

SECURITIES AND EXCHANGE COMMISSION

FORM S-8

Initial registration statement for securities to be offered to employees pursuant to employee benefit plans

Filing Date: **1999-03-26**
SEC Accession No. **0000950131-99-001774**

([HTML Version](#) on secdatabase.com)

FILER

SONIC FOUNDRY INC

CIK: **1029744** | IRS No.: **391783372** | State of Incorporation: **MD** | Fiscal Year End: **0930**
Type: **S-8** | Act: **33** | File No.: **333-75167** | Film No.: **99575175**
SIC: **7372** Prepackaged software

Mailing Address
754 WILLIAMSON ST
MADISON WI 53703

Business Address
754 WILLIAMSON ST
MADISON WI 53703
6082563133

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM S-8

Registration Statement
Under
The Securities Act of 1933

SONIC FOUNDRY, INC.

(Exact name of small business issuer as specified in its charter)

MARYLAND
(State or other jurisdiction of
incorporation or organization)

39-1783372
(I.R.S. Employer
Identification No.)

754 Williamson Street, Madison, WI 53703 (608)256-3133
(Address of principal executive offices) (Issuer's telephone number)

Sonic Foundry, Inc. 1995 Stock Option Plan (1,000,000 shares)
Sonic Foundry, Inc. Non-Employee Directors Stock Option Plan (90,000 shares)
Shareholder Relations Consultant Warrants (126,000 shares)
(Full title of plans)

Rimas P. Buinevicius
Chief Executive Officer
754 Williamson St.
Madison, WI 53703
(608)256-3133

(Name, address, including zip code, and telephone number, including area code,
of agent for service)

Calculation of Registration Fee

<TABLE>
<CAPTION>

Title of Securities to be Registered	Amount to be Registered	Proposed Maximum Aggregate Offering Price(1)	Amount of Registration Fee
<S> Common Stock, \$0.01 par value per share	<C> 1,216,000 shares	<C> \$9,886,080	<C> \$2,748.33

</TABLE>

(1) Computed pursuant to Rule 457(c) and (h) based on the average of the high and low sales prices reported by the American Stock Exchange on March 22, 1999, which was \$8.13.

1

PART I
INFORMATION REQUIRED IN THE SECTION 10(A) PROSPECTUS

ITEM 1. PLAN INFORMATION

The information required for this item is included in documents distributed to each Participant.

ITEM 2. REGISTRANT INFORMATION AND EMPLOYEE PLAN ANNUAL INFORMATION

The information required for this item is included in documents distributed to each Participant.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

ITEM 3. INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The following documents are incorporated in this Registration Statement by reference:

1. The Registrant's Annual Report on Form 10-KSB for the fiscal year ended September 30, 1998 filed on December 22, 1998 pursuant to Section 13(a) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), which Annual Report contains audited financial statements for the fiscal year ended September 30, 1998.
2. The Registrant's Quarterly Report on Form 10-QSB for the fiscal quarter ended December 31, 1998 filed pursuant to the Exchange Act.
3. The description of the Registrant's Common Stock contained in the Registrant's registration statement on Form 8-A filed on April 22, 1998 with the Commission under Section 12(g) of the Exchange Act.

All documents filed by the Registrant with the Securities and Exchange Commission pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date hereof and prior to the filing of a post-effective amendment which indicates that all of the securities offered hereby have been sold or which de-registers such securities remaining unsold shall also be deemed to be incorporated by reference into this Registration Statement and to be a part hereof commencing on the respective dates on which such documents are filed.

Any statement incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document that also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

2

ITEM 4. DESCRIPTION OF SECURITIES

Not required

ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL

The law firm of McBreen, McBreen & Kopko will be furnishing an opinion as to the legality of the Common Stock registered under this Registration Statement. During fiscal 1998, the Company paid \$196,441 to McBreen, McBreen & Kopko for legal services. Frederick H. Kopko, Jr. is a partner of McBreen, McBreen & Kopko. Mr. Kopko is a director of the Company and is the beneficial owner of 173,024 shares of Series B 5% Cumulative Convertible Preferred Stock. Mr. Kopko also was granted an option to purchase 10,000 shares of Common Stock at an exercise price of \$5.00 per share under the Directors Stock Option Plan.

ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS

The Articles of Incorporation of the Company limit the liability of the

directors of the Company to the Company or its stockholders (in their capacity as directors but not in their capacity as officers) to the fullest extent permitted by the Maryland General Corporation Law ("MGCL"). Accordingly, pursuant to the terms of the MGCL as presently in effect, the Company may indemnify any director unless it is established that: (i) the act or omission of the director was material to the matter giving rise to the proceeding and was committed in bad faith or was the result of active and deliberate dishonesty; (ii) the director actually received an improper personal benefit in money, property or services; or (iii) in the case of any criminal proceeding, the director had reasonable cause to believe that the act or omission was unlawful. In addition, the Company's Bylaws require the Company to indemnify each person who is or was, a director, officer, employee or agent of the Company to the fullest extent permitted by the laws of the State of Maryland in the event he is involved in legal proceedings by reason of the fact that he is or was a director, officer, employee or agent of the Company, or is or was serving at the Company's request as a director, officer, employee or agent of another corporation, partnership or other enterprise. The Company may also advance to such persons expenses incurred in defending a proceeding to which indemnification might apply, upon terms and conditions, if any, deemed appropriate by the Board of Directors upon receipt of an undertaking by or on behalf of such director or officer to repay all such advanced amounts if it is ultimately determined that he is not entitled to be indemnified as authorized by the laws of the State of Maryland.

ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED

Not applicable

ITEM 8. EXHIBITS

<TABLE>

<CAPTION>

Exhibit Number -----	Description -----
<S>	<C>
4.1	Amended and Restated Articles of Incorporation of the Registrant/1/
4.2	Amended and Restated By-Laws of the Registrant/1/
4.3	Registrant's 1995 Stock Option Plan/2/
4.4	Registrant's Non-Employee Directors' Stock Option Plan/2/
4.5	Form of Warrant
5.1	Opinion of McBreen, McBreen & Kopko regarding the legality of the Common Stock registered hereby.
23.1	Consent of McBreen, McBreen & Kopko (included in its opinion to be filed as Exhibit 5.1 hereto)
23.2	Consent of Ernst & Young, LLP

</TABLE>

ITEM 9. UNDERTAKINGS

(a) The undersigned registrant hereby undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement;
 - (i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;
 - (ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) that, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement; and

Both of such documents were previously filed as exhibits to the Company's

Registration Statement on Form SB-2 dated February 10, 1998 (Registration No. 333-46005) and are incorporated herein by reference.

Both of such documents were previously filed as exhibits to the Company's Registration Statement on Amendment No. 2 to Form SB-2 dated April 3, 1998 (Registration No. 333-46005) and are incorporated herein by reference.

4

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

PROVIDED, HOWEVER, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed by the Registrant pursuant to Section 13 or 15(d) of the Exchange Act that are incorporated by reference in the Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new Registration Statement relating to the securities offered therein, and the offering of the securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered that remain unsold at the termination of the offering.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act that is incorporated by reference in the Registration Statement shall be deemed to be a new Registration Statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. If a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless, in the opinion of its counsel, the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question of whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

5

SIGNATURES

Pursuant to the requirements of the Securities Act, the Registrant certifies that it has reasonable grounds to believe it meets all the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Madison, State of Wisconsin, on this 26th day of March, 1999.

Sonic Foundry, Inc.

By /s/ Rimas Buinevicius

Rimas Buinevicius, Chairman
and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Rimas Buinevicius and Kenneth Minor his true and lawful attorney-in-fact and agent with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities Exchange Commission, granting unto said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent or his substitutes or substitute may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated:

Signature	Title	Date
<S> /s/ Rimas Buinevicius ----- Rimas Buinevicius	<C> Chairman of the Board , Chief Executive Officer and Treasurer (Principal Executive Officer)	<C> March 26, 1999
/s/ Kenneth Minor ----- Kenneth Minor	Chief Financial officer (Principal Financial and Accounting Officer)	March 26, 1999
/s/ Monty Schmidt ----- Monty Schmidt	President and Director	March 26, 1999
/s/ Curtis Palmer ----- Curtis Palmer	Executive Vice President, Chief Technology Officer and Director	March 26, 1999
/s/ Frederick Kopko ----- Frederick Kopko	Secretary and Director	March 26, 1999
/s/ Arnold Pollard ----- Arnold Pollard	Director	March 26, 1999
/s/ David Kleinman ----- David Kleinman	Director	March 26, 1999

INDEX TO EXHIBITS

Item Number	Description	Page Sequentially Numbered
-------------	-------------	----------------------------------

<S>	<C>	<C>	<C>
4.1	Amended and Restated Articles of Incorporation of the Registrant		N/A
4.2	Amended and Restated By-Laws of the Registrant		N/A
4.3	Registrant's 1995 Stock Option Plan		N/A
4.4	Registrant's Non-Employee Directors' Stock Option Plan		N/A
4.5	Form of Warrant		8
5.1	Opinion of McBreen, McBreen & Kopko as to the legality of the stock registered hereby		18
23.1	Consent of McBreen, McBreen & Kopko		N/A
23.2	Consent of Ernst & Young LLP		20

</TABLE>

Warrant Certificate

For the Purchase
of _____ Shares

Void After 5:00 P.M. Central Standard Time on _____

SONIC FOUNDRY, INC.

