

\$200,000,000



Spancion LLC
7.875% Senior Notes Due 2017

Spancion LLC, an indirect wholly-owned subsidiary of Spancion Inc., is offering \$200,000,000 of 7.875% Senior Notes due 2017 (the “notes”). The notes will bear interest at the rate of 7.875% per annum. Interest on the notes is payable semi-annually in arrears on May 15 and November 15 of each year, commencing on May 15, 2011. The notes will mature on November 15, 2017.

At any time and from time to time after November 15, 2013, we may redeem the notes, in whole or in part, at specified redemption prices, as described in this offering memorandum under “Description of the Notes—Optional redemption.” We may also redeem up to 35% of the notes using the proceeds of certain equity offerings completed before November 15, 2013. In addition, at any time prior to November 15, 2013, we may redeem some or all of the notes at a price equal to 100% of the principal amount plus accrued and unpaid interest plus a “make-whole” premium. We will be required to make an offer to purchase all or a portion of each holder’s notes upon the occurrence of certain change of control events at specified redemption prices, as described in this offering memorandum under “Description of the Notes—Repurchase at the option of holders upon a change of control.”

The notes will be guaranteed on a senior unsecured basis by Spancion Inc., our ultimate parent company, and Spancion Technology LLC, our direct parent and a wholly-owned subsidiary of Spancion Inc. The notes and the guarantees will be senior unsecured obligations of us and the guarantors, respectively, and will rank equally with our and the guarantors’ senior unsecured indebtedness and will be senior in right of payment to all of our and their subordinated obligations. The notes and the guarantees will be effectively subordinated to our and the guarantors’ secured debt to the extent of the value of the assets securing such debt. The notes and the guarantees will be effectively subordinated to the debt and other liabilities, including trade payables, of our subsidiaries with respect to the assets and earnings of those subsidiaries.

We and the guarantors will enter into a registration rights agreement with respect to the notes pursuant to which we and such guarantors will agree to file a registration statement with the Securities and Exchange Commission (the “SEC”) with respect to a registered exchange offer for the notes. For a description of the registration rights agreement, see “Exchange Offer; Registration Rights.”

For a more detailed description of the notes, see “Description of the Notes” beginning on page 130.

Investing in the notes involves risk. See “Risk Factors” beginning on page 11.
Price for the notes: 100% plus accrued interest, if any, from November 9, 2010.

The notes have not been registered under the Securities Act and may not be offered or sold within the United States or to, or for the account or benefit of, U.S. persons except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act. Accordingly, the notes are being offered and sold only (a) to “qualified institutional buyers” (as defined in Rule 144A under the Securities Act) and (b) outside the United States to non-U.S. persons in compliance with Regulation S under the Securities Act. For details about eligible offers, deemed representations and agreements by investors and transfer restrictions, see “Transfer Restrictions.”

The notes will be ready for delivery on or about November 9, 2010 through the book-entry facilities of The Depository Trust Company.

Joint Bookrunning Managers

Barclays Capital

BofA Merrill Lynch

Morgan Stanley

Citi

Gleacher & Company

Needham & Company, LLC

Pacific Crest Securities

ThinkEquity LLC

Offering Memorandum dated November 4, 2010.

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You should rely only on the information contained in this offering memorandum. Neither we nor the initial purchasers have authorized any other person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. Neither we nor the initial purchasers are making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should assume that the information appearing in this offering memorandum is accurate only as of the date of the documents containing the information.

We are relying on exemptions from registration under the Securities Act of 1933, as amended (the “Securities Act”) for offers and sales of securities that do not involve a public offering. By purchasing the notes, you will be deemed to have made the acknowledgments, representations, warranties and agreements described under the headings “Notice to Investors” and “Transfer Restrictions” in this offering memorandum. You should understand that you will be required to bear the financial risks of your investment for an indefinite period of time.

We have submitted this offering memorandum confidentially to prospective purchasers so that they can consider a purchase of the notes. We have not authorized its use for any other purpose. This offering memorandum may not be copied or reproduced in whole or in part. It may be distributed and its contents disclosed only to the prospective investors to whom it is provided. By accepting delivery of this offering memorandum, you agree to these restrictions. Please see “Notice to Investors” and “Transfer Restrictions.”

This offering memorandum is based on information provided by us and by other sources that we believe are reliable. We cannot assure you that this information is accurate or complete. This offering memorandum contains summaries believed to be accurate with respect to certain documents, but reference is made to the actual documents for complete information. All such summaries are qualified in their entirety by such reference. Copies of documents referred to herein will be made available to prospective investors upon request to us or the initial purchasers.

Neither we, the initial purchasers, nor any of their respective representatives, are making any representation to any purchaser of the notes regarding the legality of an investment in the notes by such purchaser under any legal investment or similar laws or regulations. You should not consider any information in this offering memorandum to be legal, business or tax advice. You should consult your own attorney, business advisor and tax advisor for legal, business and tax advice regarding an investment in the notes.

You should contact the initial purchasers with any questions about this offering or for additional information to verify the information contained in this offering memorandum.

Neither the SEC nor any state securities commission has approved or disapproved of these securities or determined if this offering memorandum is truthful or complete. Any representation to the contrary is a criminal offense.

