

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

**FORM 8-K
CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of The Securities Exchange Act of 1934
Date of Report (Date of earliest event reported): March 9, 2020**

**FOAMIX PHARMACEUTICALS LTD.
(Translation of registrant's name into English)**

Israel
(State or other jurisdiction of incorporation)

001-36621
(Commission File Number)

N/A
(IRS Employer Identification No.)

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

7670402
(Zip Code)

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

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class:
Ordinary shares, par value NIS 0.16 per share

Name of Each Exchange on Which Registered:
Nasdaq Global Select Market

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class Trading
Symbol(s) Name of each exchange on
which registered Ordinary shares, par value NIS 0.16 per share FOMX Nasdaq Global Select Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

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.

Introductory Note

On March 9, 2020 (the “Closing Date”), pursuant to the Agreement and Plan of Merger, dated as of November 10, 2019, as amended on December 4, 2019 (as amended, the “Merger Agreement”), by and among Menlo Therapeutics Inc. (“Menlo”), Foamix Pharmaceuticals Ltd., a company organized under the laws of Israel (“Foamix” or the “Company”), and Giants Merger Subsidiary Ltd., a direct, wholly owned subsidiary of Menlo (“Merger Sub”), Merger Sub merged with and into the Company, with the Company surviving as a wholly owned subsidiary of Menlo (the “Merger”).

Item 1.01. Entry into a Material Definitive Agreement

Credit Facility

As previously disclosed in the Current Report on 8-K filed by the Company with the Securities and Exchange Commission (the “SEC”) on November 12, 2019, in connection with entering into the Merger Agreement, Foamix also entered into a Waiver and Consent to Credit Agreement and Guaranty (the “Waiver Agreement”) among the Company, Foamix Pharmaceuticals Inc., a Delaware corporation (the “Borrower”), the lenders party thereto, and Perceptive Credit Holdings II, LP, as administrative agent for the lenders (the “Administrative Agent”), relating to the Credit Agreement and Guaranty, dated as of July 29, 2019 (the “Credit Agreement”). Pursuant to the Waiver Agreement, the lenders under the Credit Agreement, among other things, (i) granted consent to the Company’s entry into the Merger Agreement and waived events of default under the Credit Agreement that would result therefrom and (ii) granted consent to the consummation of the transactions set forth under the Merger Agreement and waived certain events of default under the Credit Agreement that would result therefrom, subject in each case to satisfaction of certain closing conditions as specified therein (including amendments to the Credit Agreement and other applicable loan documents so as to ensure that Menlo becomes a guarantor and an obligor under the Credit Agreement and grants a first priority security interest in substantially all of Menlo’s assets).

Accordingly, on the Closing Date, the Company, Menlo, the Borrower, the Administrative Agent and the lenders party thereto (the “Lenders”) amended and restated the existing Credit Agreement pursuant to that certain Amended and Restated Credit Agreement and Guaranty (the “Amended Credit Agreement”). As a result of entering into the Amended Credit Agreement, Menlo (along with the Company and the Borrower) is an obligor and a guarantor of the Borrower’s indebtedness obligations under the Amended Credit Agreement and in that regard has granted a first-priority lien on substantially all of its assets (subject to limited exceptions).

The Amended Credit Agreement provides a senior secured delayed draw term loan facility (the “Credit Facility”) to the Borrower in an aggregate principal amount of up to \$50 million, of which \$35 million remains outstanding as of the Closing Date. The Borrower will be permitted to borrow an additional \$15 million before September 30, 2020 provided that the Borrower achieves certain revenue targets set forth in the Amended Credit Agreement. The Credit Facility will mature on July 29, 2024 (the “Maturity Date”).

Interest Rate

As set forth in the Amended Credit Agreement, any outstanding principal amount of the loans accrue interest monthly at a rate equal to the sum of (i) 8.25% (subject to increase in accordance with the terms of the Amended Credit Agreement) (the “Applicable Margin”) plus (ii) the greater of (x) the one-month LIBOR and (y) two and three-quarters percent (2.75%).

No scheduled repayments of the principal amount outstanding under the Amended Credit Agreement are required to be made prior to July 2023. Thereafter, on each payment date prior to the scheduled Maturity Date, the Borrower is required to make a payment on the loans in an amount equal to one and one half percent (1.5%) of the aggregate principal amount of the loans outstanding on July 29, 2023.

Representations, Warranties, Covenants and Events of Default

The Amended Credit Agreement contains certain representations and warranties, affirmative covenants, negative covenants, financial covenants, and conditions that are customarily required for similar financings. The negative covenants, among other things and subject to certain exceptions contained in the Amended Credit Agreement, include limitations on the ability of each of Menlo, Foamix, the Borrower, and the Subsidiary Guarantors regarding incurring additional indebtedness, granting liens, entering into mergers or acquisitions, making investments, paying dividends and entering into transactions with affiliates. In addition, Menlo and its subsidiaries (including the Company) on a consolidated basis must (i) at all times maintain a minimum aggregate cash balance of \$2.5 million and (ii) as of the last day of each fiscal quarter commencing on the fiscal quarter ending September 30, 2020, receive a minimum net revenue for the trailing 12-month period in amounts set forth in the Amended Credit Agreement, which range from \$10.5 million for the fiscal quarter ending September 30, 2020 to \$109.5 million for the fiscal quarter ending June 30, 2024.

