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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, DC 20549

**FORM 10-Q**

(Mark One)

**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

**For the quarterly period ended September 30, 2018**

**OR**

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

**For transition period from \_\_\_\_\_ to \_\_\_\_\_**

**Commission file number: 001-001-36621**

**Foamix Pharmaceuticals Ltd.**

(Exact name of registrant as specified in its charter)

Israel  
(State or other jurisdiction of incorporation or organization)

Not Applicable  
(I.R.S. Employer Identification No.)

**2 Holzman Street, Weizmann Science Park  
Rehovot 7670402, Israel**  
(Address of principal executive offices, including zip code)

**+972-8-9316233**  
(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes  No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files).

Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer   
Non-accelerated filer

Accelerated filer   
Smaller reporting company

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.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes  No

The total number of shares outstanding of the registrant's Ordinary Shares, par value NIS 0.16 per share, as of November 6, 2018, was 54,283,368.

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## DEFINITIONS

In this quarterly report on Form 10-Q, unless otherwise indicated, all references to the “company,” “we,” “us,” “our” and “Foamix” refer to Foamix Pharmaceuticals Ltd. and its subsidiary, Foamix Pharmaceuticals Inc., a Delaware corporation.

References to the “Companies Law” are to Israel’s Companies Law, 5759-1999, as currently amended;

References to the “Exchange Act” are to the Securities Exchange Act of 1934, as amended;

References to the “FDA” are to the United States Food and Drug Administration;

References to “Nasdaq” are to the Nasdaq Global Stock Market;

References to “Ordinary Shares” are to our ordinary shares, par value of NIS 0.16 per share;

References to the “SEC” are to the United States Securities and Exchange Commission;

References to the “Securities Act” are to the Securities Act of 1933, as amended; and

References to “U.S. dollars” and “\$” are to currency of the United States of America, and references to “NIS” are to New Israeli Shekels.

**PART I - FINANCIAL INFORMATION**

**ITEM 1. Condensed Consolidated Financial Statements**

**FOAMIX PHARMACEUTICALS LTD.**

UNAUDITED CONDENSED CONSOLIDATED  
FINANCIAL STATEMENTS  
AS OF SEPTEMBER 30, 2018

**FOAMIX PHARMACEUTICALS LTD.**

UNAUDITED CONDENSED CONSOLIDATED  
FINANCIAL STATEMENTS  
AS OF SEPTEMBER 30, 2018

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The amounts are stated in US dollars in thousands (except for share data)

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**FOAMIX PHARMACEUTICALS LTD.**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**  
(U.S. dollars in thousands, except per share data)  
(Unaudited)

	<u>September 30,</u> <u>2018</u>	<u>December 31,</u> <u>2017</u>
<b>Assets</b>		
<b>CURRENT ASSETS:</b>		
Cash and cash equivalents	\$ 87,877	\$ 15,956
Restricted cash	250	250
Short term bank deposits	6,099	19,443
Investment in marketable securities (Note 4)	15,041	31,797
Restricted investment in marketable securities (Note 4)	277	290
Accounts receivable:		
Trade	889	996
Other	1,624	772
<b>TOTAL CURRENT ASSETS</b>	<u>112,057</u>	<u>69,504</u>
<b>NON-CURRENT ASSETS:</b>		
Investment in marketable securities (Note 4)	793	8,533
Restricted investment in marketable securities (Note 4)	137	143
Property and equipment, net	2,157	2,042
Other	43	32
<b>TOTAL NON-CURRENT ASSETS</b>	<u>3,130</u>	<u>10,750</u>
<b>TOTAL ASSETS</b>	<u>\$ 115,187</u>	<u>\$ 80,254</u>

**The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.**

**FOAMIX PHARMACEUTICALS LTD.**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**  
(U.S. dollars in thousands, except per share data)  
(Unaudited)

	<u>September 30,</u> <u>2018</u>	<u>December 31,</u> <u>2017</u>
<b>Liabilities and shareholders' equity</b>		
<b>CURRENT LIABILITIES:</b>		
Accounts payable and accruals:		
Trade	\$ 5,322	\$ 6,436
Deferred revenues	-	62
Other	3,714	3,730
<b>TOTAL CURRENT LIABILITIES</b>	<u>9,036</u>	<u>10,228</u>
<b>LONG-TERM LIABILITIES:</b>		
Liability for employee severance benefits	379	437
Other liabilities	714	988
<b>TOTAL LONG-TERM LIABILITIES</b>	<u>1,093</u>	<u>1,425</u>
<b>TOTAL LIABILITIES</b>	<u>10,129</u>	<u>11,653</u>
<b>COMMITMENTS (Note 6)</b>		
<b>SHAREHOLDERS' EQUITY:</b>		
Ordinary Shares, NIS 0.16 par value - authorized: 90,000,000 Ordinary Shares as of September 30, 2018 and December 31, 2017; issued and outstanding: 54,270,174 and 37,498,128 Ordinary Shares as of September 30, 2018 and December 31, 2017, respectively		
	2,327	1,576
Additional paid-in capital	304,119	208,364
Accumulated deficit	(201,331)	(141,281)
Accumulated other comprehensive loss	(57)	(58)
<b>TOTAL SHAREHOLDERS' EQUITY</b>	<u>105,058</u>	<u>68,601</u>
<b>TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY</b>	<u>\$ 115,187</u>	<u>\$ 80,254</u>

**The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.**

**FOAMIX PHARMACEUTICALS LTD.**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**  
(U.S. dollars in thousands, except per share data)  
(Unaudited)

	<b>Nine months ended</b>		<b>Three months ended</b>	
	<b>September 30</b>		<b>September 30</b>	
	<b>2018</b>	<b>2017</b>	<b>2018</b>	<b>2017</b>
<b>REVENUES</b> (Note 7)	\$ 2,735	\$ 2,626	\$ 865	\$ 901
<b>COST OF REVENUES</b>	-	11	-	11
<b>GROSS PROFIT</b>	2,735	2,615	865	890
<b>OPERATING EXPENSES:</b>				
Research and development	52,809	42,400	13,142	15,785
Selling, general and administrative	10,019	9,206	3,309	2,933
<b>TOTAL OPERATING EXPENSES</b>	62,828	51,606	16,451	18,718
<b>OPERATING LOSS</b>	60,093	48,991	15,586	17,828
<b>FINANCE INCOME</b> , net	(471)	(846)	(119)	(302)
<b>LOSS BEFORE INCOME TAX</b>	59,622	48,145	15,467	17,526
<b>INCOME TAX</b>	463	209	13	57
<b>NET LOSS FOR THE PERIOD</b>	\$ 60,085	\$ 48,354	\$ 15,480	\$ 17,583
<b>LOSS PER SHARE BASIC AND DILUTED</b>	\$ 1.50	\$ 1.29	\$ 0.38	\$ 0.47
<b>WEIGHTED AVERAGE NUMBER OF SHARES OUTSTANDING USED IN COMPUTATION OF BASIC AND DILUTED LOSS PER SHARE IN THOUSANDS</b>				
	39,932	37,347	40,873	37,431

The accompanying notes are an integral part of these unaudited  
condensed consolidated financial statements.



**FOAMIX PHARMACEUTICALS LTD.**  
**CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS**  
(U.S. dollars in thousands, except per share data)  
(Unaudited)

	<b>Nine months ended September 30</b>		<b>Three months ended September 30</b>	
	<b>2018</b>	<b>2017</b>	<b>2018</b>	<b>2017</b>
<b>NET LOSS</b>	\$ 60,085	\$ 48,354	\$ 15,480	\$ 17,583
<b>OTHER COMPREHENSIVE LOSS (INCOME):</b>				
Net unrealized gains from marketable securities	(44)	(48)	(34)	(6)
Losses on marketable securities reclassified into net loss	(5)	-	(3)	-
Net unrealized losses (gains) on derivative financial instruments	68	(124)	(13)	(20)
Gains (losses) on derivative financial instruments reclassified into net loss	(55)	96	(20)	8
<b>TOTAL OTHER COMPREHENSIVE INCOME</b>	<b>(36)</b>	<b>(76)</b>	<b>(70)</b>	<b>(18)</b>
<b>TOTAL COMPREHENSIVE LOSS</b>	<b>\$ 60,049</b>	<b>\$ 48,278</b>	<b>\$ 15,410</b>	<b>\$ 17,565</b>

**The accompanying notes are an integral part of these unaudited  
condensed consolidated financial statements.**

**FOAMIX PHARMACEUTICALS LTD.**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(U.S. dollars in thousands)  
(Unaudited)

	<b>Nine months ended</b>	
	<b>September 30</b>	
	<b>2018</b>	<b>2017</b>
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Net loss	\$ 60,085	\$ 48,354
Adjustments required to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	243	153
Loss from sale and disposal of fixed assets	39	128
Changes in marketable securities and bank deposits, net	165	80
Changes in accrued liability for employee severance benefits, net of retirement fund profit	(57)	49
Share-based compensation	4,144	2,683
Non-cash finance expenses (income), net	20	(28)
Changes in operating asset and liabilities:		
Decrease (increase) in trade and other receivables	(756)	2,145
Increase in other non-current assets	(12)	(22)
Increase (decrease) in accounts payable and accruals	(1,467)	2,622
Net cash used in operating activities	<u>(57,766)</u>	<u>(40,544)</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Purchase of fixed assets	(408)	(1,159)
Proceeds from sale of fixed assets	10	26
Investment in bank deposits	(27,500)	(8,000)
Investment in marketable securities	(1,012)	(18,191)
Proceeds from sale and maturity of marketable securities and bank deposits	66,255	57,314
Net cash provided by investing activities	<u>37,345</u>	<u>29,990</u>
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Proceeds from exercise of options	43	145
Proceeds from exercise of warrants	840	-
Proceeds from issuance of shares, net of \$39 issuance costs	16,131	-
Proceeds from issuance of Ordinary Shares through public offerings, net of \$5,175 issuance costs	75,348	-
Payments in respect of bank borrowings	-	(21)
Net cash provided by financing activities	<u>92,362</u>	<u>124</u>
<b>INCREASE (DECREASE) IN CASH, CASH EQUIVALENTS AND RESTRICTED CASH</b>	<b>71,941</b>	<b>(10,430)</b>
<b>EFFECT OF EXCHANGE RATE ON CASH, CASH EQUIVALENTS AND RESTRICTED CASH</b>	<b>(20)</b>	<b>29</b>
<b>CASH, CASH EQUIVALENTS AND RESTRICTED CASH AT BEGINNING OF THE PERIOD</b>	<b>16,206</b>	<b>31,440</b>
<b>CASH, CASH EQUIVALENTS AND RESTRICTED CASH AT END OF THE PERIOD</b>	<b>\$ 88,127</b>	<b>\$ 21,039</b>
Cash and cash equivalents	<u>87,877</u>	<u>20,789</u>
Restricted cash	<u>250</u>	<u>250</u>
<b>TOTAL CASH, CASH EQUIVALENTS AND RESTRICTED CASH SHOWN IN STATEMENT OF CASH FLOWS</b>	<b>\$ 88,127</b>	<b>\$ 21,039</b>
<b>SUPPLEMENTARY INFORMATION ON INVESTING AND FINANCING ACTIVITIES NOT INVOLVING CASH FLOWS:</b>		
Cashless exercise of warrants and RSUs	<u>\$ 7</u>	<u>\$ 10</u>
<b>SUPPLEMENTAL DISCLOSURE OF CASH FLOW INFORMATION:</b>		
Cash paid for taxes	<u>\$ 469</u>	<u>\$ 407</u>
Interest received	<u>\$ 784</u>	<u>\$ 927</u>
Interest paid	<u>\$ -</u>	<u>\$ *</u>

\* Represents an amount less than \$1.

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

**FOAMIX PHARMACEUTICALS LTD.**  
NOTES TO THE UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS  
(U.S. dollars in thousands, except share and per share amounts)

**NOTE 1 - NATURE OF OPERATIONS AND BASIS OF PRESENTATION:**

**a. Nature of operations**

Foamix Pharmaceuticals Ltd. (hereinafter "Foamix") is an Israeli company incorporated in 2003. Foamix is a clinical-stage specialty pharmaceutical company operating in one segment - the development and commercialization of foam-based formulations, using its proprietary technology, which includes its foam platforms. Foamix develops its own product candidates, mainly for the treatment of moderate-to-severe acne and other skin conditions. It also licenses its technology under development and licensing agreements to various pharmaceutical companies for development of certain products combining Foamix's foam technology with the licensee's proprietary drugs.

Since incorporation through September 30, 2018, Foamix and its subsidiary Foamix Pharmaceuticals Inc. (hereinafter "the Company") incurred losses and negative cash flows from operations mainly attributable to its development efforts and has an accumulated deficit of \$201,331. The Company has financed its operations mainly through the issuance of shares through private and public financing rounds, convertible loans and payments received under its research and development and licensing agreements. Management believes the Company's cash and investments as of the issuance date of these financial statements will allow the Company to fund its operating plan through at least the next 12 months. However, the Company expects to continue to incur significant research and development and other expenses related to its ongoing operations and in order to continue its future operations, the Company will need to obtain additional funding until becoming profitable. If the Company is unable to obtain such funding, it will need to curtail or cease operations.

**b. Basis of presentation**

The unaudited interim condensed consolidated financial statements of the Company have been prepared in accordance with accounting principles generally accepted in the United States of America ("US GAAP") for interim financial statements. Accordingly, they do not contain all information and notes required by U.S. GAAP for annual financial statements. In the opinion of management, these unaudited condensed consolidated interim financial statements reflect all adjustments, which include only normal recurring adjustments, which are necessary for a fair statement of the Company's consolidated financial position as of September 30, 2018, the consolidated results of operations and comprehensive loss for the three and nine-month periods ended September 30, 2018 and 2017 and cash flows for the nine-month periods ended September 30, 2018 and 2017.

These unaudited interim condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements and notes thereto included in the Company's annual financial statements for the year ended December 31, 2017. The condensed consolidated balance sheet data as of September 30, 2018 was derived from the audited consolidated financial statements for the year ended December 31, 2017, included in the Company's annual report on Form 10-K/A filed with the Securities and Exchange Commission on March 1, 2018, but does not include all disclosures required by U.S. GAAP for annual financial statements.

The results for the three and nine-month periods ended September 30, 2018 are not necessarily indicative of the results expected for the year ending December 31, 2018.

**FOAMIX PHARMACEUTICALS LTD.**  
NOTES TO THE UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS  
(U.S. dollars in thousands, except share and per share amounts)

**NOTE 2 - SIGNIFICANT ACCOUNTING POLICIES:**

**a. Principles of consolidation**

The consolidated financial statements include the accounts of Foamix and its subsidiary. Intercompany balances and transactions including profits from intercompany sales not yet realized outside the Company, have been eliminated upon consolidation.

**b. Fair value measurement**

Fair value is based on the price that would be received from the sale of an asset or that would be paid to transfer a liability in an orderly transaction between market participants at the measurement date. In order to increase consistency and comparability in fair value measurements, the guidance establishes a fair value hierarchy that prioritizes observable and unobservable inputs used to measure fair value into three broad levels, which are described as follows:

- Level 1: Quoted prices (unadjusted) in active markets that are accessible at the measurement date for assets or liabilities. The fair value hierarchy gives the highest priority to Level 1 inputs.
- Level 2: Observable prices that are based on inputs not quoted on active markets, but corroborated by market data or active market data of similar or identical assets or liabilities.
- Level 3: Unobservable inputs are used when little or no market data is available. The fair value hierarchy gives the lowest priority to Level 3 inputs.

In determining fair value, the Company utilizes valuation techniques that maximize the use of observable inputs and minimize the use of unobservable inputs to the extent possible and considers counterparty credit risk in its assessment of fair value.

**c. Loss per share**

Net loss per share, basic and diluted, is computed on the basis of the net loss for the year divided by the weighted average number of Ordinary Shares outstanding during the period. Diluted net loss per share is based upon the weighted average number of Ordinary Shares and of ordinary share equivalents outstanding when dilutive. Ordinary Share equivalents include outstanding share options and warrants which are included under the treasury share method when dilutive.

The following options, restricted share units (“RSUs”) and warrants were excluded from the calculation of diluted net loss per ordinary share because their effect would have been anti-dilutive for the periods presented (share data):

	<b>Nine and three months ended</b>	
	<b>September 30</b>	
	<b>2018</b>	<b>2017</b>
Outstanding options and RSUs	4,690,034	3,875,714
Warrants	-	1,394,558

**FOAMIX PHARMACEUTICALS LTD.**  
NOTES TO THE UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS  
(U.S. dollars in thousands, except share and per share amounts)

**NOTE 2—SIGNIFICANT ACCOUNTING POLICIES (continued):**

**d. Newly issued and recently adopted accounting pronouncements:**

*Accounting pronouncements adopted in period:*

- 1) In May 2014, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) No. 2014-09, Revenue from Contracts with Customers (Topic 606), which supersedes existing revenue recognition guidance under U.S. GAAP. The core principle of ASU 2014-09 is that a company should recognize revenue when it transfers promised goods or services to customers in an amount that reflects the consideration to which the company expects to be entitled in exchange for those goods or services. ASU 2014-09 defines a five-step process that requires companies to exercise more judgment and make more estimates than under the current guidance. These may include identifying performance obligations in the contract, estimating the amount of variable consideration to include in the transaction price, and allocating the transaction price to each separate performance obligation.

The Company generates revenue primarily from its development and licensing agreements. The consideration the Company is eligible to receive under its agreements typically include upfront payments, reimbursement for research and development costs, contingent payments, royalties and other contingent payments for the achievement of certain sales targets.

The Company adopted the guidance as of January 1, 2018, under the modified retrospective method; however, as the current revenue of the Company is driven primarily from royalties and contingent payments as mentioned above, the Company’s adoption of the new standard did not have a material effect on its consolidated financial statements.

- 2) In January 2016, the FASB issued ASU No. 2016-01, Financial Instruments-Overall (Subtopic 825-10), which addresses certain aspects of recognition, measurement, presentation and disclosure of financial instruments. The amended guidance requires changes in the fair value of equity investments to be recognized through net income, rather than other comprehensive income. Adoption of the standard will be applied through a cumulative one-time adjustment to retained earnings. This standard was adopted on January 1, 2018 and its accumulative adjustment had no material impact on the Company’s consolidated financial statements. In addition, in February 2018, the FASB issued ASU No. 2018-03 which includes technical corrections and improvements to clarify the guidance in ASU No. 2016-01. This standard, adopted as of January 1, 2018, had no material impact on the Company’s consolidated financial statements.
- 3) In May 2017, the FASB issued ASU No. 2017-09, Compensation - Stock Compensation (Topic 718): Scope of Modification Accounting. ASU 2017-09 was issued to provide clarity and reduce both 1) diversity in practice and 2) cost and complexity when applying the guidance in Topic 718 to a change in the terms or conditions of a share-based payment award. ASU 2017-09 provides guidance about which changes to the terms or conditions of a share-based payment award require an entity to apply modification accounting under Topic 718. The amendments in ASU 2017-09 are applied prospectively to an award modified on or after the adoption date. This standard, adopted as of January 1, 2018, had no material impact on the Company’s consolidated financial statements.

**FOAMIX PHARMACEUTICALS LTD.**  
**NOTES TO THE UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
**(U.S. dollars in thousands, except share and per share amounts)**

**NOTE 2 - SIGNIFICANT ACCOUNTING POLICIES** (continued):

- 4) In March 2018, the FASB issued ASU No. 2018-05, Income Taxes (Topic 740), to insert the Securities and Exchange Commission's interpretive guidance from Staff Accounting Bulletin No. 118 into the income tax accounting codification under U.S. GAAP. The ASU permits companies to use provisional amounts for certain income tax effects of the Tax Act during a one-year measurement period. The provisional accounting impacts for the Company may change in future reporting periods until the accounting analysis is finalized, however the Company anticipates that the adoption of the new standard will not have material effect on its consolidated financial statements.