COMMON STOCK PURCHASE WARRANT CERTIFICATE

THIS CERTIFIES that, for value received, Sonic Foundry, Inc., a Maryland corporation (hereinafter called the "Company"), upon the surrender of this Warrant Certificate, evidencing a number of Common Stock Purchase Warrants ("Warrants") equal to the number of Shares set forth above, to the Company at its principal executive office, will sell and deliver, or cause to be sold and delivered, to _____ ("Warrant Holder") or registered assigns, _____ fully paid and nonassessable Shares of Common Stock, par value \$.01 per share, of the Company ("Shares"), evidenced by a certificate therefor, upon payment of the warrant price for the number of Shares in respect of which this Warrant Certificate is exercised; provided, however, that under certain conditions set forth hereinafter the number of Shares purchasable upon the exercise of the warrants evidenced hereby may be increased or reduced, or other securities, property and/or cash may become deliverable in lieu thereof upon the exercise of the Warrants evidenced hereby. In such event the term "Shares" shall mean, unless the context otherwise requires, the shares or other securities, property and cash at the time receivable upon the exercise of the warrants evidenced hereby. This Warrant Certificate may be surrendered and is exercisable on or after the date hereof (the "Exercise Date") and before 5:00 P.M. Central Standard time, _____ (the "Expiration Date"). The warrant price at which the Shares shall be purchasable (the "Purchase Price") upon the exercise of the warrants evidenced hereby shall be \$5.00 per share, or, in the event of any subdivision of warrants pursuant to Section 4 hereof, such other purchase price as may then be in effect. The Purchase Price is payable, upon the exercise of the Warrants evidenced hereby, in cash, or by certified or official bank check, or postal or express money order, payable in United States Dollars, to the order of the Company. The right of purchase represented by this Warrant Certificate is exercisable, at the election of the registered holder hereof, either as an entirety or from time to time for part only of the Shares specified herein and, in the event that this Warrant Certificate is exercised in respect of less than all of such Shares, a new Warrant Certificate for the remaining number of such Shares will be issued on such surrender.

Upon any exercise of the Warrants evidenced by this Warrant Certificate, the form of election to purchase attached hereto must be duly executed and the accompanying instructions for the registration and delivery of Shares must be filled in.

This Warrant Certificate and the Warrants evidenced hereby are subject to the terms and conditions hereinafter set forth:

1. Deliver of Share Certificates on Exercise. As soon as practicable after

the exercise of Warrants and payment of the Purchase Price, the Company at its expense (including the payment by it of any applicable issue tax) will cause to be issued in the name of and delivered to the holder hereof, or subject to the provisions of Section 6, as such holder (upon payment by such holder of any applicable transfer taxes) may direct, a certificate or certificates for the number of full Shares to which such holder shall be entitled upon such exercise, and cash as provided in Section 2 hereof, in respect of any fraction of a Share otherwise issuable upon such exercise.

All Shares issued upon the exercise of Warrants shall be duly issued and outstanding and fully paid and nonassessable.

Irrespective of the date of issue and delivery of certificates for any Shares issuable upon the exercise of Warrants, each person in whose name any such certificate is issued shall for all purposes be deemed to have become the holder of record of the Shares represented thereby on the date on which this Warrant Certificate was duly completed, executed and surrendered and payment of the Purchase Price was tendered in proper form. Each person holding any Shares received upon exercise of Warrants shall be entitled to receive only dividends or distributions which are payable to holders of record on or after the date on which such person became the holder of record of such Shares.

2. Payment of Cash in Lieu of Fractional Share. The Company shall not be

required to issue fractional Shares upon exercise of Warrants. If a fractional interest in a Share would be otherwise deliverable upon the exercise of Warrants, the Company shall make payment therefor in cash at the Market Price thereof on the last business day before the exercise date. The term "Market Price" shall mean the closing price of the Shares on the date in question on the principal securities exchange on which the Shares may then be listed or, if the Shares are not listed on a national securities exchange or have not traded on that date on such exchange, the closing bid price of the Shares on such date on such exchange or in the over-the-counter securities market as the case may be.