The Amended Credit Agreement also contains certain customary Events of Default which include, among others, non-payment of principal, interest, or fees, violation of covenants, inaccuracy of representations and warranties, bankruptcy and insolvency events, material judgments, cross-defaults to material contracts, certain regulatory-related events and events constituting a Change of Control (as defined in the Amended Credit Agreement). The occurrence of an Event of Default could result in, among other things, the declaration that all outstanding principal and interest under the loans are immediately due and payable in whole or in part.

Other Related Matters

The foregoing summary of the Amended Credit Agreement does not purport to be complete and is qualified in its entirety by reference to the Amended Credit Agreement, a copy of which will be filed as an exhibit to Menlo’s Quarterly Report on Form 10-Q for the quarter ending March 31, 2020.

The representations, warranties, and covenants contained in the Amended Credit Agreement and related documentation were made solely for purposes of such documents and as of specific dates, were made solely for the benefit of the parties to the applicable documents, may be subject to limitations agreed upon by the contracting parties, including being qualified by confidential disclosures made for the purposes of allocating contractual risk between the parties to the Amended Credit Agreement and such other documents instead of establishing these matters as facts, and may be subject to standards of materiality applicable to the contracting parties that differ from those applicable to shareholders. The Company’s shareholders are not third-party beneficiaries under the foregoing agreements and should not rely on the representations, warranties, and covenants or any descriptions thereof as characterizations of the actual state of facts or condition of Menlo, Foamix, the Borrower, or any of its Subsidiary Guarantors or other affiliates. Moreover, information concerning the subject matter of the representations and warranties may change after the date of the documents, which subsequent information may or may not be fully reflected in the Company’s public disclosure.

Item 2.01 Completion of Acquisition or Disposition of Assets

At the effective time of the Merger (the “Effective Time”), each ordinary share, par value NIS 0.16 per share, of Foamix (“Foamix Shares”) issued and outstanding immediately prior to the Effective Time was deemed transferred under Israeli law to Menlo in exchange for the right to receive (i) 0.5924 shares (the “Exchange Ratio”) of common stock of Menlo (“Menlo Common Stock”) and (ii) one contingent stock right (a “CSR”); and collectively, the “CSRs”) which are subject to the terms and conditions of the contingent stock rights agreement, dated as of March 9, 2020, by and between American Stock Transfer & Trust Company, LLC and Menlo (the “CSR Agreement”), as further described below (collectively, the “Merger Consideration”).

Upon completion of the Merger, approximately 36.6 million shares of Menlo Common Stock were issued by Menlo as consideration in the Merger in respect of issued and outstanding Foamix Shares. No fractional share of Menlo Common Stock was issued in the Merger, and Foamix shareholders received cash in lieu of fractional shares, as specified in the Merger Agreement.

Also, at the Effective Time, each Foamix option and Foamix restricted stock unit award that was outstanding immediately prior to the Effective Time was assumed by Menlo. Each Foamix restricted stock unit award was converted into a restricted stock unit award relating to Menlo Common Stock (an “Adjusted RSU Award”) and has the same terms and conditions as applied to the Foamix restricted stock unit award immediately prior to the Effective Time. The Adjusted RSU Award will settle in the number of shares of Menlo Common Stock equal to the product obtained by multiplying (i) the number of Foamix Shares subject to the Foamix restricted stock unit award immediately prior to the Effective Time by (ii) the Exchange Ratio. Additionally, at the Effective Time, each Foamix option was converted into an option to purchase Menlo Common Stock (an “Adjusted Option”) with the same terms and conditions as applied to the Foamix option immediately prior to the Effective Time; however, the Adjusted Option covers a number of shares of Menlo Common Stock equal to the product of (i) the number of Foamix Shares subject to the Foamix option immediately prior to the Effective Time and (ii) the Exchange Ratio, and has an exercise price per share equal to the quotient of (i) the exercise price per Foamix Share subject to such Foamix option immediately prior to the Effective Time divided by (ii) the Exchange Ratio. All Foamix warrants outstanding immediately prior to the Effective Time were converted into warrants to purchase shares of Menlo Common Stock.

CSR Agreement

Pursuant to the CSR Agreement, each CSR will become convertible upon the occurrence of the following triggering events (and upon certain triggering events will entitle its holder to receive from Menlo a number of shares of Menlo Common Stock).