*Accounting pronouncements that are not yet effective and have not been early adopted by the Company:*

- 5) In February 2016, the FASB issued ASU No. 2016-02, Leases (Topic 842), which supersedes the existing guidance for lease accounting, Leases (Topic 840). ASU 2016-02 requires lessees to recognize leases on their balance sheets, and leaves lessor accounting largely unchanged. Subsequently, the FASB issued ASU No. 2017-13 in September 2017, ASU No. 2018-01 in January 2018 and ASU No. 2018-10 and ASU No. 2018-11 in July 2018, which amends and clarifies ASU 2016-02. The amendments in this ASU are effective for interim and annual periods beginning after December 15, 2018. Early application is permitted for all entities. ASU 2016-02 requires a modified retrospective approach for all leases existing at, or entered into after, the date of initial application, with an option to elect to use certain transition relief. The Company is currently reviewing its lease contracts and began analyzing the standard and identify potential differences and changes which would result from applying the requirements of the new standard. The Company currently anticipates that the adoption will result an increase in assets and liabilities on our consolidated balance sheet and will not have a material impact on our consolidated statement of operation or consolidated statement of cash flows.
- 6) In June 2018, the FASB issued ASU No. 2018-07, Compensation-Stock Compensation (Topic 718) Improvements to Nonemployee Share-based Payments. This ASU was issued to simplify the accounting for share-based transactions by expanding the scope of Topic 718 from only being applicable to share-based payments to employees to also include share-based payment transactions for acquiring goods and services from nonemployees. As a result, nonemployee share-based transactions will be measured by estimating the fair value of the equity instruments at the grant date, taking into consideration the probability of satisfying performance conditions. This ASU is effective for annual and interim reporting periods beginning after December 15, 2018. Early adoption is permitted. The Company is currently evaluating the impact of this new standard on its consolidated financial statements, although the impact is currently expected to be immaterial.

**FOAMIX PHARMACEUTICALS LTD.**  
NOTES TO THE UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS  
(U.S. dollars in thousands, except share and per share amounts)

**NOTE 3 - FAIR VALUE PRESENTATION:**

The Company's assets and liabilities that are measured at fair value as of September 30, 2018 and December 31, 2017 are classified in the tables below in one of the three categories described in Note 2b:

	<b>September 30, 2018</b>		
	<b>Level 1</b>	<b>Level 2</b>	<b>Total</b>
Marketable securities	\$ 982	\$ 15,266	\$ 16,248
Currency options designated as hedging instruments (current liabilities)	-	\$ (2)	\$ (2)

  

	<b>December 31, 2017</b>		
	<b>Level 1</b>	<b>Level 2</b>	<b>Total</b>
Marketable securities	\$ 987	\$ 39,776	\$ 40,763
Currency options designated as hedging instruments (current assets)	-	\$ 11	\$ 11

The Company's corporate debt securities are traded in markets that are not considered to be active, but are valued based on quoted market prices, broker or dealer quotations, or alternative pricing sources with reasonable levels of price transparency. Accordingly, these assets are categorized as Level 2.

**Foreign exchange risk management**

The Company purchases and writes non-functional currency options in order to hedge the currency exposure on the Company's cash flow. The currency hedged items are denominated in New Israeli Shekels (NIS). The purchasing and writing of options is part of a comprehensive currency hedging strategy with respect to salary and rent expenses denominated in NIS. These transactions are at zero cost for periods of up to one year. The counterparties to the derivatives are major banks in Israel. As of September 30, 2018, the total hedged amount was NIS 5.6 million.

The derivative liability, in the amount of \$2 as of September 30, 2018, qualifies as hedge accounting.

As of September 30, 2018, the Company has a lien in the amount of \$277 on the Company's marketable securities and a lien in the amount \$250 on the Company's checking account, in respect of bank guarantees granted in order to secure the hedging transactions.

**NOTE 4 - MARKETABLE SECURITIES**

Marketable securities as of September 30, 2018, and December 31, 2017 consist mainly of debt and equity securities. The debt securities are classified as available-for-sale and are recorded at fair value. Changes in fair value, net of taxes (if applicable), are reflected in other comprehensive loss. Realized gains and losses on sales of the securities, as well as premium or discount amortization, are included in the consolidated statement of operations as finance income or expenses.

As of January 1, 2018, following the adoption of ASU No. 2016-01, Financial Instruments-Overall (Subtopic 825-10), equity securities with readily determinable fair value are measured at fair value. The changes in the fair value of equity investments are recognized through net income. Adoption of the standard was applied through a cumulative one-time adjustment to the accumulated deficit.

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**NOTE 4 - MARKETABLE SECURITIES** (continued):

The following table sets forth the Company's marketable securities:

	September 30, 2018	December 31, 2017
Israeli mutual funds	\$ 982	\$ 987
Certificates of deposit	4,500	17,206
Government and agency bonds	10,766	22,570
Total	<u>\$ 16,248</u>	<u>\$ 40,763</u>

As of September 30, 2018 and December 31, 2017, the fair value, cost and gross unrealized holding gains and losses of the debt securities owned by the Company were as follows:

	September 30, 2018			
	Fair value	Cost or amortized cost	Gross unrealized holding losses	Gross unrealized holding gains
Certificates of deposit	\$ 4,500	\$ 4,522	\$ 22	\$ -
Government and agency bonds	10,766	10,799	33	-
Total	<u>\$ 15,266</u>	<u>\$ 15,321</u>	<u>\$ 55</u>	<u>\$ -</u>

	December 31, 2017			
	Fair value	Cost or amortized cost	Gross unrealized holding losses	Gross unrealized holding gains
Certificates of deposit	\$ 17,206	\$ 17,243	\$ 38	\$ 1
Government and agency bonds	22,570	22,638	68	-
Total	<u>\$ 39,776</u>	<u>\$ 39,881</u>	<u>\$ 106</u>	<u>\$ 1</u>

As of September 30, 2018, the unrealized losses attributed to the Company's debt marketable securities were primarily due to credit spreads and interest rate movements. The Company has considered factors regarding other than temporary impaired securities and determined that there are no securities with impairment that is other than temporary as of September 30, 2018 and December 31, 2017.

As of September 30, 2018, and December 31, 2017 the Company's debt securities had the following maturity dates:

	Market value	
	September 30, 2018	December 31, 2017
Due within one year	\$ 14,473	\$ 31,244
1 to 2 years	793	8,380
2 to 3 years	-	152
Total	<u>\$ 15,266</u>	<u>\$ 39,776</u>

During the nine months ended September 30, 2018 and September 30, 2017, the Company received proceeds of \$25,548 and \$32,314, respectively, upon sale and maturity of marketable securities.

\$414 and \$433 of the Company's marketable securities were restricted as of September 30, 2018 and December 31, 2017, respectively, due to a lien in respect of bank guarantees granted to secure hedging transaction and the Company's rent agreement. For more information, refer to Notes 3 and 6.



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**NOTE 5 - SHARE CAPITAL:**

**a. Securities Purchase Agreement**

On April 13, 2018, the Company entered into a Securities Purchase Agreement with an existing shareholder pursuant to which the Company agreed to issue and sell, in a registered offering, an aggregate of 2,940,000 Ordinary Shares at a purchase price of \$5.50 per share. The net proceeds from the offering were \$16,131 after deducting transaction expenses. The closing of the issuance and sale of these shares took place on April 16, 2018.

**b. Follow-on Offering**

On September 18, 2018, the Company completed a follow-on offering in which 13,420,500 Ordinary Shares were sold at a price of \$6.00 per share, which included the full exercise by the underwriters of their option to purchase additional Ordinary Shares. The net proceeds, including the underwriters' option, were approximately \$75,348, after deducting the underwriting discounts and commissions and other offering expenses.

**c. Warrants**

During the nine months ended September 30, 2018, 1,394,558 warrants were exercised for 178,468 Ordinary Shares. As of September 30, 2018, there are no warrants outstanding. As of September 30, 2017, the total amount of warrants outstanding was 1,394,558.

**d. Share-based compensation**

In May 2015, the Company's Board of Directors approved a new option plan (the "Plan") replacing the previous plan approved in 2009. The Plan included a pool of 2,690,694 Ordinary Shares for grant to Company employees, consultants, directors and other service providers. During the years ended December 31, 2016 and December 31, 2017, the Board of Directors approved an accumulated increase of 2,900,000 Ordinary Shares to the Plan. As of September 30, 2018, 1,383,078 Ordinary Shares remain available for grant under the Plan.

In the nine months ended September 30, 2018 and 2017, the Company granted options and RSUs to employees and directors as follows:

	<b>Nine months ended September 30, 2018</b>			
	<b>Award amount</b>	<b>Exercise price range</b>	<b>Vesting period</b>	<b>Expiration</b>
<b>Employees:</b>				
Options		\$5.06-		10 years
	571,530	\$6.40	4 years	
RSUs	126,844		4 years	-
<b>Directors:</b>				
Options		\$5.02-		10 years
	174,373	\$5.06	1 years	
RSUs	14,829		3 years	-

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**NOTE 5 - SHARE CAPITAL** (continued):

	<b>Nine months ended September 30, 2017</b>			
	<b>Award amount</b>	<b>Exercise price range</b>	<b>Vesting period</b>	<b>Expiration</b>
<b>Employees:</b>				
Options	804,838	\$5.22- \$10.31	4 years	10 years
RSUs	268,764	-	4 years	-
<b>Directors:</b>				
Options	189,709	\$4.69- \$4.76	4 years	10 years
RSUs	19,397	-	4 years	-

The fair value of options and RSUs granted to employees and directors during the nine months ended September 30, 2018 and September 30, 2017 was \$3,287 and \$6,860, respectively.

The fair value of RSUs granted to employees and directors is based on the share price on grant date.

The fair value of options granted to employees and directors on the date of grant was computed using the Black-Scholes model. The underlying data used for computing the fair value of the options are as follows:

	<b>Nine months ended September 30</b>	
	<b>2018</b>	<b>2017</b>
Value of ordinary share	\$5.12-\$5.99	\$4.44-\$10.12
Dividend yield	0%	0%
Expected volatility	62.1%-62.6%	58.4%-59.7%
Risk-free interest rate	2.75%-2.84%	1.97%-2.09%
Expected term	6 years	6 years

On January 1, 2018, the Company and Dr. Dov Tamarkin agreed to terminate the consulting agreement signed in June 2017. Pursuant to the termination, the Board of Directors resolved that all options and RSUs previously granted to Dr. Tamarkin shall continue to vest and may be exercised until their expiration date.

The retention of the options and RSUs was considered a Type III modification for share-based compensation, and, as a result, on January 1, 2018, the Company re-measured the fair value of all outstanding options and RSUs granted to Dr. Tamarkin and recognized the residual amount of the fair value as an immediate expense. The compensation expenses recorded on January 1, 2018 were \$239.

In addition, following changes in circumstances, including Mr. Meir Eini's resignation from his position as an observer to the Board of Directors, the Company reassessed the services provided by Mr. Meir Eini and concluded they are not substantive in comparison to the value of the equity awards he received. Therefore, in January 2018, all expenses related to the awards previously granted to Mr. Eini were measured and the unrecognized amount of the fair value was fully recognized. The compensation expenses recorded in January 2018 were \$494.

**FOAMIX PHARMACEUTICALS LTD.**  
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**NOTE 5 - SHARE CAPITAL** (continued):

The following table illustrates the effect of share-based compensation on the statements of operations:

	Nine months ended September 30		Three months ended September 30	
	2018	2017	2018	2017
Cost of revenues	\$ -	\$ 2	\$ -	\$ 2
Research and development expenses	1,679	1,097	376	522
Selling, general and administrative	2,465	1,584	814	672
	<u>\$ 4,144</u>	<u>\$ 2,683</u>	<u>\$ 1,190</u>	<u>\$ 1,196</u>

**NOTE 6 – COMMITMENTS:**

**Lease agreement**

The Company leases office space for its headquarters and research and development facilities in Israel and the United States under several lease agreements. The office lease agreements for the facilities in Israel are linked to the Israeli CPI and expire in December 2020. The lease agreement in the United States is due to expire during March 2019. The Company has an option to extend the lease agreement in the United States for additional 3 years on similar conditions.

In July 2017, the Company has entered into operating lease agreements in connection with a number of vehicles. The lease periods are generally for three years and the payments are linked to the Israeli CPI. To secure the terms of the lease agreements, the Company has made certain prepayments to the leasing company, representing approximately three months of lease payments. These amounts have been recorded as other non-current assets.

Operating lease expenses for the three and nine months ended September 30, 2018 and September 30, 2017, are as follows:

	Nine months ended September 30		Three months ended September 30	
	2018	2017	2018	2017
Rental expenses	\$ 581	\$ 461	\$ 191	\$ 184
Vehicle lease expenses	\$ 91	\$ 7	\$ 41	\$ 7

Future minimum lease commitments under non-cancelable operating lease agreements are as follows:

2018	\$ 213
2019	750
2020 and thereafter	732
Total	<u>\$ 1,695</u>

The Company has a lien in the amount of \$137 on the Company's marketable securities in respect of bank guarantees granted in order to secure the lease agreements.

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**NOTE 7 - ENTITY-WIDE DISCLOSURES:**

- a. Net revenues by geographic area were as follows:

	Nine months ended September 30		Three months ended September 30	
	2018	2017	2018	2017
United States	\$ 62	\$ 86	\$ -	\$ 86
Germany	2,468	2,540	660	815
Denmark	205	-	205	-
	<u>\$ 2,735</u>	<u>\$ 2,626</u>	<u>\$ 865</u>	<u>\$ 901</u>

- b. Customers exceeding 10% of revenues:

During the three and nine months ended September 30, 2018 and September 30, 2017 the Company had one customer exceeding over 10% of total revenues. Revenues from the customer were \$2,468 and \$2,540 during the nine months ended September 30, 2018 and September 30, 2017, respectively. Revenues from the customer were \$660 and \$815 during the three months ended September 30, 2018 and September 30, 2017, respectively.

- c. Net revenues by type of payment:

	Nine months ended September 30		Three months ended September 30	
	2018	2017	2018	2017
Development service payments	\$ 62	\$ 86	\$ -	\$ 86
Royalties	2,673	2,540	865	815
Total revenues	<u>\$ 2,735</u>	<u>\$ 2,626</u>	<u>\$ 865</u>	<u>\$ 901</u>

## ITEM 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

*You should read the following discussion and analysis of our financial condition and results of operations in conjunction with (i) our condensed consolidated financial statements and the notes thereto included elsewhere in this quarterly report on Form 10-Q (ii) our audited consolidated financial statements and related notes and management's discussion and analysis of financial condition and results of operations included in our annual report on Form 10-K/A for the year ended December 31, 2017 filed with the Securities and Exchange Commission, or the SEC, on March 1, 2018. This Quarterly Report on Form 10-Q contains "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act. These statements are often identified by the use of words such as "anticipate," "believe," "continue," "could," "estimate," "expect," "intend," "may," "plan," "project," "will," "would" or the negative or plural of these words or similar expressions or variations. Such forward-looking statements are subject to a number of risks, uncertainties, assumptions and other factors that could cause actual results and the timing of certain events to differ materially from future results expressed or implied by the forward-looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those identified herein, and those referred in the section titled "Risk Factors", set forth in Part II, Item 1A of this quarterly report on Form 10-Q, if any, and in our other SEC filings. Forward-looking statements are based on our management's beliefs and assumptions and on information currently available to our management. These statements, like all statements in this report, speak only as of the date of this quarterly report on Form 10-Q (unless another date is indicated), and, except as required by law, we undertake no obligation to update or revise these statements in light of future developments.*

### Company Overview

We are a clinical-stage specialty pharmaceutical company focused on developing and commercializing our proprietary, innovative and differentiated topical drug candidates for dermatological therapy. Our lead product candidates, FMX101 (4% minocycline foam) for treatment of moderate-to-severe acne and FMX103 (1.5% minocycline foam) for treatment of moderate-to-severe papulopustular rosacea, are novel topical foam formulations of the antibiotic minocycline. Based on the results observed in our Phase II and Phase III clinical trials for FMX101 and our Phase II and Phase III clinical trials for FMX103, we believe these product candidates, if approved, have the potential to provide a fast, effective and well-tolerated treatment for their respective indications, which are currently underserved and commonly treated by oral prescription products such as oral minocycline, oral doxycycline and various other non-foam topical therapies.

We have been advancing our third pivotal Phase III clinical trial (Study 22) for FMX101. We announced the first patient enrolled in this trial on August 3, 2017 and had the last patient enrolled and dosed on May 7, 2018. We received positive top-line results from this trial in the third quarter of 2018. See "- Key Developments" below. Previously, in March 2017, we announced the results of the double-blind stage of our two initial Phase III clinical trials for FMX101. Statistical significance was observed in both co-primary efficacy endpoints in one study (Study 05); however, statistical significance was demonstrated in only one of the co-primary efficacy endpoints in the second study (Study 04). Statistical significance was also demonstrated for FMX101 compared to vehicle in the pooled analysis of the co-primary endpoints as well as key secondary endpoints for Studies 05 and 04. The third trial (Study 22) was initiated following a Type B meeting conducted with the FDA in June of 2017. During this meeting, we confirmed that achieving statistically significant results for FMX101 versus vehicle in both co-primary efficacy endpoints in a third independent clinical trial would be sufficient for establishing an efficacy claim in a new drug application ("NDA"), or NDA submission. A previous Phase II clinical trial of FMX101 also showed clinically and statistically significant results in all primary and secondary endpoints. As previously announced, in January 2018 we announced the completion of a long-term safety study that was an extension of our two initial Phase III clinical trials for FMX101. The results from the long-term safety study showed FMX101 to be well-tolerated and to have an acceptable safety profile.

We are also advancing our two pivotal Phase III clinical trials (known as Studies 11 and 12) in the U.S. for FMX103, minocycline foam for moderate-to-severe papulopustular rosacea. We announced the enrollment of the first patient in our Phase III trials on June 12, 2017, and had the last patient enrolled and dosed on June 27, 2018. Our Phase II clinical trial for FMX103 demonstrated clinically and statistically significant results in all primary and secondary endpoints. We received positive top-line results from these two trials in the fourth quarter of 2018. See "-Key Developments" below.

In addition, we successfully completed a Phase II clinical trial with FDX104, our proprietary doxycycline foam for the management of moderate-to-severe rash associated with epidermal growth factor receptor inhibitor (EGFRI) anticancer treatments. As the majority of our efforts and resources have been devoted to the development of FMX101 and FMX103 over the past year, limited work has been done during this year to further the development of FDX104. We are currently assessing our various options with regard to this product candidate.

We developed FMX101, FMX103 and FDX104 using our proprietary technology, which includes our foam-based platforms. Our technology enables us to formulate and stabilize a wide variety of product candidates and deliver them directly to their target site. We have independently developed a series of proprietary foam platforms, each having unique pharmacological features and characteristics. We believe our foam platforms may offer significant advantages over alternative delivery options and are suitable for multiple application sites. We believe our proprietary foam-based platforms may serve as a foundation in developing a potential pipeline of products across a range of conditions. In July 2015, an affiliate of Bayer HealthCare AG, or Bayer, received FDA approval for Finacea® Foam (azelaic acid 15%), or Finacea, a prescription foam product for the treatment of rosacea, which utilizes our proprietary foam technology.