SEC REVIEW

We will agree to (i) file a registration statement with the SEC with respect to a registered offer to exchange the notes for new exchange notes having terms substantially identical in all material respects to the notes (except that the new exchange notes will not contain terms with respect to special interest or transfer restrictions) and (ii) if necessary, file a shelf registration statement with respect to resales of the notes. See “Exchange Offer; Registration Rights.” In the course of review by the SEC of these registration statements and other filings, we may be required to make changes to the description of our business or financial statements and other information in those documents and filings. We believe that our financial statements and the other financial data included in this offering memorandum have been prepared in a manner that complies in all material respects with U.S. generally accepted accounting principles, or GAAP, and the regulations published by the SEC, as applicable. However, comments by the SEC may require modification or reformulation of our financial statements and other information we present in this offering memorandum.

MARKET AND INDUSTRY DATA

Market and industry data throughout this offering memorandum were obtained from a combination of third-party industry data and good faith estimates of management based on these data. While we believe these industry data and estimates of management are reliable, neither we nor the initial purchasers have independently verified these data. Accordingly, neither we nor the initial purchasers make any representations as to the accuracy or completeness of these data. We are not aware of any misstatements regarding market or industry data contained in this offering memorandum; however, such data involves risks and uncertainties and is subject to change based on various factors, including those factors discussed in the “Risk Factors” section of this offering memorandum.

TRADEMARKS

Spansion™, the Spansion logo, and other trademarks or service marks of Spansion appearing in this offering memorandum are the property of Spansion. Trade names, trademarks and service marks of other companies appearing in this offering memorandum are the property of the respective holders.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This offering memorandum and the documents incorporated by reference herein contain forward-looking statements. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends affecting the financial condition of our business. Forward-looking statements should not be read as a guarantee of future performance or results, and will not necessarily be accurate indications of the times at, or by, which such performance or results will be achieved. Forward-looking statements are based on information available at the time those statements are made and/or management's good faith belief as of that time with respect to future events, and are subject to risks and uncertainties that could cause actual performance or results to differ materially from those expressed in or suggested by the forward-looking statements. Important factors that could cause such differences include, but are not limited to:

- our ability to successfully transform our business and implement our new business strategy;
- the impact of the current economic climate on our business;
- the rate of growth in the industries into which our products are sold;
- our ability to maintain or increase our average selling price and lower our average costs;
- the accuracy of our forecasts of customer demand for our products;
- our ability to attract new customers;
- the continued ability of Fujitsu Semiconductor Limited to distribute our products in Japan;
- our ability to successfully enter new markets and manage our international expansion;
- the impact of fluctuations in currency exchange rates;
- the effects of increased competition or new memory or other technologies on our business;
- our ability to successfully develop new applications and markets for our products;
- our ability to maintain manufacturing efficiency;
- our ability to protect our intellectual property;
- costs associated with defending intellectual property infringement and other claims;
- the availability of adequate supplies of satisfactory materials essential to manufacture our products;
- the effects of natural or man-made catastrophic events; and
- other risk factors included under "Risk Factors" in this offering memorandum.

In addition, in this offering memorandum and the documents incorporated by reference herein, the words "believe," "may," "will," "estimate," "continue," "anticipate," "intend," "expect," "predict," "potential" and similar expressions, as they relate to our company, our business and our management, are intended to identify forward-looking statements. In light of these risks and uncertainties, the forward-looking events and circumstances discussed in this offering memorandum and the documents incorporated by reference herein may not occur and actual results could differ materially from those anticipated or implied in the forward-looking statements. Forward-looking statements speak only as of the date of this offering memorandum or the date of the incorporated documents. You should not put undue reliance on any forward-looking statements. We assume no obligation to update forward-looking statements to reflect actual results, changes in assumptions or changes in other factors affecting forward-looking information, except to the extent required by applicable laws. If we update one or more forward-looking statements, no inference should be drawn that we will make additional updates with respect to those or other forward-looking statements.

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SUMMARY

This summary highlights information contained in greater detail elsewhere in this offering memorandum. This summary may not contain all the information that you should consider before investing in the notes. You should read the entire offering memorandum carefully, including “Risk Factors” beginning on page 11 and the consolidated financial statements and related notes of Spansion Inc. included elsewhere in this offering memorandum, before making an investment decision. Unless the context otherwise requires, references in this offering memorandum to “Spansion LLC,” “we,” “our,” “us” and “the company” refer to Spansion LLC in the context of the terms of the notes being offered hereby, as the issuer of the notes, and references to “Spansion Inc.” refers to Spansion Inc. and its subsidiaries, including Spansion LLC.

Overview

We are a leading designer, manufacturer and developer of Flash memory semiconductors. We are focused on the embedded Flash market providing our software solutions to more than 4,000 customers worldwide. Our Flash memory products primarily store data and software code for microprocessors, controllers and other programmable semiconductors which run applications in a broad range of electronics systems. These electronic systems include computing and communications, automotive and industrial, consumer and gaming, wireless and machine-to-machine, or M2M, devices. In addition to Flash memory products, we assist our customers in developing and prototyping their designs by providing software and hardware development tools, drivers and simulation models for system-level integration.

