



DIVISION OF  
CORPORATION FINANCE

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549-3010

November 27, 2007

Jeffrey M. Jones, Esq.  
Durham Jones & Pinegar, P.C.  
111 East Broadway, Suite 900  
PO Box 4050  
Salt Lake City, UT 84110-4050

Re: Fonix Corporation  
Incoming letter dated November 9, 2007

Dear Mr. Jones:

This is in response to your letter dated November 9, 2007 concerning the shareholder proposal submitted to Fonix by Andrew Marowitz. Our response is attached to the enclosed photocopy of your correspondence. By doing this, we avoid having to recite or summarize the facts set forth in the correspondence. Copies of all of the correspondence also will be provided to the proponent.

In connection with this matter, your attention is directed to the enclosure, which sets forth a brief discussion of the Division's informal procedures regarding shareholder proposals.

Sincerely,

Jonathan A. Ingram  
Deputy Chief Counsel

Enclosures

cc: Andrew Marowitz

\*\*\* FISMA & OMB Memorandum M-07-16 \*\*\*

November 27, 2007

**Response of the Office of Chief Counsel  
Division of Corporation Finance**

Re: Fonix Corporation  
Incoming letter dated November 9, 2007

The proposal nominates an individual for membership on Fonix's board of directors.

There appears to be some basis for your view that Fonix may exclude the proposal under rule 14a-8(i)(8), as relating to an election to Fonix's board of directors. Accordingly, we will not recommend enforcement action to the Commission if Fonix omits the proposal from its proxy materials in reliance on rule 14a-8(i)(8). In reaching this position, we have not found it necessary to address the alternative basis for omission upon which Fonix relies.

We note that Fonix did not file its statement of objections to including the proposal in its proxy materials at least 80 calendar days before the date on which it will file definitive proxy materials as required by rule 14a-8(j)(1). Noting the circumstances of the delay, we do not waive the 80-day requirement.

Sincerely,

Ted Yu  
Special Counsel

DURHAM

JONES &

PINEGAR

DURHAM JONES & PINEGAR, P.C.  
111 East Broadway, Suite 900  
P O Box 4050  
Salt Lake City, Utah 84110-4050  
801.415.3000  
801.415.3500 Fax  
www.djplaw.com

Jeffrey M. Jones, Esq.  
jjones@djplaw.com

November 9, 2007

**FEDERAL EXPRESS**

U.S. Securities and Exchange Commission  
Division of Corporate Finance  
Office of Chief Counsel  
100 F Street, N.E.  
Washington, D.C. 20549

RECEIVED  
2007 NOV 13 AM 11:55  
OFFICE OF CHIEF COUNSEL  
CORPORATION FINANCE

**Re: Fonix Corporation  
Notice of Intent to Omit From Proxy Materials  
Shareholder Proposal of Andrew Marowitz**

Ladies and Gentlemen:

This letter is submitted on behalf of Fonix Corporation, a Delaware corporation (the "Company"), pursuant to Rule 14a-8(j) of the Securities and Exchange Act of 1934, as amended (the "Act"), in order to notify the Securities and Exchange Commission (the "Commission") of the Company's intention to exclude a shareholder proposal (the "Shareholder Proposal") from the Company's proxy materials for the Company's 2007 Annual Meeting of the Shareholders. The Shareholder Proposal was submitted by Andrew Marowitz (the "Shareholder").

A copy of the Shareholder Proposal and correspondence is attached to this letter as Exhibit A. In accordance with Rule 14a-8(j) of the Act, six (6) copies of this letter and its attachments are enclosed. The Company is simultaneously providing the Shareholder with a copy of this submission.

**Request**

The Company respectfully requests confirmation that the staff of the Division of Corporate Finance ("Staff") of the Securities and Exchange Commission (the "Commission") will not recommend any enforcement action to the Commission if the Company omits the Shareholder Proposal from the Proxy Statement, pursuant to Rules 14a-8(b) and 14a-8(i)(8) of the Exchange Act. The Company believes that the Shareholder Proposal may be properly omitted because the Shareholder was not eligible to submit the Shareholder Proposal and

constitute approximately 0.028% of the outstanding shares of the Company, which is less than the required 1% ownership to be eligible to submit a shareholder proposal.