Besides our in-house development projects, we have entered into development and license agreements relating to our technology with various pharmaceutical companies such as Bayer, Mylan N.V. and Actavis Laboratories. Our total revenues from these development and license agreements, since our inception through September 30, 2018, amounted to approximately \$30.9 million. The collaboration with Bayer, in particular, has led to the development and commercialization of Finacea, which uses one of our proprietary foam technology platforms. Bayer began selling Finacea in the United States in the third quarter of 2015. On September 4, 2018, LEO Pharma A/S, or LEO, acquired Bayer's prescription dermatology business in the United States, including Finacea. As part of the acquisition, our license agreement with Bayer with respect to Finacea was assigned to LEO. LEO has assumed all of the rights and responsibilities of Bayer under the license agreement as it relates to Finacea, including the payment of royalties to us and the litigation matters, which are discussed further below. Since its commercial launch through September 30, 2018, we received (or became entitled to receive) a total of \$9.4 million in royalties for this product from both Bayer and LEO. As previously disclosed, we received notifications from third party pharmaceutical companies that they had filed abbreviated NDAs with the FDA, seeking approval for generic versions of Finacea prior to the expiry of certain patents licensed by us to Bayer. In January and February of this year we and Bayer initiated legal action against such third parties. We are committed to defending our intellectual property rights globally, including patents we have licensed to other pharmaceutical companies as part of our collaboration efforts. Our FMX101 and FMX103 products are based on a different foam technology platform and different patents than those listed in the Approved Drug Products with Therapeutic Equivalence Evaluations, or Orange Book, for Finacea.

To date, we have not yet submitted any product candidates for approval by regulatory authorities and we do not currently have rights to any products that have been approved for marketing in any territory. We have financed our operations primarily through private and public placements of our shares, convertible loans and from development and licensing collaborations. We have incurred significant losses since our inception in 2003. Our accumulated deficit at September 30, 2018 was \$201.3 million and our net loss for the nine and three months ended September 30, 2018 was \$60.1 million and \$15.5 million respectively. A substantial amount of our net losses resulted from costs incurred in connection with our research and development programs and clinical trials and from general and administrative costs associated with our operations. The net losses and negative operating cash flows incurred to date, together with expected future losses, have had, and likely will continue to have, an adverse effect on our shareholders' equity and working capital. The amount of future net losses will depend, in part, on the rate of future growth of our expenses and our ability to generate offsetting revenue, if any. We expect to continue to incur significant expenses and operating losses for the foreseeable future.

We do not expect to generate revenue from product sales unless and until we successfully complete clinical trials and obtain marketing approval from the FDA for one or more of our lead product candidates, FMX101 or FMX103. Accordingly, we anticipate that we will need to raise additional capital in order to complete the development and commercialization of FMX101 and FMX103 and to advance the development of our other product candidates. Until we can generate a sufficient amount of product revenue to finance our cash requirements, we expect to finance our future cash needs primarily through a combination of public and private equity offerings, debt or other structured financings, and entry into strategic collaborations. We may be unable to raise capital when needed or on attractive terms, which would force us to delay, limit, reduce or terminate our development programs or commercialization efforts. We will need to generate significant revenue to achieve and sustain profitability, and we may never be able to do so.

We continue to be an "emerging growth company," as defined in Section 2(a) of the Securities Act and as modified by the JOBS Act. As such, we are eligible to, and take advantage of, certain exemptions from various reporting requirements applicable to other public companies that are not "emerging growth companies," such as not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act of 2002. We will remain an emerging growth company until the earliest of: (i) the last day of our fiscal year during which we have total annual gross revenues of at least \$1.07 billion; (ii) the last day of our fiscal year following the fifth anniversary of the closing of our initial public offering, specifically – December 31, 2019; (iii) the date on which we have, during any three-year period, issued more than \$1.0 billion in non-convertible debt; or (iv) the date on which we are deemed to be a "large accelerated filer" under the Exchange Act with at least \$700 million of equity securities held by non-affiliates.

## Key Developments

Below is a summary of selected key developments affecting our business that have occurred since June 30, 2018:

On August 10, 2018, following our Type B meeting with the FDA on February 14, 2018, we received a letter from the FDA's Division of Dermatology requesting information on the canister, foaming pump and other device constituent parts of our FMX101 product candidate. The letter referred to FMX101 as a combination product and requested information relating to the quality and design control of the device, including (1) the device description documentation, (2) the design control documentation, (3) the traceability documentation, and (4) additional considerations related to the biocompatibility and sterility of the product candidate. We expect to provide the requested information to the FDA using readily available data derived from our Study 22. We also expect to compile such information for our NDA submission and file the NDA for FMX101, with no material increases of the expected budget or material changes to the anticipated timing of our NDA submission.

On September 11, 2018, we announced the positive results of our third pivotal Phase III clinical trial (Study 22) for FMX101 in the United States for the treatment of moderate-to-severe acne. The double-blind, randomized, vehicle-controlled Phase III trial included 1,507 patients with moderate-to-severe acne enrolled at 89 sites in the United States. Patients randomly received either FMX101 minocycline foam (4%) or vehicle foam once daily over a period of 12 weeks. The safety and tolerability of FMX101 were also evaluated and the safety profile of FMX101 was found to be consistent with that observed from the two prior Phase III trials. The most commonly reported adverse events in the clinical trial related to upper respiratory tract infections. There were no treatment-related serious adverse events. FMX101 was observed in the clinical trial to have a generally favorable safety profile and to be generally well tolerated. Based on the efficacy and safety profile observed in clinical studies to date, we believe FMX101, if approved, may present an attractive option for the treatment of moderate-to-severe acne. We intend to file the NDA for FMX101 by the end of 2018.

On September 18, 2018, following the announcement of the positive results of our third pivotal Phase III clinical trial for FMX101, we completed a follow-on offering pursuant to an effective shelf registration statement and issued 13,420,500 Ordinary Shares at a price of \$6.00 per share, which included the full exercise by the underwriters of their option to purchase additional Ordinary Shares. We raised net proceeds, after expenses and underwriting discounts and commissions, of approximately \$75.3 million.

On November 7, 2018, we announced the positive results of our Phase III clinical trials (Studies 11 and 12) for FMX103 in the United States for the treatment of moderate-to-severe papulopustular rosacea. Studies 11 and 12 were identical, double-blind, randomized, vehicle-controlled studies that enrolled a total of 1,522 subjects (Study 11: 751 subjects, Study 12: 771 subjects) with moderate-to-severe papulopustular rosacea at a total of 100 sites in the United States. Patients were randomized 2:1 to receive either FMX103 minocycline foam (1.5%) or vehicle foam, respectively, once daily over a period of 12 weeks. The safety and tolerability of FMX103 were also evaluated. The most commonly reported adverse events in the clinical trial related to upper respiratory tract infections. There were no treatment-related serious adverse events. FMX103 was observed in the clinical trial to have a generally favorable safety profile and appeared to be generally well tolerated. Based on the efficacy and safety profile observed in clinical studies to date, we believe FMX103, if approved, may present an attractive option for the treatment of moderate-to-severe papulopustular rosacea. Our goal is to file an NDA for FMX103 in 2019.

## **Revenues**

To date, we have not generated any revenues from sales of FMX101 or any of our other product candidates. We do not expect to commercially launch FMX101 or other product candidates or generate any revenues from sales of any of our product candidates before the end of 2019, until after completion of their development and clinical testing and after obtaining approvals for their marketing in the U.S. Our ability to generate revenues from sales will depend on the successful commercialization of FMX101 and our other product candidates.

As of September 30, 2018, we generated cumulative revenues of approximately \$30.9 million under development and license agreements, of which approximately \$18.4 million were development service payments, approximately \$3.1 million were contingent payments and \$9.4 million were royalty payments. The royalties were paid in relation to Finacea, the prescription foam product that we developed in collaboration with Bayer. In the three and nine months ended September 30, 2018 we received (or became entitled to receive) royalty payments in an amount of \$865,000 and \$2.7 million, respectively. We may become entitled to additional contingent payments, subject to achievement of the applicable clinical results by our other licensees. In light of the current phase of development under these agreements, we do not expect to receive significant payments in the near term, if at all.

## **Cost of Revenues**

Our total cost of revenues for the three and nine months ended September 30, 2017, was \$11,000 and there was no cost of revenues for the three and nine months ended September 30, 2018, as revenues consist almost entirely from royalties, which do not bear related cost of revenue.

We do not expect substantial changes in cost of revenue unless and until we obtain regulatory approval for our lead product candidates and begin serial production of such products, whether internally or through third party manufacturers, at which point we expect our cost of revenues to grow along with the growth of our sales and inventory needs.

## **Operating Expenses**

### ***Research and development expenses***

Research and development activities are, and will continue to be, central to our business. Product candidates in later stages of clinical development generally have higher development costs than those in earlier stages of clinical development, primarily due to the increased size and duration of later-stage clinical trials. We expect research and development costs to increase significantly for the foreseeable future assuming our pipeline products progress into clinical trials. However, we do not believe that it is possible at this time to accurately project total program-specific expenses to reach commercialization. There are numerous factors associated with the successful commercialization of any of our product candidates, including future trial design and various regulatory requirements, many of which cannot be determined with accuracy at this time based on our stage of development. Additionally, future commercial and regulatory factors beyond our control will affect our clinical development programs and plans.



Our research and development expenses relate primarily to the development of FMX101 and FMX103. From January 1, 2007 until September 30, 2018, we cumulatively spent approximately \$157.7 million on research and development of FMX101, FMX103 and our other product candidates. Our total research and development expenses for the three-month ended September 30, 2018 and 2017 were approximately \$13.1 million and \$15.8 million, respectively, and for the nine-month periods ended September 30, 2018 and 2017 were approximately \$52.8 and \$42.4 million, respectively. We charge all research and development expenses to operations as they are incurred.

The successful development of FMX101, FMX103 and additional product candidates is highly uncertain. As such, at this time, we cannot reasonably estimate or know the nature, timing and costs of the efforts that will be necessary to complete the remainder of the development of our technology for additional indications. This uncertainty is due to numerous risks and variables associated with developing products, including the uncertainty of:

- the scope, rate of progress and expense of our research and development activities;
- preclinical results;
- clinical trial results;
- the terms and timing of regulatory approvals;
- our ability to file, prosecute, obtain, maintain, defend and enforce patents and other intellectual property rights and the expense of taking such actions;
- the ability to market, commercialize and achieve market acceptance for FMX101, FMX103 or any other product candidate that we may develop in the future; and
- our ability to identify, evaluate, acquire or obtain licenses for intellectual property, if needed, to facilitate the commercialization of our products and technologies.

A change in the outcome of any of these variables with respect to the development of FMX101, FMX103 or our other product candidates could result in a significant change in the costs and timing associated with their development. For example, if the FDA or foreign regulatory authority were to require us to conduct preclinical studies and clinical trials beyond those which we currently anticipate for the completion of clinical development of our product candidates, or if we experience significant delays in enrollment in any clinical trials, we could be required to expend significant additional time and financial resources on the completion of the clinical development.

Research and development expenses consist primarily of:

- employee-related expenses, including salaries, benefits and related expenses, including share-based compensation expenses;
- expenses incurred under agreements with third parties, including subcontractors, suppliers and consultants that conduct regulatory activities, clinical trials and preclinical studies;
- expenses incurred to acquire, develop and manufacture clinical trial materials;
- facilities, depreciation and other expenses, which include direct and allocated expenses for rent and maintenance of facilities, insurance, and other operating costs; and
- other costs associated with preclinical and clinical activities and regulatory operations.

We have managed to finance our research and development operations and expenses without the aid of government grants, other than a loan in the amount of approximately \$450,000 received from the Israel-U.S. Bi-national Industrial Research and Development Foundation, or BIRD, in 2008, which was fully repaid in 2016. Accordingly, we are not subject to the provisions of the Law for Encouragement of Research and Development in the Industry, 5744-1984, nor to any directives issued by the Israel Innovation Authority, previously known as the Office of the Chief Scientist of the Ministry of the Economy.

#### ***Selling, general and administrative expenses***

Our selling, general and administrative expenses consist principally of:

- employee-related expenses, including salaries, benefits and related expenses, including share-based compensation expenses;
- costs associated with market research and business development activities in preparation for future marketing and sales, including activities intended to select the most promising product candidates for further development and commercialization;
- legal and professional fees for auditors and other consulting expenses not related to research and development activities or to market research or business development activities;
- cost of office space, communication and office expenses;

- information technology expenses;
- depreciation of tangible fixed assets related to our general and administrative activities or to our market research and business development activities; and
- costs associated with filing, prosecuting, obtaining and maintaining patents and other intellectual property.

As part of our growth strategy, we have begun building up our dedicated U.S. marketing and business development team and infrastructure, and we intend to further increase such U.S. infrastructure, as well as expand our marketing effort to new markets. We therefore expect selling and marketing expenses to increase in absolute terms as a percentage of our revenues. Our total selling, general and administrative expenses for the three-month periods ended September 30, 2018 and 2017 were approximately \$3.3 million and \$2.9 million, respectively, and for the nine-month periods ended September 30, 2018 and 2017 were approximately \$10.0 million and \$9.2 million, respectively.

#### **Financial Income**

Financial income consists primarily of gains from interest earned from our bank deposits and financial income on our marketable securities.

#### **Taxes on Income**

The standard corporate tax rate in Israel during the year 2018 is 23%, a decrease compared to the 24% tax rate during 2017.

We have yet to generate taxable income in Israel, as we have historically incurred operating losses resulting in carry forward tax losses totaling approximately \$88.6 million as of December 31, 2017. We anticipate that we will be able to carry forward these tax losses to future tax years. Accordingly, we do not expect to pay taxes in Israel until we have taxable income after the full utilization of our carry-forward tax losses. We provided a full valuation allowance with respect to the deferred tax assets related to these carry-forward losses.

During the three-month periods ended September 30, 2018 and 2017 we incurred tax expenses of \$13,000 and \$57,000, respectively, in our U.S. subsidiary, Foamix Pharmaceuticals Inc., and during the nine-month periods ended September 30, 2018 and 2017 we incurred tax expenses of \$463,000 and \$209,000, respectively.

#### **Comparison of the Three-Month Periods Ended September 30, 2018 and 2017**

##### ***Revenues***

Our total revenues decreased by \$36,000, or 4.0%, from \$901,000 in the three months ended September 30, 2017 to \$865,000 in the three months ended September 30, 2018. The change is due to a decrease in development service payments, which was offset by an increase in royalty payments from Bayer and LEO for sales of Finacea.

##### ***Cost of revenues***

Our total cost of revenues for the three months ended September 30, 2017 was \$11,000 and there was no cost of revenues for the three-month period ended September 30, 2018, as revenues consist entirely from royalties, which bear no related cost of revenue.

##### ***Research and development expenses***

Our research and development expenses for the three months ended September 30, 2018 were \$13.1 million, representing a decrease of \$2.7 million, or 17.1%, compared to \$15.8 million for the three months ended September 30, 2017. The decrease in research and development expenses resulted primarily from a decrease of \$3.6 million in costs relating predominantly to FMX101 and FMX103 clinical trials, offset by an increase of \$434,000 in payroll and payroll-related expenses including share-based compensation primarily due to an increase in salary raises, an increase of \$139,000 in advisors, consultants and other professional services expenses, and an increase of \$120,000 in travel expenses.

##### ***Selling, general and administrative expenses***

Our general and administrative expenses for the three months ended September 30, 2018 were \$3.3 million, representing an increase of \$376,000, or 13.0%, compared to \$2.9 million for the three months ended September 30, 2017. The increase in selling, general and administrative expenses resulted primarily from an increase of \$270,000 in payroll and payroll-related expenses including share-based compensation primarily due to an increase in headcount and salary raises, and an increase of \$104,000 in expenses related to our Board of Directors.

### **Operating loss**

Our operating loss for the three months ended September 30, 2018 was \$15.6 million, representing a decrease of \$2.2 million, or 12.4%, compared to an operating loss of \$17.8 million for the three months ended September 30, 2017.

### **Finance income**

In the three-month periods ended September 30, 2018 and 2017, our financial income included mostly gains from marketable securities and interest earned on our bank deposits.

The finance expenses (income) by cash and non-cash components are as follows:

	Three months ended September 30,	
	2018	2017
	(in thousands of U.S. dollars)	
Interest on bank deposits	\$ (51)	\$ (113)
Gain from marketable securities, net	(107)	(163)
Foreign exchange gain, net	-	(28)
Total income	(158)	(304)
Less:		
Foreign exchange loss, net	35	-
Other expenses	4	2
Total expenses	39	2
Finance income, net	\$ (119)	\$ (302)

### **Taxes on income**

During the three-month periods ended September 30, 2018 and 2017 we did not generate taxable income in Israel. However, we had incurred tax expenses in our U.S. subsidiary, Foamix Pharmaceuticals Inc., in the amount of \$13,000 and \$57,000 for the three-month periods ended September 30, 2018 and 2017, respectively.

### **Net Loss**

Our net loss for the three months ended September 30, 2018 was \$15.5 million, compared to \$17.6 million for the three months ended September 30, 2017, a decrease of \$2.1 million, or 11.9%.

### **Comparison of the Nine-Month Periods Ended September 30, 2018 and 2017**

#### **Revenues**

Our total revenues increased by \$109,000, or 4.2%, from \$2.6 million in the nine months ended September 30, 2017 to \$2.7 million in the nine months ended September 30, 2018. The increase is mainly due to an increase in royalty payments from Bayer and LEO for sales of Finacea.

#### **Cost of revenues**

Our total cost of revenues for the nine months ended September 30, 2017 was \$11,000 and there was no cost of revenues for the nine-month period ended September 30, 2018, as revenues consist entirely from royalties, which bear no related cost of revenue.

#### **Research and development expenses**

Our research and development expenses for the nine months ended September 30, 2018 were \$52.8 million, representing an increase of \$10.4 million, or 24.5%, compared to \$42.4 million for the nine months ended September 30, 2017. The increase in research and development expenses resulted primarily from (a) an increase of \$8.5 million in costs relating predominantly to FMX101 and FMX103 clinical trials, (b) an increase of \$2.0 million in payroll and payroll-related expenses, including share-based compensation, primarily due to a change in the measurement of share based compensation expenses of a consultant and an increase in headcount and salary raises, (c) an increase of \$504,000 in travel expenses, and (d) an increase of \$225,000 in advisors, consultants and other professional services expenses. Such increases were offset by a decrease of \$1.2 million in compensation to one of our co-founders in the nine months ended September 30, 2017.

### ***Selling, general and administrative expenses***

Our general and administrative expenses for the nine months ended September 30, 2018 were \$10.0 million, representing an increase of \$813,000, or 8.8%, compared to \$9.2 million for the nine months ended September 30, 2017. The increase in selling, general and administrative expenses resulted primarily from (a) an increase of \$1.9 million in payroll and payroll-related expenses, including share-based compensation, mostly due to an increase in headcount, salary raises and accounting modification relating to share based compensation of a consultant, (b) an increase of \$512,000 in advisors and other professional services expenses, and (c) an increase of \$256,000 in expenses related to our Board of Directors. Such increases were offset by (i) a decrease of \$1.5 million in compensation to one of our co-founders in the nine months ended September 30, 2017, and (ii) a decrease of \$201,000 in travel expenses.

### ***Operating loss***

Our operating loss for the nine months ended September 30, 2018 was \$60.1 million, compared to an operating loss of \$49.0 million for the nine months ended September 30, 2017, an increase of \$11.1 million, or 22.7%.