3. Adjustments in Shares Receivable upon Exercise of Warrants. If the

Company shall (1) subdivide its outstanding Shares, (2) combine its outstanding Shares into a smaller number of Shares, (3) issue by reclassification of its Shares any shares of the Company, (4) merge or consolidate, or (5) sell, lease, exchange or otherwise transfer or distribute all or a material portion of the assets of the Company in a distribution to its shareholders, the number of Shares issuable upon the exercise of each warrant evidenced by this Warrant Certificate shall be the same number and kind of Shares and the same amount of securities, property, or cash as the holder hereof would have been entitled to

receive upon the happening of the above events if immediately prior to any such event such holder had exercised such warrant and had purchased Shares. For this purpose, any event described in (1) through (5) in the preceding sentence shall be deemed to have occurred immediately after the opening of business on the day following the date fixed for the determination of the stockholders entitled to participate in such event.

The Company may retain a firm of independent public accountants of recognized standing, which may be the firm regularly retained by the Company, selected by the Board of Directors of the Company, to make any computation required under this Section, and a certificate signed by such firm shall be conclusive evidence of the correctness of any computation made under this Section.

Whenever the Company shall take any action requiring an adjustment in the Shares receivable upon the exercise of a warrant, the Company shall promptly cause to be mailed to the registered holder hereof, at such holder's address appearing on the Warrant register, a notice stating the date of the action, the type of action and the adjustment required. Failure to give such notice, or any defect therein, shall not affect the legality or validity of the action taken or of any distribution in connection therewith.

4. Subdivision of Warrants. If as a result of an adjustment under Section 3

or 6 hereof ("the Adjustment"), the Shares receivable upon the exercise of a Warrant immediately after the Adjustment shall constitute a multiple (the "Multiple"), which Multiple shall be a whole number, of the Shares which would have been receivable upon exercise of a Warrant immediately prior to the Adjustment, then the Company may at its discretion subdivide the number of Warrants evidenced by this Warrant Certificate into a number of Warrants equal to the number of Shares which would have been receivable upon exercise of all of the Warrants evidenced by this Warrant Certificate immediately prior to the Adjustment, multiplied by the Multiple.

Upon such subdivision of Warrants (the "Subdivision") this Warrant Certificate shall, immediately and without any further action by the Company or the holder thereof, evidence a number of Warrants equal to the number of Warrants evidenced by this Warrant Certificate immediately prior to the Subdivision, multiplied by the Multiple; and each Warrant evidenced hereby shall entitle the registered holder hereof to purchase the Shares which would have been receivable upon exercise of such Warrant immediately prior to the Adjustment at a Purchase Price equal to the Purchase Price in effect immediately prior to the Subdivision, divided by the Multiple. Promptly following the Subdivision the Company shall cause to be mailed to the registered holder hereof, at such holder's address appearing on the Warrant register, a notice stating the date and nature of the Subdivision and the new Purchase Price effective with the Subdivision. Failure to give such notice, or any defect therein, shall not affect the legality or validity of the Subdivision. In connection with the Subdivision, the Company may at its election make provision for exchange of this Warrant Certificate for a new form of Warrant Certificate.

5. Registration. The Company or its agent shall maintain books for the

transfer and registration of Warrants. Such registers shall show the names and addresses of the respective holders of the Warrant Certificates and the number of Shares for which each such Warrant Certificate has been issued.

6. Restrictions on Transfer. This Warrant Certificate, the Warrants

evidenced hereby and the Shares (the "Warrant Shares") issuable upon the exercise of the Warrants evidenced hereby (the Warrant Certificate, the Warrants and the Warrant Shares are collectively referred to as the "Warrant Securities") shall not be transferable except upon satisfaction of the conditions specified in this Section 6. For all purposes of this Section 6 the term "transfer" shall include any transfer, sale, pledge or hypothecation.

6.1 Termination of Restrictions. Notwithstanding the foregoing provisions of

this Section 6, on or after the Exercise Date, the restrictions imposed by this Section 6 upon the transferability of any particular Warrant Shares, shall terminate when (1) such securities shall have been effectively registered under the Securities Exchange Act of 1934 ("Securities Act") and sold by the holder thereof in accordance with such registration, or (2) a written opinion to the effect that such restrictions are no longer required or necessary under any federal or state securities law or regulation has been received from counsel satisfactory to the Company or (3) a letter shall have been issued by the staff of the Securities and Exchange Commission (the "Commission") or a ruling shall have been issued by the Commission or its staff stating that no action will be recommended by such staff or taken by the Commission, as the case may be, if such Warrant Shares are transferred without registration under the Securities Act, and such Warrant Shares are transferred in accordance with the conditions set forth in such letter or ruling.

