

ZIX CORP  
Form PRE 14A  
September 08, 2005

**Table of Contents**

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20529  
SCHEDULE 14A**

Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934  
Exchange Act of 1934 (Amendment No. )

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material under Rule 14a-12

**ZIX CORPORATION**

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- No fee required.
- Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

1) Title of each class of securities to which transaction applies:

2) Aggregate number of securities to which transaction applies:

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

4) Proposed maximum aggregate value of transaction:

5) Total fee paid:

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

- 1) Amount Previously Paid:
  
  - 2) Form, Schedule or Registration Statement No.:
  
  - 3) Filing Party:
  
  - 4) Date Filed:
-

**Table of Contents**

**ZIX CORPORATION**  
2711 North Haskell Avenue  
Suite 2200, LB 36  
Dallas, Texas 75204-2960

September , 2005

Dear Fellow Shareholders:

I am pleased to report that we have successfully closed the first part of a private placement of securities of our company, Zix Corporation. In the private placement, we agreed to issue and sell an aggregate of 10,503,862 shares of our common stock and warrants to purchase up to an additional 3,466,274 shares of our common stock for total proceeds to us of approximately \$26.3 million. Of that amount, we have completed the issuance of 6,302,318 shares of our common stock and warrants to purchase an additional 2,079,767 shares of our common stock, for total net proceeds to us of approximately \$14.67 million. Under applicable Nasdaq rules, we cannot issue the balance of the shares and warrants without your approval. The attached Proxy Statement and notice of special meeting of shareholders describes in detail the proposal which requires your support to enable us to complete this important financing.

**THIS FINANCING WILL DILUTE YOUR EXISTING STOCKHOLDING. HOWEVER, IF SHAREHOLDERS DO NOT APPROVE THE PROPOSAL, WE WILL NOT BE ABLE TO OBTAIN APPROXIMATELY \$9.75 MILLION OF NET PROCEEDS THAT WE BELIEVE ARE ESSENTIAL TO OUR OPERATIONS AND SUCCESS.**

The affirmative vote of a majority of our shares of common stock as of the record date for the meeting and present in person or represented by proxy and entitled to vote at the Special Meeting (excluding shares of our common stock already issued in the private placement) will be required to approve such proposal. Each shareholder should take the time to review the attached Proxy Statement and to complete and return the enclosed proxy card.

Your vote is important, no matter how many shares you own. Please vote today.

Thank you very much for your prompt attention to this important matter.

RICHARD D. SPURR  
Chief Executive Officer, President and Chief  
Operating Officer

---

**Table of Contents**

**ZIX CORPORATION**  
2711 North Haskell Avenue  
Suite 2200, LB 36  
Dallas, Texas 75204-2960  
**NOTICE OF SPECIAL MEETING OF SHAREHOLDERS**  
**To Be Held , , 2005**

We will hold a special shareholders meeting on , , 2005, at 10:00 a.m. (registration to begin at 9:30 a.m.), Central Time. We will hold the meeting at Cityplace Conference Center, Room, 2711 North Haskell Avenue, Dallas, Texas 75204. At the meeting, we will ask you to consider and vote on the following proposals:

a proposal to approve the issuance of 4,201,544 shares of our common stock and related warrants to purchase an additional 1,386,507 shares of our common stock pursuant to the securities purchase agreement described in the accompanying Proxy Statement; and

such other matters as may be properly brought before the meeting or any adjournment thereof.

If you held shares of our common stock (other than shares acquired under the securities purchase agreement, as described in the accompanying Proxy Statement) at the close of business on , 2005, the record date for the meeting, you are entitled to notice of, and to vote at, the meeting or any adjournment thereof. The stock transfer books will not be closed.

We would like you to attend the meeting in person, but understand that you may not be able to do so. For your convenience, and to ensure that your shares are represented and voted according to your wishes, we have enclosed a proxy card for you to use. Please vote, sign and date the proxy card and return it to us as soon as possible. We have provided you with a postage-paid envelope to return your proxy card. If you attend the meeting in person, you may revoke your proxy and vote in person. We look forward to hearing from you.

By Order of the Board of Directors,

RONALD A. WOESSNER  
Senior Vice President, General Counsel & Secretary

Dallas, Texas  
September , 2005

**YOUR VOTE IS IMPORTANT.**  
**PLEASE VOTE EARLY EVEN IF YOU PLAN TO ATTEND THE SPECIAL MEETING.**

---

TABLE OF CONTENTS

|   |    |
|---|----|
| <u>Questions and Answers</u>  | 1  |
| <u>Information Concerning Solicitation and Voting</u>                 | 7  |
| <u>Security Ownership of Certain Beneficial Owners and Management</u> | 11 |
| <u>Proposal: Approval of Terms of Completion of Private Placement</u> | 14 |
| <u>Other Matters</u>  | 20 |
| <u>Documents Incorporation by Reference</u>                           | 21 |
| <u>Where You Can Find More Information</u>                            | 22 |
| <u>Annex A Form of Securities Purchase Agreement</u>                  |    |
| <u>Annex B Form of Warrant</u>  |    |

---

**Table of Contents**

**Questions and Answers**

Although we encourage you to read the enclosed Proxy Statement in its entirety, we include this Question and Answer section to provide some background information and brief answers to several questions you might have about the enclosed proposal. In this Proxy Statement, we refer to Zix Corporation as the Company, Zix, ZixCorp, we, and us.

**Q. Why did I receive this Proxy Statement?**

A. On or about [redacted], 2005, we will begin mailing this Proxy Statement and accompanying proxy card to everyone who (i) was a holder of our shares of common stock on the record date for the meeting, which is at the close of business on [redacted], 2005 and (ii) was entitled to vote on the Proposal described below. We prepared this Proxy Statement to let our shareholders know when and where we will hold a special shareholders meeting. This proxy statement:

provides you with information about the proposal that will be discussed and voted on at the meeting, and

provides you with certain updated information about our company.

**Q. What proposal are shareholders being asked to consider at the upcoming Special Meeting?**

A. We are seeking approval of a proposal that would allow us to complete the issuance of shares of our common stock and related warrants to purchase shares of our common stock in the private placement we closed on August 9, 2005.

On that date, we agreed to sell and issue to certain purchasers (the Purchasers) under a securities purchase agreement (the Securities Purchase Agreement) an aggregate of 10,503,862 units. Each unit consists of (i) one share of our common stock, par value \$0.01 per share, and (ii) a related warrant to purchase 0.33 of one share of our common stock. Under Nasdaq rules (as further described below), we could not, without the approval of our shareholders, issue more than 6.5 million shares of our common stock (or 19.99% of our issued and outstanding shares immediately prior to the execution of the Securities Purchase Agreement). Due to these limitations, we issued only an aggregate of 6,302,318 shares of common stock and related warrants to purchase an additional 2,079,767 shares of our common stock to the Purchasers at the closing of the Securities Purchase Agreement in exchange for proceeds of approximately \$15.8 million (\$14.67 million in net proceeds to us after transaction fees of \$1.13 million). In this Proxy Statement, we refer to the shares of common stock we already issued to Purchasers at the closing of the Securities Purchase Agreement as Firm Shares and the related warrants as Firm Warrants, and when describing both the Firm Shares and Firm Warrants, we refer to them as the Firm Securities.