### ***Finance income***

In the nine-month periods ended September 30, 2018 and 2017, our financial income included mostly gains from marketable securities and interest earned on our bank deposits.

The finance expenses (income) by cash and non-cash components are as follows:

	Nine months ended September 30,	
	2018	2017
	(in thousands of U.S. dollars)	
Interest on bank deposits	\$ (205)	\$ (438)
Gain from marketable securities, net	(326)	(448)
Total income	(531)	(886)
Less:		
Other expenses	13	12
Foreign exchange loss, net	47	28
Total expenses	60	40
Finance income, net	\$ (471)	\$ (846)

### ***Taxes on income***

During the nine-month periods ended September 30, 2018 and 2017 we did not generate taxable income in Israel. However, we had incurred tax expenses in our U.S. subsidiary, Foamix Pharmaceuticals Inc., in the amount of \$463,000 and \$209,000 for the nine-month periods ended September 30, 2018 and 2017, respectively. The increase in tax expenses resulted mainly from an increase in operations of Foamix Pharmaceuticals Inc.

### ***Net Loss***

Our net loss for the nine months ended September 30, 2018 was \$60.1 million, compared to \$48.4 million for the nine months ended September 30, 2017, an increase of \$11.7 million, or 24.2%.

### ***Liquidity***

Since our inception, we have incurred losses from operations and negative cash flows from our operations. For the nine months ended September 30, 2018 we incurred a net loss of \$60.1 million, which included \$57.7 million used for operating activities. For the nine months ended September 30, 2017 we incurred a net loss of \$48.4 million, which included \$40.5 million used for operating activities.

As of September 30, 2018 and September 30, 2017 we had a working capital surplus of \$103.0 million and \$70.8 million, respectively, and an accumulated deficit of \$201.3 million and \$123.9 million, respectively. Our principal source of liquidity as of September 30, 2018 consisted of cash and investments of \$110.5 million.

In September 2014, we completed our initial public offering in which we sold 6,700,000 Ordinary Shares for \$6.00 per share raising total net proceeds, after expenses, of approximately \$35.7 million. In October 2014 the underwriters exercised their option to purchase an additional 968,200 Ordinary Shares. The proceeds from the exercise of the option, net of underwriters' commission, were approximately \$5.4 million, bringing the total net proceeds from the initial public offering, after expenses, to approximately \$41.1 million.

In April 2015, we completed a follow-on offering in which we sold 7,419,353 Ordinary Shares, including the exercise of an underwriter option, for \$9.30 per share, raising total net proceeds, after expenses, of approximately \$64.2 million.

On September 30, 2016 we completed another follow-on offering under an effective shelf registration statement, in which we sold 5,700,000 Ordinary Shares for \$9.50 per share, raising net proceeds, after expenses and underwriter commissions, of approximately \$50.4 million. An additional 300,000 Ordinary Shares were sold by certain selling shareholders. In October 2016 the underwriters partially exercised the option granted to them in the underwriting agreement and purchased an additional 411,959 Ordinary Shares. The proceeds from the exercise of the option, net of expenses and underwriter commissions, were approximately \$3.7 million, bringing the total net proceeds from the offering to approximately \$54.1 million.

On April 13, 2018 we entered into a Securities Purchase Agreement with OrbiMed Partners Master Fund Limited, or OrbiMed, pursuant to which we agreed to issue and sell, in a registered offering by the Company, an aggregate of 2,940,000 Ordinary Shares, par value NIS 0.16 per share, at a purchase price equivalent to \$5.50 per share, representing a premium to the Company's Ordinary Shares' last closing price, for aggregate net proceeds of approximately \$16.1 million, after deducting offering expenses. The closing of the issuance and sale of these securities took place on April 16, 2018, pursuant to our shelf registration statement on Form S-3, which was filed with the SEC on April 2, 2018 and became effective on April 12, 2018.

On September 18, 2018 we completed an additional follow-on offering, under a shelf registration statement filed with the SEC on Form S-3 (File No. 333-224084) on April 2, 2018 and declared effective on April 12, 2018, in which we sold 11,670,000 Ordinary Shares for \$6.00 per share, raising net proceeds, after expenses and underwriter commissions, of approximately \$65.5 million. Upon closing of the offering, the underwriters further exercised the option granted to them in the underwriting agreement and purchased 1,750,500 additional Ordinary Shares at the per share price of the offering. The proceeds from the exercise of the option, net of expenses and underwriter commissions, were approximately \$9.8 million, bringing the total net proceeds from the offering to approximately \$75.3 million.

We anticipate that with our existing cash and investments we will be able to fund our planned operating expenses and capital expenditure requirements through mid 2020. These planned expenses and expenditures include: (a) the full development and filing of an NDA for FMX101, which we expect to submit by the end of 2018, (b) completion of our two Phase III clinical trials for FMX103, (c) full development and filing of an NDA for FMX103, which we expect to submit in 2019, (d) certain pipeline development activities and (e) any pre-commercialization and launch preparations for FMX101. We expect we will need additional funding to support our operating expenses and capital requirements for 2020 and beyond, including with regard to the commercialization of our product candidates and to fund our internal and external research and development efforts. We have based this estimate on assumptions that may prove to be wrong, and we could use our capital resources sooner than we currently expect.

## **Capital Resources**

### ***Overview***

To date, we have financed our operations through private and public placements of our Ordinary Shares, convertible loans and through fees, cost reimbursements and royalties received from our licensees.

From inception through September 30, 2018, we have received net cash proceeds of approximately \$280.1 million from the issuance of Ordinary Shares, preferred shares, exercise of options and warrants and from convertible loans.

## Cash flows

The following table summarizes our statement of cash flows for the nine-month periods ended September 30, 2018 and 2017:

	Nine months ended September 30,	
	2018	2017
	(in thousands of U.S. dollars)	
Net cash (used in) / provided by:		
Operating activities	\$ (57,766)	\$ (40,544)
Investing activities	\$ 37,345	\$ 29,990
Financing activities	\$ 92,362	\$ 124

### Net cash used in operating activities

The use of cash in all periods resulted primarily from our net losses adjusted for non-cash charges and measurements and changes in components of working capital. Adjustments to net income for non-cash items mainly include depreciation and amortization and share-based compensation.

Net cash used in operating activities was \$57.8 million in the nine months ended September 30, 2018, compared to \$40.5 million in the nine months ended September 30, 2017. The increase was attributable primarily to increased net losses resulting from the increase in activity related mostly to clinical trials and payroll expenses.

### Net cash provided by investing activities

Net cash provided by investing activities has been primarily related to proceeds from the sale and maturity of marketable securities and bank deposits. Net cash provided by investing activities was \$37.3 million in the nine months ended September 30, 2018, compared to net cash provided by investing activities of \$30.0 million in the nine months ended September 30, 2017. The increase in cash provided by investing activities was attributable primarily to an increase in proceeds from the sale and maturity of marketable securities and bank deposits, a decrease in investment in marketable securities, offset by an increase in investment in bank deposits.

### Net cash provided by financing activities

Net cash provided by financing activities was \$92.4 million in the nine months ended September 30, 2018, compared to \$124,000 in the nine months ended September 30, 2017. The increase was attributable primarily to (i) the proceeds from the issuance of shares to OrbiMed based on the aforementioned Securities Purchase Agreement, in an aggregate net amount of approximately \$16.1 million after deducting offering expenses, (ii) the increase in the amount of \$840,000 in proceeds from the exercise of warrants, and (iii) the proceeds from the issuance of shares in the underwritten follow-on offering which closed on September 18, 2018, in an aggregate net amount of approximately \$75.3 million after deducting offering expenses and underwriters' commissions.

## Cash and funding sources

The table below summarizes our main sources of financing for the nine-month periods ended September 30, 2018 and 2017:

	Proceeds from	Proceeds from	Payments from	Total
	our offerings <sup>(1)</sup>	issuance of	licensees	
		Ordinary Shares		
		(in thousands of U.S. dollars)		
Nine months ended September 30, 2018	\$ 91,479	\$ 883	\$ 2,797	\$ 95,159
Nine months ended September 30, 2017	-	\$ 145	\$ 4,961	\$ 5,106

(1) Net of issuance costs.

Our sources of financing in the nine months ended September 30, 2018 totaled \$95.2 million and consisted primarily of \$16.1 million of net proceeds from our registered direct offering to OrbiMed, \$75.3 million of net proceeds from our underwritten follow-on offering which closed on September 18, 2018, and \$2.8 million of payments from licensees.

Our sources of financing in the nine months ended September 30, 2017 totaled \$5.1 million and consisted primarily of payments from licensees.

We have no ongoing material financial commitments (such as lines of credit) that may affect our liquidity over the next five years.

## Funding requirements

We anticipate that with our existing cash and investments we will be able to fund our planned operating expenses and capital expenditure requirements through mid-2020. These planned expenses and expenditures include: (a) the full development and filing of an NDA for FMX101, which we expect to submit by the end of 2018, (b) completion of our two Phase III clinical trials for FMX103, (c) full development and filing of an NDA for FMX103, which we expect to submit in 2019, (d) certain pipeline development activities and (e) any pre-commercialization and launch preparations for FMX101. We expect we will need additional funding to support our operating expenses and capital requirements for all of 2020 and beyond, including with regard to the commercialization of our product candidates and to fund our internal and external research and development efforts. We have based this estimate on assumptions that may prove to be wrong, and we could use our capital resources sooner than we currently expect.

Our present and future funding requirements will depend on many factors, including, among other things:

- the progress, timing and completion of preclinical testing and clinical trials for FMX101, FMX103 or any future pipeline product candidate;
- selling, marketing and patent-related activities undertaken in connection with the anticipated commercialization of FMX101, FMX103 and any other product candidates and costs involved in the development of an effective sales and marketing organization;
- the time and costs involved in obtaining regulatory approval for FMX101, FMX103 and our other pipeline products and any delays we may encounter as a result of evolving regulatory requirements or adverse results with respect to any of these products;
- the number of potential new products we identify and decide to develop;
- the costs involved in filing and prosecuting patent applications and obtaining, maintaining and enforcing patents or defending against claims or infringements raised by third parties, and license royalties or other amounts we may be required to pay to obtain rights to third party intellectual property rights; and
- the amount of revenues, if any, we may derive either directly or in the form of royalty payments from future sales of FMX101, FMX103 and any other pipeline product that is commercialized.

For more information as to the risks associated with our future funding needs, see “Part I, Item 1A—Risk Factors—Risks Related to Our Business and Industry—We will require substantial additional financing to achieve our goals, and a failure to obtain this necessary capital when needed on acceptable terms, or at all, could force us to delay, limit, reduce or terminate our product development, other operations or commercialization efforts” in our Annual Report on Form 10-K/A for the year ended December 31, 2017, as filed with the Securities and Exchange Commission on March 1, 2018.

Our capital expenditures for the nine-month periods ended September 30, 2018 and 2017 amounted to \$408,000 and \$1.2 million, respectively. During the nine months ended September 30, 2018, these expenditures were primarily related to laboratory equipment, software and leasehold improvements.

## Off-Balance Sheet Arrangements

As of September 30, 2018, we did not have any off-balance sheet arrangements.

## Contractual Obligations

Our significant non-cancelable contractual obligations as of September 30, 2018 are summarized in the following table:

	Payments due by period					
	Total	Less than 1 year	1-3 years	3-5 years	More than 5 years	Other
Operating lease obligations <sup>(1)</sup>	\$ 1,695	\$ 775	\$ 920	-	-	-
Liability for employee severance benefits <sup>(2)</sup>	\$ 379	-	-	-	-	\$ 379
Total	\$ 2,074	\$ 775	\$ 920	-	-	\$ 379

(1) Operating lease obligations consist of lease of our facilities and lease of vehicles.

(2) The liability for employee severance benefits is considered long term. However, we cannot estimate the exact period in which such benefits will be paid.

## **Critical Accounting Policies and Significant Judgments and Estimates**

We prepare our consolidated financial statements in accordance with generally accepted accounting principles in the United States. The preparation of consolidated financial statements also requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue, expenses and related disclosures. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances. Actual results could differ significantly from the estimates made by our management. To the extent that there are differences between our estimates and actual results, our future financial statement presentation, financial condition, results of operations and cash flows will be affected.

While our significant accounting policies are more fully described in Note 2, Summary of Significant Accounting Policies, to the consolidated financial statements included in “Item 8—Financial Statements and Supplementary Data” of our Annual Report on Form 10-K/A for the year ended December 31, 2017, as filed with the Securities and Exchange Commission on March 1, 2018, and refer also to Note 2, “Significant Accounting Policies,” in the accompanying notes to the condensed consolidated financial statements, we believe that the following accounting policies are the most critical to assist shareholders and investors reading the consolidated financial statements in fully understanding and evaluating our financial condition and results of operations. These policies relate to the more significant areas involving management’s judgments and estimates and they require our most difficult, subjective or complex judgments, often as a result of the need to make estimates about the effect of the matters that are inherently uncertain.

### ***Clinical trial accruals***

Clinical trial costs are charged to research and development expense as incurred. We accrue for expenses resulting from obligations under contracts with CROs. The financial terms of these contracts are subject to negotiations, which vary from contract to contract and may result in payment flows that do not match the periods over which materials or services are provided. Our objective is to reflect the appropriate trial expense in the consolidated financial statements by matching the appropriate expenses with the period in which services and efforts are expended. In the event advance payments are made to a CRO, the payments will be recorded as other assets, which will be recognized as expenses as services are rendered. The CRO contracts generally include pass-through fees including, but not limited to, regulatory expenses, investigator fees, travel costs and other miscellaneous costs. We estimate our clinical accruals based on reports from and discussion with clinical personnel and the CRO as to the progress or state of completion of the trials. We estimate accrued expenses as of each balance sheet date in the consolidated financial statements based on the facts and circumstances known at that time. Our clinical trial accrual is dependent, in part, upon the receipt of timely and accurate reporting from the CROs.

### ***Equity-based compensation***

The fair value of equity-based payment transactions is recognized as an expense over the requisite service period and computed using the Black-Scholes model. We recognize compensation costs for awards that are conditioned only on continued service and which have a graded vesting schedule using the straight-line method based on the multiple-option award approach. When options and RSUs are granted as consideration for services provided by consultants and other non-employees, the grant is accounted for based on the fair value of the consideration received or the fair value of the awards issued, whichever is more reliably measurable. The fair value of the awards granted is measured on a final basis at the end of the related service period and is recognized over the related service period using the straight-line method.

### **Recently Issued Accounting Pronouncements**

For a discussion of certain recently issued accounting pronouncements, refer to Note 2, “Significant Accounting Policies,” in the accompanying notes to the condensed consolidated financial statements.

### **ITEM 3. Quantitative and Qualitative Disclosures about Market Risk**

Market risk is the risk of loss related to changes in market prices, including interest rates, foreign exchange rates and prices of financial instruments that may adversely impact our financial position, results of operations or cash flows. As of September 30, 2018 we did not have any financial instruments sensitive to market risk. We therefore have little exposure to market risks in the ordinary course of our operations, and such risks are primarily related to changes in foreign currency exchange rates and in interest rates.



## Foreign Currency Exchange Risk

The U.S. dollar is our functional and reporting currency. Although a substantial portion of our expenses (mainly salaries and related costs) are denominated in New Israeli shekels (NIS), accounting for 13.2% and 15.9% of our expenses in the nine month ended September 30, 2018 and 2017, respectively, almost all our revenues were generated under agreements denominated in U.S. dollars and our proceeds from our public offerings, which are the main source of our financing, are denominated in U.S. dollars. Furthermore, while we anticipate that a portion of our expenses, principally salaries and related personnel expenses in Israel, will continue to be denominated in NIS, we expect to incur an increasing amount of expenses in U.S. dollars as we expand our operations in the U.S. We also have expenses, although to a much lesser extent, in other non-dollar currencies, in particular the Swiss Franc. Moreover, for the next few years we expect that the substantial majority of our revenues, if any, will be denominated in U.S. dollars from the sale of FMX101, if approved, and potentially other product candidates in the United States. Having the substantial majority of our revenues denominated in U.S. dollars while having a substantial portion of our expenses denominated in NIS and other non-U.S. currencies exposes us to risk, associated with exchange rate fluctuations vis-à-vis the U.S. dollar. For further discussion of this risk, please review “Item 1A—Risk Factors—Risks Related to Our Business and Industry—Exchange rate fluctuations between the U.S. dollar and the Israeli NIS may negatively affect our earnings” in our Annual Report on Form 10-K/A for the year ended December 31, 2017, as filed with the Securities and Exchange Commission on March 1, 2018.

A devaluation of the NIS in relation to the U.S. dollar has the effect of reducing the U.S. dollar amount of our expenses or payables that are payable in NIS, unless those expenses or payables are linked to the U.S. dollar. Conversely, any appreciation of the NIS in relation to the U.S. dollar has the effect of increasing the U.S. dollar value of our unlinked NIS expenses, which would have a negative impact on our profit margins. In the nine months ended September 30, 2018, the value of the NIS depreciated in relation to the U.S. dollar by 4.6%, the effect of which was partially offset by inflation in Israel at a rate of approximately 1.1%. In the nine months ended September 30, 2017, the value of the NIS appreciated in relation to the U.S. dollar by 8.2%, the effect of which was compounded by inflation in Israel at a rate of approximately 0.3%.

Because exchange rates between the U.S. dollar and the NIS (as well as between the U.S. dollar and other currencies) fluctuate continuously, such fluctuations have an impact on our results and period-to-period comparisons of our results. The effects of foreign currency re-measurements are reported in our statements of operations.

The following table presents information about the changes in the exchange rates of the NIS against the U.S. dollar:

Nine-month period ended September 30,	NIS against the U.S. dollar
2018	(4.6)%
2017	8.2%

We will continue to monitor our exposure to currency fluctuations. Since February 2015, we have engaged in currency hedging activities in order to reduce our exposure to currency fluctuations. Instruments that are used to hedge future risks may include foreign currency forward contracts, swap contracts and options. These instruments may be used to selectively manage risks, but we may not be fully protected against material foreign currency fluctuations.

## Inflation-Related Risks

We do not believe that the rate of inflation in Israel has had a material impact on our business, financial condition or results of operations during the year ended December 31, 2017 or nine months ended September 30, 2018. However, our costs in Israel will increase if inflation in Israel exceeds the devaluation of the NIS against the U.S. dollar, or if the timing of such devaluation lags behind inflation in Israel.

## ITEM 4. Controls and Procedures

### Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act and regulations promulgated thereunder) as of September 30, 2018, or the Evaluation Date. Based on such evaluation, our Chief Executive Officer and Chief Financial Officer, have concluded that, as of the Evaluation Date, our disclosure controls and procedures were effective at the reasonable assurance level in recording, processing, summarizing and reporting, on a timely basis, information required to be included in periodic filings under the Exchange Act and that such information was accumulated and communicated to management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

### Changes in Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting that occurred during the quarter ended September 30, 2018 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

### Limitations on Effectiveness of Controls and Procedures

In designing and evaluating the disclosure controls and procedures and internal control over financial reporting, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. In addition, the design of disclosure controls and procedures and internal control over financial reporting must reflect the fact that there are resource constraints and that management is required to apply judgment in evaluating the benefits of possible controls and procedures relative to their costs.

## PART II - OTHER INFORMATION

### ITEM 1. Legal Proceedings

#### *Legal Proceedings*

From time to time, we may become involved in litigation or other legal proceedings relating to claims that we consider to be arising from the ordinary course of our business. There are currently no claims or actions pending against us that, in the opinion of our management, are likely to have a material adverse effect on our business.