Counsel for the Company informed the Shareholder of his ineligibility to submit the Shareholder Proposal in the letter dated January 24, 2007, and provided the above analysis to the Shareholder. The January 24, 2007, letter was delivered to the Shareholder on January 29, 2007. Neither the Company nor the undersigned have received any response from the Shareholder.

**B. The Shareholder failed to submit a statement of his intention to continue ownership of the shares through the date of the Company's annual meeting.**

Additionally, the Shareholder Proposal may properly be omitted from the Company's proxy materials because the Shareholder failed to provide a written statement of his intentions to continue his ownership of the shares of the Company's Common Stock, as required by Rule 14a-8(b)(2)(ii)(C). In fact, the Company has no knowledge as to whether the Shareholder continues to hold any shares of the Company's Class A common stock.

Under Rule 14a-8(b)(1), in order to be eligible to submit a proposal to be included in the proxy materials, a proponent must have continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to vote on the proposal at the meeting for at least one year by the date the proposal is submitted. The proponent must also indicate that he or she will continue to hold the securities through the date of the meeting.

On numerous occasions, the Staff has concurred with a company's omission of a shareholder proposal based upon a proponent's failure to provide evidence of its eligibility pursuant to Rules 14a-8(b) and Rule 14-8(f)(1). See Dell, Inc., SEC No-Action Letter (April 2, 2007); Yahoo! Inc., SEC No-Action Letter (March 29, 2007); Harleyville Savings Financial Corp., SEC No-Action Letter (October 23, 2007); EDAC Technologies Corp., SEC No-Action Letter (March 28, 2007); see also Division of Corporation Finance, Staff Legal Bulletin No. 14 (CF), July 31, 2001.

The Shareholder did not own at least \$2,000 in market value, or 1%, of the Company's common stock, the class of stock entitled to vote at the upcoming shareholder meeting, for at least one year by the date the Shareholder Proposal was submitted. Additionally, the Shareholder did not provide a statement of his intention to continue his ownership of the shares through the date of the Company's annual meeting, either with the original submission of the Shareholder Proposal or with his supplemental submission of information relating to his share ownership. As such, under Rule 14a-8(b)(1), the Shareholder is not eligible to submit the Shareholder Proposal, and the Company is entitled to omit the Shareholder Proposal from its proxy materials.

The Company respectfully requests that the Staff confirm that it will not recommend any enforcement action to the Commission if the Proposal is omitted from the Company's proxy materials under Rule 14a-8(b)(1) of the Act.

**II. The Shareholder Proposal may be omitted pursuant to Rule 14a-8(i)(8) because it relates to an election of the Company's Board of Directors.**

The Shareholder Proposal may also be properly omitted from the Company's proxy materials because the Shareholder Proposal relates to an election of the Company's Board of Directors.

The Shareholder Proposal requests the inclusion of the Shareholder as a director nominee to the Board of Directors of the Company at the 2007 Annual Meeting of the Shareholders. However, under the proxy rules, a company is not required to include a shareholder's proposal that nominates himself to that company's board of directors.

Rule 14a-8(i)(8) provides that a corporation may exclude a shareholder proposal:

"If the proposal relates to an election for membership on the company's board of directors or analogous governing body."

When a shareholder's proposal clearly relates to the nomination of specific individuals for election to a company's board of directors, including the Shareholder himself or herself, the Staff has consistently indicated that the proposal may be excluded pursuant to Rule 14a-8(i)(8) of the Act. *See, Isis Pharmaceuticals, Inc.*, SEC No-Action Letter (May 31, 2006) (permitting exclusion of a shareholder proposal under Rule 14a-8(i)(8) of the Act where the shareholder nominated himself as a candidate for the upcoming proxy vote); *Exabyte Corporation*, SEC No-Action Letter (Jan. 23, 2002) (permitting the exclusion of a shareholder proposal under 14a-8(i)(8) of the Act where the shareholder nominated himself as a candidate for the next election of directors); *NetCurrents, Inc.*, SEC No-Action Letter (April 25, 2001) (permitting exclusion under Rule 14a-8(i)(8) of the Act for a shareholder proposal that nominated two specific individuals for election to the company's board of directors); *Plasma-Therm, Inc.*, SEC No-Action Letter (March 3, 1999).