Our Flash memory solutions are incorporated in products from leading original equipment manufacturers, or OEMs, including Huawei Technologies Co., Ltd., Harman/Becker Automotive Systems GmbH, Motorola, Inc., LG Electronics, Technicolor S.A., Continental AG, Pace plc, The Bosch Group, Alpine Electronics of America, Inc., ZTE Corporation, Panasonic Corporation of North America, Sagem Télécommunications, Sharp Electronics Corporation, Pioneer Electronics (USA) Inc., and Future Designs, Inc. Our products are designed to address various voltages, interfaces and memory densities for a wide range of specific applications and customer platforms. The majority of our new product designs are based on our proprietary two-bit-per-cell MirrorBit technology which has a simpler cell architecture requiring fewer manufacturing steps, supporting higher yields and lower costs as compared to competing floating gate NOR Flash technology. As of June 27, 2010, we held over 2,300 patents.

For fiscal 2009, our total net sales were approximately \$1.4 billion as compared with total net sales of approximately \$2.3 billion for fiscal 2008. For the nine months ended September 26, 2010, our total net sales were approximately \$840.6 million. According to market research firm iSuppli, in 2009, we were responsible for 31.2 percent of all NOR Flash memory sales, making us the second largest supplier of NOR Flash memory in the world.

Our Addressable Market

The Flash memory market can be divided into two major categories based on application: the integrated category, which includes wireless and embedded applications, and the removable storage category, which includes Flash memory cards and USB drives. Within the integrated category, we refer to portable, battery-powered communications applications as “wireless” and all other applications, such as consumer, telecommunications, automotive and industrial electronics, as “embedded.” We have focused historically on the integrated category of the Flash memory market, including wireless and embedded applications. In early 2009, we narrowed our strategic focus to the embedded portion of the Flash memory market and intend to continue to selectively engage in portions of the wireless market where we believe we can do so advantageously. The embedded Flash memory market is characterized by long design and life cycles, low capital and technology investments, stable average selling prices, or ASPs, and fragmented competition with multiple suppliers.

In addition to our focus on our traditional embedded NOR Flash memory applications, we plan to expand our presence in growing portions of the embedded Flash memory market, including embedded NOR and embedded NAND. We believe our proprietary MirrorBit technology, licensing partners, customer relationships and broad product portfolio will enable us to extend our leadership in the attractive embedded Flash memory markets.

Competitive Advantages

- ***Focus on Embedded Flash Products.*** We focus on the embedded portion of the Flash memory market. In order to service this market, we leverage our broad product set and software programmability to provide a diverse range of application-specific solutions. We believe that our focus on the embedded Flash market and our superior customer service distinguishes us from our competitors who generate a large portion of their sales from other markets, such as mobile handsets and PCs.
- ***Customer-Centric, Application-Focused Go-To-Market Strategy.*** We focus on application-specific solutions for our customers' embedded Flash requirements. Our field application engineers, or FAEs, are located in close proximity to our customers' design centers across the globe. This enables us to better support our customers by enhancing our ability to anticipate customer needs and industry trends which we believe will allow us to gain market share. We believe that this application and design-win focused approach enables a deeper relationship with our customers and strengthens our position in their product lifecycles.
- ***Application-Specific Customizable Software.*** In addition to our advanced hardware technology, we provide customized, application specific software to our customers. Specifically, we supply customers the necessary software and hardware development tools, drivers and simulation models for systemlevel integration. We believe our focused software service strategy contributes to our success with OEMs.
- ***Leading-Edge Technology Platform.*** Our proprietary MirrorBit technology drives our lower cost, high performance product platform. MirrorBit technology is simpler, has a lower manufacturing cost and can store more data than traditional floating gate technology. We believe leveraging our MirrorBit technology will help us retain and enhance our market position from entry-level to high-end applications.
- ***Process Technology Leverage.*** Our MirrorBit technology provides enhanced geometric scalability when shifting to smaller process nodes in comparison to floating gate technology as it has a simpler cell architecture requiring fewer manufacturing steps and supporting higher yields. We invested over \$1.2 billion in R&D between 2006 and 2008 primarily on the development of next-generation process technologies. We have 65-nanometer products in production which currently represent only a small portion of our revenues. With the majority of our customers presently using 110- and 90-nanometer technologies, we anticipate migrating customers to 65- and 4x-nanometer and then eventually to 3x-nanometer technology over the next several years.
- ***Broad Product Portfolio.*** Our products and solutions deliver a combination of high performance and competitive cost for a wide range of customer platforms and applications. These product offerings support various voltages, interfaces and memory densities, enabling us to pursue diverse embedded Flash end markets which have differing density and performance requirements.

Our Strategy

Our principal objective is to be the leading global supplier of embedded Flash memory products and solutions. We plan to achieve this objective by aggressively pursuing the following strategies:

- ***Regain Embedded Flash Market Share.*** We intend to continue to focus on regaining market share that we lost due to the negative impact of our reorganization under Chapter 11 of the U.S. Bankruptcy

Code, or the Chapter 11 Cases. We have already begun to regain lost market share and we plan to continue regaining market share by securing new design-wins and by further deepening our relationships with our key end-customers and distribution partners through our application specific solutions, our superior customer service and continued investment in our FAEs.