We are now seeking shareholder approval to issue the balance of the shares and warrants that the Purchasers agreed to purchase from us (*i.e.*, an aggregate of 4,201,544 shares of common stock and related warrants to purchase 1,386,507 shares of our common stock). In this Proxy Statement, we refer to the additional shares to be issued to the Purchasers if our shareholders approve the issuance as the Excess Shares and the additional warrants as the Excess Warrants, and when describing both shares and warrants, we refer to them as the Excess Securities. We refer to this proposal as the Proposal throughout this Proxy Statement.

**Table of Contents**

Pursuant to an Escrow Agreement, dated as of August 9, 2005, between us and JPMorgan Chase Bank, N.A., approximately \$10.5 million of funds relating to the Excess Securities were placed into escrow pending approval by our shareholders of the issuance of the Excess Securities. While held in escrow, the escrowed funds will accrue interest, payable by us, at a rate of 7.0% per annum.

If the Proposal is approved by our shareholders, we will issue the Excess Securities to the Purchasers as promptly as practicable following such approval. Upon such issuance, we will receive escrowed funds, totaling approximately \$9.75 million (net of transaction fees and expenses).

If the Proposal is not approved by our shareholders, we will not be allowed to issue the Excess Securities and the funds held in escrow will be returned to the Purchasers.

Regardless of whether shareholder approval is obtained, we will be obligated to pay interest on the escrowed funds to the Purchasers at a rate of 7.0% per annum until the date the funds are released from escrow.

**Q. For which part of the private placement is Zix seeking shareholder approval?**

A. Zix is seeking shareholder approval of the Proposal for the issuance to the Purchasers of the Excess Securities. Zix is not seeking shareholder approval for the private placement of Firm Shares and Firm Warrants issued to the Purchasers at the closing of the Securities Purchase Agreement.

**Q. Why is Zix seeking shareholder approval for the issuance of the Excess Securities?**

A. We are subject to the rules of the Nasdaq Stock Market, Inc. because our common stock is listed on the Nasdaq National Market. These rules require us to obtain shareholder approval for any issuance or sale of common stock, or securities convertible into or exercisable for common stock, that is (i) equal to 20% or more of our outstanding common stock before such issuance or sale and (ii) at a price per share below the greater of book or market value at the time of such issuance or sale. These rules apply to the Excess Shares because:

the purchase price of the units (each consisting of one share of common stock and a warrant to purchase 0.33 of one share of common stock) issued at the closing of the Securities Purchase Agreement, and that we intend to issue following shareholder approval, is \$2.50 per unit (except for units purchased by certain of our officers and directors, which were issued or will be issued at a purchase price of \$2.99 per unit), which is below the \$2.94 per share closing price of our common stock on Nasdaq on August 8, 2005, the last day our common stock traded on Nasdaq before we entered into the Securities Purchase Agreement; and

the shares of common stock that we have issued or intend to issue pursuant to the Securities Purchase Agreement (including the Excess Shares) will comprise, in total, approximately 32.25% of the shares of our common stock outstanding immediately prior to August 9, 2005.

For the above reasons, on the closing date of the Securities Purchase Agreement, we were only able to issue shares of our common stock representing up to 19.99% of our common stock

**Table of Contents**

outstanding on the date of the Securities Purchase Agreement and now we are required under Nasdaq National Market rules to obtain shareholder approval prior to issuing the Excess Securities.

In addition, under the Securities Purchase Agreement, we agreed to seek, and use our best efforts to obtain, the approval of our shareholders to issue the Excess Securities to the Purchasers no later than November 22, 2005. This Proxy Statement has been prepared pursuant to our obligations to the Purchasers under the Securities Purchase Agreement.

**Q. Why does Zix need to issue the Excess Securities?**

A. As of June 30, 2005, we had unrestricted cash and cash equivalents of \$7.7 million. Prior to the private placement described in this Proxy Statement, we had taken certain actions to reduce our cash requirements, including cost reductions, sale of two product lines and amendments to the terms of our \$20 million principal amount of convertible notes held by two institutional investors. In addition, the Company has chosen to continue to invest in the eHealth (e-prescription) market, which is a developing market requiring us to make significant cash investments in order to develop the business. Based on this strategic decision to continue investing in the eHealth market, our anticipated cash requirements would have been greater than our balance of unrestricted cash and cash equivalents that were on hand at that time.

Consequently, our management and Board of Directors determined that we should seek additional working capital to improve its cash position and fund our continuing investments in the eHealth market. The alternatives to securing additional working capital would have been a change in our business model, substantially scaled back investments in eHealth or significant disposition of business assets. Based on our stock price and the state of the capital markets, our management and Board of Directors, in consultation with our investment banking firm, C.E. Unterberg, Towbin LLC, determined that a private placement of our publicly-traded common stock (commonly referred to as a PIPE financing), targeting private venture capital investors and other institutional investors, had a higher likelihood of success, could be consummated promptly and would provide us better terms than alternate financing transactions.

At the closing of the Securities Purchase Agreement on August 9, 2005, we completed the issuance of the Firm Securities and received net proceeds of approximately \$14.67 million. Assuming the approval of the Proposal, we would promptly issue the Excess Securities and receive approximately \$9.75 million in additional net proceeds (after fees and expenses). We may also receive an additional \$10.5 million in aggregate gross proceeds if and when all warrants (including the Excess Warrants) are exercised in full (assuming an exercise price of \$3.04 per share and no net exercise).

**Q. What if the Proposal is not approved?**

A. If the Proposal does not receive shareholder approval, the earlier issuance of the Firm Securities to the Purchasers at the closing of the Securities Purchase Agreement will not be affected, but the issuance and sale of the Excess Securities to the Purchasers will not occur. Specifically, the Excess Securities will not be issued, the funds relating to the Excess Securities that currently are held in escrow will be returned to the Purchasers and we will not receive approximately \$9.75 million in net proceeds from the issuance of the Excess Securities.

Our current liquidity and capital resources are limited. If the Proposal fails and we do not receive



**Table of Contents**

the proceeds from the Excess Securities, meeting our working capital needs under a continuation of the current business model would prove difficult beyond June 30, 2006 and could significantly harm our ability to achieve our intended business objectives. We could be forced to further augment our cash position through additional cost reduction measures, sales of non-core assets, additional financings or a combination of these actions. Should we have to seek additional funds to replace the funds under a failed Proposal vote, there can be no assurances that these funds could be obtained on terms that are as favorable to us as the terms of the Excess Securities; therefore, our business model might have to be altered. Any of these adverse events could substantially diminish the value of our common stock and thus your investment in our shares.