- (A) If the top-line primary endpoint results of one or both of the Phase III double-blinded, placebo-controlled trials for the treatment of pruritus associated with prurigo nodularis, referenced by Protocol Numbers MTI-105 (United States) and MTI-106 (Europe) (each, a “Phase III PN Trial”) (the “Efficacy Determination”) reports that Serlopitant Significance (as defined in the Merger Agreement) was achieved in both Phase III PN Trials on or before May 31, 2020, then each CSR will be terminated and the holders thereof will not be entitled to additional shares of Menlo Common Stock;
- (B) If the Efficacy Determination reports that (1) Serlopitant Significance was achieved in only one Phase III PN Trial on or before May 31, 2020 and (2) Serlopitant Significance was not achieved or has not been determined on or before May 31, 2020 in the other Phase III PN Trial, then each CSR will be converted into 0.6815 shares of Menlo Common Stock, resulting in an effective exchange ratio in the Merger of 1.2739 shares of Menlo Common Stock for each Foamix Share (as defined below); and
- (C) If the Efficacy Determination reports that Serlopitant Significance was not achieved in both Phase III PN Trials or the Efficacy Determination has not been delivered on or before May 31, 2020, then each CSR will be converted into 1.2082 shares of Menlo common stock, resulting in an effective exchange ratio in the Merger of 1.8006 shares of Menlo Common Stock for each Foamix Share.

No fractional shares of Menlo Common Stock will be issued upon the conversion of the CSRs, and Foamix shareholders will receive cash in lieu of fractional shares, as specified in the CSR Agreement.

If the CSRs become convertible, each person holding a Foamix restricted stock unit award immediately prior to closing will get additional Menlo restricted stock unit awards based on the additional shares that each ordinary Foamix Share will get upon conversion of a CSR. Similarly, if the CSRs become convertible, then the Menlo Board will make equitable adjustments to the exercise price per share of and the number of shares of Menlo Common Stock that are subject to Adjusted Options. Each Foamix warrant that will be assumed by Menlo in connection with the Merger will become exercisable for one CSR for each Foamix Shares that the holder of such Foamix warrant would have been entitled to receive had such Foamix warrants been exercised prior to the Effective Time.

The CSRs are not transferable except under certain limited circumstances, will not be evidenced by a certificate or other instruments and will not be registered or listed for trading. The CSRs will not have any voting or dividend rights and will not represent any equity or ownership interest in Menlo, Foamix or any of their affiliates.

The foregoing description of the Merger Agreement and related transactions does not purport to be complete and is qualified in its entirety by reference to the full text of the Merger Agreement, a copy of which is filed as [Exhibit 2.1](#) to Foamix's [Current Report on Form 8-K, filed with the SEC on November 12, 2019](#), and its amendment, a copy of which is filed as [Exhibit 2.1](#) to Foamix's [Current Report on Form 8-K, filed with the SEC on December 4, 2019](#), both incorporated herein by reference. All capitalized terms used herein and not otherwise defined have the meanings given to such terms in the Merger Agreement and amendment.

The information set forth in the Introductory Note and Item 3.01 of this Current Report on Form 8-K is incorporated into this Item 2.01 by reference.

Item 3.01. Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing.

Trading of the Foamix Shares on Nasdaq was suspended as of the close of trading on March 6, 2020. On March 9, 2020, (i) the Company notified Nasdaq of its intent to remove the Foamix Shares from listing on Nasdaq, and (ii) Nasdaq filed with the SEC a Notification of Removal from Listing and/or Registration under Section 12(b) of the Exchange Act, on Form 25 to delist and deregister the Foamix Shares. The delisting will become effective ten days after the filing of the Form 25. The Company also intends to file with the SEC a certification on Form 15 under the Securities Exchange Act of 1934, as amended (the "Exchange Act") requesting deregistration of the Shares and the suspension of the Company's reporting obligations under Sections 13(a) and 15(d) of the Exchange Act and deregistration of its Shares under Section 12(g) of the Exchange Act. The aforementioned actions to deregister Foamix Shares and to delist Foamix Shares from Nasdaq were authorized by the Board of Directors of the Company on November 10, 2019.

The information set forth in the Introductory Note and Item 2.01 of this Current Report on Form 8-K is incorporated into this Item 3.01 by reference.

Item 3.03. Material Modification to Rights of Security Holders.

The information set forth or incorporated by reference in Items 2.01, 3.01, 5.01 and 5.03 of this Current Report on 8-K is incorporated by reference into this Item 3.03.

Pursuant to the Merger Agreement and in connection with the consummation of the Merger, each Foamix Share was converted into the right to receive the Merger Consideration.

Item 5.01. Changes in Control of Registrant.

The information set forth in the Introductory Note and Item 2.01 of this Current Report on Form 8-K is incorporated into this Item 5.01 by reference.

As a result of the Merger, a change in control of Foamix occurred, and Foamix is now a wholly-owned subsidiary of Menlo.

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.***Resignations of Executive Officers and Directors***

In accordance with the Merger Agreement, on March 9, 2020, effective as of the Effective Time, Stanley Hirsch, Stanley Stern, Rex Bright, Anna Kazanchyan, Anthony Bruno, Aharon Schwartz and Sharon Barbari resigned from the board of directors of the Company (the "Board") and any respective committee of the Board to which they belonged, which resignations were not the result of any disagreements with the Company relating to the Company's operations, policies or practices.