6.2 Compliance with Rule 144. At the request of any holder thereof who

proposes to sell Warrant Shares in compliance with Rule 144 promulgated by the Commission under the Securities Act ("Rule 144"), the Company shall forthwith furnish to such holder a written statement concerning the Company's compliance with any issuer requirements of the Commission as set forth in such Rule, as such Rule may be amended from time to time.

6.3 Incidental Registrations. If the Company at any time subsequent to the

Exercise Date but on or before the Expiration Date proposes to register any Shares under the Securities Act (other than on Form S-8 or another similar form) on a form which permits inclusion of the Warrant Shares, and the Warrant Shares have not already been registered pursuant to Section 6.4, it shall use its best efforts to cause all Warrant Shares to be registered under the Securities Act, all to the extent requisite to permit the sale or other disposition by such holder of the Warrant Shares so registered in the manner intended by such holder as set forth in such request.

provisions of this Section 6 to use its best efforts to effect the registration of any of the Warrant Shares under the Securities Act, the Company shall, as expeditiously as possible:

- A. prepare and file with the Commission a Registration Statement (or a post-effective amendment to an appropriate existing Registration Statement of the Company which is then effective under the Securities Act, as the case may be) with respect to such Warrant Shares and use its best efforts to cause such Registration Statement (or such Registration Statement as so post-effectively amended, as the case may be) to become and remain effective under the Securities Act for the period provided in this Section 6.
- B. prepare and file with the Commission such amendments and supplements to such Registration Statement (or such Registration Statement as post-effectively amended, as the case may be) and the Prospectus used in connection therewith as may be necessary to keep such Registration Statement (or such Registration Statements post-effectively amended, as the case may be) effective and to comply with the provisions of the Securities Act with respect to the sale or other disposition of all Warrant Shares covered by such Registration Statement (or such registration statement as post-effectively amended, as the case may be) whether the seller or sellers of such Warrant Shares shall desire to sell or otherwise dispose of the same, but only to the extent provided in this Section 6;
- C. furnish to each seller of Warrant Shares covered by such Registration Statement (or such Registration Statement as post-effectively amended, as the case may be), such numbers of copies of a Prospectus, including a preliminary Prospectus, in conformity with the requirements of the Securities Act, and such other documents, as such seller may reasonably request in order to facilitate the public sale or other disposition of such Warrant Shares;
- D. use every reasonable effort to register or qualify the Warrant Shares covered by such Registration Statement (or such Registration Statement as post-effectively amended, as the case may be) under such other securities or Blue Sky laws of such jurisdiction as each seller thereof shall reasonably request, and do any and all other acts and things which may be necessary under such securities or Blue Sky laws to enable such seller to consummate the public sale or other disposition in such jurisdiction of the Warrant Shares owned by such seller covered by such Registration Statement (or such Registration Statement as post-effectively amended, as the case may be), except that the Company shall not for any such purpose be required to qualify to do business as a foreign corporation in any jurisdiction wherein it is not so qualified or subject itself to taxation in any such jurisdiction; and

E. before filing the Registration Statement or any Prospectus or any amendment or supplement to the Registration Statement or any Prospectus with the Commission, furnish counsel for each seller of Warrant Shares covered or to be covered by such Registration Statement with copies of all such documents proposed to be filed, which shall be subject to the reasonable approval of such counsel; provided, however,

that notwithstanding any other provision of this Section 6, the Company's obligation to register securities pursuant to this Section 6 shall be limited such that (1) the Company shall have no obligation to include any Warrant Shares in a registration statement under the Securities Act to the extent the holder of such Warrant Shares is, in the opinion of counsel satisfactory to such holder, then eligible to resell all of such shares immediately under Rule 144, provided the Company bears the cost of all legal fees and expenses necessary in securing or ascertaining the exemption from registration afforded by Rule 144; (2) the Company shall be required to register the Warrant Shares only if and to the extent that holders requesting such registration furnish the Company with such information as the Company may reasonably request; (3) the Company shall not be obligated to keep any registration statement filed in accordance with this Section 6 effective for more than ninety days; and (4) the Company's obligation to include any Warrant Shares in a registration statement under the Securities Act

pursuant to Section 6.3 shall be limited to the extent the managing underwriter for such offering recommends in good faith that it would be in the Company's best interest to limit or the Company is required by contractual obligation to limit in whole or in part, the number of Warrant Shares to be included in such registration statement.