Currently, we are not involved in any legal proceedings other than the complaints filed by Bayer and Foamix in the U.S. In January 2018, we, along with Bayer, filed complaints against affiliates of Teva and in February 2018 against affiliates of Perrigo, alleging patent infringement arising out of ANDA submissions seeking approval to manufacture and sell a generic version of Bayer's Finacea® Foam prior to the expiry of patents licensed by Foamix to Bayer. For more information, (see "Part I, Item 1A-Risk Factors-Risks Related to Our Intellectual Property-We have received notice letters of ANDAs submitted for drug products that are generic versions of Finacea® Foam and we are involved in lawsuits to protect or enforce our patents, which could be expensive, time consuming and unsuccessful" in our most recent Annual Report on Form 10-K/A for the year ended December 31, 2017, as filed with the Securities and Exchange Commission on March 1, 2018). We consider such actions to be a part of the ordinary course of our business. We may become parties to additional litigation or other legal proceedings that we consider to be a part of the ordinary course of our business, and may also become involved in material legal proceedings.

### ITEM 1A. Risk Factors

There have been no material changes from the risk factors previously disclosed in "Part I, Item 1A—Risk Factors" of our Annual Report on Form 10-K/A for the year ended December 31, 2017, as filed with the Securities and Exchange Commission on March 1, 2018.

### ITEM 2. Unregistered Sales of Equity Securities and Use of Proceeds

None.

### ITEM 3. Defaults Upon Senior Securities

Not applicable.

### ITEM 4. Mine Safety Disclosures

Not applicable.

### ITEM 5. Other Information

None.

### ITEM 6. Exhibits

<u>Exhibit Number</u>	<u>Description Of Document</u>	<u>Form</u>	<u>SEC File No.</u>	<u>Exhibit</u>	<u>Filing Date</u>	<u>Filed Herewith</u>
<a href="#">3.1</a>	<a href="#">Amended and Restated Articles of Association of Foamix Pharmaceuticals Ltd.</a>					X
<a href="#">31.1</a>	<a href="#">Certification of the Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>					X
<a href="#">31.2</a>	<a href="#">Certification of the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>					X
<a href="#">32.1*</a>	<a href="#">Certification of the Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>					X
<a href="#">32.2*</a>	<a href="#">Certification of the Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>					X
101.INS	XBRL Instance Document					X
101.SCH	XBRL Taxonomy Extension Schema Document					X
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document					X
101.DEF	XBRL Taxonomy Extension Definition Document					X
101.LAB	XBRL Taxonomy Extension Label Document					X
101.PRE	XBRL Taxonomy Presentation Linkbase Document					X

\* These certifications are being furnished solely to accompany this quarterly report pursuant to 18 U.S.C. Section 1350, and are not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and are not to be incorporated by reference into any filing of the registrant, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

**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 thereunto duly authorized.

FOAMIX PHARMACEUTICALS LTD.

Date: November 7, 2018

By: /s/ David Domzalski  
David Domzalski  
Chief Executive Officer

Date: November 7, 2018

By: /s/ Ilan Hadar  
Ilan Hadar  
Chief Financial Officer

**ARTICLES OF ASSOCIATION  
OF  
FOAMIX PHARMACEUTICALS LTD.  
A COMPANY LIMITED BY SHARES  
UNDER THE COMPANIES LAW, 5759 – 1999**

**1. INTERPRETATION**

1.1. In these Articles, unless the context requires otherwise, the following capitalized terms shall have the meanings set opposite them:

“**Alternate Nominee**” has the meaning set out in Article 17.2;

“**Articles**” means these Articles of Association, as may be amended from time to time by a Resolution (as defined below);

“**Board**” means all of the directors of the Company holding office pursuant to these Articles, including alternates, substitutes or proxies;

“**Business Day**” means any day other than a Saturday, Sunday and any day in which banks in Israel are closed or in which the NASDAQ Stock Market is closed.

“**Chairman of the Board**” has the meaning set out in Article 18.4;

“**Companies Law**” the Israeli Companies Law, 5759-1999, as amended from time to time, including the regulations promulgated thereunder, or any other law which may come in its stead, including all amendments made thereto;

“**Company**” means Foamix Pharmaceuticals Ltd.;

“**Compensation Committee**” has the meaning set out in the Companies Law;

“**Derivative Transaction**” has the meaning set out in Article 14.5;

“**Effective Time**” means the closing of the initial underwritten public offering of the Company’s ordinary shares, at which time these Articles shall first become effective;

“**External Director**” has the meaning set out in the Companies Law;

“**General Meeting**” means either an annual or an extraordinary meeting of the shareholders;

“**Incapacitated Person**” has the meaning set out in the Israeli Legal Capacity and Guardianship Law, 5722-1962, as amended from time to time, including a minor who has not yet attained the age of 18 years, a person of unsound mind and a bankrupt person in respect of whom no rehabilitation has been granted;

“**Nominees**” has the meaning set out in Article 17.2;

“**Office**” means the registered office of the Company at that time;

“**Office Holder**” has the meaning set out in the Companies Law;

“**Proposal Request**” has the meaning set out in Article 14.5;

“**Proposing Shareholder**” has the meaning set out in Article 14.5;

“**Register**” means the register of shareholders administered in accordance with the Companies Law;

“**Rights**” has the meaning set out in Article 26.8;

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“**Special Fund**” has the meaning set out in Article 26.8;

“**U.S. Rules**” means the applicable rules of the NASDAQ Stock Market and the U.S. securities rules and regulations, as amended from time to time; and

- 1.2. Reference to “writing”, “written” or similar expressions in these Articles means handwriting, typewriting, photography, telex, email or any other legible form of writing. Reference to a “person” or “persons” shall also include corporations, companies, cooperative societies, partnerships, trusts of any kind or any other body of persons, whether incorporated or otherwise.
- 1.3. Subject to the provisions of this Article 1 and unless the context necessitates another meaning, terms and expressions in these Articles which have been defined in the Companies Law shall have the meanings ascribed to them therein.

Words in the singular shall also include the plural, and vice versa. Words in the masculine shall include the feminine and vice versa.

- 1.4. The captions to articles in these Articles are intended for the convenience of the reader only, and no use shall be made thereof in the interpretation of these Articles.

## 2. **LIMITED LIABILITY**

The Company is a limited liability company and therefore each shareholder’s liability for the Company’s obligations shall be limited to the payment of the nominal value of the shares held by such shareholder, subject to the provisions of the Companies Law.

## 3. **OBJECTIVES**

The Company’s objectives are to conduct all types of business as are permitted by law. The Company may donate a reasonable amount of money for any purpose that the Board finds appropriate, even if the donation is not for business considerations or for the purpose of achieving profits for the Company.

## 4. **REGISTERED OFFICE**

The registered office shall be at such place as decided by the Board from time to time.

## 5. **AUTHORIZED SHARE CAPITAL**

The authorized share capital of the Company shall consist of NIS 14,400,000, divided into 90,000,000 ordinary shares with a nominal value of NIS 0.16 each.

## 6. **RIGHTS ATTACHING TO THE ORDINARY SHARES**

- 6.1. The ordinary shares in respect of which all calls have been fully paid shall confer on the holders thereof the right to attend and to vote at General Meetings of the Company, both annual as well as extraordinary meetings.
- 6.2. The ordinary shares shall confer on a holder thereof the right to receive a dividend, to participate in a distribution of bonus shares and to participate in the distribution of the assets of the Company upon its winding-up, pro rata to the nominal amount paid up on the shares or credited as paid up in respect thereof, and without reference to any premium which may have been paid in respect thereof.

## 7. **MODIFICATION OF CLASS RIGHTS**

- 7.1. Subject to applicable law, if at any time the share capital of the Company is divided into different classes of shares and unless the terms of issue of such class of shares otherwise stipulate, the rights attaching to any class of shares (including rights prescribed in the terms of issue of the shares) may be altered, modified or canceled by a resolution passed at a separate class meeting of the shareholders of that class.
- 7.2. The provisions contained in these Articles with regard to General Meetings shall apply, *mutatis mutandis* as the case may be, to every class meeting of the holders of each such class of the Company’s shares.

- 7.3. Unless otherwise provided by these Articles, the increase of an authorized class of shares, or the issuance of additional shares thereof out of the authorized and unissued share capital, shall not be deemed, for purposes of this Article 7, to modify or abrogate the rights attached to previously issued shares of such class or of any other class.

**8. UNISSUED SHARE CAPITAL**

- 8.1. The unissued shares in the capital of the Company shall be under the control of the Board, which shall be entitled to allot or otherwise grant the same to such persons under such restrictions and conditions as it shall deem fit, whether for consideration or otherwise, and whether for consideration in cash or for consideration which is not in cash, above their nominal value or at a discount, all on such conditions, in such manner and at such times as the Board shall deem fit, subject to the provisions of the Companies Law. The Board shall be entitled, *inter alia*, to differentiate between shareholders with regard to the amounts of calls in respect of the allotment of shares (to the extent that there are calls) and with regard to the time for payment thereof. The Board may also issue options or warrants for the purchase of shares of the Company and prescribe the manner of the exercise of such options or warrants, including the time and price for such exercise and any other provision which is relevant to the method for distributing the issued shares of the Company amongst the purchasers thereof.
- 8.2. The Board shall be entitled to prescribe the times for the issue of shares of the Company and the conditions therefore and any other matter which may arise in connection with the issue thereof.
- 8.3. In every case of a rights offering the Board shall be entitled, in its discretion, to resolve any problems and difficulties arising or that are likely to arise in regard to fractions of rights, and without prejudice to the generality of the foregoing, the Board shall be entitled to specify that no shares shall be allotted in respect of fractions of rights, or that fractions of rights shall be sold and the net proceeds shall be paid to the persons entitled to the fractions of rights, or, in accordance with a decision by the Board, to the benefit of the Company.

**9. INCREASE OF CAPITAL; ALTERATIONS TO CAPITAL**

- 9.1. The Company may, from time to time, by a resolution of the shareholders at a General Meeting, increase its share capital by way of the creation of new shares, whether or not all the existing shares have been issued up to the date of the resolution, whether or not it has been decided to issue same, and whether or not calls have been made on all the issued shares.
- 9.2. The increase of share capital shall be in such amount and divided into shares of such nominal value, and with such restrictions and conditions and with such rights and privileges as the resolution dealing with the creation of the shares prescribes, and if no provisions are contained in the resolution, then as the Board shall prescribe.
- 9.3. Unless otherwise stated in the resolution approving the increase of the share capital, the new shares shall be subject to those provisions in regard to issue, allotment, alteration of rights, payment of calls, liens, forfeiture, transfer, transmission and other provisions which apply to the shares of the Company.
- 9.4. By resolution of the shareholders in a General Meeting, the Company may, subject to any applicable provisions of the Companies Law:
- 9.4.1. consolidate its existing share capital, or any part thereof, into shares of a larger denomination than the existing shares;
- 9.4.2. sub-divide its share capital, in whole or in part, into shares of a smaller denomination than the nominal value of the existing shares and without prejudice to the foregoing, one or more of the shares so created may be granted any preferred or deferred rights or any special rights with regard to dividends, participation in assets upon winding-up, voting and so forth, subject to the provisions of these Articles;
- 9.4.3. reduce its share capital; or

9.4.4. cancel any shares which on the date of passing of the resolution have not been issued and to reduce its share capital by the amount of such shares.

9.5. In the event that the Company's shareholders shall adopt any of the resolutions described in Article 9.4 above, the Board shall be entitled to prescribe arrangements necessary in order to resolve any difficulty arising or that are likely to arise in connection with such resolutions, including, in the event of a consolidation, it shall be entitled to (i) allot, in contemplation of or subsequent to such consolidation or other action, shares or fractional shares sufficient to preclude or remove fractional share holdings; (ii) redeem, in the case of redeemable shares, and subject to applicable law, such shares or fractional shares sufficient to preclude or remove fractional share holdings; (iii) round up, round down or round to the nearest whole number, any fractional shares resulting from the consolidation or from any other action which may result in fractional shares; or (iv) cause the transfer of fractional shares by certain shareholders to other shareholders thereof so as to most expediently preclude or remove any fractional shareholdings, and, cause the transferees of such fractional shares to pay the transferors thereof the fair value thereof, and the Board is hereby authorized to act in connection with such transfer, as agent for the transferors and transferees of any such fractional shares, with full power of substitution, for the purposes of implementing the provisions of this Article 9.5.

## 10. SHARE CERTIFICATES

10.1. To the extent shares are certificated, share certificates evidencing title to the shares of the Company shall be issued under the seal or rubber stamp of the Company, and together with the signatures of two members of the Board, or one director together with the Chief Executive Officer, the Chief Financial Officer or any other person designated by the Board. The Board shall be entitled to decide that the signatures be effected in any mechanical or electronic form, provided that the signature shall be effected under the supervision of the Board in such manner as it prescribes.

10.2. Every shareholder shall be entitled, free of charge, to one certificate in respect of all the shares of a single class registered in his name in the Register.

10.3. The Board shall not refuse a request by a shareholder to obtain several certificates in place of one certificate, unless such request is, in the opinion of the Board, unreasonable. Where a shareholder has sold or transferred some of his shares, he shall be entitled, free of charge, to receive a certificate in respect of his remaining shares, provided that the previous certificate is delivered to the Company before the issuance of a new certificate.

10.4. Every share certificate shall specify the number of the shares in respect of which such certificate is issued and also the amounts which have been paid up in respect of each share.

10.5. No person shall be recognized by the Company as having any right to a share unless such person is the registered owner of the shares in the Register. The Company shall not be bound by and shall not recognize any right or privilege pursuant to the laws of equity, or a fiduciary relationship or a chose in action, future or partial, in any share, or a right or privilege to a fraction of a share, or (unless these Articles otherwise direct) any other right in respect of a share, except the absolute right to the share as a whole, where same is vested in the owner registered in the Register.

10.6. A share certificate registered in the names of two or more persons shall be delivered to one of the joint holders, and the Company shall not be obliged to issue more than one certificate to all the joint holders of shares and the delivery of such certificate to one of the joint holders shall be deemed to be delivery to all of them.

10.7. If a share certificate should be lost, destroyed or defaced, the Board shall be entitled to issue a new certificate in its place, provided that the certificate is delivered to it and destroyed by it, or it is proved to the satisfaction of the Board that the certificate was lost or destroyed and security has been received to its satisfaction in respect of any possible damages and after payment of such amount as the Board shall prescribe.



## 11. CALLS ON SHARES

- 11.1. The Board may from time to time, in its discretion, make calls on shareholders in respect of amounts which are still unpaid in respect of the shares held by each of the shareholders (including premiums), if the terms of issue do not prescribe that same be paid at fixed times, and every shareholder shall be obliged to pay the amount of the call made on him, at such time and at such place as stipulated by the Board.
- 11.2. In respect of any such call, prior notice of at least fourteen (14) Business Days shall be given, stating to whom the amount called is to be paid, the time for payment and the place thereof, provided that prior to the due date for payment of such call, the Board may, by written notice to the shareholders to which the call was made, cancel the call or extend the date of payment thereof.
- 11.3. If according to the terms of issue of any share, or otherwise, any amount is required to be paid at a fixed time or in installments at fixed times, whether the payment is made on account of the nominal value of the share or in form of a premium, every such payment or every such installment shall be paid as if it was a call duly made by the Board, in respect of which notice was duly given, and all the provisions contained in these Articles in regard to calls shall apply to such amount or to such installment.
- 11.4. Joint holders of a share shall be jointly and severally liable for the payment of all installments and calls due in respect of such share.
- 11.5. In the event that a call or installment due on account of a share is not paid on or before the date fixed for payment thereof, the holder of the share, or the person to whom the share has been allotted, shall be obliged to pay linkage differentials and interest on the amount of the call or the installment, at such rate as shall be determined by the Board, commencing from the date fixed for the payment thereof and until the date of actual payment. The Board may, however, waive the payment of the linkage differentials or the interest or part thereof.
- 11.6. A shareholder shall not be entitled (i) to receive a dividend and (ii) to exercise any right as a shareholder, including but not limited to, the right to attend and vote at a General Meeting and to transfer the shares to another, unless he has paid all the calls payable from time to time and which apply to any of his shares, whether he holds same alone or jointly with another, plus linkage differentials, interest and expenses, if any.
- 11.7. The Board may, if it deems fit, accept payment from a shareholder wishing to advance the payment of all moneys which remain unpaid on account of his shares, or part thereof which are over and above the amounts which have actually been called, and the Board shall be entitled to pay such shareholder linkage differentials and interest in respect of the amounts paid in advance, or that portion thereof which exceeds the amount called for the time being on account of the shares in respect of which the advance payment is made, at such rate as is agreed upon between the Board and the shareholder, with this being in addition to dividends (if any) payable on the paid-up portion of the share in respect of which the advance payment is made. The Board may, at any time, repay the amount paid in advance as aforesaid, in whole or in part, in its sole discretion, without premium or penalty. Nothing in this Article 11.7 shall derogate from the right of the Board to make any call for payment before or after receipt by the Company of any such advance.

## 12. FORFEITURE AND LIEN

- 12.1. If a shareholder fails to make payment of any call or other installment on or before the date fixed for the payment thereof, the Board may, at any time thereafter and for as long as the part of the call or installment remains unpaid, serve on such shareholder a notice demanding that he make payment thereof, together with the linkage differentials and interest at such rate as is specified by the Board and all the expenses incurred by the Company in consequence of such non-payment.
- 12.2. The notice shall specify a further date, which shall be at least fourteen (14) Business Days after the date of the delivery of the notice, and a place or places at which such call or installment is to be paid, together with linkage differentials and interest and expenses as aforesaid. The notice shall further state that, if the amount is not paid on or before the date specified, and at the place mentioned in such notice, the shares in respect of which the call was made, or the installment is due, shall be liable to forfeiture.

- 12.3. If the demands contained in such notice are not complied with the Board may treat the shares in respect of which the notice referred to in Articles 12.1 and 12.2 was given as forfeited. Such forfeiture shall include all dividends, bonus shares and other benefits which have been declared in respect of the forfeited shares which have not actually been paid prior to the forfeiture.
- 12.4. Any share so forfeited or waived shall be deemed to be the property of the Company and the Board shall be entitled, subject to the provisions of these Articles and the Companies Law, to sell, re-allot or otherwise dispose thereof, as it deems fit, whether the amount paid previously in respect of that share is credited, in whole or in part.
- 12.5. The Board may, at any time before any share forfeited as aforesaid is sold or re-allotted or otherwise dispose of, cancel the forfeiture on such conditions as it deems fit.
- 12.6. Any person whose shares have been forfeited shall cease to be a shareholder in respect of the forfeited shares, but shall, nonetheless remain liable for the payment to the Company of all calls, installments, linkage differentials, interest and expenses due on account of or in respect of such shares on the date of forfeiture, in respect of the forfeited shares, together with interest on such amounts reckoned from the date of forfeiture until the date of payment, at such rate as the Board shall from time to time specify. However, such person's liability shall cease after the Company has received all the amounts called in respect of the shares as well as any expenses incurred by the Company relating to collecting the amounts called. The Board shall be entitled to collect the moneys which have been forfeited, or part thereof, as it shall deem fit, but it shall not be obliged to do so.
- 12.7. The provisions of these Articles in regard to forfeiture shall also apply to cases of non-payment of any amount, which, according to the terms of issue of the share, or which under the conditions of allotment the due date for payment of which fell on a fixed date, whether this be on account of the nominal value of the share or in the form of a premium, as if such amount was payable pursuant to a call duly made and notified.
- 12.8. The Company shall have a first and paramount lien over all the shares which have not been fully paid up and which are registered in the name of any shareholder (whether individually or jointly with others) and also over the proceeds of the sale thereof, as security for the debts and obligations of such shareholder to the Company and his contractual engagements with it, either individually or together with others. This right of lien shall apply whether or not the due date for payment of such debts or the fulfillment or performance of such obligations has arrived, and no rights in equity shall be created in respect of any share over which there is a lien as aforesaid. The aforesaid lien shall apply to all dividends or benefits which may be declared, from time to time, on such shares, unless the Board shall decide otherwise.
- 12.9. In order to foreclose on such lien, the Board may sell the shares under lien at such time and in such manner as, it shall deem fit, but no share may be sold unless the period referred to below has elapsed and written notice has been given to the shareholder, his trustee, liquidator, receiver, the executors of his estate, or anyone who acquires a right to shares in consequence of the bankruptcy of a shareholder, as the case may be, stating that the Company intends to sell the shares, if he or they should fail to pay the aforesaid debts, or fail to discharge or fulfill the aforesaid obligations within fourteen (14) Business Days from the date of the delivery of the notice.
- 12.10. The net proceeds of any such sale of shares, as contemplated by Article 12.9 above, after deduction of the expenses of the sale, shall serve for the discharge of the debts of such shareholder or for performance of such shareholder's obligations (including debts, undertakings and contractual engagements the due date for the payment or performance of which has arrived) and the surplus, if any, shall be paid to the shareholder, his trustee, liquidator, receiver, guardians, the executors of his estate, or to his successors-in-title.