Appointment of Directors

In accordance with the Merger Agreement, on March 9, 2020, effective immediately after the Effective Time, Ilan Hadar and Mutya Harsch, each an executive officer of Menlo, were appointed to the Board as directors.

Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year

Pursuant to the Merger Agreement, at the Effective Time, the Articles of Association of the Company, as in effect immediately prior to the Effective Time, were amended and restated in their entirety and included changes required in connection with the entry by the Company into the Amended Credit Agreement and changes reflecting the fact that the Company is now a wholly-owned subsidiary of Menlo. A copy of the Articles of Association is filed as Exhibit 3.1 to this Current Report on Form 8-K and is incorporated herein by reference.

Item 8.01. Other Events***Tax Rulings***

Under applicable tax laws of Israel, any consideration to Foamix's shareholders and beneficiaries of equity-based compensation is subject to withholding tax obligations.

On March 5, 2020, Foamix obtained a ruling from the Israeli tax authority under which all shareholders, registered and others, other than shareholders and beneficiaries of equity-based compensation that beneficially own 5% or more of Foamix's share capital shall be exempt from any Israeli tax withholding with no further action required from them. The consideration to the owners of equity based compensation shall be governed by a separate customary tax ruling.

On March 8, 2020, Foamix obtained a ruling from the Israeli tax authority under which all non-Israeli equity award holders shall be exempt from any Israeli tax withholding on their consideration subject to the completion of a tax declaration form, as provided in the tax ruling.

On March 9, 2020, Foamix obtained a ruling from the Israeli tax authority under which two shareholders that beneficially own more than 5% of Foamix's share capital, shall be exempt from any Israeli tax withholding on their consideration.

Press Release

On March 9, 2020, Menlo issued a press release announcing the completion of the Merger. A copy of the press release announcing the completion of the Merger is attached hereto as Exhibit 99.1.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
3.1	Articles of Association of Foamix Pharmaceuticals Ltd.
99.1	Press release, dated March 9, 2020

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

FOAMIX PHARMACEUTICALS LTD.

Date: March 9, 2020

By: /s/ Mutya Harsch

Mutya Harsch

Chief Legal Officer and General Counsel

The Companies Law, 5759-1999
Amended and Restated Articles of Association of
FOAMIX PHARMACEUTICALS LTD.
(the "Company")

1. Definitions

1.1. Capitalized terms used in these Articles of Association (the "**Articles**") shall bear the meanings ascribed to such terms as set forth in this Article, unless inconsistent with the context:

The "**Company**" – as defined in Paragraph 2 of these Articles.

The "**Law**" – the Companies Law, 5759-1999 and the regulations promulgated thereunder, as shall be in effect from time to time.

1.2. Any capitalized terms not otherwise defined herein shall have the meaning ascribed to them under the Law, unless the context necessitates otherwise. Words denoting the singular number shall include the plural number and vice versa; words denoting the masculine gender shall include the feminine gender; words denoting persons shall include corporations.

2. Name of the Company

In Hebrew: פואמיקס פרמצבטיקה בע"מ

In English: **FOAMIX PHARMACEUTICALS LTD.**

3. Company's Objectives

3.1. The Company's objective is to engage in any lawful activity.

3.2. The Company may donate reasonable amounts for appropriate cause, even if the donation does not fall within business considerations, as may be resolved by the Board of Directors of the Company (the "**Board**").

4. Authorized Share Capital

4.1. The authorized share capital of the Company shall be NIS 1,000 divided into 10,000 ordinary shares of NIS 0.1 par value each.

4.2. The rights attached to all ordinary shares of the Company shall be equal, and for each ordinary share paid in full there shall be one vote in the General Meeting of the Company's shareholders.

5. Limitation of Liability

5.1. Each shareholder's obligations to the Company's obligations is limited to payment of the amount at which the shares were issued to such shareholder and which is outstanding, if any.

5.2. The Company shall not be permitted to change the scope of a shareholder's liability or require a shareholder to purchase additional shares without such shareholder's consent.

6. Limitations

6.1. The right to transfer shares is restricted in the manner hereinafter prescribed.

6.2. Any invitation to the public to subscribe for any shares or debentures of the Company is prohibited.

6.3. The number of shareholders (exclusive of persons who are in the employment of the Company, or of persons who having been formerly in the employment of the Company were, while in such employment, and have continued after the termination of such employment to be, shareholders of the Company) is limited to 50; provided that where two or more persons hold one or more shares in the Company jointly they shall, for the purpose of this Article, be treated as a single shareholder.

7. **Shares**

7.1. Without derogating from any special rights of the Company's shareholders, if such shall be granted, the Company may allocate and issue shares with preferred rights or deferred rights or issue preferred shares from the share capital that had not previously been issued, or issue shares with restricted rights or other special rights or voting rights, rights of redemption (and to redeem such shares accordingly), or relating to other matters as shall be determined by the Company from time to time by way of a shareholders' resolution or resolution of the Board, as applicable.