6.5 Expenses. All expenses incurred in effecting the

registrations provided for in this Section 6, including, without limitation, all registration and filing fees, printing expenses, fees and disbursements of counsel for the Company, expenses of any audits incident to or required by any such registration and expenses of complying with the securities or Blue Sky laws of any jurisdiction, but excluding fees and disbursements of counsel for the sellers and underwriting commissions and discounts attributable to the Warrant Shares being sold by the sellers, shall be paid by the Company.

6.6 Indemnification.

A. In the event of any registration of any Warrant Shares under the Securities Act pursuant to this Section 6, the Company shall indemnify and hold harmless each seller of such Warrant Shares, each underwriter (as defined in the Securities Act), the directors and officers of such underwriter, each other person who participates in

the offering of such securities and each other person, if any who controls (within the meaning of the Securities Act) such seller, underwriter or participating person against any losses, claims, damages or liabilities, joint or several, to which such seller, underwriter, director or officer, participating person or controlling person may become subject under the Securities Act, the rules or regulations promulgated thereunder by the Commission or any other statute, rule or regulation or at common law, in so far as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon (1) an untrue statement or alleged untrue statement of material fact contained, on the effective date thereof, in any Registration Statement (or a post-effective amendment to such Registration Statement, as the case may be) under which such Warrant Shares were registered under the Securities Act, any preliminary Prospectus or final Prospectus contained therein, or any summary Prospectus issued in connection with such Warrant Shares, or any amendment or supplement thereto, or (2) an omission or alleged omission to state in any such document a material fact required to be stated therein or necessary to make the statements therein not misleading, and shall reimburse each such seller, underwriter, director or officer, participating person or controlling person for any legal or other expenses reasonably incurred by such seller, underwriter, director or officer, participating person or controlling person in connection with investigating or defending any such loss, claim, damage, liability or any action with respect thereto; provided,

however, that the Company shall not be liable to any seller,

underwriter, director or officer, participating person, or controlling person in any such case to the extent that any such loss, claim, damage or liability (or any action in respect thereof) arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in such Registration Statement (or such Registration Statement as post-effectively amended, as the case may be), preliminary Prospectus, final Prospectus, summary Prospectus, or amendment or supplement thereto, in reliance upon and in conformity with information furnished to the Company by such seller, underwriter, director or officer, participating person, or controlling person in any such case to the extent that any such loss, claim, damage or liability (or any action in respect thereof) arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in such Registration Statement (or such Registration Statement as post-effectively amended, as the case may be), preliminary Prospectus, final Prospectus, summary Prospectus, or amendment or supplement thereto, in reliance upon and in conformity with information furnished to the Company by such seller, underwriter, director or officer, participating person, or controlling person, and shall survive the transfer of Warrant Shares by such seller.

B. Each holder of any Warrant Security shall, by acceptance thereof, severally and not jointly, indemnify and hold harmless each other holder of any Warrant Security, the Company, its directors and officers, each underwriter (as defined in the Securities Act), the directors and officers of such underwriter, each other person who participates in the offering of Warrant Shares, and each other person, if any, who controls (within the meaning of the Securities Act) the Company or any underwriter, against any losses, claims, damages or liabilities, joint or several, to which any such other holder, the Company, any such director or officer, any such underwriter, any such participating person, or any such controlling person may become subject under the Securities Act, the rules or regulations promulgated thereunder by the Commission or any other statute, rule or regulation or at common law, in so far as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon (1) an untrue statement or alleged untrue statement of a material fact contained, on the effective date thereof, in any Registration Statement (or a post-effective amendment to such Registration Statement, as the case may be) under which Warrant Shares were registered under the Securities Act, any preliminary Prospectus or final Prospectus contained therein, or any summary Prospectus issued in connection with such Warrant Share, or any amendment or supplement thereto, or (2) an omission or alleged omission to state in any such document a material fact required to be stated therein or necessary to make the statements therein not misleading, in the case of (1) or (2) to the extent, but only to the extent, that such untrue statement or omission or alleged untrue statement or alleged omission was made in such Registration Statement (or such Registration Statement as post-effectively amended, as the case may be), preliminary Prospectus, final Prospectus, summary Prospectus, or amendment or supplement thereto in reliance upon and in conformity with information furnished to the Company by such holder specifically for use therein, and shall reimburse the Company, each such other holder, underwriter, director or officer, participating person, or controlling person for any legal or any other expenses reasonably incurred in connection with investigating or defending any such loss, claim, damage, liability or any action with respect thereto.

C. Indemnification similar to that specified in Subsections 6.6A and 6.6B hereof shall be given by the Company and each holder of any Warrant Shares (with such modifications as shall be appropriate) covered by any registration or other qualification of securities under any federal or state securities law or regulation other than the Securities Act with respect to any such registration or other qualification effected pursuant to this Section 6.