- ***Continue Product Innovation and New Market Expansion.*** We aim to expand our products and solutions by selectively targeting embedded Flash applications within our target markets. We plan to achieve this by developing and bringing to market products that allow us to offer higher densities and faster performance. We also intend to increase our presence in high growth emerging markets such as China and India. Further, we intend to evaluate and potentially make acquisitions of technologies and products that we can integrate into our solutions in order to broaden our product portfolio functionality and accelerate growth and entry into new markets.
- ***Expand Addressable Market with Embedded Flash Products.*** We will continue to seek opportunities to develop and commercialize memory solutions based on our MirrorBit technology, our software and other design capabilities. We believe that our proprietary charge-trapping NAND solution is more scalable, has a simpler cell structure and offers superior performance, faster read and faster programming speeds when compared to traditional floating gate NAND Flash solutions. Our strategy is to bring our high reliability Flash solutions to support the low-density single-level cell NAND Flash market by leveraging our relationships with our partners and customers.
- ***Flexible, Scalable and Cost-efficient Manufacturing Strategy.*** As part of our restructuring efforts, we substantially reduced our overall manufacturing footprint. We plan to maintain our low capital intensive model by outsourcing a significant amount of manufacturing activity to our foundry partners while focusing our internal captive manufacturing capacity on products and solutions that differentiate us in terms of process technologies, product features, quality and cost. We believe that a flexible, highly scalable and low-cost operating model will enable us to respond to rapidly changing product mix and market demand.
- ***License our Intellectual Property.*** We intend to evaluate potential licensing arrangements with semiconductor designers and manufacturers who may integrate our MirrorBit technology into their future products and solutions. We also intend to license our process technology to third-party manufacturers to help increase our external manufacturing capacity.

Chapter 11 Cases

On March 1, 2009, we filed a voluntary petition for relief under the Chapter 11 Cases as part of our substantial reorganization of the company to better align our operations with the business environment. The key components of this reorganization were: revamping our management team; streamlining our operations; focusing on embedded Flash memory solutions and implementing a flexible manufacturing strategy. On April 16, 2010, the U.S. Bankruptcy Court confirmed our plan of reorganization, which was filed with the U.S. Bankruptcy Court on October 26, 2009 (as amended, the “Plan of Reorganization”), and on May 10, 2010 (the “Emergence Date”), we emerged from the Chapter 11 Cases. For more information regarding the Chapter 11 Cases and our Plan of Reorganization, see “Management’s Discussion and Analysis of Financial Condition and Results of Operations” elsewhere in this offering memorandum.

Concurrent Common Stock Offering

Concurrently with this notes offering, our parent company, Spansion Inc., is offering to sell 6,750,000 shares (7,762,500 shares if the underwriters’ over-allotment option is exercised in full) of its Class A common stock in an underwritten public offering. This offering of common stock by Spansion Inc. is referred to in this offering memorandum as the Common Stock Offering. Spansion Inc. recently negotiated with its lenders under

our \$450 million credit agreement, or Term Loan, to modify certain terms of the Term Loan, one of which was a waiver to the requirement that it use 50% of the net proceeds from the Common Stock Offering to pay down the Term Loan. As a result of this waiver having been obtained, Spansion Inc. intends to use the net proceeds from the Common Stock Offering for general corporate purposes. Neither this offering of senior notes by Spansion LLC nor the Common Stock Offering by Spansion Inc. is contingent on the completion of the other.

The foregoing description and other information regarding the Common Stock Offering is included herein solely for informational purposes. Nothing in this offering memorandum should be construed as an offer to sell, or the solicitation of an offer to buy, any shares of our common stock included in the Common Stock Offering.

Recent Developments

On October 20, 2010, the claims agent appointed to resolve certain of our pre-bankruptcy claims entered into an agreement with Spansion Japan Limited, or Spansion Japan, our former subsidiary, to settle all claims asserted between Spansion Japan and the debtors' estates under the Chapter 11 Cases. Spansion Japan had asserted a claim for approximately \$936 million related to damages allegedly incurred as a result of our rejection of our foundry agreement with Spansion Japan. Pursuant to the settlement agreement, the claims agent and Spansion Japan agreed on a settlement valuing the rejection damages claim at \$200 million. As part of the agreement, Citigroup Financial Products Inc., or Citi, which was not a party to this litigation, agreed to purchase the rejection damages claim from Spansion Japan for \$100 million in cash. In a separate transaction, we agreed to purchase 85 percent of this rejection damages claim from Citi for \$85 million in cash. These transactions became effective upon the final approval of the settlement agreement by the U.S. Bankruptcy Court and the Tokyo District Court, which is administering Spansion Japan's corporate reorganization proceeding in Japan. The value of any shares received under the claim will depend upon the total size of the claim pool ultimately determined in the Chapter 11 Cases.

Corporate Information

Spansion Inc. is a Delaware corporation and Spansion LLC is a Delaware limited liability operating company. Our principal executive offices are located at 915 DeGuigne Drive, Sunnyvale, California 94088, and our telephone number is (408) 962-2500. Our website address is www.spansion.com. Information contained on our website is not a part of this offering memorandum and the inclusion of our website address in this offering memorandum is an inactive textual reference only.