7.2. If at any time, the share capital is divided into different classes of shares, the Company may, by way of a shareholders resolution (unless the terms of allotment of that class of shares provide otherwise), change, convert, expand, add or otherwise modify the rights, privileges, advantages, restrictions and provisions associated or not associated at that time with any of the classes, or as shall be determined by the shareholders resolution which shall be passed at a General Meeting of the holders of the shares of such class. The provisions of these Articles relating to General Meetings shall apply, mutatis mutandis, to any separate General Meeting of the holders of the shares of a particular class.

7.3. Issuance of shares shall be under the authority of the Board, who shall have the power to allot shares as it may find fit, for a cash payment or for a non-cash payment, with the same limitations and conditions, and at such times that the Board finds fit, and such allotment shall entail the authority to make calls for payment for any such shares, for such duration of time and at such amount which the Board shall find fit. The Board may delegate its authorities in the matters set forth in this Section, to the extent permitted by law.

7.4. If by the terms of allotment of any share, the whole or any part of the price thereof shall be payable in installments, every such installment shall, when due, be paid to the Company by the then registered holder of the share or by the custodian of such person or by a person lawfully holding such shares at that time.

7.5. Unless otherwise set forth in these Articles, the Company shall be entitled to treat the registered holder of any share as the absolute owner thereof, and, accordingly, shall not, except as ordered by a court of competent jurisdiction, or as required by statute, be bound to recognize any equitable or other claim to, or interest in such share on the part of any other person.

7.6. Section 290(a) of the Law shall not apply to the Company.

7.7. The Company shall be permitted, subject to the provisions of the Law, to issue redeemable shares and to redeem such shares.

8. **Transfer of Shares** The right to transfer shares in the Company is subject to the approval of the Board. Such approval shall be at the sole discretion of the Board. The Board may refuse to approve such transfer or assignment without the need to give any reasons; notwithstanding anything to the contrary herein or in any shareholders' agreement, the creation of a pledge over shares of the Company under a pledge agreement pursuant to the Amended and Restated Credit Agreement and Guaranty, dated as of March 9, 2020 among, inter alia, Foamix Pharmaceuticals Inc., the Company, Menlo Therapeutics Inc., Perceptive Credit Holdings II, LP, OrbiMed Royalty & Credit Opportunities III, LP, as may be amended from time to time, and the transfer of shares by way of realisation of such pledge, shall not require the approval of the Board of Directors of the Company or otherwise be restricted in any manner by these Articles).

9. **General Meeting**

9.1. The Company may adopt resolutions of the General Meeting without convening a shareholders' meeting, provided such resolutions are adopted unanimously by all shareholders entitled to vote in such a meeting. If resolutions are adopted in such a manner, the chairman of the Board, and in lack thereof, the director who initiated the resolution, shall record the minutes of the meeting and attach thereto the signatures of all of the said shareholders.

9.2. Pursuant to Section 50(a) of the Law the general meeting may assume powers conferred on another organ, including, to the maximum extent permitted by Law, powers conferred on the Board.

10. Board of Directors

10.1. The Board shall consist of such number as determined by a shareholders' resolution of the Company, but will not be less than one (1).

10.2. The appointment, replacement and removal of a director shall be by delivery of a written notice to the Company, signed by the shareholder(s) of the Company holding a majority of the issued and outstanding share capital of the Company. The appointment, replacement and removal of a director shall take effect immediately upon delivery of such notice to the Company, unless otherwise stated in such notice. Such notice may set that the appointment, replacement and removal of a director shall become effective at a later date in the future (including, upon the occurrence of a future event).

10.3. The Board may elect one of its members to be the chairman of the Board. The chairman of the Board shall preside at every meeting of the Board and shall sign the minutes of the meetings of the Board. The office of the chairman shall not, by itself, entitle the holder thereof to a second or casting vote.

10.4. The Board may convene meetings via any means of communication, including audio or video conference, provided that each director participating in such call can simultaneously hear, and be heard by, each other director participating in such call. Such participation by a director in a meeting shall constitute attendance in person of that director at the meeting.

10.5. The Board may adopt resolutions without convening a meeting of the Board, provided that all directors then in office and lawfully entitled to participate in the discussion on the proposed matter and to vote thereon have given their consent not to convene a meeting on such matters. If resolutions are adopted in such a manner, the chairman of the Board (and if there is no chairman, the director who initiated the resolution) shall record the minutes of the meeting and attach thereto the signatures of all of said directors. Such minutes shall be considered minutes of a meeting of the Board for all intents and purposes.

10.6. Any Board member is entitled to appoint an alternate director for himself (an "**Alternate Director**"). A person may be an Alternate Director if such person is qualified to serve as a director of the Company, or if such person is already a director in the Company or an Alternate Director in the Company. Any Alternate Director shall have a vote equal to the vote of the Board member that he substitutes. An Alternate Director shall have, subject to his letter of appointment, all authorities vested to the member of the Board he substitutes. The tenure of office of an Alternate Director shall automatically be terminated upon the dismissal of such member, or upon the office of the member of the Board he substitutes being vacated for any reason. In the event that a member of the Board is precluded by law or otherwise from participating in a meeting or a vote of the Board, such member shall be entitled to appoint an Alternate Director to so participate and/or vote in his place.

