (as defined in the Cooperation Agreement). During the Standstill Period, Engaged also agreed not to acquire beneficial ownership of more than 10.0% of the outstanding Shares.

The foregoing description of the Cooperation Agreement does not purport to be complete and is qualified in its entirety by reference to the Cooperation Agreement, which is attached as Exhibit 99.1 hereto and is incorporated herein by reference.

Item 5. Interest in Securities of the Issuer.

Items 5(a) and (c) are hereby amended and restated to read as follows:

(a) The aggregate percentage of Shares reported owned by each person named herein is based upon 40,655,159 Shares outstanding as of February 22, 2019, which is the total number of Shares outstanding as reported in the Issuer's Current Report on Form 8-K filed with the Securities and Exchange Commission on February 26, 2019.

As of the date hereof, Engaged Capital Flagship Master beneficially owned 1,950,408 Shares, constituting approximately 4.8% of the Shares outstanding. Each of Engaged Capital Fund and Engaged Capital Offshore, as feeder funds of Engaged Capital Flagship Master, may be deemed to beneficially own the 1,950,408 Shares owned by Engaged Capital Flagship Master, constituting approximately 4.8% of the Shares outstanding.

As of the date hereof, 166,151 Shares were held in the Engaged Capital Account, constituting less than 1% of the Shares outstanding.

Engaged Capital, as the general partner and investment adviser of Engaged Capital Flagship Master and the investment adviser of the Engaged Capital Account, may be deemed to beneficially own the 2,116,559 Shares owned in the aggregate by Engaged Capital Flagship Master and held in the Engaged Capital Account, constituting approximately 5.2% of the Shares outstanding. Engaged Holdings, as the managing member of Engaged Capital, may be deemed to beneficially own the 2,116,559 Shares owned in the aggregate by Engaged Capital Flagship Master and held in the Engaged Capital Account, constituting approximately 5.2% of the Shares outstanding. Mr. Welling, as the Founder and CIO of Engaged Capital and sole member of Engaged Holdings, may be deemed to beneficially own the 2,116,559 Shares owned in the aggregate by Engaged Capital Flagship Master and held in the Engaged Capital Account, constituting approximately 5.2% of the Shares outstanding.

CUSIP NO. 08160H101

As of the date hereof, Mr. Lash and Ms. Pankopf did not beneficially own any Shares, constituting 0% of the Shares outstanding.

The filing of this Schedule 13D shall not be deemed an admission that the Reporting Persons are, for purposes of Section 13(d) of the Securities Exchange Act of 1934, as amended, the beneficial owners of any securities of the Issuer he, she or it does not directly own. Each of the Reporting Persons specifically disclaims beneficial ownership of the securities reported herein that he, she or it does not directly own.

(c) Schedule A annexed hereto lists all transactions in securities of the Issuer by the Reporting Persons since the filing of Amendment No. 1 to the Schedule 13D. All of such transactions were effected in the open market.

Item 6. Contracts, Arrangements, Understandings or Relationships With Respect to Securities of the Issuer.
Item 6 is hereby amended to add the following:

On February 25, 2019, Engaged and the Issuer entered into the Cooperation Agreement as defined and described in Item 4 above and attached as Exhibit 99.1 hereto.

On February 25, 2019, the Reporting Persons entered into a Joint Filing Agreement in which the Reporting Persons who will remain Reporting Persons subsequent to this Amendment No. 2 to the Schedule 13D agreed to the joint filing on behalf of each of them of statements on Schedule 13D with respect to the securities of the Issuer to the extent required by applicable law. A copy of the Joint Filing Agreement is attached hereto as Exhibit 99.2 and is incorporated herein by reference.

Item 7. Material to be Filed as Exhibits.
Item 7 is hereby amended to add the following exhibits:

99.1	Cooperation Agreement, dated February 25, 2019.
99.2	Joint Filing Agreement, dated February 25, 2019.

CUSIP NO. 08160H101

SIGNATURES

After reasonable inquiry and to the best of his knowledge and belief, the undersigned certifies that the information set forth in this statement is true, complete and correct.

Dated: February 26, 2019

Engaged Capital Flagship Master Fund, LP

By: Engaged Capital, LLC
General Partner

By: /s/ Glenn W. Welling
Name: Glenn W. Welling
Title: Founder and Chief Investment Officer

Engaged Capital Flagship Fund, LP

By: Engaged Capital, LLC
General Partner

By: /s/ Glenn W. Welling
Name: Glenn W. Welling
Title: Founder and Chief Investment Officer

Engaged Capital Flagship
Fund, Ltd.

By: /s/ Glenn W. Welling
Name: Glenn W. Welling
Title: Director

Engaged Capital, LLC

By:/s/ Glenn W. Welling
Name: Glenn W. Welling

Title: Founder and Chief Investment Officer

Engaged Capital Holdings,
LLC

By:/s/ Glenn W. Welling
Name: Glenn W. Welling
Title: Sole Member

CUSIP NO. 08160H101

/s/ Glenn W. Welling
Glenn W. Welling

Individually and as attorney-in-fact for Joseph V. Lash and Tonia Pankopf

14

CUSIP NO. 08160H101

SCHEDULE A

Transactions in Securities of the Issuer Since the Filing of Amendment No. 1 to the Schedule 13D

<u>Nature of the Transaction</u>	<u>Securities</u>	<u>Price Per</u>	<u>Date of</u>
	<u>Purchased/(Sold)</u>	<u>Share(\$)</u>	<u>Purchase / Sale</u>

Engaged Capital Flagship Master Fund, LP

Sale of Common Stock (38,890) 27.651802/12/2019

Sale of Common Stock (24,391) 27.535102/12/2019

Sale of Common Stock (36,925) 27.847702/13/2019

Engaged Capital, LLC

(Through the Engaged Capital Account)

Sale of Common Stock (14,870) 27.651802/12/2019

Sale of Common Stock (2,077) 27.535102/12/2019

Sale of Common Stock (3,075) 27.847702/13/2019