

Avinger Inc
Form DEFR14A
December 29, 2017
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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

SCHEDULE 14A

**PROXY STATEMENT PURSUANT TO SECTION 14(a) OF THE
SECURITIES EXCHANGE ACT OF 1934
(Amendment No. 1)**

Filed by the Registrant

Filed by a Party other than the Registrant o

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 Pursuant to §240.14a-11(c) or §240.14a-2

AVINGER, INC.

(Name of Registrant as Specified In Its Charter)

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:
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(1) Amount Previously Paid:

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(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

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**400 CHESAPEAKE DRIVE
REDWOOD CITY, CALIFORNIA 94063**

December 27, 2017

Dear Stockholders of Avinger, Inc.:

We cordially invite you to attend a special meeting of stockholders (the **Special Meeting**) of Avinger, Inc., a Delaware corporation, which will be held on **Monday, January 29, 2018 at 1:00 p.m. Pacific Time**, in person at 400 Chesapeake Drive, Redwood City, California 94063.

At the Special Meeting, you will be asked to consider and vote on (1) a Proposal to approve the proposed issuance and sale by Avinger, Inc. (the **Company** or **Avinger**) of up to \$15,000,000 in shares of its Common Stock to Lincoln Park Capital Fund, LLC (**Lincoln Park** or **LPC**), in accordance with NASDAQ Stock Market Rule 5635(d); and (2) a Proposal to amend our Amended and Restated Certificate of Incorporation to effect a reverse stock split at a ratio not less than 1-for-20 and not greater than 1-for-40, with the exact ratio to be set within that range at the discretion of our board of directors before the day prior to the 2018 annual meeting of stockholders without further approval or authorization of our stockholders. At the Special Meeting, you may also be asked to consider and vote on a proposal to adjourn the Special Meeting to a later date or dates, if necessary or appropriate, to solicit additional proxies if there are insufficient votes to approve the above matters at the time of the Special Meeting.

Avinger's board of directors, after considering the factors more fully described in the enclosed proxy statement, has unanimously (1) determined that it is in the best interests of Avinger and its stockholders, and declared it advisable, to effect the above stock issuance and sale and amendment to Avinger's Amended and Restated Certificate of Incorporation; (2) directed that the stock issuance to Lincoln Park and the adoption of the amendment to Avinger's Amended and Restated Certificate of Incorporation be submitted to a vote at the Special Meeting; and (3) resolved to recommend that the Avinger stockholders vote in favor of the stock issuance and sale to Lincoln Park and the adoption of the amendment to Avinger's Amended and Restated Certificate of Incorporation in accordance with the Delaware General Corporation Law.

Avinger's board of directors unanimously recommends that you vote (1) FOR the issuance and sale of up to \$15,000,000 in shares of Avinger's Common Stock to Lincoln Park; (2) FOR the adoption of an amendment to Avinger's Amended and Restated Certificate to effect a reverse stock split; and (3) FOR the adjournment of the Special Meeting to a later date or dates, if necessary or appropriate, to solicit additional proxies if there are insufficient votes to approve the issuance to Lincoln Park or to adopt the amendment to Avinger's Amended and Restated Certificate of Incorporation at the time of the Special Meeting.

The accompanying proxy statement provides detailed information about the Special Meeting and the matters to be voted on at the Special Meeting. A copy of the proposed amendment to our Amended and Restated Certificate of Incorporation is attached as **Appendix A** to the proxy statement. We encourage you to read the proxy statement and its appendix carefully and in their entirety, as they contain important information.

YOUR VOTE IS IMPORTANT. Whether or not you plan to attend the Special Meeting, we urge you to submit your vote via the Internet, telephone or mail.

If you have any questions or need help voting your shares, please contact our proxy solicitor:

The Proxy Advisory Group, LLC
18 East 41st Street, 20th Floor
New York, NY 10017
Avinger Stockholders May Call:
1 (888) 557-7699 (Toll-Free From the U.S. and Canada)
or
1 (212) 616-2180 (From Other Locations)

We appreciate your continued support of Avinger.