11. Signatory Rights The Board shall be entitled to authorize any person or persons (who need not be directors) to sign on behalf of the Company, and to designate the form of such signature.

12. Auditors; Financial Statements

12.1. The financial statements that the Company is required by law to prepare each year shall be prepared within nine (9) months from the end of the fiscal year of the Company.

12.2. The appointment, authorities, rights and duties of the auditor(s) shall be regulated by applicable law; provided, however, that in exercising their authority to fix the remuneration of the auditor(s), the shareholders may act (and in the absence of any action in connection therewith shall be deemed to have so acted) to authorize the Board (with right of delegation to management) to fix such remuneration.

12.3. The Company is not obligated to hold annual meetings, save for to the extent necessary to appoint an auditor. The auditor may be appointed to act until the completion of up to three audits of the Company's financial statements.

13. **Notices**

13.1. Any notice may be served by the Company to any shareholder at such shareholder's address or other contact details as specified in the register of shareholders, by personal delivery, postal delivery, facsimile, or in a prepaid envelope or package addressed to such shareholder.

13.2. All notices to be given to the shareholders, with respect to any share to which persons are jointly entitled, shall be given to whichever of such persons whose name appears first in the register of shareholders, and any notice so given shall be sufficient notice to the holders of such shares.

13.3. Any such notice sent via registered postal mail shall be deemed to have been served within three (3) business days after it has been posted; or when actually tendered in person to such shareholder; or upon electronic confirmation of delivery if it has been sent by email or facsimile on a business day (or on the first business day thereafter if transmitted on a non-business day).

13.4. If a person becomes entitled to any share under law, a transfer or any other means, such person shall be deemed included in any notice with respect to such share duly delivered, prior to the entry of person's name in the register of shareholders, to the person from whom entitlement to the share arose.

13.5. The accidental omission to give notice of a meeting to any shareholder or the non-receipt of notice sent to such shareholder shall not invalidate the resolutions passed at such meeting.

14. **Indemnification, Release and Insurance**

14.1. To the extent permitted under applicable law, the Company may indemnify an Office Holder ("Noseh Misra", as defined under the Law) for a liability or expense imposed on him or expended by him as a consequence of an act which he performed by virtue of being an Office Holder, as set forth below:

14.1.1. a financial liability imposed on such Office Holder in favor of any person pursuant to a judgment, including a judgment rendered in the context of a settlement or an arbitrator's decision that was approved by a court;

14.1.2. reasonable litigation expenses, including attorney fees, expended by an Office Holder as a result of an investigation or any proceeding instituted against him by an authority that is authorized to conduct an investigation or proceeding, and that was concluded without filing an indictment against the Office Holder and without imposing on the Office Holder a financial obligation in lieu of a criminal proceeding, or that was concluded without filing an indictment against the Office Holder but with imposing a financial obligation in lieu of a criminal proceeding in an offense that does not require proof of *mens rea*, or in connection with a financial sanction. In this section-

A. Conclusion of a proceeding without filing an indictment in a matter in which a criminal investigation has been instigated - shall mean the closure of the file as ascribed in Paragraph 62 of the Criminal Procedure Law [Consolidated Version], 5742-1982 (in this sub-clause - the "**Criminal Procedure Law**"), or a stay of proceedings granted by the attorney general in accordance with Paragraph 231 of the Criminal Procedure Law; and

B. "financial liability in lieu of a criminal proceeding" shall mean financial liability imposed under law in lieu of a criminal proceeding, including administrative fines in accordance with the Administrative Offenses Law, 5746-1985, fines imposed for an offense designated as an offense subject to fine in accordance with the Criminal Procedure Law, monetary sanctions, forfeit or penalty.

14.1.3. reasonable litigation expenses, including attorneys' fees, incurred by an Office Holder or charged to him by a court, in a proceeding instituted against him by the Company or on its behalf or by another person, or in a criminal charge from which he was acquitted or in which he was convicted of an offense that does not require proof of *mens rea*;

14.1.4. any other event, circumstances liability or state of matters with respect to which the Company may, currently or in the future, under the Law or any other applicable law indemnify an Office Holder of the Company, and to the extent the provisions of any such law determine that indemnity pursuant to such law is conditioned upon these Articles containing such a provision allowing for indemnity in such cases, then such provision shall be deemed to be included in these Articles by way of reference (including, without limitation, as set forth in Section 56H of the Securities Law, 5728-1968 (as amended, the “**Securities Law**”) and Section 50P of the Entomic Competition Law, 5758-1988 (as amended, the “**Anti-Trust Law**”).

14.2. The Company may undertake to indemnify an Office Holder, in advance, with respect to any of the following:

14.2.1. as set forth in Article 14.1.1, provided that the undertaking to indemnify shall be limited to events which the Board believes are predictable in light of the Company's business de facto at the time the undertaking to indemnify is granted, and to amounts or criteria that the Board had determined to be reasonable under the circumstances, and that the undertaking to indemnify shall specify such predictable events and the amounts or criterion so determined; and

14.2.2. as set forth in Articles 14.1.2, 14.1.3 and 14.1.4.