**Q. Will the issuance of the Excess Securities dilute our shareholders ownership interest in Zix?**

A. Our shareholders will incur immediate and significant dilution of their percentage of stock ownership in Zix if the Proposal is approved and the Excess Securities are issued. The table below illustrates the incremental impact that the issuance of the Excess Securities will have upon the number of shares of our common stock outstanding (assuming no additional issuances of shares of our common stock):

|  | Number of Shares<br>Outstanding    |                    |                      |
|--|------------------------------------|--------------------|----------------------|
|  | Prior to Issuance                  | Shares             | Warrants*            |
| Issuance of Firm Securities on August 9, 2005: | 32,573,744                         | 6,302,318          | 2,079,767            |
|  | (As of August 8,<br>2005)          | (Firm<br>Shares)   | (Firm<br>Warrants)   |
| Issuance of Excess Securities:                 | 38,876,062                         | 4,201,544          | 1,386,507            |
|  | (After issuance of<br>Firm Shares) | (Excess<br>Shares) | (Excess<br>Warrants) |

\* The Firm Warrants and Excess Warrants reflected in this table are not exercisable until February 9, 2006.

Shareholders immediately prior to the issuance of the Excess Securities will incur dilution in their percentage ownership of our common stock upon the consummation of the issuance of the Excess Shares, of approximately 9.75%, or 12.01% assuming exercise in full of the both Firm Warrants and the Excess Warrants. However, as explained above in the answer to the question What if the Proposal is not approved? failure to issue the Excess Securities could significantly harm our business and the value of our common stock, and the value of your investment in our common stock could be substantially diminished.

**Q. Why have I received more than one proxy statement?**

A. If you received more than one proxy statement, your shares are probably registered differently or are in more than one account. Please vote each proxy card that you receive.

**Q. How do I vote if I am not planning to attend the special meeting?**

A. In addition to voting in person at the meeting, you may mark your selections on the enclosed proxy card, date and sign the card and return the card in the enclosed postage-paid envelope.

**Table of Contents**

Please understand that voting by any means other than voting in person at the meeting has the effect of appointing Richard D. Spurr, our Chief Executive Officer, President and Chief Operating Officer, and Bradley C. Almond, our Vice President of Finance and Administration, Chief Financial Officer and Treasurer, as your proxies. They will be required to vote on the Proposal described in this Proxy Statement exactly as you have voted. However, if any other matter requiring a shareholder vote is properly raised at the meeting, then Messrs. Spurr and Almond will be authorized to use their discretion to vote on such issues on your behalf.

We encourage you to vote now even if you plan to attend the Special Meeting in person. If your shares are in a brokerage account, you may receive different voting instructions from your broker.

**Q. What if I want to change my vote?**

A. You may revoke your vote on the Proposal at any time before the Special Meeting for any reason. To revoke your vote before the meeting, write to our Secretary, Ronald A. Woessner, at 2711 North Haskell Avenue, Suite 2200, LB 36, Dallas, Texas 75204-2960. You may also come to the meeting and change your vote in writing.

**Q. What vote is necessary to approve the Proposal?**

A. The affirmative vote of a majority of the shares of our common stock represented, in person or by proxy, and entitled to vote at the meeting is required to approve the Proposal. Pursuant to Nasdaq requirements, shares of common stock issued in the first part of the private placement (*i.e.*, the Firm Shares) are not entitled to vote on the Proposal.

**Q. How are abstentions and broker non-votes treated?**

A. Any shareholder that is present at the Special Meeting, either in person or by proxy, but who abstains from voting, will still be counted for purposes of determining whether a quorum exists. An abstention would have the same effect as a vote against the Proposal. If you sign your proxy card but do not specify how you want to vote on the Proposal, then your shares will be voted FOR the Proposal.

Brokers who hold shares in street name do not have the authority to vote on the Proposal without receiving instructions from the beneficial owner of the shares. In accordance with our bylaws, broker non-votes will be considered present for purposes of calculating a quorum but will not be deemed to be entitled to vote for purposes of determining whether shareholder approval of the Proposal has been obtained. Therefore, broker non-votes will not be included in the tabulation of the voting results and will have no effect with respect to the approval of the Proposal.

**Q. Where can I find additional information? Who can help answer my questions?**

A: You should carefully review the entire Proxy Statement, which contains important information regarding the Proposal, before voting on the Proposal. We filed a current report on Form 8-K with the Securities and Exchange Commission on August 9, 2005, and an amendment to such Form 8-K on August 10, 2005, which contain a summary of the private placement and attach each of the relevant agreements as exhibits. The Securities Purchase Agreement and Form of Warrant are also attached for your convenience as Annexes to this Proxy Statement. We strongly encourage you to carefully review the Form 8-K, as amended, and the exhibits thereto describing the private placement. The section under the heading "Where You Can Find

**Table of Contents**

Additional Information, beginning on page 22 of this Proxy Statement, describes additional sources from which to obtain this Proxy Statement, our public filings under the Securities Exchange Act of 1934, as amended (including the Form 8-K described above), and other information about Zix.

If you would like copies of the Form 8-K, as amended, described above (including the exhibits thereto), additional copies of this Proxy Statement or other documents that we have filed with the SEC that are incorporated by reference into this Proxy Statement, free of charge, or if you have questions about the Proposal or the procedures for voting your shares, you should contact: Zix Corporation, Attention: Bradley C. Almond, Vice President and Chief Financial Officer, 2711 North Haskell Avenue, Suite 2200, LB 36, Dallas, Texas 75204, Telephone: (214) 370-2000.

**Table of Contents**

**ZIX CORPORATION  
PROXY STATEMENT FOR THE SPECIAL MEETING OF SHAREHOLDERS  
TO BE HELD                      , 2005  
INFORMATION CONCERNING SOLICITATION AND VOTING**

**General**

The enclosed Proxy is solicited on behalf of the Board of Directors (the Board of Directors or the Board ) of Zix Corporation, a Texas corporation ( Zix ), at a Special Meeting of Shareholders to be held on                      , 2005, at 10:00 a.m. (registration to begin at 9:30 a.m.), Central Time, and at any adjournment, continuation or postponement of the meeting, referred to throughout this Proxy Statement as the Special Meeting, for the purposes set forth herein and in the accompanying Notice of Special Meeting of Shareholders. The Special Meeting will be held at Cityplace Conference Center,                      Room, 2711 North Haskell Avenue, Dallas, Texas 75204.

These proxy solicitation materials were first mailed or given to all shareholders entitled to vote at the meeting on or about September                      , 2005.

**Purpose of Special Meeting**

As described above, the purpose of the Special Meeting is to obtain approval for the Proposal and such other business as may properly come before the meeting, including any adjournment or postponement thereof.