- 12.11. In every case of a sale following forfeiture or waiver, or for purposes of executing a lien by exercising all of the powers conferred above, the Board shall be entitled to appoint a person to sign an instrument of transfer of the shares sold, and to arrange for the registration of the name of the buyer in the Register in respect of the shares sold.
- 12.12. An affidavit signed by the Chairman of the Board that a particular share of the Company was forfeited, waived or sold by the Company by virtue of a lien, shall serve as conclusive evidence of the facts contained therein as against any person claiming a right in the share. The purchaser of a share who relies on such affidavit shall not be obliged to investigate whether the sale, re-allotment or transfer, or the amount of consideration and the manner of application of the proceeds of the sale, were lawfully effected, and after his name has been registered in the Register he shall have a full right of title to the share and such right shall not be adversely affected by a defect or invalidity which occurred in the forfeiture, waiver, sale, re-allotment or transfer of the share.

**13. TRANSFER AND TRANSMISSION OF SHARES**

- 13.1. No transfer of shares shall be registered unless a proper instrument of transfer is delivered to the Company or, in the case of shares registered with a transfer agent, delivered to such transfer agent or to such other place specified for this purpose by the Board. Subject to the provisions of these Articles, an instrument of transfer of a share in the Company shall be signed by the transferor and the transferee. The Board may approve other methods of recognizing the transfer of shares in order to facilitate the trading of the Company's shares on the Nasdaq Global Market or on any other stock exchange. The transferor shall be deemed to remain the holder of the share up until the time the name of the transferee is registered in the Register in respect of the transferred share.
- 13.2. Insofar as the circumstances permit, the instrument of transfer of a share shall be substantially in the form set out below, or in any other form that the Board may approve.

I \_\_\_\_\_, I.D. \_\_\_\_\_ of \_\_\_\_\_ (the "**Transferor**"), in consideration for an amount of NIS \_\_\_\_\_ (in words) paid to me by \_\_\_\_\_ I.D. \_\_\_\_\_ of \_\_\_\_\_ (hereinafter: the "**Transferee**"), hereby transfer to the Transferee \_\_\_\_\_ shares of nominal value NIS \_\_\_\_\_ each, marked with the numbers \_\_\_\_\_ to \_\_\_\_\_ (inclusive) of Foamix Pharmaceuticals Ltd., to be held by the Transferee, the acquires of his rights and his successors-in title, under all the same conditions under which I held same prior to the signing of this instrument, and I, the Transferee, hereby agree to accept the aforementioned share in accordance with the above mentioned conditions.

In witness whereof we have hereunto signed this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

Transferor \_\_\_\_\_  
\_\_\_\_\_

Transferee

Witnesses to Signature \_\_\_\_\_

- 13.3. The Company may close the transfer registers and the Register for such period of time as the Board shall deem fit.
- 13.4. Every instrument of transfer shall be submitted to the Office or to such other place as the Board shall prescribe, for purposes of registration, together with the share certificates to be transferred, or if no such certificate was issued, together with a letter of allotment of the shares to be transferred, and such other proof as the Board may demand in regard to the transferor's right of title or his right to transfer the shares. The Board shall have the right to refuse to recognize an assignment of shares until the appropriate securities under the circumstances have been provided, as shall be determined by the Board in a specific case or from time to time in general. Instruments of transfer which serve as the basis for transfers that are registered shall remain with the Company.
- 13.5. Every instrument of transfer shall relate to one class of shares only, unless the Board shall otherwise agree.
- 13.6. The executors of the will or administrator of a deceased shareholder's estate (such shareholder not being one of a joint owners of a share) or, in the absence of an administrator of the estate or executor of the will, the persons specified in Article 13.7 below, shall be entitled to demand that the Company recognize them as owners of rights in the share. The provisions of Article 13.4 above shall apply, mutatis mutandis, also in regard to this Article.

- 13.7. In the case of the death of one of the holders of a share registered in the names of two or more Persons, the Company shall recognize only the surviving owners as Persons having rights in the share. However, the aforementioned shall not be construed as releasing the estate of a deceased joint shareholder from any and all undertakings in respect of the shares. Any person who shall become an owner of shares following the death of a shareholder shall be entitled to be registered as owner of such shares after having presented to an officer of the Company to be designated by the Chief Executive Officer an inheritance order or probate order or order of appointment of an administrator of estate and any other proof as required - if these are sufficient in the opinion of such officer - testifying to such person's right to appear as shareholder in accordance with these Articles, and which shall testify to his title to such shares. The provisions of Article 13.4 above shall apply, *mutatis mutandis*, also in regard to this Article.
- 13.8. The receiver or liquidator of a shareholder who is a company or the trustee in bankruptcy or the official receiver of a shareholder who is bankrupt, upon presenting appropriate proof to the satisfaction of an officer of the Company to be designated by the Chief Executive Officer that such shareholder has the right to appear in this capacity and which testifies to such shareholder's title, may, with the consent of the Board (the Board shall not be obligated to give such consent) be registered as the owner of such shares. Furthermore, such shareholder may assign such shares in accordance with the rules prescribed in these Articles. The provisions of Article 13.4 above shall apply, *mutatis mutandis*, also in regard to this Article.
- 13.9. A person entitled to be registered as a shareholder following assignment pursuant to these Articles shall be entitled, if approved by the Board and to the extent and under the conditions prescribed by the Board, to dividends and any other monies paid in respect of the shares, and shall be entitled to give the Company confirmation of the payments; *however*, he shall not be entitled to be present or to vote at any General Meeting of the Company or, subject to the provisions of these Articles, to make use of any rights of shareholders, until he has been registered as owner of such shares in the Register.

14. **GENERAL MEETING**

- 14.1. A General Meeting shall be held at least once every year, not later than fifteen (15) months after the last General Meeting, at such time and at such place as the Board shall determine. Such General Meeting shall be called an annual meeting, and all other meetings of the shareholders shall be called extraordinary meetings.
- 14.2. The Board may call an extraordinary meeting whenever it sees fit to do so.
- 14.3. The Board shall be obliged to call an extraordinary meeting upon a requisition in writing in accordance with the Companies Law.
- 14.4. The Company shall provide prior notice in regard to the holding of an annual meeting or an extraordinary meeting in accordance with the requirements of these Articles, the Companies Law and the regulations promulgated thereunder. Subject to the provisions of the Companies Law and the regulations promulgated thereunder, in counting the number of days of prior notice given, the day of publication of notice shall not be counted, but the day of the meeting shall be counted. The notice shall specify those items and contain such information as shall be required by the Companies Law, the regulations promulgated thereunder and any other applicable law and regulations.

- 14.5. Any shareholder requesting to add an item to the agenda of a General Meeting (a“**Proposing Shareholder**”) may submit such a request in accordance with the Companies Law (a “**Proposal Request**”). Subject to any requirements under the Law, to be considered timely and thereby be added to such agenda, a Proposal Request must be delivered, either in person or by certified mail, postage prepaid, and received at the Office, (i) in the case of a General Meeting that is an annual meeting, no less than sixty (60) days nor more than one-hundred twenty (120) days prior to the date of the first anniversary of the preceding year’s annual meeting, *provided, however*, that, in the event that the date of the annual meeting is advanced more than thirty (30) days prior to or delayed by more than thirty (30) days after the anniversary of the preceding year’s annual meeting, notice by the Proposing Shareholder, in order to be timely, must be received no earlier than the close of business one-hundred twenty (120) days prior to such annual meeting and no later than the close of business on the later of ninety (90) days prior to such annual meeting or the tenth (10<sup>th</sup>) day following the day on which public announcement of the date of such meeting is first made, and (ii) in the case of a General Meeting that is an extraordinary meeting, no earlier than one-hundred twenty (120) days prior to such extraordinary meeting and no later than the close of business on the later of sixty (60) days prior to such extraordinary meeting or the tenth (10<sup>th</sup>) day following the day on which public announcement of the date of such meeting is first made, subject to applicable law.
- 14.6. Such request to add an item to the agenda of the General Meeting shall also set forth: (i) the name and address of the Proposing Shareholder making the request; (ii) a representation that the Proposing Shareholder is a holder of record of shares of the Company entitled to vote at such meeting and intends to appear in person or by proxy at the meeting; (iii) a description of all arrangements or understandings between the Proposing Shareholder and any other person or persons (naming such person or persons) in connection with the subject which is requested to be included in the agenda; (iv) a description of all Derivative Transactions (as defined below) by the Proposing Shareholder during the previous twelve (12) month period, including the date of the transactions and the class, series and number of securities involved in, and the material economic terms of, such Derivative Transactions; and (v) a declaration that all the information that is required under the Companies Law and any other applicable law to be provided to the Company in connection with such subject, if any, has been provided. Furthermore, the Board, may, in its discretion, to the extent it deems necessary, request that the Proposing Shareholder(s) provide additional information necessary so as to include a subject in the agenda of a General Meeting, as the Board may reasonably require. The information required pursuant to this [Article 14.6](#) shall be updated as of the record date of the General Meeting, five (5) Business Days before the General Meeting, and any adjournment or postponement thereof.
- 14.7. A “**Derivative Transaction**” means any agreement, arrangement, interest or understanding entered into by, or on behalf or for the benefit of, any Proposing Shareholder or any of its affiliates or associates, whether of record or beneficial: (a) the value of which is derived in whole or in part from the value of any class or series of shares or other securities of the Company, (b) which otherwise provides any direct or indirect opportunity to gain or share in any gain derived from a change in the value of securities of the Company, (c) the effect or intent of which is to mitigate loss, manage risk or benefit of security value or price changes, or (d) which provides the right to vote or increase or decrease the voting power of such Proposing Shareholder, or any of its affiliates or associates, with respect to any shares or other securities of the Company, which agreement, arrangement, interest or understanding may include, without limitation, any option, warrant, debt position, note, bond, convertible security, swap, stock appreciation right, short position, profit interest, hedge, right to dividends, voting agreement, performance-related fee or arrangement to borrow or lend shares (whether or not subject to payment, settlement, exercise or conversion in any such class or series), and any proportionate interest of such Proposing Shareholder in the shares or other securities of the Company held by any general or limited partnership, or any limited liability company, of which such Proposing Shareholder is, directly or indirectly, a general partner or managing member.
- 14.8. Subject to [Article 15.9](#) below, in the event that the Company has established that an adjourned meeting shall be held on such date which is later than the date provided for in Section 78(b) of the Companies Law, such later date shall be included in the notice. The Company may add additional places for shareholders to review the full text of the proposed resolutions, including an internet site. The notice shall be provided in the manner prescribed in [Article 29](#). In no event shall the public announcement of an adjournment or postponement of a General Meeting commence a new time period (or extend any time period) for the giving of a shareholder’s notice as described above.

- 14.9. Subject to any requirements under the Companies Law, nominations of persons for election to the Board may only be made at an extraordinary meeting if directors are to be elected at such meeting (a) by or at the direction of the Board, or (b) by any shareholder who is entitled to vote at the meeting and who complies with the notice procedures set forth in Article 14.6 above.

**15. PROCEEDINGS AT GENERAL MEETING**

- 15.1. No business shall be conducted at a General Meeting unless a quorum is present, and no resolution shall be passed unless a quorum is present at the time the resolution is voted on. Except in cases where it is otherwise stipulated, a quorum shall be constituted when there are personally present, or represented by proxy, at least two (2) shareholders who hold, in the aggregate, at least 25% of the voting rights in the Company. A proxy may be deemed to be two (2) or more shareholders pursuant to the number of shareholders he represents.
- 15.2. If within half an hour from the time appointed for the meeting, a quorum is not present, without there being an obligation to notify the shareholders to that effect, the meeting shall be adjourned to the same day in the following week, at the same hour and at the same place or to a later time and date if so specified in the notice of the meeting, unless such day shall fall on a statutory holiday (either in Israel or in the United States), in which case the meeting will be adjourned to the first Business Day afterwards.
- 15.3. If the original meeting was convened upon requisition under Section 63 of the Companies Law, one or more shareholders, present in person or by proxy and holding the number of shares required for making such requisition, shall constitute a quorum at the adjourned meeting, but in any other case any two (2) shareholders present in person or by proxy shall constitute a quorum at the adjourned meeting.
- 15.4. The Chairman of the Board, or any other person appointed for this purpose by the Board, shall preside at every General Meeting. If within fifteen (15) minutes from the time appointed for the meeting, the designated chairman for the meeting shall not be present, the shareholders present at the meeting shall elect one of their number to serve as chairman of the meeting.
- 15.5. Except as required under the Companies Law or these Articles, any resolution of the shareholders shall be adopted by a majority of the voting power present and voting at the applicable General Meeting, in person or by proxy. Every vote at a General Meeting shall be conducted according to the number of votes to which each shareholder is entitled on the basis of the number of ordinary shares held by such shareholder.
- 15.6. Where a poll has been demanded, the chairman of the meeting shall be entitled - but not obliged - to accede to the demand. Where the chairman of the meeting has decided to hold a poll, such poll shall be held in such manner, at such time and at such place as the chairman of the meeting directs, either immediately or after an interval or postponement, or in any other way, and the results of the vote shall be deemed to be the resolution at the meeting at which the poll was demanded. A person demanding a poll may withdraw his demand prior to the poll being held.
- 15.7. A demand for the holding of a poll shall not prevent the continued business of the meeting on all other questions apart of the question in respect of which a poll was demanded.
- 15.8. The announcement by the chairman of the meeting that a resolution has been passed unanimously or by a particular majority, or has been rejected, and a note recorded to that effect in the Company's minute book, shall serve as prima facie proof of such fact, and there shall be no necessity for proving the number of votes or the proportion of votes given for or against the resolution, unless otherwise required under applicable law and regulation.
- 15.9. The chairman of a General Meeting at which a quorum is present may, with the consent of holders of a majority of the voting power represented in person and by proxy and voting on the question of adjournment, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting except business which might lawfully have been transacted at the meeting as originally called. Subject to these Articles, it shall not be necessary to give any notice of an adjournment unless the meeting is adjourned for more than twenty one (21) days, in which case notice thereof shall be given in the manner required for the meeting as originally called. Where a General Meeting has been adjourned without changing its agenda, to a date which is not more than twenty one (21) days, notices shall be given for the new date, as early as possible, and by no later than seventy two (72) hours before the General Meeting.

16. VOTES OF SHAREHOLDERS

- 16.1. The voting rights of every shareholder entitled to vote at a General Meeting shall be as set forth in Article 6.1 of these Articles.
- 16.2. In the case of joint shareholders, the vote of the senior joint holder, given personally or by proxy, shall be accepted, to the exclusion of the vote of the remaining joint shareholders, and for these purposes the senior of the joint shareholders shall be the person amongst the joint holders whose name appears first in the Register.
- 16.3. A shareholder who is an Incapacitated Person may vote solely through his guardian or other person who fulfills the function of such guardian and who was appointed by a court, and any guardian or other person as aforesaid shall be entitled to vote by way of a proxy, or in such manner as the court directs.
- 16.4. Any corporation which is a shareholder of the Company shall be entitled, by way of resolution of its board of directors or another organ which manages said corporation, to appoint such person which it deems fit, whether or not such person is a shareholder of the Company, to act as its representative at any General Meeting of the Company or at a meeting of a class of shares in the Company which such corporation is entitled to attend and to vote thereat, and the appointed as aforesaid shall be entitled, on behalf of the corporation whom he represents, to exercise all of the same powers and authorities which the corporation itself could have exercised had it been a natural person holding shares of the Company.
- 16.5. Every shareholder who is entitled to attend and vote at a General Meeting of the Company shall be entitled to appoint a proxy. A proxy can be appointed by more than one shareholder and vote in different ways on behalf of each principal.
- 16.6. The instrument appointing a proxy shall be in writing signed by the person making the appointment or by his authorized representative, and if the person making the appointment is a corporation, the power of attorney shall be signed in the manner in which the corporation signs on documents which bind it, and a certificate of an attorney with regard to the authority of the signatories to bind the corporation shall be attached thereto. The proxy need not be a shareholder of the Company.
- 16.7. The instrument appointing a proxy, or a copy thereof certified by an attorney, shall be lodged at the Office, or at such other place as the Board shall specify, not less than forty-eight (48) hours prior to the General Meeting at which the proxy intends to vote based on such instrument of proxy. Notwithstanding the above, the chairman of the meeting shall have the right to waive the time requirement provided above with respect to all instruments of proxies and to accept any and all instruments of proxy until the beginning of a General Meeting. A document appointing a proxy shall be valid for every adjourned meeting of the General Meeting to which the document relates.
- 16.8. Every instrument appointing a proxy, whether for a meeting specifically indicated, or otherwise, shall, as far as circumstances permit, be substantially in the following form, or in any other form approved by the Board:

I \_\_\_\_\_ of \_\_\_\_\_ being a shareholder holding shares in Foamix Pharmaceuticals Ltd., hereby appoint Mr. \_\_\_\_\_ of \_\_\_\_\_ or failing him, Mr. \_\_\_\_\_ of \_\_\_\_\_, or failing him, Mr. \_\_\_\_\_ of \_\_\_\_\_, to vote in my name, place and stead at the (ordinary/extraordinary) General Meeting of the Company to be held on the \_\_\_\_ of \_\_\_\_\_ 20\_\_, and at any adjourned meeting thereof.

In witness whereof I have hereto set my hand on the \_\_\_\_ day of \_\_\_\_\_.