14.3. Subject to applicable law, the Company may indemnify an Office Holder retroactively.

14.4. Subject to applicable law, as may be from time to time, the Company releases, in advance an Office Holder from all or any part of the liability due to damages arising out of a breach of duty of care towards the Company.

14.5. Subject to applicable law, as may be from time to time, the Company may enter into an agreement for the insurance of all or any part of the liability of an Office Holder imposed on such Office Holder due to an action performed by virtue of being an Office Holder in the Company, with respect to any of the following:

14.5.1. a breach of duty of care – as such term is defined in Article A of Chapter 3, Part 6 of the Law – towards the Company or towards another person;

14.5.2. a breach of fiduciary duty – as such term is defined in Article B of Chapter 3, Part 6 of the Law – towards the Company, provided that the Office Holder acted in good faith and had reasonable cause to assume that such act would not prejudice the interests of the Company;

14.5.3. a financial obligation imposed on him in favor of another person due to an action performed by him by virtue of being an Office Holder in the Company;

14.5.4. any other event, circumstances liability or state of matters with respect to which the Company may, currently or in the future, under any applicable law, insure an Office Holder of the Company, and to the extent such law determine that the effectiveness of such provision is conditioned upon these Articles containing such a provision allowing for procurement of insurance in such cases, then such provision shall be deemed to be included in these Articles by way of reference (including, without limitation, as set forth in Section 56H of the Securities Law and Section 50P of the Anti-Trust Law).

14.6. Nothing in these Articles is intended, in any manner, to restrict the Company in respect of indemnification, release and/or the procurement of insurance:

14.6.1. in respect of any person who is not an Office Holder, including, without limitation, its employees, agents, consultants or contractors of the Company; and/or

14.6.2. in respect of any Office Holder to the extent that such insurance and/or indemnification is not specifically and explicitly prohibited under law.

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Menlo Therapeutics and Foamix Pharmaceuticals Complete Merger, Creating a Combined Company Focused on the Development and Commercialization of Therapeutics for Dermatologic Indications

BRIDGEWATER, N.J., March 9, 2020 – Menlo Therapeutics Inc. (Nasdaq: MNLO) (“Menlo” or the “Company”) announced today the completion of its merger with Foamix Pharmaceuticals Ltd. (Nasdaq: FOMX) (“Foamix”) following the satisfaction of all closing conditions required by the merger agreement.

Upon completion of the merger, pursuant to the terms of the merger agreement, Foamix became a wholly owned subsidiary of Menlo. Under the terms of the merger, Foamix shareholders received 0.5924 of a share of Menlo common stock for each Foamix share owned, as well as a non-transferrable contingent stock right. These contingent stock rights potentially allow Foamix shareholders to receive additional shares of Menlo common stock based on the results of Menlo’s Phase 3 trials of serlopitant for the treatment of pruritus associated with prurigo nodularis, as more fully described in the companies’ joint proxy statement/prospectus on Form S-4. Foamix ordinary shares ceased trading as of the close of trading on March 6, 2020. On March 9, 2020, newly issued Menlo shares will commence trading under the ticker “MNLO” on Nasdaq.

“This is an exciting day as we take a significant step toward becoming a broad dermatology franchise. The combined company already has an approved, commercial-stage product, AMZEEQ™, and several late-stage product candidates with several meaningful near-term catalysts,” said David Domzalski, who became the Chief Executive Officer of Menlo upon the closing of the merger. “I am excited about the opportunities ahead for the combined company as we work towards improving the lives of patients with a differentiated and innovative product pipeline.”

Since announcing the transaction on November 11, 2019, the Company achieved a major milestone with the launch of its first product, AMZEEQ™ for the treatment of inflammatory lesions of non-nodular moderate to severe acne vulgaris in adults and pediatric patients 9 years of age and older. “We are encouraged by the initial performance and activities in support of the launch of AMZEEQ,” continued Mr. Domzalski. In the coming weeks, the Company anticipates announcing the results of its Phase 3 clinical trials of serlopitant for the treatment of pruritus associated with prurigo nodularis. Additionally, the Company expects to announce the results of its Phase 2 clinical trial for FCD105 (minocycline 3% and adapalene 0.3% foam) for the treatment of acne in the second quarter of 2020. The Company has also taken meaningful steps towards facilitating a successful integration and capitalizing on expected cost synergies.

Company Management and Board Appointees

Effective upon the closing of the merger, Foamix's management team will manage the Company, led by David Domzalski as Chief Executive Officer.

As part of the transaction, Foamix has designated five of its pre-closing directors, David Domzalski, Sharon Barbari, Rex Bright, Anthony Bruno and Stanley Hirsch to serve as members of the Menlo Board of Directors. Menlo has designated two of its pre-closing directors, Steve Basta, Menlo's Chief Executive Officer prior to the consummation of the merger, and Elisabeth Sandoval, to be directors of the Company following the merger.