**Vote Required**

The affirmative vote of the holders of a majority of the common stock present in person or represented by proxy and entitled to vote at the Special Meeting will be required to approve the Proposal.

**Record Date and Shares Outstanding**

Only shareholders who owned shares of our common stock at the close of business on                      , 2005, referred to in this Proxy Statement as the Record Date, are entitled to notice of, and to vote at, the Special Meeting. In addition, pursuant to Nasdaq requirements, shares of common stock issued in the first part of the private placement transaction (*i.e.*, the Firm Shares) are not entitled to vote on the Proposal. Therefore, each share of common stock outstanding on the Record Date (other than the Firm Shares) is entitled to one vote on the matter to be voted on at the Special Meeting. As of                      , 2005,                      shares of Zix s common stock were outstanding and entitled to vote.

**Revocability of Proxies**

You may revoke your Proxy at any time before it is exercised. Execution of the Proxy will not in any way affect your right to attend the Special Meeting in person. Revocation may be made prior to the meeting by written revocation or through a duly executed proxy bearing a later date sent to

**Table of Contents**

Zix Corporation, Attention: Ronald A. Woessner, Secretary, 2711 North Haskell Avenue, Suite 2200, LB 36, Dallas, Texas 75204; or your Proxy may be revoked personally at the Special Meeting by written notice to the Secretary at the Special Meeting prior to the voting of the Proxy. Any revocation sent to Zix must include the shareholder's name and must be received prior to the meeting to be effective.

**How Your Proxy Will Be Voted**

In the absence of specific instructions to the contrary, shares represented by properly executed proxies received by Zix, including unmarked proxies, will be voted to approve the Proposal. In addition, if any other matters properly come before the meeting, it is the intention of the persons named in the enclosed Proxy to vote the shares they represent as directed by the Board of Directors. We have not received notice of any other matters that may properly be presented at the Special Meeting.

**Quorum**

The presence, in person or by proxy, of the holders of a majority of the outstanding shares of Zix's common stock entitled to vote at the Special Meeting is necessary to constitute a quorum at the Special Meeting. As there were \_\_\_\_\_ shares outstanding and entitled to vote at the Special Meeting as of the Record Date, we will need at least \_\_\_\_\_ shares present in person or by proxy at the Special Meeting for a quorum to exist.

**Dissenters' Rights**

Under Texas law, shareholders are not entitled to dissenters' rights with respect to the Proposal.

**Voting**

***Tabulation***

Votes of shareholders entitled to vote who are present at the Special Meeting in person or by proxy and abstentions are counted as present or represented at the meeting for purposes of determining whether a quorum exists. For the Proposal, the affirmative vote of a majority of the shares of common stock entitled to vote and present in person or represented by proxy at the Special Meeting is necessary for approval.

***Abstentions***

Abstentions occur when a shareholder entitled to vote and present in person or represented by proxy affirmatively votes to abstain. Votes in abstention are considered present for purposes of calculating a quorum but do not count as a vote FOR or AGAINST any matter. While abstentions do not count as a vote FOR or AGAINST, they have the same effect as a negative vote on the Proposal because abstentions will be included in tabulations of the shares of common stock entitled to vote for purposes of determining whether the Proposal has been approved.

***Broker Non-Votes***

A broker non-vote occurs when a nominee holding shares for a beneficial owner does not vote on a particular proposal because the nominee does not have the discretionary voting power with respect to that item and has not received instructions from the beneficial owner. Under applicable

**Table of Contents**

rules, brokers who hold shares in street name do not have the authority to vote on the Proposal without receiving instructions from the beneficial owner of the shares. In accordance with our bylaws, broker non-votes will be considered present for purposes of calculating a quorum but will not be deemed to be entitled to vote for purposes of determining whether stockholder approval of the Proposal has been obtained. Therefore, broker non-votes will not be included in the tabulation of the voting results and will have no effect with respect to the approval of the Proposal.

**Solicitation of Proxies**

This solicitation is being made by mail on behalf of our Board of Directors. We will bear the expense of the preparation, printing and mailing of the enclosed Proxy, Notice of Special Meeting and this Proxy Statement and any additional material relating to the meeting that may be furnished to our shareholders by our Board subsequent to the furnishing of this Proxy Statement. We have engaged Georgeson Shareholder to assist in the solicitation of proxy materials from shareholders at a fee of approximately \$17,000 plus reimbursement of reasonable out-of-pocket expenses. Proxies may also be solicited without additional compensation by our officers or employees by telephone, facsimile transmission, e-mail or personal interview. We will reimburse banks and brokers who hold shares in their name or custody, or in the name of nominees for others, for their out-of-pocket expenses incurred in forwarding copies of the proxy materials to those persons for whom they hold such shares. To obtain the necessary representation of shareholders at the meeting, supplementary solicitations may be made by mail, telephone, facsimile transmission, e-mail or personal interview by our officers or employees, without additional compensation, or selected securities dealers. We anticipate that the cost of such supplementary solicitations, if any, will not be material.

**Shareholders Proposals**

If you would like to submit a proposal to be included in next year's annual proxy statement, you must submit your proposal in writing so that we receive it no later than December 16, 2005. We will include your proposal in our next annual proxy statement if it is a proposal that we would be required to include in our proxy statement pursuant to the rules of the SEC. Under Rule 14a-8 of the Securities Exchange Act of 1934, as amended (the Exchange Act), proposals of shareholders must conform to certain requirements as to form and may be omitted from the proxy materials in certain circumstances. To avoid unnecessary expenditures of time and money, you are urged to review this rule and, if questions arise, consult legal counsel prior to submitting a proposal to us.

The SEC rules also establish a different deadline for submission of shareholder proposals that are not intended to be included in our next annual proxy statement. If a shareholder intends to submit a proposal at the next annual meeting of shareholders and the proposal is not intended to be included in our proxy statement relating to such meeting, the shareholder must have given proper notice no later than March 1, 2005. If a shareholder gives notice of such a proposal after the deadline, the proxy holders will be allowed to use their discretionary voting authority to vote against the shareholder proposal when and if the proposal is raised at the next annual meeting.

All notices of proposals, whether or not to be included in our proxy materials, should be directed to our Secretary, Ronald A. Woessner, at our principal executive offices at 2711 North Haskell Avenue, Suite 2200, LB 36, Dallas, Texas 75204-2960.

**Table of Contents**

**Householding of Proxy Materials**

The SEC has adopted rules that permit companies and intermediaries (e.g., brokers) to satisfy the delivery requirements for proxy statements and annual reports with respect to two or more shareholders sharing the same address by delivering a single proxy statement addressed to those shareholders and enclosing separate proxy cards for each shareholder. This process, which is commonly referred to as householding, potentially eliminates some duplicative mailings to shareholders and reduces our mailing costs.