- 16.9. No shareholder shall be entitled to vote at a General Meeting unless he has paid all of the calls and all of the amounts due from him, for the time being, in respect of his shares.
- 16.10. A vote given in accordance with the instructions contained in an instrument appointing a proxy shall be valid notwithstanding the death or bankruptcy of the appointer, or the revocation of the proxy, or the transfer of the share in respect of which the vote was given as aforesaid, unless notice in writing of the death, revocation or transfer is received at the Office, or by the chairman of the meeting, prior to such vote.
- 16.11. Subject to the Companies Law, an instrument appointing a proxy shall be deemed revoked (i) upon receipt by the Company or the chairman of the meeting, subsequent to receipt by the Company of such instrument, of written notice signed by the person signing such instrument or by the shareholder appointing such proxy canceling the appointment thereunder (or the authority pursuant to which such instrument was signed) or of an instrument appointing a different proxy, provided such notice of cancellation or instrument appointing a different proxy were so received at the place and within the time for delivery of the instrument revoked thereby as referred to in Article 16.7 hereof, or (ii) if the appointing shareholder is present in person at the meeting for which such instrument of proxy was delivered, upon receipt by the chairman of such meeting of written notice from such shareholder of the revocation of such appointment, or if and when such shareholder votes at such meeting. A vote cast in accordance with an instrument appointing a proxy shall be valid notwithstanding the revocation or purported cancellation of the appointment, or the presence in person or vote of the appointing shareholder at a meeting for which it was rendered, unless such instrument of appointment was deemed revoked in accordance with the foregoing provisions of this Article 16.11 at or prior to the time such vote was cast.

## 17. THE BOARD OF DIRECTORS

- 17.1. Unless otherwise resolved by a resolution of the General Meeting, the prescribed number of directors of the Company shall be between five (5) and nine (9) (including the External Directors), as may be fixed from time to time by the Board. At any time the minimum number of directors (other than the External Directors) shall not fall below three (3). Any director shall be eligible for re-election upon termination of his term of office, subject to applicable law.
- 17.2. Prior to every annual General Meeting of the Company, the Board (or a committee of the Board) may select, via a resolution adopted by a majority of the Board (or such committee), a number of persons to be proposed to the shareholders for election as directors at such annual General Meeting for service until the next annual General Meeting (the “**Nominees**”). Any shareholder entitled under applicable law to propose one or more persons as nominees for election as directors at a General Meeting (each such nominee, an “**Alternate Nominee**”) may make such proposal only if a written notice of such shareholder’s intent to that effect has been given to the Secretary of the Company (or, if there is no such Secretary, the Chief Executive Officer) within the periods set out in Article 14.5 above. Each such notice shall set forth: (a) the name and address of the shareholder who intends to make the nomination and of the Alternate Nominees; (b) a representation that the shareholder is a holder of record of shares of the Company entitled to vote at such meeting (including the number of shares held of record by the shareholder) and intends to appear in person or by proxy at the meeting to nominate the Alternate Nominees; (c) a description of all arrangements or understandings between the shareholder and each Alternate Nominee and any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by the shareholder; (d) the consent of each Alternate Nominee to serve as a director of the Company if so elected and (e) a declaration signed by each Alternate Nominee declaring that there is no limitation under the Companies Law for the appointment of such a nominee and that all of the information that is required under the Companies Law to be provided to the Company in connection with such an appointment has been provided. The Board may refuse to acknowledge the nomination of any person not made in compliance with the foregoing procedure.



- 17.3. The Nominees or Alternate Nominees shall be elected by a resolution at the annual General Meeting at which they are subject to election.
- 17.4. Every director, other than External Directors, shall hold office until the end of the next annual General Meeting following the annual General Meeting at which he was elected, unless his office is vacated in accordance with Articles 17.7 or 18.5 below. If, at an annual General Meeting, no Nominees or Alternate Nominees are proposed by either the Board or shareholders, or if no Nominees or Alternate Nominees are elected, the directors then in office shall continue to hold office until the convening of a General Meeting at which Nominees or Alternate Nominees shall be proposed and elected.
- 17.5. If the office of a director shall be vacated, or if the number of incumbent directors is less than the maximum prescribed by Article 17.1 above, leaving one or more available offices unfilled, the remaining members of the Board shall be entitled to appoint another director in place of each director whose office has become or remains vacated, and such Board-appointed director (or directors) shall hold office until replaced in the manner set out in Article 17.4 above. This Article 17.5 shall not apply to a vacated office of an External Director, which may be filled only in accordance with Article 17.9 below, unless there are two (2) or more External Directors in office at that time in addition to the vacated office.
- 17.6. The directors in their capacity as such shall be entitled to receive remuneration as shall be determined in compliance with the Companies Law and the regulations promulgated thereunder. The conditions (including remuneration) of the terms of office of members of the Board shall be decided by the Board or any committee thereof, but the same shall be valid only if ratified in the manner required under the Companies Law. The remuneration of directors may be fixed as an overall payment or other consideration or as a payment or other consideration in respect of attendance at meetings of the Board, or a combination of both. In addition to his remuneration, each director shall be entitled to be reimbursed, retroactively or in advance, in respect of his reasonable expenses connected with performing his functions and services as a director. Such entitlement shall be determined in accordance with, and shall be subject to, a specific resolution or policy adopted by the Board regarding such matter and in accordance with the requirements of applicable law.
- 17.7. Subject to the provisions of the Companies Law with regard to External Directors and subject to Article 17.4 above and Article 18.5 below, the office of a member of the Board shall be vacated in any one of the following events:
- 17.7.1. if he resigns his office by way of a letter signed by him, lodged at the Office;
- 17.7.2. if he is declared bankrupt;
- 17.7.3. if he becomes insane or unsound of mind;
- 17.7.4. upon his death;
- 17.7.5. if he is prevented by applicable law from serving as a director of the Company;
- 17.7.6. if the Board terminates his office according to Section 231 of the Companies Law;
- 17.7.7. if a court order is given in accordance with Section 233 of the Companies Law;
- 17.7.8. if he is removed from office by a Resolution at a General Meeting of the Company adopted by a majority of the voting power in the Company; or
- 17.7.9. if his period of office has terminated in accordance with the provisions of these Articles.
- 17.8. If the office of a member of the Board should be vacated, the remaining members of the Board shall be entitled to continue to act for all purposes for as long as their number does not fall below the minimum, as prescribed in Article 17.1 above, without limiting their right to fill the vacancy at any time in accordance with Article 17.5 above. Should their number fall below the aforesaid minimum, the directors shall not be entitled to act, except for the appointment of additional directors, or for the purpose of calling a General Meeting for the appointment of additional directors, or for the purpose of calling a General Meeting for the appointment of a new Board.

- 17.9. The office of an External Director shall be vacated and an External Director may be removed and replaced only in accordance with the provisions for vacation of office, removal and appointment of External Directors under the Companies Law.

**18. OTHER PROVISIONS REGARDING DIRECTORS**

- 18.1. Subject to any mandatory provisions of applicable law, a director shall not be disqualified by virtue of his office from holding another office in the Company or in any other company in which the Company is a shareholder or in which it has any other form of interest, or of entering into a contract with the Company, either as seller or buyer or otherwise. Likewise, no contract made by the Company or on its behalf in which a director has any form of interest may be nullified and a director shall not be obliged to account to the Company for any profit deriving from such office, or resulting from such contract, merely by virtue of the fact that he serves as a director or by reason of the fiduciary relationship thereby created, but such director shall be obliged to disclose to the Board the nature of any such interest at the first opportunity.
- 18.2. A general notice to the effect that a director is a shareholder or has any other form of interest in a particular firm or a particular company and that he must be deemed to have an interest in any business with such firm or company shall be deemed to be adequate disclosure for purposes of this Article in relation to such director, and after such general notice has been given, such director shall not be obliged to give special notice in relation to any particular business with such firm or such company.
- 18.3. Subject to the provisions of the Companies Law and these Articles, the Company shall be entitled to enter into a transaction in which an Office Holder of the Company has a personal interest, directly or indirectly, and may enter into any contract or otherwise transact any business with any third party in which contract or business an Office Holder has a personal interest, directly or indirectly.
- 18.4. The Board shall elect one (1) or more of its members to serve as chairman (the ‘**Chairman of the Board**’), *provided* that, subject to the provisions of Section 121(c) of the Companies Law, the Chief Executive Officer of the Company shall not serve as Chairman of the Board. The office of Chairman of the Board shall be vacated in each of the cases mentioned in Articles 17.7 above and Article 18.5 below. The Board may also elect one or more members to serve as Vice Chairman, who shall have such duties and authorities as the Board may assign to him.
- 18.5. Subject to the relevant provisions of the Companies Law, the Company may, in a General Meeting, by a resolution adopted by a majority of the voting power in the Company, dismiss any director prior to the end of his term of office, and the Board shall be entitled, by regular majority, to appoint another individual in his place as a director. The individual so appointed shall hold such office only for that period of time during which the director whom he replaces would have held office. This Article 18.5 shall not apply to External Directors, who shall be appointed and removed in accordance with the Companies Law.
- 18.6. A director shall not be obliged to hold any share in the Company.

**19. PROCEEDINGS OF THE BOARD OF DIRECTORS**

- 19.1. The Board shall convene for a meeting at least once every calendar quarter.
- 19.2. The Board may meet in order to exercise its powers pursuant to Section 92 of the Companies Law, including without limitation to supervise the Company’s affairs, and it may, subject to the provisions of the Companies Law, adjourn its meetings and regulate its proceedings and operations as it deems fit. It may also prescribe the quorum required for the conduct of business. Until otherwise decided, a quorum shall be constituted if a majority of the directors holding office for the time being are present.

- 19.3. Should a director or directors be barred from being present and voting at a meeting of the Board pursuant to Section 278 of the Companies Law, the quorum shall be a majority of the directors entitled to be present and to vote at the meeting of the Board.
- 19.4. Any director, the Chief Executive Officer or the auditor of the Company in the event stipulated in Section 169 of the Companies Law, may, at any time, demand the convening of a meeting of the Board. The Chairman of the Board shall be obliged, on such demand, to call such meeting on the date requested by the director, the Chief Executive Officer or the auditor of the Company soliciting such a meeting, provided that proper notice pursuant to Article 19.5 is given.
- 19.5. Every director shall be entitled to receive notice of meetings of the Board, and such notice may be in writing or by facsimile, or electronic mail, sent to the last address (whether physical or electronic) or facsimile number given by the director for purposes of receiving notices, *provided* that the notice shall be given at least a reasonable amount of time prior to the meeting and in no event less than forty eight (48) hours prior notice, unless the urgency of the matter to be discussed at the meeting reasonably requires a shorter notice period.
- 19.6. Every meeting of the Board at which a quorum is present shall have all the powers and authorities vested for the time being in the Board. Any matter discussed in a meeting and brought up for decision by the Chairman of the Board shall be decided by a simple majority of the directors attending such meeting and voting on such matter. In the case of an equality of votes of the Board, the Chairman of the Board shall not have a second or casting vote, and the proposal shall be deemed to be defeated.
- 19.7. If the Chairman of the Board is not present within thirty (30) minutes after the time appointed for the meeting, the directors present shall elect one of their members to preside at such meeting.
- 19.8. The Board may adopt resolutions, without actually convening a meeting of the Board, provided that all the directors entitled to participate in the meeting and to vote on the subject brought for decision agree thereto. If resolutions are made as stated in this Article 19.8, the Chairman of the Board shall record minutes of the decisions stating the manner of voting of each director on the subjects brought for decision, as well as the fact that all the directors agreed to take the decision without actually convening.
- 19.9. The Board may hold meetings by use of any means of communication, on condition that all participating directors can hear each other at the same time. In the case of a resolution passed by way of a telephone call or any such other means of communication, a copy of the text of the resolution shall be sent, as soon as possible thereafter, to the directors.

20. **GENERAL POWERS OF THE BOARD OF DIRECTORS**

- 20.1. The supervision of the Company's affairs shall be in the hands of the Board, which shall be entitled to exercise all of the powers and authorities and to perform any act and deed which the Company is entitled to exercise and to perform in accordance with these Articles, and in respect of which there is no mandatory provision or requirement in the Companies Law or in the U.S. Rules that such powers and authorities be exercised or performed by the shareholders in a General Meeting or by a committee.
- 20.2. The Board may, from time to time, in its absolute discretion, borrow or secure any amounts of money required by the Company for the conduct of its business. The Board shall be entitled to raise or secure the repayment of an amount obtained by it, in such way and on such conditions and times as it deems fit.
- 20.3. The Board shall be entitled to issue documents of undertaking, such as options, debentures or debenture stock, whether linked or redeemable, convertible debentures or debentures convertible into other securities, or debentures which carry a right to purchase shares or to purchase other securities, or any mortgage, pledge, collateral or other charge over the property of the Company and its undertaking, in whole or in part, whether present or future, including the uncalled share capital or the share capital which has been called but not yet paid. The deeds of undertaking, debentures of various types or other forms of collateral security may be issued at a discount, at a premium or otherwise and with such preferential or deferred or other rights, as the Board shall, from time to time, decide.

**21. BOARD COMMITTEES**

- 21.1. The Board may, as it deems fit and subject to any applicable law, delegate to a committee certain of its powers and authorities, in whole or in part, as appropriate. The curtailment or revocation of the powers and authorities of a committee by the Board shall not invalidate a prior act of such committee or an act taken in accordance with its instructions, which would have been valid had the powers and authorities of the committee not been altered or revoked by the Board. Subject to applicable law, a committee may be comprised of one or more directors, and it may comprise persons who are not directors if it is appointed solely for the purpose of advising the Board and is not delegated any of Board's powers or authorities.
- 21.2. The meetings and proceedings of every such committee which is comprised of two (2) or more members shall be conducted in accordance with the provisions contained in these Articles in regard to the conduct of meetings and proceedings of the Board to the extent that the same are suitable for such committee, and so long as no provisions have been adopted in replacement thereof by the Board.

**22. RATIFICATION OF ACTIONS**

- 22.1. Subject to the Companies Law, all acts taken in good faith by the Board or a committee or by an individual acting as a member thereof shall be valid even if it is subsequently discovered that there was a defect in the appointment of the Board, the committee or the member, as the case may be, or that the members, or one of them, was or were disqualified from being appointed as a director(s) or to a committee.
- 22.2. The Board or any committee may ratify any act the performance of which at the time of the ratification was within the scope of the authority of the Board or the relevant committee. The General Meeting shall be entitled to ratify any act taken by the Board or any committee without authority or which was tainted by some other defect. From the time of the ratification, every act ratified as aforesaid, shall be treated as though lawfully performed from the outset.

**23. SIGNING POWERS**

- 23.1. Subject to any other resolution on the subject passed by the Board, the Company shall be bound only pursuant to a document in writing bearing its seal or its rubber stamp or its printed name, and the signature of whomever may be authorized by the Board, which shall be entitled to empower any person, either alone or jointly with another, even if he is not a shareholder or a director, to sign and act in the name and on behalf of the Company.
- 23.2. The Board shall be entitled to prescribe separate signing power in regard to different businesses of the Company and in respect of the limit of the amounts in respect of which various persons shall be authorized to sign.

**24. CHIEF EXECUTIVE OFFICER**

- 24.1. The Board shall, from time to time, appoint a Chief Executive Officer and subject to the provisions of the Companies Law delineate his powers and authorities and his remuneration. Subject to any contract between the Chief Executive Officer and the Company, the Board may dismiss him or replace him at any time it deems fit.
- 24.2. A Chief Executive Officer need not be a director or shareholder. Subject to the provisions of any contract between the Chief Executive Officer and the Company, if the Chief Executive Officer is also a director, all of the same provisions with regard to appointment, resignation and removal from office shall apply to the Chief Executive Officer in his capacity as a director, as apply to the Company's other directors.
- 24.3. The Board shall be entitled from time to time to delegate to the Chief Executive Officer for the time being such of the powers it has pursuant to these Articles as it deems appropriate. The Board shall be entitled to grant such powers for such period, for such purposes, on such conditions and with such restrictions as it deems appropriate, and it shall be entitled to grant such powers without renouncing the powers and authorities of the Board in such regard. The Board may revoke, annul and alter such delegated powers and authorities, in whole or in part, at any time.

24.4. Subject to the provisions of any applicable law, the remuneration of the Chief Executive Officer shall be fixed from time to time by the Board (and, so long as required by the Companies Law, shall be approved by the Compensation Committee and by the shareholders unless exempted from shareholders' approval) and such remuneration may be in the form of a fixed salary or commissions or a participation in profits, or combination thereof, or in any other manner which may be decided by the Board and approved according to this Article 24.4.

**25. SECRETARY, OFFICE-HOLDERS, CLERKS AND REPRESENTATIVES**

25.1. The Board shall be entitled, from time to time, to appoint, or to delegate to the Chief Executive Officer, either alone or together with other persons designated by the Board, the ability to appoint Office Holders (other than directors), a Secretary for the Company, employees and agents to such permanent, temporary or special positions, and to specify and change their titles, authorities and duties, and may set, or delegate to the Chief Executive Officer, either alone or together with other persons designated by the Board, the ability to set salaries, bonuses and other compensation of any employee or agent who is not an Office Holder. Salaries, bonuses and compensation of Office Holders who are not directors shall be determined and approved by the Chief Executive Officer, or in such other manner as may be required from time to time under the Companies Law. The Board, or the Chief Executive Officer, either alone or together with other persons designated by the Board (in the case of any Office Holder, employee or agent appointed by the Board), shall be entitled at any time, in its, his or their (as applicable) sole and absolute discretion, to terminate the services of one of more of the foregoing persons (in the case of a director, however, subject to compliance with Article 18.5 above), subject to any other requirements under applicable law.

25.2. The Board and the Chief Executive Officer may from time to time and at any time, subject to their powers under these Articles and the Companies Law, empower any person to serve as representative of the Company for such purposes and with such powers and authorities, instructions and discretions for such period and subject to such conditions as the Board or the Chief Executive Officer, as the case may be, shall deem appropriate. The Board or Chief Executive Officer may grant such person, inter alia, the power to further delegate the authority, powers and discretions vested in him, in whole or in part. The Board or the Chief Executive Officer, as the case may be, may revoke, annul, vary or change any such power or authority, or all such powers or authorities collectively.

**26. DIVIDENDS, BONUS SHARES, FUNDS AND CAPITALIZATION OF FUNDS AND PROFITS**

26.1. Unless otherwise permitted by the Companies Law, no dividends shall be paid other than out of the Company's profits available for distribution as set forth in the Companies Law. The Board may decide on the payment of a dividend or on the distribution of bonus shares. A dividend in cash or bonus shares shall be paid or distributed, as the case may be, equally to the holders of the ordinary shares registered in the Register, pro rata to the nominal amount of capital paid up or credited as paid up on par value of the shares, without reference to any premium which may have been paid thereon. However, whenever the rights attached to any shares or the terms of issue of the shares do not provide otherwise, an amount paid on account of a share prior to the payment thereof having been called, or prior to the due date for payment thereof, and on which the Company is paying interest, shall not be taken into account for purposes of this Article as an amount paid-up on account of the share.

26.2. Unless other instructions are given, it shall be permissible to pay any dividend by way of a check or payment order to be sent by post to the registered address of the shareholder or the person entitled thereto, or in the case of joint shareholders being registered, to the shareholder whose name appears first in the Register in relation to the joint shareholding. Every such check shall be made in favor of the person to whom it is sent. A receipt by the person whose name, on the date of declaration of the dividend, was registered in the Register as the owner of the shares, or in the case of joint holders, by one of the joint holders, shall serve as a discharge with regard to all the payments made in connection with such share.