Sincerely,
/s/ Jeffrey M. Soinski
Jeffrey M. Soinski
Chief Executive Officer
Redwood City, California

The accompanying proxy statement is dated December 27, 2017, and together with the enclosed form of proxy card, is first being mailed on or about December 28, 2017.

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Explanatory Note

This Amendment No. 1 amends and restates the definitive proxy statement of Avinger, Inc. for its January 29, 2018 special meeting of stockholders, which was filed with the Securities and Exchange Commission on December 28, 2017 (the Original Proxy Statement). This amended and restated proxy statement is being filed in order to clarify the discretion brokers and other nominees have in voting at the special meeting, in the event that the beneficial owners of shares of our outstanding stock fail to deliver timely voting instructions.

There are three proposals to be presented at the special meeting. Because Proposal 2 and Proposal 3 are considered routine matters by applicable stock exchange rules, brokers or other nominees generally have discretion to vote shares as to which they have not received voting instructions from the beneficial owners. Accordingly, we do not expect any broker non-votes on Proposal 2 or Proposal 3. Proposal 1 is considered a non-routine matter, and accordingly brokers and other intermediaries will not have discretion to vote shares as to which they have not received voting instructions from the beneficial owners. No other changes have been made to the Original Proxy Statement.

You should read this Amendment No. 1 in its entirety and in place of the Original Proxy Statement. We will print and distribute to our stockholders this Amendment No. 1 in lieu of the Original Proxy Statement.

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**NOTICE OF SPECIAL MEETING OF STOCKHOLDERS
TO BE HELD ON JANUARY 29, 2018**

Notice is hereby given that a special meeting (the Special Meeting) of stockholders of Avinger, Inc., a Delaware corporation, referred to as Avinger or the Company will be held on Monday, January 29, 2018 at the Company's principal executive offices at 400 Chesapeake Drive, Redwood City, California 94063, at 1:00 p.m. Pacific time, for the following purposes:

1. To approve the proposed issuance and sale by the Company of up to \$15,000,000 in shares of Common Stock to Lincoln Park Capital Fund, LLC (Lincoln Park or LPC), in compliance with NASDAQ Stock Market Rule 5635(d);
2. To approve an amendment to our Amended and Restated Certificate of Incorporation to effect a reverse stock split at a ratio not less than 1-for-20 and not greater than 1-for-40, with the exact ratio to be set within that range at the discretion of our board of directors before the day prior to the 2018 annual meeting of stockholders without further approval or authorization of our stockholders; and
3. To approve the adjournment of the Special Meeting to a later date or dates, if necessary or appropriate, to solicit additional proxies if there are insufficient votes to adopt certain of the above proposals.

Our board of directors has fixed the close of business on December 21, 2017 as the record date for the Special Meeting. Only stockholders of record on December 21, 2017 are entitled to notice of and to vote at the Special Meeting. Further information regarding voting rights and the matters to be voted upon is presented in the accompanying proxy statement.

YOUR VOTE IS IMPORTANT. Whether or not you plan to attend the Special Meeting, we urge you to submit your vote via the Internet, telephone or mail.

If you have any questions or need help voting your shares, please contact our proxy solicitor:

The Proxy Advisory Group, LLC
18 East 41st Street, 20th Floor
New York, NY 10017
Avinger Stockholders May Call:
1 (888) 557-7699 (Toll-Free From the U.S. and Canada)
or
1 (212) 616-2180 (From Other Locations)

We appreciate your continued support of Avinger.

By order of the Board of Directors,
/s/ Jeffrey M. Soinski
Jeffrey M. Soinski
Chief Executive Officer
Redwood City, California

Dated: December 27, 2017

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AVINGER, INC.

**PROXY STATEMENT
FOR SPECIAL MEETING OF STOCKHOLDERS
To Be Held at 1:00 p.m. Pacific Time on January 29, 2018**

This proxy statement and the enclosed form of proxy are furnished in connection with the solicitation of proxies by our board of directors for use at the Special Meeting of stockholders of Avinger, Inc., a Delaware corporation, and any postponements, adjournments or continuations thereof (the Special Meeting). The Special Meeting will be held on Monday, January 29, 2018 at 1:00 p.m. Pacific Time, at the Company's principal executive offices at 400 Chesapeake Drive, Redwood City, California 94063. This proxy statement is first being mailed on or about December 28, 2017 to all stockholders entitled to vote at the Special Meeting.