For this Special Meeting, a number of brokers with account holders who are shareholders of Zix will be householding our proxy materials. A single proxy statement will be delivered to multiple shareholders sharing an address unless contrary instructions have been received from the affected shareholders. Once you have received notice from your broker that they will be householding communications to your address, householding will continue until you are notified otherwise or until you revoke your consent. If, at any time, you no longer wish to participate in householding and would prefer to receive a separate proxy statement and annual report, please notify your broker, direct your written request to Zix Corporation, Attention: Ronald A. Woessner, Secretary, 2711 North Haskell Avenue, Suite 2200, LB 36, Dallas, Texas 75204 or contact Ronald A. Woessner at (214) 370-2000. Shareholders who currently receive multiple copies of the proxy statement at their address and would like to request householding of their communications should contact their broker.

**Table of Contents****SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND  
MANAGEMENT**

The following table sets forth the shares of our common stock beneficially owned by (1) each of our directors, (2) our executive officers, (3) all of our directors and executive officers as a group, and (4) all persons known by us to beneficially own more than 5% of our outstanding stock.

|  | <b>Amount and Nature of<br/>Beneficial Ownership (1)</b>                   |   |
|--|--|---|
|  | <b>Number of<br/>Common<br/>Stock Shares<br/>Beneficially<br/>Owned(3)</b> | <b>Percentage of<br/>Total Common<br/>Stock<br/>Shares<br/>Outstanding(3)</b> |
| <b>Beneficial Owner(2)</b>   |  |   |
| Amaranth LLC (4)<br>c/o Amaranth Advisors L.L.C.<br>One American Lane<br>Greenwich, Connecticut 06831  | 1,400,958  | 3.6%  |
| Bradley C. Almond (5)<br>George W. Haywood (6)<br>c/o Cronin & Vris, LLP<br>380 Madison Avenue, 24th Floor<br>New York, New York 10017   | 107,874  | *   |
| Michael E. Keane (7)<br>Charles N. Kahn III (8)<br>James S. Marston (7)<br>David J. Robertson (7)<br>John A. Ryan (9)<br>Antonio R. Sanchez, Jr. (10)<br>Post Office Box 2986<br>Laredo, Texas 78044 | 4,716,203  | 12.1%   |
| Antonio R. Sanchez III (11)<br>Paul E. Schlosberg (7)<br>Richard D. Spurr (12)<br>Dr. Ben G. Streetman (7)<br>Ronald A. Woessner (13)  | 258,014<br>8,258<br>260,514<br>202,083<br>1,485,309                        | *<br>*<br>*<br>*<br>3.7%  |
| All directors and executive officers as a group (11 persons) (14)  | 2,640,896  | 6.8%  |
|  | 477,366  | 1.2%  |
|  | 6,250  | *   |
|  | 543,779  | 1.4%  |
|  | 207,706  | *   |
|  | 67,864   | *   |
|  | 3,625,017  | 8.7%  |

\* Denotes  
ownership of  
less than 1%.

(1) Reported in  
accordance with  
the beneficial  
ownership rules  
of the Securities  
and Exchange



Commission.  
Unless  
otherwise noted,  
each  
shareholder  
listed in the  
table has both  
sole voting and  
sole investment  
power over the  
common stock  
shown as  
beneficially  
owned, subject  
to community  
property laws  
where  
applicable.

- (2) Unless  
otherwise noted,  
the address for  
each beneficial  
owner is c/o Zix  
Corporation,  
2711 North  
Haskell Avenue,  
Suite 2200, LB  
36, Dallas,  
Texas  
75204-2960.

**Table of Contents**

(3) Percentages are based on the total number of shares of our common stock outstanding at August 10, 2005, which was 38,876,062. Shares of our common stock that were not outstanding but could be acquired upon exercise of an option or other convertible security within 60 days of August 10, 2005 are deemed outstanding for the purpose of computing the percentage of outstanding shares beneficially owned by a particular person. However, such shares are not deemed to be outstanding for the purpose of computing the percentage of outstanding shares beneficially owned by any other person. The number of shares beneficially owned does not include the

Excess Shares or  
shares issuable  
upon exercise of  
the Firm  
Warrants or  
Excess Warrants.

- (4) Excludes  
900,000 Excess  
Shares that may  
be issued to  
Amulet Limited  
upon shareholder  
approval of the  
issuance of the  
Excess Securities  
and warrants  
exercisable for  
245,025 shares  
that were  
reported as  
beneficially  
owned by  
Amaranth LLC  
on a  
Schedule 13G  
filed jointly by  
Amaranth LLC,  
Amaranth  
Advisors L.L.C  
and Nicholas M.  
Maounis on  
August 19, 2005.  
If the Excess  
Shares were  
included, the  
percentage of  
our common  
stock  
beneficially  
owned by  
Amaranth LLC  
would be 5.8%.  
Includes  
(i) 1,398,658  
shares held by  
Amaranth LLC  
through Amulet  
Limited, its  
wholly-owned  
subsidiary.

Amaranth  
Advisors L.L.C.,  
the trading  
advisor for  
Amulet Limited,  
exercises  
dispositive  
powers with  
respect to the  
shares, and  
voting and/or  
dispositive  
power with  
respect to the  
common stock  
underlying the  
warrants.

Amaranth  
Advisors L.L.C.  
has designated  
authorized  
signatories who  
will sign on  
behalf of Amulet  
Limited.

Nicholas M.  
Maounis is the  
managing  
member of  
Amaranth

Advisors L.L.C.

Each of  
Amaranth  
Securities L.L.C  
and Amaranth  
Global Securities

Inc. is a  
broker-dealer  
registered  
pursuant to  
Section 15(b) of  
the Exchange  
Act and is a  
member of the  
National  
Association of  
Securities  
Dealers, Inc. (the  
NASD ). Each  
such  
broker-dealer

may be deemed to be an affiliate of Amaranth LLC. Neither of such broker-dealers, however, is authorized by the NASD to engage in securities offerings either as an underwriter or as a selling group participant and neither of such broker-dealers actually engages in any such activity. Amaranth LLC, through Amulet Limited, also holds \$10 million principal amount of our convertible promissory notes and warrants covering 500,000 shares of our common stock. The convertible notes have an initial conversion price of \$6.00 and the warrants have an initial exercise price of \$6.00, both of which may be adjusted in certain events. We have agreed to redeem \$2.5 million principal amount of the convertible notes with shares of

our common stock by October 31, 2005 and an additional \$2.5 million principal amount of the convertible notes with shares of our common stock by December 31, 2005 at (i) 105% of the principal amount, plus accrued interest and (ii) a redemption rate that will require that we issue shares of our common stock valued at a 10% discount to the daily volume weighted average price ( VWAP ) of our common stock for a specified number of trading days preceding the applicable redemption date. On August 31, 2005, these \$5.25 million mandatory redemptions would be payable with approximately 2.4 million shares of our common stock using a VWAP of approximately \$2.43 per share. For more information on

Amaranth LLC's convertible note holdings, see our Registration Statement on Form S-3 (File No. 333-124318).