THE OFFERING

Issuer	Spansion LLC.
Securities Offered	\$200 million aggregate principal amount of 7.875% Senior Notes due 2017.
Maturity	The notes will mature on November 15, 2017.
Interest	Interest on the notes will accrue at a rate per annum equal to 7.875%. Interest will be payable semi-annually in arrears on May 15 and November 15, starting on May 15, 2011.
Guarantees	The notes will be guaranteed on a senior unsecured basis by Spansion Inc., our ultimate parent company, and Spansion Technology LLC, our direct parent and a wholly-owned subsidiary of Spansion Inc.
Ranking	<p>The notes and the guarantees will be Spansion LLC's and the guarantors' senior unsecured obligations and will:</p> <ul style="list-style-type: none">• rank pari passu with all of the current and future senior unsecured debt of Spansion LLC and the guarantors;• be effectively subordinated to all secured debt of Spansion LLC and the guarantors, including amounts outstanding under our Term Loan, to the extent of the value of the assets securing such debt;• be structurally subordinated to any debt and other liabilities, including trade payables, of Spansion LLC's subsidiaries with respect to the earnings and assets of those subsidiaries; and• be senior to all of the existing and future debt of Spansion LLC and the guarantors that is expressly subordinated in right of payment to the notes and the guarantees. <p>As of September 26, 2010, after giving effect to the issuance of the notes and the consummation of the Common Stock Offering and the application of the net proceeds therefrom, Spansion Inc. would have had consolidated debt of approximately \$463.0 million. Of such debt, approximately \$463.0 million would have constituted debt directly borrowed (or issued) by Spansion LLC or a guarantor, approximately \$263.0 million of which would have been secured. In addition, our subsidiaries would have had other liabilities as would be shown on our balance sheet of approximately \$96.4 million, including trade and other payables.</p>
Optional Redemption	Prior to November 15, 2013, we may redeem some or all of the notes at a price equal to 100% of the principal amount, plus accrued and unpaid interest and a "make-whole" premium. Thereafter, we may redeem all or part of the notes at any time at the redemption prices set forth in the section "Description of the Notes—Optional redemption," plus accrued and unpaid interest, if any, to the date of redemption.

In addition, on or prior to November 15, 2013, we may redeem up to 35% of the notes with the proceeds of certain sales of our equity securities at 107.875% (100% of the principal amount plus a premium equal to the interest rate applicable to the notes), plus accrued and unpaid interest, if any, to the date of redemption. See “Description of the Notes—Optional redemption.”

Change of Control Upon the occurrence of certain change of control events, you will have the right as a holder of notes to require us to repurchase all of your notes at a repurchase price equal to 101% of their principal amount, plus accrued and unpaid interest, if any, to the date of repurchase. We may not have enough funds or the terms of our other debt may prevent us from purchasing the notes. See “Description of the Notes—Repurchase at the option of holders upon a change of control.”

Restrictive Covenants The indenture governing the notes will contain certain covenants that will limit, among other things, our ability and the ability of our restricted subsidiaries to:

- incur additional indebtedness or issue preferred stock;
- pay dividends and make other restricted payments;
- make certain investments, including investments in unrestricted subsidiaries;
- create or permit certain liens;
- create or permit restrictions on the ability of the restricted subsidiaries to pay dividends or make other distributions to us;
- use the proceeds from sales of assets;
- enter into certain types of transactions with affiliates; and
- consolidate or merge or sell our assets as an entirety or substantially as an entirety.

These covenants are subject to a number of important exceptions and limitations, which are described under the heading “Description of the Notes—Certain covenants.” In addition, at any time that the notes have an investment grade rating from both Moody’s Investors Services, Inc. and Standard and Poor’s Rating Services, we will not be subject to certain of these covenants.

Transfer Restrictions We have not registered the notes under the Securities Act or any state or other securities laws and the notes are subject to restrictions on transfer and may only be offered and sold in transactions exempt from or not subject to the registration requirements of the Securities Act. For more information on these restrictions, see “Plan of Distribution,” “Notice to Investors” and “Transfer Restrictions.”

Absence of an Established Market for the Notes

The notes are a new issue of securities and currently there is no market for them. We do not intend to apply to have the notes listed on any securities exchange or to arrange for any quotation system to quote them. The initial purchasers have advised us that they intend to make a market in the notes, but they are not obligated to do so. The initial purchasers may discontinue any market making in the notes at any time in their sole discretion. Accordingly, we cannot assure you that a liquid market will develop for the notes, that you will be able to sell your notes at a particular time or that the prices you receive when you sell will be favorable.

Exchange Offer; Registration

Rights

In connection with the issuance of the notes, the issuer, the guarantors and the initial purchasers will enter into an agreement for your benefit obligating us to file a registration statement with the SEC so that you can:

- exchange the notes for registered notes having substantially the same terms as the notes and evidencing the same indebtedness as the notes (referred to in this offering memorandum as the “exchange notes”); and
- exchange the related guarantees for registered guarantees having substantially the same terms as the original guarantees.

You will be entitled to the payment of additional interest if we do not comply with these obligations within specified time periods.

Use of Proceeds

We estimate that we will receive net proceeds from this offering of approximately \$195.3 million. We intend to use all of the net proceeds received in this offering to pay down amounts outstanding under our \$450 million credit agreement, or Term Loan. See “Use of Proceeds.”