The information provided in the question and answer format below is for your convenience only and is merely a summary of the information contained in this proxy statement. You should read this entire proxy statement carefully. Information contained on, or that can be accessed through, our website is not intended to be incorporated by reference into this proxy statement and references to our website address in this proxy statement are inactive textual references only.

What matters am I voting on?

You will be voting on:

- *Proposal 1* – to approve the proposed issuance and sale by the Company of up to \$15,000,000 in shares of Common Stock to Lincoln Park, in compliance with NASDAQ Stock Market Rule 5635(d) to the extent such issuance could result in the Company issuing twenty percent (20%) or more of the issued and outstanding Common Stock of the Company;

Proposal 2 – to authorize an amendment to our Amended and Restated Certificate of Incorporation to effect a reverse stock split at a ratio not less than 1-for-20 and not greater than 1-for-40, with the exact ratio to be set within that range at the discretion of our board of directors before the day prior to the 2018 annual meeting of stockholders without further approval or authorization of our stockholders; and

Proposal 3 – to approve the potential adjournment of the Special Meeting to a later date or dates, if necessary or appropriate, to solicit additional proxies if there are insufficient votes to adopt Proposal 1 or Proposal 2 at the time of the Special Meeting.

Why is the Company seeking to authorize the issuance of 20% or more of the Company's outstanding common stock?

Under the Purchase Agreement entered into with Lincoln Park on November 3, 2017, pursuant to which we may issue and sell to Lincoln Park up to \$15,000,000 of the Company's Common Stock, no more than 19.99% of the Company's shares may be issued to Lincoln Park without stockholder approval. The Lincoln Park Purchase Agreement is our primary financing source in the near term, and at this time we are not subject to any other agreements for alternative financing sources. We can provide no assurance that we will be successful in raising funds through additional equity or debt financings or that such funds will be raised at prices that do not create substantial dilution for our existing stockholders. As a result, the Company is seeking stockholder approval in order to have the ability to issue the full \$15,000,000 of Common Stock to Lincoln Park.

Why is the Company seeking to implement a reverse stock split?

The reverse stock split is being proposed to increase the market price of our common stock to satisfy the \$1.00 minimum closing bid price required to avoid the delisting of our common stock from The NASDAQ Global Market (NASDAQ). In addition, a higher stock price may, among other things, increase the attractiveness of our common stock to the investment community.

What are the consequences of being delisted from NASDAQ?

If we do not effect the reverse stock split, it is likely that we will not be able to meet the \$1.00 minimum closing bid price continued listing requirement of NASDAQ and our common stock would be delisted from NASDAQ. If we are delisted from NASDAQ, we may be forced to seek to be traded on the OTC Bulletin Board or the pink

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sheets, which would require our market makers to request that our common stock be so listed. There are a number of negative consequences that could result from our delisting from NASDAQ, including, but not limited to, the following:

- the liquidity and market price of our common stock may be negatively impacted and the spread between the bid and asked prices quoted by market makers may be increased;
- our access to capital may be reduced, causing us to have less flexibility in responding to our capital requirements;
 - our institutional investors may be less interested in or prohibited from investing in our common stock, which may cause the market price of our common stock to decline;
- we will no longer be deemed a covered security under Section 18 of the Securities Act of 1933, as amended, and, as a result, we will lose our exemption from state securities regulations, making the granting of stock options and other equity incentives to our employees more difficult; and
- if our stock is traded as a penny stock, transactions in our stock would be more difficult and cumbersome.

How does the board of directors recommend I vote on these proposals?

Our board of directors recommends a vote:

FOR Proposal 1 to approve the proposed issuance and sale by the Company of up to \$15,000,000 in shares of Common Stock to Lincoln Park, in compliance with NASDAQ Stock Market Rule 5635(d) to the extent such issuance could result in the Company issuing twenty percent (20%) or more of the issued and outstanding Common Stock of the Company;