The Shareholder Proposal falls squarely within Rule 14a-8(i)(8). It relates to the Shareholder's proposal that he be elected to the Company's Board of Directors. Under Rule 14a-8(i)(8), such a proposal is not a proper shareholder proposal, and may be excluded.

Accordingly, the Company intends to exclude the Shareholder Proposal from the Company's proxy materials for its 2007 Annual Meeting of the Shareholders. The Company respectfully requests that the Staff confirm that it will not recommend any enforcement action to the Commission if the Shareholder Proposal is omitted from the Company's proxy materials under Rule 14a-8(i)(8) of the Act.

### **III. Request for Waiver of 8-Day Submission Requirement.**

The Company further requests that it be permitted to file, and the Commission accept, this submission less than 80 days prior to the anticipated filing date of the Proxy Statement. Rule 14a-8(j)(1) provides that if a company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission; provided, however, that the Staff may permit the company to make its submission later than 80 days before such filing, upon the demonstration of "good cause."

The Company's anticipated date for filing the Proxy Statement with the Commission is November 30, 2007. Based on the foregoing, this submission is being made approximately 20 days prior to the Company's anticipated filing of its definitive proxy statement and form of proxy with the Commission.

The Company believes it has "good cause" for making this submission after the deadline for filing because the Company informed the Shareholder of his potential ineligibility to submit the Shareholder Proposal within ten calendar days of its mailing to the Company. The Shareholder provided information in response to the Company's request to counsel for the Company on January 22, 2007, and the Company provided its analysis and response to the Shareholder on January 24, 2007, two days after its receipt. As demonstrated above, the Company believes that the Shareholder's ineligibility could not be overcome, and as such, the Shareholder would receive no benefit from an extended review and analysis period in which to attempt to cure the proposal.

Based on the facts set forth above, the Company requests that the Commission accept this submission and waive the 80-day advance submission requirement of Rule 14a-8(j)(1).

### **IV. Conclusion**

For the foregoing reasons, we respectfully request that the Staff concur with our view that the Shareholder Proposal may be omitted from the Company's proxy materials for the Annual Meeting and that the Staff will not recommend any enforcement action to the Commission if the Company omits the Shareholder Proposal from its proxy materials for the Annual Meeting.

If for any reason the Commission does not agree with the Company's position, or it has questions or requires additional information in support of the Company's position, we would appreciate an opportunity to confer with the Commission's Staff prior to the issuance of a formal response. Please call me at (801) 415-3000.

By copy of this letter, the Shareholder is being notified that, for the reasons discussed above, the Company intends to omit the Shareholder Proposal from its proxy materials for the Annual Meeting.

U.S. Securities and Exchange Commission  
November 9, 2007  
Page 6

Please acknowledge receipt of this letter and the materials enclosed herewith by file-stamping the enclosed copy of this letter and returning it to me in the enclosed, self-addressed envelope.

Respectfully,

**DURHAM JONES & PINEGAR, P.C.**

A handwritten signature in black ink, appearing to read "J. Jones", written over the printed name of Jeffrey M. Jones.

Jeffrey M. Jones, Esq.

cn

enc.

cc Roger D. Dudley  
Andrew Marowitz

**EXHIBIT A**

**SHAREHOLDER PROPOSAL**

Dec 18, 2006

To: FOMX CORPORATION

From: Andrew M. Rozowitz

RE: SUBMISSION OF NOMINEE ~~OF~~ FOR CORPORATE BOARD OF DIRECTORS

NAME OF NOMINEE: Andrew M. Rozowitz  
FOR FOMX BOARD OF DIRECTORS

BIOGRAPHY

Andrew Rozowitz, 52, College Graduate, A Successful Small Businessman Entrepreneur & Real Estate Investor, with Twenty Years Experience Running A Successful Business; A Long Term Investor In FOMX Who Is Intimately Familiar With FOMX, Its Technology, Its ~~History~~ Existing Management And Board Of Directors. Mr. Rozowitz Drafted The Proxy Proposal For The 2006 Proxy He Wants To Bring Independence & Accountability To The FOMX Board Of Directors, Though It Seems Unlikely To Happen. Mr. Rozowitz Is Knowledgeable And Competent To Comprehend The Economics Of The FOMX Business And Finance Model To Sufficiently Determine Appropriate Decisions For The Best Interests Of The Company And Its Shareholders

Dec 18, 2006

Signature 