Risk Factors

Investing in the notes involves substantial risks. You should consider carefully all of the information contained or incorporated by reference in this offering memorandum and, in particular, should evaluate the specific facts set forth under “Risk Factors” before investing in the notes.

SUMMARY HISTORICAL CONSOLIDATED FINANCIAL DATA

The following tables present the summary historical consolidated financial and other data for the business of Spansion Inc. for the periods indicated. Spansion Inc. derived the consolidated statements of operations data for the years ended December 30, 2007, December 28, 2008 and December 27, 2009 from its audited consolidated financial statements included elsewhere in this offering memorandum. Fiscal 2007, 2008 and 2009 each consisted of 52 weeks. Spansion Inc. derived the condensed consolidated statements of operations data for the nine months ended September 26, 2010 and September 27, 2009 and the condensed consolidated balance sheet data as of September 26, 2010 from its unaudited consolidated financial statements incorporated by reference in this offering memorandum. The nine months ended September 26, 2010 and September 27, 2009 each consisted of 39 weeks.

Spansion Inc.'s historical results are not necessarily indicative of the results to be expected in the future, and the results for the six months ended September 26, 2010 should not be considered indicative of results to be expected for the full fiscal year. Upon emergence from the Chapter 11 Cases on May 10, 2010, or the Emergence Date, Spansion Inc. adopted fresh start accounting as prescribed under Accounting Standards Codification (ASC) 852 *Reorganizations*, which requires it to revalue its assets and liabilities to their related fair values. As such, Spansion Inc. adjusted its stockholders' deficit to equal the reorganization value at the Emergence Date. Items such as accumulated depreciation, accumulated deficit, accumulated other comprehensive income (loss) and allowances for doubtful debt were reset to zero. Spansion Inc. allocated the reorganization value to the individual assets and liabilities based on their estimated fair values. Items such as accounts receivable, auction rate securities and cash, whose fair values approximated their book values, reflected values similar to those reported prior to emergence. Items such as prepaid and other current assets, inventory, property, plant and equipment, deferred income tax asset and liability, accounts payable, income tax payable, and deferred income were significantly adjusted from amounts previously reported. Because Spansion Inc. adopted fresh start accounting at emergence and because of the significance of liabilities subject to compromise that were relieved upon emergence, the historical financial statements of the predecessor entity, or Predecessor, and the financial statements of the successor entity, or Successor, are not comparable. Refer to the notes to Spansion Inc.'s financial statements included or incorporated by reference in this offering memorandum for further details relating to fresh start accounting.

You should read this summary consolidated financial data in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the consolidated financial statements and related notes of Spansion Inc., included elsewhere or incorporated by reference in this offering memorandum.

	Successor ⁽¹⁾	Predecessor ⁽¹⁾	Predecessor ⁽¹⁾			
	Period from May 11, 2010 to September 26, 2010	Period from December 28, 2009 to May 10, 2010	Nine Months Ended September 27, 2009	Year Ended December 27, 2009	Year Ended December 28, 2008 ⁽²⁾	Year Ended December 30, 2007 ⁽²⁾
Consolidated Statements of Operations:						
<i>(in thousands, except per share amounts)</i>						
Net sales	\$ 432,163	\$ 324,914	\$ 825,038	\$1,059,408	\$ 1,630,573	\$1,627,253
Net sales to related parties	4,801	78,705	278,469	351,245	651,230	873,560
Total net sales	436,964	403,619	1,103,507	1,410,653	2,281,803	2,500,813
Cost of sales	388,251	274,817	898,253	1,103,757	2,193,345	2,065,143
Gross profit	48,713	128,802	205,254	306,896	88,458	435,670
Research and development	39,666	35,068	110,916	136,449	431,808	436,785
Sales, general and administrative	18,207	68,105	174,637	216,298	253,878	239,317
In-process research and development	—	—	—	—	10,800	—
Restructuring charges (credits)	—	(2,772)	45,646	46,852	11,161	—
Asset impairment charges ⁽³⁾	—	—	—	12,538	1,652,622	—
Operating loss before reorganization items	(69,160)	28,401	(125,945)	(105,241)	(2,271,811)	(240,432)
Interest and other income (expense), net	1,742	(2,904)	2,928	4,038	5,200	32,595
Interest expense ⁽⁴⁾	(14,001)	(30,573)	(42,877)	(50,976)	(105,536)	(87,460)
Gain on deconsolidation of subsidiary ⁽⁵⁾	—	—	30,100	30,100	—	—
Loss before reorganization items and income taxes	(81,419)	(5,076)	(135,794)	(122,079)	(2,372,147)	(295,297)
Reorganization items	—	370,340	(381,647)	(391,383)	—	—
Income (loss) before income taxes	(81,419)	365,264	(517,441)	(513,462)	(2,372,147)	(295,297)
Benefit from (provision for) income taxes ⁽⁶⁾	(1,649)	(1,640)	947	(597)	(62,865)	25,144
Net income (loss)	(83,068)	363,624	(518,388)	\$ (514,059)	\$(2,435,012)	\$ (270,153)
Net income (loss) per share						
Basic	\$ (1.40)	\$ 2.24	\$ (3.21)	\$ (3.18)	\$ (15.69)	\$ (2.00)
Diluted ⁽⁷⁾	\$ (1.40)	\$ 2.24	\$ (3.21)	\$ (3.18)	\$ (15.69)	\$ (2.00)
Shares used in per share calculation:						
Basic	59,271	162,439	161,717	161,847	155,162	134,924
Diluted ⁽⁷⁾	59,271	162,610	161,717	161,847	155,162	134,924
As of September 26, 2010						
	Actual	As adjusted for this offering ⁽⁸⁾	As further adjusted for the Common Stock Offering ⁽⁹⁾			
Consolidated Balance Sheet:						
<i>(in thousands)</i>						
Working capital	\$ 365,002	\$ 363,049	\$ 470,962			
Total assets	1,403,478	1,401,525	1,509,438			
Long-term debt and capital lease obligations, including current portion, short term note, and notes payable to banks under revolving loans	458,289	462,989	462,989			
Total stockholders' equity	592,530	590,577	698,490			

