

PHOENIX TECHNOLOGIES LTD
Form 8-K
November 02, 2010

**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): October 31, 2010

PHOENIX TECHNOLOGIES LTD.

(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or Other Jurisdiction of
Incorporation)

0-17111
(Commission File Number)

04-2685985
(I.R.S. Employer
Identification No.)

915 Murphy Ranch Road, Milpitas, California
(Address of Principal Executive Offices)

95035
(Zip Code)

Registrant's telephone number, including area code: **(408) 570-1000**

Not Applicable

(Former name or former address, if changed since last report)

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:

- 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))
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Item 8.01. Other Events

As previously disclosed, on October 28, 2010, Phoenix Technologies Ltd. (Phoenix) received an unsolicited non-binding proposal from a third party, affiliates of Gores Capital Partners III, L.P. (Gores), to acquire all of the securities of Phoenix following the execution of the Agreement and Plan of Merger (the Marlin Merger Agreement), dated August 17, 2010, between Phoenix and affiliates of Marlin Capital Partners (Marlin), and the Amendment to the Agreement and Plan of Merger, dated October 21, 2010, between Phoenix and Marlin. The non-binding proposal from Gores was subject to satisfactory completion of confirmatory due diligence and the finalization of definitive agreements.

On October 31, 2010, Gores submitted a definitive offer and revised proposal to Phoenix, in the form of an Agreement and Plan of Merger (the Gores Merger Agreement) and other related agreements executed by Gores, to acquire all of the outstanding securities of Phoenix for cash consideration of \$4.20 per share. Under the Marlin Merger Agreement, as amended, the merger consideration is \$4.05 per share. The proposed acquisition by Gores will be structured as a tender offer to stockholders of Phoenix. Except for the merger consideration and the tender offer structure of the transaction, the terms of the Gores Merger Agreement are substantially identical to the Marlin Merger Agreement, as amended.

Promptly following the submission of Gores revised proposal, on November 1, 2010, the board of directors of Phoenix (the Board) held a meeting and determined, in accordance with the terms of the Marlin Merger Agreement, as amended, and after consulting with its financial and legal advisors, that the revised proposal received from Gores constitutes a Superior Proposal (as such term is defined in the Marlin Merger Agreement, as amended).

Thereafter, on November 1, 2010 and pursuant to the terms of the Marlin Merger Agreement, as amended, the Board gave written notice to Marlin of its determination that the revised proposal from Gores constitutes a Superior Proposal, and the notice included copies of the Gores Merger Agreement and related agreements. Under the terms of the Marlin Merger Agreement, as amended, if Marlin does not within three business days following the receipt of such notice make a binding written proposal (the Matching Proposal) that would cause the revised proposal received from Gores to no longer constitute a Superior Proposal, Phoenix will be entitled to terminate the Marlin Merger Agreement, as amended, and enter into the Gores Merger Agreement. Pursuant to the terms of the Marlin Merger Agreement, as amended, Phoenix intends to negotiate in good faith with Marlin with respect to a Matching Proposal. In the event of a termination of the Marlin Merger Agreement, as amended, by Phoenix, Marlin will be entitled to a termination fee of \$4.15 million from Phoenix.

In light of the developments disclosed above, Phoenix currently expects that it will hold but immediately adjourn its special meeting of stockholders on November 5, 2010 to a later date to be announced at the meeting.

On November 1, 2010, Phoenix issued a press release announcing the receipt of the definitive offer and revised proposal from Gores and the Gores Merger Agreement. A copy of the press release is attached hereto as Exhibit 99.1.

Important Additional Information About the Merger and Where You Can Find It.

In connection with the proposed transaction and the special meeting of Phoenix stockholders to approve the transaction, Phoenix filed a definitive proxy statement with the Securities and Exchange Commission on September 22, 2010 and a supplement to the definitive proxy statement on October 26, 2010 (as supplemented, the Proxy Statement). INVESTORS AND SECURITY HOLDERS ARE STRONGLY ADVISED TO READ THE PROXY STATEMENT AND OTHER FILED DOCUMENTS WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT THE PROPOSED TRANSACTION. Investors and security holders may obtain a free copy of the Proxy Statement and other documents filed by Phoenix at the Securities and Exchange Commission s website at www.sec.gov. The Proxy

Statement and other relevant documents may also be obtained for free from Phoenix by directing such request to Phoenix Technologies Ltd., c/o Investor Relations, 915 Murphy Ranch Rd., Milpitas, CA, telephone: (408) 570-1000.

Phoenix and its directors, executive officers and certain other members of its management and employees may be deemed to be participants in the solicitation of proxies from its stockholders in connection with the proposed merger. Certain information regarding the interests of such directors and executive officers is included in the Phoenix Proxy Statement for its 2010 Annual Meeting of Stockholders filed with the Securities and Exchange Commission on December 30, 2009, and information concerning all of the Phoenix participants in the solicitation are included in the Proxy Statement. Each of these documents is, or will be, available free of charge at the Securities and Exchange Commission's website at www.sec.gov and from Phoenix Technologies Ltd., c/o Investor Relations, 915 Murphy Ranch Rd., Milpitas, CA, telephone: (408) 570-1000.

Forward-Looking Statements

This document contains certain forward-looking statements about Phoenix that are subject to risks and uncertainties that could cause actual results to differ materially from those expressed or implied in the forward-looking statements. These factors include, but are not limited to, the outcome of the Superior Proposal submitted by Gores or any Matching Proposal submitted by Marlin; the occurrence of any event, change or other circumstances that could give rise to the termination of the Marlin Merger Agreement, as amended, and the execution of the Gores Merger Agreement; the outcome of any legal proceedings that have or may be instituted against the Company; the risk that the proposed transaction disrupts current plans and operations; and other risks that are set forth in the Risk Factors and other sections of Phoenix's filings with the Securities and Exchange Commission. Many of the factors that will determine the outcome of the merger are beyond Phoenix's ability to control or predict. Phoenix undertakes no obligation to revise or update any forward-looking statements, or to make any other forward-looking statements, whether as a result of new information, future events or otherwise.

Item 9.01. Financial Statements and Exhibits

(d) The following documents are filed as exhibits to this report:

Item No.	Exhibit
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99.1	Press Release issued by Phoenix Technologies Ltd., dated November 1, 2010
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SIGNATURE

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

Date: November 1, 2010

PHOENIX TECHNOLOGIES LTD.

By: /s/ Timothy C. Chu
Timothy C. Chu
Vice President, General Counsel and
Secretary