- (5) Includes 100,000 shares that Mr. Almond has the right to acquire under outstanding stock options that are currently exercisable or that become exercisable within 60 days of August 10, 2005.
  
- (6) As reported in Mr. Haywood's most recent Form 4, filed August 11, 2005. Includes
  - (i) 41,500 shares that are owned by family members of Mr. Haywood,
  - (ii) 115,000 shares owned by the estate of a family member for which Mr. Haywood is executor and has voting power and
  - (iii) 199,556 shares of common stock currently issuable to him upon exercise of certain warrants.Does not include 320,000 Excess

Shares that may be issued to Mr. Haywood upon shareholder approval of the issuance of the Excess Securities. If such Excess Shares were included, the percentage of our common stock beneficially owned by Mr. Haywood would be 12.8%.

- (7) This individual has the right to acquire these shares under outstanding stock options that are currently exercisable or that become exercisable within 60 days of August 10, 2005.
- (8) Includes 6,250 shares that Mr. Khan has the right to acquire under outstanding stock options that are currently exercisable or that become exercisable within 60 days of August 10, 2005.
- (9) Includes
  - (i) 1,050,000 shares that Mr. Ryan has the right to acquire



under  
outstanding  
stock options  
that are currently  
exercisable or  
that become  
exercisable  
within 60 days of  
August 10, 2005  
and (ii) 66,518  
shares currently  
issuable upon  
exercise of  
certain warrants.

- (10) As reported in  
Mr. Sanchez's  
most recent  
Schedule 13D/A  
filed August 11,  
2005. Includes  
(i) 1,883,770  
shares held by  
Mr. Sanchez, Jr.  
directly,  
(ii) 9,375 shares  
held by family  
members of  
Mr. Sanchez, Jr.,  
(iii) 91,123  
shares held by  
trusts for which  
he serves as  
trustee or  
co-trustee,  
(iv) 523,592  
shares held by  
SANTIG, Ltd., a  
family limited  
partnership for  
which he owns  
and controls the  
managing  
general partner,  
Sanchez  
Management  
Corporation, and  
(v) 133,036  
shares currently  
issuable to Mr.  
Sanchez, Jr. and

SANTIG, Ltd.  
upon exercise of  
certain warrants.  
Mr. Sanchez, Jr.  
is a former  
director and  
father of current  
director Antonio  
R. Sanchez III.  
Does not include  
80,000 Excess  
Shares that may  
be issued to Mr.  
Sanchez, Jr.  
upon shareholder  
approval of the  
issuance of the  
Excess  
Securities. If  
such Excess  
Shares were  
included, the  
percentage of  
our common  
stock  
beneficially  
owned by Mr.  
Sanchez, Jr.  
would be 7.0%.

- (11) Includes  
(i) 187,068  
shares held by  
Mr. Sanchez III  
directly, (ii)  
170,121 shares  
held by a trust  
for which he  
serves as  
co-trustee, along  
with 44,345  
shares issuable  
to the trust upon  
exercise of  
certain warrants  
and (iii) 75,832  
shares that he  
has the right to  
acquire under  
outstanding  
stock options

that are currently  
exercisable or  
that become  
exercisable  
within 60 days of  
August 10, 2005.  
Mr. Sanchez III  
is the son of  
Antonio R.  
Sanchez, Jr., a  
former director.

**Table of Contents**

- (12) Includes 529,922 shares that Mr. Spurr has the right to acquire these shares under outstanding stock options that are currently exercisable or that become exercisable within 60 days of August 10, 2005.
- (13) Includes 59,374 shares that Mr. Woessner has the right to acquire under outstanding stock options that are currently exercisable or that become exercisable within 60 days of August 10, 2005 and 2,500 shares held by a trust for which Mr. Woessner serves as trustee.
- (14) Includes 2,755,934 and 110,863 shares of our common stock that the group has the right to acquire under outstanding stock options and warrants,

respectively,  
that are  
currently  
exercisable or  
that become  
exercisable  
within 60 days  
of August 10,  
2005.

**Table of Contents**

**PROPOSAL:  
APPROVAL OF ISSUANCE OF EXCESS SECURITIES**

**Background and Reasons for the Private Placement Including the Issuance of the Excess Securities**

***General.***

On August 9, 2005, we entered into the Securities Purchase Agreement with the Purchasers, pursuant to which we agreed to sell to the Purchasers an aggregate of 10,503,862 units, each consisting of (i) one share of our common stock, par value \$0.01 per share, and (ii) a related warrant to purchase 0.33 of one share of our common stock. The units were sold for a purchase price of \$2.50 per unit, except in the case of units purchased by our officers and directors, which were sold at a purchase price of \$2.99 per unit. Due to Nasdaq limitations (as described below), we issued only the Firm Securities (consisting of an aggregate of 6,302,318 shares of common stock and related warrants to purchase 2,079,767 shares of our common stock) to the Purchasers at the closing of the Securities Purchase Agreement in exchange for total net proceeds of approximately \$14.67 million.

Assuming the Proposal is approved, we will issue the Excess Securities and receive approximately \$9.75 million in additional proceeds, net of fees and our expenses (for a total of \$24.42 million in aggregate net proceeds from the private placement transaction). We may also receive up to an additional \$10.5 million in aggregate proceeds if and when all warrants issued to the Purchasers in the private placement are exercised in full (assuming an exercise price of \$3.04 and no net exercise of warrants, as described below in *Terms of the Private Placement* ).

***Board of Directors Determination***

In reaching their unanimous decision to approve the private placement, and in determining that the private placement was fair to, and in the best interests of, us and our shareholders, our Board of Directors carefully considered many factors, the most important of which are set forth below:

As of June 30, 2005, we had unrestricted cash and cash equivalents of \$7.7 million. Prior to the private placement described in this Proxy Statement, we had taken certain actions to reduce our cash requirements, including cost reductions, sale of two product lines and amendments to the terms of our \$20 million principal amount of convertible notes held by two institutional investors. In addition, the Company has chosen to continue to invest in the eHealth (e-prescription) market, which is a developing market requiring us to make significant cash investments in order to develop the business. Based on this strategic decision to continue investing in the eHealth market, our anticipated cash requirements would have been greater than our balance of unrestricted cash and cash equivalents that were on hand at that time.

In June 2005, we engaged a financial advisor and investment bank, C.E. Unterberg, Towbin LLC ( *CEUT* ), to help us identify financing alternatives. Based on our stock price and the state of the capital markets and the advice of *CEUT*, our management and our Board of Directors agreed that a private placement, structured as a PIPE transaction, targeting private venture capital investors and other institutional investors, had a higher

**Table of Contents**

likelihood of success, would be concluded more quickly and would provide us better terms than alternative financing transactions.