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- (1) Successor refers to Spansion and its consolidated subsidiaries after the Emergence Date, after giving effect to: (i) the cancellation of shares of our Class A common stock issued prior to the Emergence Date, or the Old Common Stock; (ii) the issuance of new shares of our Class A common stock, or New Common Stock, and settlement of existing debt and other adjustments in accordance with the Plan of Reorganization; and (iii) the application of fresh start accounting. Predecessor refers to Spansion and its consolidated subsidiaries up to the Emergence Date.
 - (2) Statements of operations for these periods have been adjusted to reflect the change in accounting for our Exchangeable Senior Subordinated Debentures. See “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Adoption of New Accounting Pronouncements—Accounting for Convertible Debt Instruments.”
 - (3) The asset impairment charge for fiscal 2009 includes pre-tax impairment on an equity investment and loan to an investee. The asset impairment charge for fiscal 2008 includes pre-tax impairment related to long-lived assets held for use of \$1.6 billion, and impairment related to goodwill and intangible assets of \$20.8 million and \$53.5 million, respectively.
 - (4) Contractual interest expense for the year ended December 27, 2009 and nine months ended September 27, 2009 was \$89.4 million and \$69.1 million.
 - (5) The gain on deconsolidation of subsidiary represents the difference between the carrying value of our investment in and receivables from Spansion Japan immediately before its deconsolidation in March 2009 and the estimated fair value of our retained non-controlling interest in Spansion Japan, which was zero then and as of December 27, 2009. See “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Creditor Protection Proceedings Background” for further details regarding the deconsolidation of Spansion Japan.
 - (6) The provision for income taxes in fiscal 2009 includes a decrease of \$457.9 million in valuation allowances against deferred tax assets in Spansion Japan resulting from the deconsolidation of Spansion Japan in March 2009. However, the decrease in the amount of deferred tax assets had no impact on the provision for income taxes since the deferred tax assets had a full valuation allowance. The provision for income taxes in fiscal 2008 includes an increase of \$457.9 million in valuation allowances against deferred tax assets in Spansion Japan. This increase occurred because we did not believe it was more likely than not that these deferred tax assets would be realized in these jurisdictions. The increase in valuation allowance resulted in a \$64.5 million income tax expense associated with deferred tax assets of Spansion Japan.
 - (7) Diluted net loss per share is computed using the weighted-average number of common shares and excludes potential common shares, as their effect is anti-dilutive.
 - (8) Adjusted to reflect the application of the net proceeds from this offering. See “Use of Proceeds” elsewhere in this offering memorandum.
 - (9) As further adjusted to reflect the application of the net proceeds from this offering and the net proceeds from the concurrent offering of common stock by Spansion Inc.

RISK FACTORS

Investing in the notes involves a high degree of risk. You should carefully consider the risks described below and the other information in this offering memorandum before making a decision to invest in the notes offered hereby. Any of such risks could materially adversely affect our business, operating results, financial condition and liquidity. In those cases, you may lose all or part of your investment. We cannot assure you that any of the events discussed in the risk factors below will not occur. The risks described below are not the only ones facing us. Additional risks not currently known to us or that we currently believe are immaterial may also impair our business, operating results, financial condition and liquidity.

Risks Related to Our Business

We are in the process of transforming our business and implementing a new business strategy. If we are unsuccessful in doing so, we may be materially adversely affected.

Shortly after the Chapter 11 Cases commenced, we began implementing a new business strategy focused primarily on exiting a large portion of the wireless Flash memory market in order to reduce significantly our engineering expenses. We remain dedicated to, and focused on, the embedded portion of the Flash memory market and intend to continue to selectively engage in portions of the wireless market where we believe we can do so advantageously. The embedded market is more mature than the wireless market and is expected to grow more slowly than some other sectors of the semiconductor industry. In addition, the embedded market historically has been, and we anticipate that it will continue to be, subject to rapid selling price reductions. If we are unable to successfully address these challenges and execute this new business strategy, our business will be materially adversely affected.