Tax Consequences

For a summary of the tax ruling the parties received from the Israeli Tax Authority relating to the transaction, please see Menlo's Current Report on Form 8-K it intends to file with the SEC later today.

Exchange Agent

Foamix shareholders with questions about their shares can contact American Stock Transfer & Trust Company, LLC at (877) 248-6417.

Conference Call

There will be a conference call at 8:30 a.m. Eastern Time on Thursday, March 12th during which management of Menlo will provide a corporate update.

Toll Free: 877-407-0784

International: 201-689-8560

Conference ID: 13700089

Webcast: <http://public.viaavid.com/index.php?id=138439>

A replay of the call will be archived on the Company's website at www.menlotherapeutics.com promptly after the conference call.

Advisors

Barclays acted as exclusive financial advisor to Foamix. Skadden, Arps, Slate, Meagher & Flom, LLP and Meitar Law Offices acted as Foamix's legal counsel in connection with the transaction. Guggenheim Securities, LLC acted as exclusive financial advisor to Menlo. Latham & Watkins LLP and Herzog, Fox & Neeman acted as Menlo's legal counsel in connection with the transaction.

About Menlo Therapeutics

Menlo Therapeutics Inc. is a different type of biopharmaceutical company working to solve some of today's most difficult therapeutic challenges in dermatology and beyond.

With expertise in topical medicine innovation as a springboard, the Company is working to develop and commercialize a variety of solutions using its proprietary Molecule Stabilizing Technology (MSTTM), and has received FDA approval for the world's first topical minocycline, AMZEEQTM. In addition, the Company is focused on the development of serlopitant, a once-daily oral NK₁ receptor antagonist, as a novel potential treatment option for pruritus associated with prurigo nodularis.

Menlo uses its website as a channel to distribute information about Menlo and its products and product candidates from time to time. Menlo may use its website to comply with its disclosure obligations under Regulation FD. Therefore, investors should monitor Menlo's website in addition to following its press releases, filings with the U.S. Securities and Exchange Commission, public conference calls, and webcasts. For more information, visit www.menlotherapeutics.com.

Cautionary Statement Regarding Forward-Looking Statements

This release includes forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995, including, but not limited to, statements regarding expectations with respect to the anticipated announcement of results of Menlo's clinical trials for pruritus associated with prurigo nodularis, statements regarding the development and commercialization of Menlo's products and product candidates and other statements regarding the future expectations, plans and prospects of Menlo. All statements in this press release which are not historical facts are forward-looking statements. Any forward-looking statements are based on Menlo's current knowledge and its present beliefs and expectations regarding possible future events and are subject to risks, uncertainties and assumptions that could cause actual results to differ materially and adversely from those set forth or implied by such forward-looking statements. These risks and uncertainties include, but are not limited to, Menlo's ability to successfully integrate the two companies; the achievement of certain expected cost synergies; the outcome of any legal proceedings related to the merger; the outcome and cost of clinical trials for current and future product candidates, including those for serlopitant; determination by the FDA that results from Menlo's clinical trials are not sufficient to support registration or marketing approval of product candidates; adverse events associated with the commercialization of AMZEEQ™; the outcome of pricing, coverage and reimbursement negotiations with third party payors for AMZEEQ™ or any other products or product candidates that Menlo may commercialize in the future; whether, and to what extent, third party payors impose additional requirements before approving AMZEEQ™ prescription reimbursement; the eligible patient base and commercial potential of AMZEEQ™ or any of Menlo's other product or product candidates; risks that Menlo's intellectual property rights, such as patents, may fail to provide adequate protection, may be challenged and one or more claims may be revoked or interpreted narrowly or will not be infringed; risks that any of Menlo's patents may be held to be narrowed, invalid or unenforceable or one or more of Menlo's patent applications may not be granted and potential competitors may also seek to design around Menlo's granted patents or patent applications; additional competition in the acne and dermatology markets; inability to raise additional capital on favorable terms or at all; Menlo's ability to recruit and retain key employees; and Menlo's ability to stay in compliance with applicable laws, rules and regulations. For a discussion of other risks and uncertainties, and other important factors, any of which could cause Menlo's actual results to differ from those contained in the forward-looking statements, see the sections titled "Risk Factors" in (i) Menlo's most recent annual report on Form 10-K, (ii) Foamix's most recent quarterly report on Form 10-Q and (iii) Menlo's definitive joint proxy statement/prospectus filed with the U.S. Securities and Exchange Commission under Rule 424(b)(3) on January 7, 2020, as well as discussions of potential risks, uncertainties, and other important factors in Menlo's subsequent filings with the U.S. Securities and Exchange Commission. Although Menlo believes these forward-looking statements are reasonable, they speak only as of the date of this announcement and Menlo undertakes no obligation to update publicly such forward-looking statements to reflect subsequent events or circumstances, except as otherwise required by law. Given these risks and uncertainties, you should not rely upon forward-looking statements as predictions of future events.

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