Given the cash requirements of our business, our Board of Directors determined to proceed with the private placement (including the issuance of the Excess Securities) on the terms contained in the Securities Purchase Agreement.

***Use of Proceeds***

The proceeds received from the issuance of the Excess Securities will be used to fund operations under our current business model, including to fund the Company's continuing investments in the eHealth (e-prescription) market. In particular, the proceeds will be used in a focused effort to maintain and take advantage of what we believe to be an early mover position in the eHealth market as the market develops and continues to grow.

**Terms of the Private Placement**

***General***

The closing of the Securities Purchase Agreement occurred on August 9, 2005. At the closing of the Securities Purchase Agreement, we issued an aggregate of 6,302,318 units (each consisting of one share of common stock and a warrant to purchase 0.33 of one share of our common stock) at a price of \$2.50 per unit, except in the case of units purchased by our officers and directors, which were sold for a purchase price of \$2.99 per unit, for aggregate net proceeds of approximately \$14.67 million. We are requesting in the Proposal that the shareholders approve the issuance by Zix of the Excess Securities, consisting of an additional 4,201,544 units (totaling 4,201,544 shares of our common stock and warrants exercisable for 1,386,507 shares of our common stock at an exercise price of \$3.04 per share) for aggregate net proceeds of approximately \$9.75 million. The sale of common stock and warrants in the private placement is intended to be exempt from the registration requirements of the Securities Act of 1933, as amended, and we expect to rely upon the Regulation D safe harbor provisions. We have set forth below the major terms of the private placement.

To ensure that shareholder approval would not be required for the Firm Securities, the number of Firm Shares was capped at 19.99% of our issued and outstanding shares immediately prior to the execution of the Securities Purchase Agreement. In effecting such cap, we required each participating Purchaser to cut back, on a pro rata basis, the number of shares of common stock and warrants to purchase our common stock that were issued at the closing of the Securities Purchase Agreement, such that the aggregate number of shares of common stock issued at the closing of the Securities Purchase Agreement did not exceed the 19.99% threshold. The funds relating to the Excess Securities were placed into escrow pending shareholder approval of the issuance of the Excess Securities.

A form of the Securities Purchase Agreement and a Form of Warrant are provided for your reference as Annexes A and B, respectively, to this Proxy Statement. These documents were also included as exhibits to our Form 8-K filed on August 9, 2005, as subsequently amended on August 10, 2005. On August 9, 2005, we also entered into an Escrow Agreement with JPMorgan Chase Bank, N.A., as escrow agent, pursuant to which the funds in respect of the Excess Securities are to be held in escrow pending shareholder approval. A form of the Escrow Agreement was also included as an exhibit to our Form 8-K filed on August 9, 2005.

**Table of Contents**

**THIS SUMMARY OF THE TERMS OF THE PRIVATE PLACEMENT IS INTENDED TO PROVIDE YOU WITH BASIC INFORMATION CONCERNING THE TRANSACTION; HOWEVER, IT IS NOT A SUBSTITUTE FOR REVIEWING THE FORM OF SECURITIES PURCHASE AGREEMENT AND THE FORM OF WARRANT IN THEIR ENTIRETY, WHICH WE HAVE INCLUDED AS ANNEXES A AND B, RESPECTIVELY, TO THIS PROXY STATEMENT. YOU SHOULD READ THIS SUMMARY IN CONJUNCTION WITH THE ANNEXES.**

***Terms of the Securities Purchase Agreement Applicable to the Issuance of the Excess Securities***

*Excess Securities to be Issued to Purchasers.* Subject to obtaining the approval of our shareholders, we will issue an additional 4,201,544 shares of common stock and related warrants to purchase 1,386,507 shares of common stock, for an aggregate purchase price of approximately \$10.5 million (\$9.75 million net of transaction expenses). We have agreed to issue the Excess Securities as units, each consisting of one share of common stock and a warrant to purchase 0.33 of one share of common stock, at a purchase price of \$2.50 per unit (except in the case of units issued to our officers and directors, which we have agreed to issue for a purchase price of \$2.99 per unit). The warrants may be exercised at any time from February 9, 2006 through August 9, 2010 at an exercise price of \$3.04 per share. We currently expect the issuance of such Excess Securities to take place promptly following this Special Meeting.

*Special Meeting Obligations.* Under the Securities Purchase Agreement, we are required to seek, and use our best efforts to obtain, our shareholders' approval of the issuance of the Excess Securities on or before November 22, 2005 (the 105th day following the closing of the Securities Purchase Agreement). In satisfying such obligations, we are required to call the Special Meeting and were required to prepare and file a preliminary form of this Proxy Statement no later than 30 days after the closing date of the Securities Purchase Agreement. Our Board of Directors has also agreed to recommend approval of the issuance of the Excess Securities by our shareholders. Under the Securities Purchase Agreement, we agreed to mail and distribute this Proxy Statement to our shareholders at least 30 days prior to the date of the Special Meeting, actively solicit proxies to vote for the Proposal and retain a proxy solicitation firm to assist in the solicitation.

*Registration Obligations and Liquidated Damages.* No later than 30 business days after the closing of the Securities Purchase Agreement (the Required Filing Date), we are required, at our expense, to file with the Securities and Exchange Commission (the SEC) a registration statement with respect to the resale of the shares of common stock (A) issued pursuant to the private placement (including the Firm Shares and the Excess Shares), and (B) issuable upon exercise of the warrants issued pursuant to the private placement (including the Firm Warrants and the Excess Warrants). We are required to use commercially reasonable efforts to cause such registration statement to be declared effective by the SEC no later than the 120th day following the closing date of the Securities Purchase Agreement (or if we receive notification from the SEC that the registration statement will receive no action or review from the SEC, within five business days after such notification) (the Required Effective Date), and, subject to our right to suspend the resale of stock under the registration statement in certain circumstances, we are required to maintain the effectiveness of this registration statement until the earlier of (1) the second anniversary of the effective date of the registration statement, (2) the date on which all such shares have been sold thereunder or (3) the date on which all such shares become eligible for resale pursuant to Rule 144(k) promulgated under the Securities Act of 1933, as amended (the Securities Act); provided, however, that if any Purchaser is an affiliate of Zix (as defined in



**Table of Contents**

Rule 144(a)(1) of the Securities Act) on the second anniversary of the effective date of the registration statement, the applicable time period to maintain the effectiveness of the registration statement will be the third anniversary of the effective date of the registration statement. If the registration statement (a) is not filed by the Required Filing Date, (b) is not declared effective by the Required Effective Date, or (c) once effective, ceases to be effective and available to the Purchasers in the private placement for any continuous period that exceeds 15 days, Zix is required to pay the investors in the private placement a cash payment as liquidated damages and not as a penalty. This cash payment is calculated as 1% per month (pro-rata on a 30 day basis) of the aggregate purchase price paid by the Purchasers in the private placement.