D. Within 30 days after receipt of an indemnified party under Subsections 6.6A, 6.6B, or 6.6C hereof of a complaint, claim or other notice of any loss, claim, damage, liability or action giving rise to a claim for indemnification under any such Subsection, such

indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under any such Subsection, notify the indemnifying party in writing of the commencement thereof; but the omission so to notify the indemnifying party shall not relieve it, him or her from any liability which it, he or she may have to any indemnified party otherwise than under such Subsections. In case any such action shall be brought against any indemnified party and it, he or she shall notify the indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate therein, and to the extent that it, he or she shall wish, to assume the defense thereof, with counsel satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party), and, after notice from the indemnifying party to such indemnified party of its, his or her election so to assume the defense thereof, the indemnifying party shall not be liable to such indemnified party under any such Subsection for any legal expenses or other counsel or any other expenses, in each case subsequently incurred by such indemnified party, in connection with the defense thereof other than reasonable costs of investigation.

Exhibit 4.5

13

6.7 Restrictive Legend. So long as any particular Warrant Shares are

not freely transferable, the certificates evidencing such Warrant Shares may be stamped or otherwise inscribed with an appropriate legend to such effect.

6.8 Transfer and Exchanges of Warrant Certificates. Upon compliance

with the provisions of this Section 6, the Company shall transfer, from time to time, any outstanding Warrant Certificates upon the books to be maintained by the Company for that purpose, upon surrender thereof for transfer properly endorsed or accompanied by appropriate instructions for transfer. Upon any such transfer, a new Warrant Certificate shall be issued to the transferee and the surrendered Warrant Certificate shall be cancelled. A Warrant Certificate may be exchanged, at the option of the holder thereof, when surrendered at the principal office of the Company, for another Warrant Certificate, or other Warrant Certificates of different denominations, of like tenor and representing in the aggregate the right to purchase a like number of shares.

7. Mutilated or Missing Warrant Certificates. In case this Warrant

Certificate shall be mutilated, lost, stolen or destroyed, the Company may in its discretion issue and deliver in exchange and substitution for and upon cancellation hereof, or in lieu of and substitution therefor, a new Warrant Certificate of like tenor and representing an equivalent right or interest; but only upon receipt of evidence satisfactory to the Company of such mutilation, loss, theft or destruction hereof and indemnity, if requested, also satisfactory

to it. Applicants for such substitute Warrant Certificates shall also comply with such other reasonable regulations and pay such other reasonable charges as the Company may prescribe.

8. Reservation of Shares, etc. The Company shall at all times keep

reserved, out of its authorized and unissued Shares or Shares held in its treasury, a number of Shares sufficient to provide for the exercise of all outstanding Warrants, including, without limitation, the Warrants evidenced by this Warrant Certificate, and any Transfer Agent for the Shares is hereby irrevocably authorized and directed to reserve such number of Shares as shall be requisite for such purpose. The Company shall supply such Transfer Agent with duly executed Share certificates for such purpose and will itself provide or otherwise make available any cash which may be payable as provided in Section 2 hereof.

9. Warrant Holder Not Deemed a Shareholder. Nothing contained in

this Warrant Certificate shall be construed as conferring upon the holder hereof the right to vote or to consent or to receive notice as a shareholder in respect of the meetings of shareholders for any purpose, or any other rights whatsoever, as a shareholder of the Company.

10. Agreement of Holders Hereof. The holder of this Warrant

Certificate by accepting the same consents and agrees with the Company that:

A. this Warrant Certificate is transferable only on the registry books of the Company by the registered holder hereof in person or by such holder's attorney duly authorized in writing, and only if surrendered at the principal executive office of the Company, duly endorsed, or accompanied by a proper instrument of transfer satisfactory to the Company in its sole discretion; and

B. the Company may deem and treat the person in whose name this Warrant Certificate is registered as the absolute owner for all purposes whatsoever and the Company shall not be affected by any notice to the contrary.

11. Survival of Indemnities and Agreements. All indemnities and

agreements set forth in Section 6 hereof shall survive the exercise of the Warrants evidenced hereby, the issuance of Warrant Shares upon such exercise and the transfer of any Warrant Shares.

12. Successors and Assigns. This Warrant Certificate and the

indemnities and agreements made herein shall inure to the benefit of and be binding upon the Company, the holder hereof and their respective successors, assigns, heirs, executors, and administrators.