- 26.3. The Board shall be entitled to invest any dividend which has not been claimed for a period of one (1) year after having been declared, or to make use thereof in any other way for the benefit of the Company until such time as it is claimed. A dividend or other beneficial rights in respect of shares shall not bear interest, and the Company shall not be obliged to pay interest or linkage in respect of an unclaimed dividend. The payment by the Board of any unclaimed dividend into a separate account shall not make the Company a trustee in respect thereof, and any dividend unclaimed after a period of seven (7) years from the date of declaration of such dividend shall be forfeited and shall revert to the Company, *provided, however*, that the Board may, at its discretion, cause the Company to pay any such dividend, or any part thereof, to a person who would have been entitled thereto had the same not reverted to the Company.
- 26.4. Unless otherwise specified in the terms of issue of shares or securities convertible into, or which grant a right to purchase, shares, any shares that are fully paid-up or credited as paid-up shall at any time confer on their holders the right to participate in the full dividends and in any other distribution for which the determining date for the right to receive the same is the date at which the aforesaid shares were fully paid-up or credited as fully paid-up, as the case may be, or subsequent to such date.
- 26.5. The Board shall be entitled to deduct from any dividend or other beneficial rights, all amounts of money which the holder of the share in respect of which the dividend is payable or in respect of which the other beneficial rights were given, may owe to the Company in respect of such share, whether or not the due date for payment thereof has arrived. The Board shall be entitled to retain any dividend or bonus shares or other beneficial rights in respect of a share in relation to which the Company has a lien, and to utilize any such amount or the proceeds received from the sale of any bonus shares or other beneficial rights, for the discharge of the debts or liabilities in respect of which the Company has a lien.
- 26.6. The Board may decide that a dividend is to be paid, in whole or in part, by way of a distribution of assets of the Company in kind, including by way of debentures of the Company, or shares or debentures of any other company, or in any other way.
- 26.7. The Board may decide that any portion of the amounts standing for the time being to the credit of any capital fund (including a fund created as a result of a revaluation of the assets of the Company), or which are held by the Company as profits available for distribution, shall be capitalized subject to and in accordance with the provisions of the Companies Law and of these Articles, and serve for the payment up in full (either at par or with a premium as prescribed by the Company) of shares which have not yet been issued or of debentures of the Company, which shall then be allotted and distributed amongst the shareholders as fully paid-up shares or debentures, pro rata to each shareholder's entitlement under these Articles.
- 26.8. In every case that the Company issues bonus shares by way of a capitalization of profits or funds at a time at which securities issued by the Company are in circulation and confer on the holders thereof rights to convert the same into shares in the share capital of the Company, or options to purchase shares in the share capital of the Company (such rights of conversion or options shall henceforth be referred to as the "**Rights**"), the Board shall be entitled (in a case that the Rights or part thereof shall not be otherwise adjusted in accordance with the terms of their issue) to transfer to a special fund designated for the distribution of bonus shares in the future (to be called by any name that the Board may decide on and which shall henceforth be referred to as the "**Special Fund**") an amount equivalent to the nominal amount of the share capital to which some or all of the Rights holders would have been entitled as a result of the issue of bonus shares, had they exercised their Rights prior to the determining date for the right to receive bonus shares, including rights to fractions of bonus shares, and in the case of a second or additional distribution of bonus shares in respect of which the Company acts pursuant to this Article, including entitlement stemming from a previous distribution of bonus shares.

- 26.9. In the case of the allotment of shares by the Company as a consequence of the exercise of entitlement by the owners of shares in those cases in which the Board has made a transfer to the Special Fund in respect of the Rights pursuant to Article 26.8 above, the Board shall allot to each such shareholder, in addition to the shares to which he is entitled by virtue of having exercised his rights, such number of fully paid-up shares the nominal value of which is equivalent to the amount transferred to the Special Fund in respect of his rights, by way of a capitalization to be effected by the Board of an appropriate amount out of the Special Fund. The Board shall be entitled to decide on the manner of dealing with rights to fractions of shares in its sole discretion.
- 26.10. If after any transfer to the Special Fund has been made the Rights should lapse, or the period should end for the exercise of Rights in respect of which the transfer was effected without such Rights being exercised, then any amount which was transferred to the Special Fund in respect of the aforesaid unexercised Rights shall be released from the Special Fund, and the Company may deal with the amount so released in any manner it would have been entitled to deal therewith had such amount not been transferred to the Special Fund.
- 26.11. For the implementation of any resolution regarding a distribution of shares or debentures by way of a capitalization of profits as aforesaid, the Board may:
- 26.11.1. Resolve any difficulty which arises or may arise in regard to the distribution in such manner as it deems fit and may take all of the steps that it deems appropriate in order to overcome such difficulty.
- 26.11.2. Issue certificates in respect of fractions of shares, or decide that fractions of less than an amount to be decided by the Board shall not be taken into account for purposes of adjusting the rights of the shareholders or may sell the fractions of shares and pay the net proceeds to the persons entitled thereto.
- 26.11.3. Sign, or appoint a person to sign, on behalf of the shareholders on any contract or other document which may be required for purposes of giving effect to the distribution, and, in particular, shall be entitled to sign or appoint a person who shall be entitled to appoint and submit a contract as referred to in Section 291 of the Companies Law.
- 26.11.4. Make any arrangement or other scheme which is required in the opinion of the Board in order to facilitate the distribution.
- 26.12. The Board shall be entitled, as it deems appropriate and expedient, to appoint trustees or nominees for those registered shareholders who have failed to notify the Company of a change of their address and who have not applied to the Company in order to receive dividends, shares or debentures out of capital, or other benefits during the aforesaid period. Such trustees or nominees shall be appointed for the use, collection or receipt of dividends, shares or debentures out of capital and rights to subscribe for shares which have not yet been issued and which are offered to the shareholders but they shall not be entitled to transfer the shares in respect of which they were appointed, or to vote on the basis of holding such shares. In all of the terms and conditions governing such trusts and the appointment of such nominees it shall be stipulated by the Company that upon the first demand by a beneficial holder of a share being held by the trustee or nominee, such trustee or nominee shall be obliged to return to such shareholder the share in question and all of those rights held by it on the shareholder's behalf (all as the case may be). Any act or arrangement effected by any such nominees or trustee and any agreement between the Board and a nominee or trustee shall be valid and binding in all respects.

## 27. COMPANY RECORDS AND REGISTERS

- 27.1. The Board shall comply with all the provisions of the Companies Law in regard to the recording of charges and the keeping and maintaining of a register of directors, register of shareholders and register of charges.
- 27.2. Any book, register and record that the Company is obliged to keep in accordance with the Companies Law or pursuant to these Articles shall be recorded in a regular book, or by digital, electronic or other means, as the Board shall decide.

- 27.3. Subject to and in accordance with the provisions of Sections 138 and 139 of the Companies Law, the Company may cause supplementary registers to be kept in any place outside Israel as the Board may deem fit, and, subject to all applicable requirements of the Companies Law, the Board may from time to time adopt such rules and procedures as it may deem fit in connection with the keeping of such supplementary registers.

**28. BOOKS OF ACCOUNT**

- 28.1. The Board shall keep proper books of account in accordance with the provisions of the Companies Law. The books of account shall be kept at the Office, or at such other place or places as the Board shall deem appropriate, and shall at all times be open to the inspection of members of the Board. A shareholder of the Company who is not a member of the Board shall not have the right to inspect any books or accounts or documents of the Company, unless such right has been expressly granted to him by the Companies Law, or if he has been permitted to do so by the Board or by the shareholders based on a resolution adopted at a General Meeting.
- 28.2. At least once each year the accounts of the Company and the correctness of the statement of income and the balance sheet shall be audited and confirmed by an independent auditor.
- 28.3. The Company shall, in an annual General Meeting, appoint an independent auditor who shall hold such position until the next annual General Meeting, and his appointment, remuneration and rights and duties shall be subject to the provisions of the Companies Law, *provided, however*, that in exercising its authority to fix the remuneration of the auditor, the shareholders in an annual General Meeting may, by a resolution, act (and in the absence of any action in connection therewith shall be deemed to have so acted) to authorize the Board to fix such remuneration subject to such criteria or standards, if any, as may be provided in such resolution, and if no such criteria or standards are so provided, such remuneration shall be fixed in an amount commensurate with both the volume and nature of the services rendered by the auditor. By an act appointing such auditor, the Company may appoint the auditor to serve for a period of up to the end of completion of the audit of the yearly financial statements for the three (3) year period then ended.
- 28.4. The auditor shall be entitled to receive notices of every General Meeting of the Company and to attend such meetings and to express his opinions on all matters pertaining to his function as the auditor of the Company.
- 28.5. Subject to the provisions of the Companies Law and the U.S. Rules, any act carried out by the auditor of the Company shall be valid as against any person doing business in good faith with the Company, notwithstanding any defect in the appointment or qualification of the auditor.
- 28.6. For as long as the Company is a public company, as defined in the Companies Law, it shall appoint an internal auditor possessing the authorities set forth in the Companies Law. The internal auditor of the Company shall present all of its proposed work plans to the audit committee of the Board, which shall have the authority to approve them, subject to any modifications in its discretion.

**29. NOTICES**

- 29.1. The Company may serve any written notice or other document on a shareholder by way of delivery by hand, by facsimile transmission or by dispatch by prepaid registered mail to his address as recorded in the Register, or if there is no such recorded address, to the address given by him to the Company for the sending of notices to him. Notwithstanding the foregoing or any other provision to the contrary contained herein, notices or any other information or documents required to be delivered to a shareholder shall be deemed to have been duly delivered if submitted, published, filed or lodged in any manner prescribed by applicable law. With respect to the manner of providing such notices or other disclosures, the Company may distinguish between the shareholders listed on its regular Registry and those listed in any "additional registry", as defined in Section 138(a) of the Companies Law, administered by a transfer agent or stock exchange registration company.



- 29.2. Any shareholder may serve any written notice or other document on the Company by way of delivery by hand at the Office, by facsimile or email transmission to the Company or by dispatch by prepaid registered mail to the Company at the Office.
- 29.3. Any notice or document which is delivered or sent to a shareholder in accordance with these Articles shall be deemed to have been duly delivered and sent in respect of the shares held by him (whether in respect of shares held by him alone or jointly with others), notwithstanding the fact that such shareholder has died or been declared bankrupt at such time (whether or not the Company knew of his death or bankruptcy), and shall be deemed to be sufficient delivery or dispatch to heirs, trustees, administrators or transferees and any other persons (if any) who have a right in the shares.
- 29.4. Any such notice or other document shall be deemed to have been served:
- 29.4.1. in the case of mailing, forty eight (48) hours after it has been posted, or when actually received by the addressee if sooner than 48 hours after it has been posted;
  - 29.4.2. in the case of overnight air courier, on the next day following the day sent, with receipt confirmed by the courier, or when actually received by the addressee if sooner;
  - 29.4.3. in the case of personal delivery, when actually tendered in person to such shareholder;
  - 29.4.4. in the case of facsimile or other electronic transmission (including email), the next day following the date on which the sender receives automatic electronic confirmation by the recipient's facsimile machine or computer or other device that such notice was received by the addressee; or
  - 29.4.5. in the case a notice is, in fact, received by the addressee, when received, notwithstanding that it was defectively addressed or failed, in some other respect, to comply with the provisions of this Article 29.4.
- 29.5. Any shareholder whose address is not described in the Register, and who shall not have designated in writing an address for the receipt of notices, shall not be entitled to receive any notice from the Company. In the case of joint holders of a share, the Company shall be entitled to deliver a notice by dispatch to the joint holder whose name stands first in the Register in respect of such share.
- 29.6. Whenever it is necessary to give notice of a particular number of days or a notice for another period, the day of delivery shall be counted in the number of calendar days or the period, unless otherwise specified.
- 29.7. Notwithstanding anything to the contrary contained herein, notice by the Company of a General Meeting, containing the information required to be set forth in such notice under these Articles, which is published, within the time otherwise required for giving notice of such meeting, in:
- 29.7.1. at least two daily newspapers in the State of Israel shall be deemed to be notice of such meeting duly given, for the purposes of these Articles, to any shareholder whose address as registered in the Register (or as designated in writing for the receipt of notices and other documents) is located in the State of Israel; and
  - 29.7.2. one daily newspaper in New York, NY, United States, and in one international wire service shall be deemed to be notice of such meeting duly given, for the purposes of these Articles, to any shareholder whose address as registered in the Register (or as designated in writing for the receipt of notices and other documents) is located outside the State of Israel.

### 30. INSURANCE, INDEMNITY AND EXCULPATION

- 30.1. Subject to the provisions of the Companies Law, the Company shall be entitled to enter into a contract to insure all or part of the liability of an Office Holder of the Company, imposed on him in consequence of an act which he has performed by virtue of being an Office Holder, in respect of any of the following:
- 30.1.1. The breach of a duty of care to the Company or to any other person;

- 30.1.2. The breach of a fiduciary duty to the Company, provided that the Office Holder acted in good faith and had reasonable grounds for believing that the action would not adversely affect the best interests of the Company;
  - 30.1.3. A pecuniary liability imposed on him in favor of any other person in respect of an act done in his capacity as an Office Holder.
  - 30.1.4. Any other circumstances arising under the law with respect to which the Company may, or will be able to, insure an Office Holder.
- 30.2. Subject to the provisions of the Companies Law, the Company shall be entitled to indemnify an Office Holder of the Company, to the fullest extent permitted by applicable law. Subject to the provisions of the Companies Law, including the receipt of all approvals as required therein or under any applicable law, the Company may resolve retroactively to indemnify an Office Holder with respect to the following liabilities and expenses, *provided*, in each of the below cases, that such liabilities or expenses were incurred by such Office Holder in such Office Holder's capacity as an Office Holder of the Company:
- 30.2.1. a monetary liability imposed on him in favor of a third party in any judgment, including any settlement confirmed as judgment and an arbitrator's award which has been confirmed by the court, in respect of an act performed by the Office Holder by virtue of the Office Holder being an Office Holder of the Company; *provided, however*, that: (a) any indemnification undertaking with respect to the foregoing shall be limited (i) to events which, in the opinion of the Board, are foreseeable in light of the Company's actual operations at the time of the granting of the indemnification undertaking, and (ii) to an amount or by criteria determined by the Board to be reasonable in the given circumstances; and (b) the events that in the opinion of the Board are foreseeable in light of the Company's actual operations at the time of the granting of the indemnification undertaking are listed in the indemnification undertaking together with the amount or criteria determined by the Board to be reasonable in the given circumstances;
  - 30.2.2. reasonable litigation expenses, including legal fees, paid for by the Office Holder, in an investigation or proceeding conducted against such Office Holder by an agency authorized to conduct such investigation or proceeding, and which investigation or proceeding: (i) concluded without the filing of an indictment (as defined in the Companies Law) against such Office Holder and without a monetary liability having been imposed against such Office Holder in lieu of a criminal proceeding (as defined in the Companies Law); (ii) concluded without the filing of an indictment against such Office Holder but with a monetary liability having been imposed against such Office Holder in lieu of a criminal proceeding for an offense that does not require proof of criminal intent; or (iii) involves financial sanction;
  - 30.2.3. reasonable litigation expenses, including legal fees, paid for by the Office Holder, or which the Office Holder is obligated to pay under a court order, in a proceeding brought against the Office Holder by the Company, or on its behalf, or by a third party, or in a criminal proceeding in which the Office Holder is found innocent, or in a criminal proceeding in which the Office Holder was convicted of an offense that does not require proof of criminal intent; and
  - 30.2.4. any other event, occurrence or circumstances in respect of which the Company may lawfully indemnify an Office Holder of the Company (including, without limitation, indemnification with respect to the matters referred to under Section 56h(b)(1) of the Israeli Securities Law 5728-1968, as amended).
- 30.3. The Company may undertake to indemnify an Office Holder as aforesaid: (i) prospectively, provided that the undertaking is limited to categories of events which in the opinion of the Board can be foreseen when the undertaking to indemnify is given, and to an amount set by the Board as reasonable under the circumstances, and (ii) retroactively.

- 30.4. Subject to the provisions of the Companies Law including the receipt of all approvals as required therein or under any applicable law, the Company may, to the maximum extent permitted by the Companies Law, exempt and release, in advance, any Office Holder from any liability for damages arising out of a breach of a duty of care towards the Company.
- 30.5. Any amendment to the Companies Law adversely affecting the right of any Office Holder to be indemnified or insured pursuant to Articles 30.1, 30.2 and 30.4 and any amendments to such Articles shall be prospective in effect, and shall not affect the Company's obligation or ability to indemnify or insure an Office Holder for any act or omission occurring prior to such amendment, unless otherwise provided by applicable law.
- 30.6. The provisions of Articles 30.1, 30.2 and 30.4 are not intended, and shall not be interpreted so as to restrict the Company, in any manner, in respect of the procurement of insurance or in respect of indemnification or exculpation, in favor of any person who is not an Office Holder, including, without limitation, any employee, agent, consultant or contractor of the Company who is not an Office Holder; or any Office Holder to the extent that such insurance and/or indemnification is not specifically prohibited under law.

**31. WINDING-UP AND REORGANIZATION**

- 31.1. Should the Company be wound up and assets of the Company will remain available for distribution after covering all the Company's outstanding liabilities, such assets shall be distributed among the shareholders pro rata to the nominal value of the paid-up capital on the shares held by each of them.
- 31.2. Upon the sale of the Company's assets, the Board may, or in the case of a liquidation, the liquidators may, if authorized to do so by a resolution of the Company, accept fully or partly paid-up shares, or securities of another company, Israeli or non-Israeli, whether in existence at such time or about to be formed, in order to purchase the property of the Company, or part thereof, and to the extent permitted under the Companies Law, the Board may (or in the case of a liquidation, the liquidators may) distribute the aforesaid shares or securities or any other property of the Company among the shareholders without realizing the same, or may deposit the same in the hands of trustees for the shareholders, and the General Meeting by a resolution may decide, subject to the provisions of the Companies Law, on the distribution or allotment of cash, shares or other securities, or the property of the Company and on the valuation of the aforesaid securities or property at such price and in such manner as the shareholders at such General Meeting shall decide, and all of the shareholders shall be obliged to accept any valuation or distribution determined as aforesaid and to waive their rights in this regard, except, in a case in which the Company is about to be wound-up and is in the process of liquidation, for those legal rights (if any) which, according to the provisions of the Companies Law, may not be changed or modified.

**32. TRANSLATION AND BINDING EFFECT**

These Articles may be translated into Hebrew and/or into other languages. Notwithstanding the aforesaid, the English version of these Articles shall be binding upon the Company, its shareholders and/or any third party and shall supersede any translation thereof.

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER**

I, David Domzalski, certify that:

1. I have reviewed this report on Form 10-Q of Foamix Pharmaceuticals Ltd.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions), based on our most recent evaluation of internal control over financial reporting:
  - (a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 7, 2018

By:           /s/ David Domzalski            
David Domzalski  
Chief Executive Officer

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**CERTIFICATION OF CHIEF FINANCIAL OFFICER**

I, Ilan Hadar, certify that:

1. I have reviewed this report on Form 10-Q of Foamix Pharmaceuticals Ltd.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions), based on our most recent evaluation of internal control over financial reporting:
  - (a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 7, 2018

By:           /s/ Ilan Hadar            
Ilan Hadar  
Chief Financial Officer

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**CERTIFICATION OF CEO PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of Foamix Pharmaceuticals Ltd. (the **Company**) for the period ended September 30, 2018 as filed with the Securities and Exchange Commission on the date hereof (the **Report**), David Domzalski, as Chief Executive Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 7, 2018

By:           /s/ David Domzalski            
David Domzalski  
Chief Executive Officer

This certification accompanies the Report pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not, except to the extent required by the Sarbanes-Oxley Act of 2002, be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.

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**CERTIFICATION OF CFO PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report on Form 10-Q of Foamix Pharmaceuticals Ltd. (the **Company**) for the period ended September 30, 2018 as filed with the Securities and Exchange Commission on the date hereof (the **Report**), Ilan Hadar, as Chief Financial Officer of the Company, hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 7, 2018

By:           /s/ Ilan Hadar            
Ilan Hadar  
Chief Financial Officer

This certification accompanies the Report pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not, except to the extent required by the Sarbanes-Oxley Act of 2002, be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.

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