***Terms of the Warrants***

***Exercise Period.*** Each of the Excess Warrants to be issued in the private placement will be exercisable from February 9, 2006 through August 9, 2010 and can be exercised in cash or, in certain situations, pursuant to a net exercise provision (as described below).

***Methods of Exercise.*** The warrants may be exercised in cash at all times during the exercise period, whereby the holders of the warrants deliver the certificates representing the warrants to Zix and the then-applicable exercise price for the warrants in exchange for the shares issuable thereunder. In addition, the warrants contain a net exercise provision. If there is no effective registration statement registering the resale of the shares issuable upon exercise of the warrants, the net exercise provision allows the holder to receive shares of common stock equal to the value of the warrant without paying the exercise price in cash, but rather with the shares underlying the warrant.

***Exercise Price, Adjustment to Exercise Price and Number of Shares.*** The exercise price of the Warrants is initially \$3.04 per share. The exercise price of, and the number of shares issuable pursuant to, the warrants are subject to customary anti-dilution adjustments in certain events, including certain mergers, consolidations, sales of substantially all of the assets of Zix, subdivision or combination of shares of Zix, stock dividends and other distributions of Zix.

***Registration Rights.*** The warrants and the shares of our common stock issuable upon exercise of the warrants are not registered under the Securities Act or any state securities laws. Zix has granted registration rights to the Purchasers for the shares of common stock issuable upon the exercise of the warrants. Such registration rights are described in more detail above under the heading Terms of the Securities Purchase Agreement Applicable to the Issuance of the Excess Securities Registration Obligations and Liquidated Damages above on page 16.

***Terms of the Escrow Agreement***

Pursuant to the Escrow Agreement entered into as of August 9, 2005, between us and JPMorgan Chase Bank, N.A., as escrow agent, approximately \$10.5 million of funds relating to the Excess Securities to be issued to the Purchasers under the Securities Purchase Agreement were placed into escrow pending approval by our shareholders of the issuance of the Excess Securities to the Purchasers. While held in escrow, the escrowed funds will accrue interest, payable by us, at a rate of 7.0% per annum.

If our shareholders approve the consummation of the issuance of the Excess Securities, we will receive the escrowed funds in exchange for the issuance of the Excess Securities. If our shareholders do not approve such issuance, the funds will be returned to the Purchasers. Under the terms of the Securities Purchase Agreement and the Escrow Agreement, we will be required

**Table of Contents**

to pay the required interest amount to the Purchasers whether or not shareholder approval is obtained.

**Conditions to Consummating the Issuance of the Excess Securities**

Under the terms of the Securities Purchase Agreement that govern the private placement, our obligation to issue the Excess Securities pursuant to the private placement is subject only to the condition that our shareholders approve the issuance of such securities.

**Shareholder Approval and Nasdaq National Market Rules**

We are subject to the rules of the Nasdaq Stock Market, Inc. because our common stock is listed on the Nasdaq National Market. These rules require us to obtain shareholder approval for any issuance or sale of common stock, or securities convertible into or exercisable for common stock, that is (i) equal to 20% or more of our outstanding common stock before such issuance or sale and (ii) at a price per share below the greater of book or market value at the time of such issuance or sale. These rules apply to the Excess Shares because:

the purchase price of the units (each consisting of one share of common stock and a warrant to purchase 0.33 of one share of our common stock) issued and sold at the closing of the Securities Purchase Agreement, and that we intend to issue and sell following shareholder approval, is \$2.50 per unit (except for units purchased by certain of our officers and directors, which were sold or will be sold at a purchase price of \$2.99 per unit), which is below \$2.94 per share, the closing price of our common stock on Nasdaq on August 8, 2005, the last day our common stock traded on Nasdaq before we entered into the Securities Purchase Agreement; and

the shares of common stock that we have issued or intend to issue and sell pursuant to the Securities Purchase Agreement (including the Excess Shares) will comprise, in total, approximately 32.25% of the shares of our common stock outstanding immediately prior to August 9, 2005.

For the above reasons, we are required under Nasdaq National Market rules to obtain shareholder approval prior to issuing and selling the Excess Securities.

**Dilutive Effect**

Our shareholders will incur immediate and significant dilution of their percentage of stock ownership in Zix if the Proposal is approved and the Excess Securities are issued. This means that our current shareholders will own a smaller percentage interest in Zix as a result of the issuance of the Excess Securities.

The table below illustrates the incremental impact that the issuance of the Excess Securities will have upon the number of shares of our common stock outstanding (assuming no additional issuances of shares of our common stock):

**Table of Contents**

|  | Number of Shares<br>Outstanding<br>Prior to Issuance | Shares                          | Warrants*                         |
|--|--|---------------------------------|-----------------------------------|
| Issuance of Firm Securities on August 9, 2005: | 32,573,744   | 6,302,318<br>(Firm<br>Shares)   | 2,079,767<br>(Firm<br>Warrants)   |
|  | (As of August 8, 2005)                               |                                 |                                   |
| Issuance of Excess Securities:                 | 38,876,062   | 4,201,544<br>(Excess<br>Shares) | 1,386,507<br>(Excess<br>Warrants) |
|  | (After issuance of<br>Firm Shares)                   |                                 |                                   |

\* The Firm Warrants and Excess Warrants reflected in this table are not exercisable until February 9, 2006.

Shareholders immediately prior to the issuance of the Excess Securities will incur dilution in their percentage ownership of our common stock upon the consummation of the issuance of the Excess Shares, of approximately 9.75%, or 12.01% assuming exercise in full of the Firm Warrants and the Excess Warrants.

**Interests of Certain Persons in the Issuance of the Excess Securities**

Some of the Purchasers in the private placement are officers and directors of Zix. Units issued to our officers and directors in the private placement were sold for a purchase price of \$2.99 per unit (each unit consisting of one share of common stock and a warrant to purchase up to 0.33 of one share of our common stock), which is equal to (i) \$2.94 per share, the closing market price of one share of our common stock on August 8, 2005 (the day immediately prior to the closing of the Securities Purchase Agreement) plus (ii) \$0.05 attributable to the warrant to purchase 0.33 of one share of our common stock (or approximately an additional \$0.125 per whole share of our common stock as required under Nasdaq rules). All other Purchasers in the private placement purchased units at a price of \$2.50 per unit. The following table sets forth the beneficial ownership of each such officer and/or director who is participating in the private placement in our common stock immediately prior to the issuance of the Excess Securities, the number of Excess Shares and Excess Warrants that such officer and/or director will own after the issuance of the Excess Securities, and the beneficial ownership of such officer and/or director immediately following the issuance of the Excess Securities:

|                                  | <b>Beneficial Ownership</b> | <b>After Issuance of<br/>Excess<br/>Shares</b> |
|----------------------------------|-----------------------------|--|
| <b>Prior<br/>to<br/>Issuance</b> | &nbsp;                      |  |