13. Applicable Law. This Warrant Certificate will be deemed to be a

contract made under the laws of the State of Wisconsin and for all purposes shall be construed in accordance with the substantive laws of said State, without giving effect to the principles of conflicts of law thereof.

SONIC FOUNDRY, INC.

By: _____
Chief Financial Officer

ATTEST:

ELECTION TO PURCHASE

To: SONIC FOUNDRY, INC.

The undersigned hereby irrevocably elects to exercise the warrants evidenced by the attached Warrant Certificate, and to purchase thereunder _____ Shares of the stock provided for therein, and requests that certificates for such Shares shall be issued in the name of _____, Social Security or Taxpayer Identification Number _____, and be delivered to _____ at _____, and, if said number of Shares shall not be all the Shares purchasable thereunder, that a new Warrant Certificate for the balance remaining of the Shares purchasable under the attached Warrant Certificate be registered in the name of, and delivered to, the undersigned at the address stated below.

Dated: _____

Name of Warrant Holder:

(please print)

Address: _____

Signature: _____

Note: The above signature must correspond with the name as written upon the first page of this Warrant Certificate in every particular, without alteration or enlargement or any change whatsoever.

Signature Guaranteed: _____

Exhibit 4.5

16

ASSIGNMENT

FOR VALUE RECEIVED _____ hereby sells, assigns and transfers unto: Name: _____, Address: _____, Social Security or Taxpayer Identification No: _____, the attached Warrant _____, together with all right, title and interest therein, and does hereby irrevocably constitute and appoint _____ attorney, to transfer said Warrant _____ on the books of SONIC FOUNDRY, INC. with full power of substitution in the premises.

Dated: _____

Note: The above signature must correspond with the name as written upon the first page of the Warrant Certificate as initially issued in every particular, without alteration or enlargement or any change whatsoever.

Signature Guaranteed: _____

March 26, 1999

Sonic Foundry, Inc.
754 Williamson Street
Madison, WI 53703

Re: Sonic Foundry, Inc. Form S-8 Registration Statement

Ladies and Gentlemen:

At your request, I have examined the Registration Statement on Form S-8 (the "Registration Statement") which you intend to file with the Securities and Exchange Commission in connection with the registration under the Securities Act of 1933, as amended, of 1,216,000 shares of common stock, par value \$0.01 (the "S-8 Shares"), of Sonic Foundry, Inc., a Maryland corporation (the "Company"), which are to be offered and sold by the Company pursuant to the 1995 Stock Option Plan, the Non-Employee Directors Stock Option Plan, the Shareholder Relations Consultant Warrants between the Company and Vencap, Inc. dated July 24, 1996 and July 15, 1998, and the Shareholder Relations Consultant Warrant between the Company and Marit A. Fremstad dated July 15, 1998 (collectively, such agreements and plans are hereinafter referred to as the "Plans").

I have examined the Company's Certificate of Incorporation and Bylaws; the Company's minute books; the corporate records in connection with the Plans and the sale of the S-8 Shares; and such other documents of the Company as I have considered necessary or appropriate for the purposes of this opinion.

On the basis of such examinations and reviews, I advise you that I am of the opinion that the S-8 Shares, when offered and sold in the manner provided in the Prospectus contained in the Registration Statement, will be validly issued, fully paid and non-assessable.

This opinion is limited solely to matter as of the laws of the State of Illinois; the general corporation law of the State of Maryland; and the laws of the United States of America.

Exhibit 5.1

18

We hereby advise you that Frederick H. Kopko, Jr., a partner of this law firm, is a director of the Company, beneficially owns 173,024 shares of Series B 5% Cumulative Convertible Preferred Stock and holds options to purchase 10,000

shares of Common Stock issued under the Non-Directors Stock Option Plan. We hereby consent to the use of this opinion as an exhibit to the Registration Statement.

Very truly yours,

McBreen, McBreen & Kopko

By _____

Exhibit 5.1

19

CONSENT OF ERNST & YOUNG LLP, INDEPENDENT AUDITORS

We consent to the incorporation by reference in this Registration Statement (Form S-8) pertaining to the Sonic Foundry, Inc. 1995 Stock Option Plan, the Sonic Foundry, Inc. Non-Employee Directors Stock Option Plan and the Shareholder Relations Consultant Warrants of our report dated November 6, 1998, with respect to the financial statements of Sonic Foundry, Inc. included in its Annual Report (Form 10-KSB) for the year ended September 30, 1998, filed with the Securities and Exchange Commission.

ERNST & YOUNG LLP

Milwaukee, Wisconsin
March 23, 1999

Exhibit 23.2

20