In addressing these challenges, our new business strategy has involved, and will continue to involve, cost containment, in particular with respect to our workforce and we will continue to make judgments as to whether we should further reduce, relocate or otherwise change our workforce. Costs incurred in connection with such workforce changes, should they occur, may be higher than estimated. In addition, such workforce changes may impair our ability to achieve our current or future business objectives. In addition, any workforce changes may not be effected on the planned timetable and may result in the recording of additional charges. Similarly, any decision by us to further limit investment in, or exit or dispose of parts of, our business may result in the recording of additional charges. As part of our review of our restructured business, we look at the recoverability of tangible and intangible assets. Future market conditions may indicate these assets are not recoverable based on changes in forecasts of future business performance and the estimated useful life of these assets, and this may trigger further write-downs of these assets which may have a material adverse effect on our business, results of operations and financial condition.

Our new business strategy may also include considering strategic transactions, such as acquisitions, divestitures, joint ventures, alliances or co-production programs, as such opportunities arise. We may not be able to effect any strategic transaction or if we enter into transactions, we may not realize the benefits we anticipate. Moreover, in the case of acquisitions, the integration of separate companies involves a number of integration risks. Consummating any acquisitions, divestitures, joint ventures, alliances or co-production programs could result in the incurrence of additional transaction-related expenses, as well as unforeseen contingent liabilities, which could materially adversely affect us.

Our business has been characterized by selling prices that decline over time, which can negatively affect our results of operations.

Historically, the selling prices of our products have decreased during the products' lives, and we expect this trend to continue. When our selling prices decline, our net sales and gross margins also decline unless we are able to compensate by selling more units and thereby reducing our manufacturing costs per unit or by introducing

and selling new, higher margin products with higher densities and/or advanced features. If the selling prices for our products continue to decline, our operating results could be materially adversely affected.

During downturns, periods of extremely intense competition, or the presence of oversupply in the industry, the selling prices for our products have declined at a high rate over relatively short time periods as compared to historical rates of decline. We are unable to predict selling prices for any future periods and may experience unanticipated, sharp declines in selling prices for our products. When such pricing declines occur, we may not be able to mitigate the effects by selling more or higher margin units, or by reducing our manufacturing costs. In such circumstances, our operating results could be materially adversely affected.

The Flash memory market is highly cyclical and has experienced severe downturns that have materially adversely affected, and may in the future materially adversely affect, our business.

The Flash memory market is highly cyclical and in the past has experienced severe downturns, generally as a result of wide fluctuations in supply and demand, constant and rapid technological change, continuous new product introductions and price erosion. Our financial performance has been, and may in the future be, adversely affected by these downturns. We have incurred substantial losses in past downturns, including the most recent downturn, due principally to:

- substantial declines in selling prices, particularly due to competitive pressures and an imbalance in product supply and demand; and
- a decline in demand for end-user products that incorporate our products.

Our historical financial information is not necessarily indicative of what our results of operations, financial condition or cash flows will be in the future. If our net sales decline in the future, or if these or other similar conditions continue or occur again in the future, we would likely be materially adversely affected. If demand for consumer products, industrial products or mobile phones utilizing Flash memory declines, as we experienced during the worldwide global recession, our business could be materially adversely affected. Also, if the functionality of successive generations of such products does not require increasing Flash memory density or if such products no longer require the type of Flash memory product we produce due to alternative technologies or otherwise, our operating results would be materially adversely affected.

We cannot be certain that the Chapter 11 Cases will not adversely affect our operations going forward.

Although we emerged from the Chapter 11 Cases on May 10, 2010, we cannot provide assurance that our prior bankruptcy will not adversely affect our future operations. Our suppliers and vendors could stop providing supplies or services to us or provide such supplies or services only on unfavorable terms such as “cash on delivery,” “cash on order” or other terms that could have an adverse impact on our short-term cash flows. In addition, the fact that we recently emerged from the Chapter 11 Cases may adversely affect our ability to retain existing customers, attract new customers and maintain contracts that are critical to our operations.

We lost a significant amount of market share while in bankruptcy as certain customers were unwilling to work with a vendor in bankruptcy and others reduced their dependence on us by shifting their business to other vendors. There can be no assurance as to whether we will be able, or how long it may take, to regain all or any portion of that lost market share.

If we are unable to attract and retain qualified personnel at reasonable costs, we may not be able to achieve our business objectives.

We are dependent on the experience and industry knowledge of our senior management and other key employees to execute our current business plans and lead us throughout the implementation of the Plan of Reorganization. Competition for certain key positions and specialized technical and sales personnel in the high-technology industry remains strong. The Chapter 11 Cases, along with workforce reductions, created uncertainty

that led to an increase in unwanted attrition and additional challenges in attracting and retaining new qualified personnel. We have lost many key employees with long tenures and broad knowledge about our technology and historical operations and we are at risk of losing or being unable to hire talent critical to a successful reorganization and ongoing operation of our business. If we are not able to attract, recruit or retain qualified employees (including as a result of headcount or salary reductions), we may not have the personnel necessary to successfully implement the Plan of Reorganization and our new business strategy, and our business, results of operations and financial condition could be materially adversely impacted.

Our reliance on third-party manufacturers entails risks that could materially adversely affect us.

We have in the past and plan in the future to enter into foundry, subcontractor and other arrangements with third parties to meet demand for our products. Third-party manufacturers we have used in the past or expect to use in the future for foundry and other manufacturing services include Texas Instruments, or TI, Fujitsu Semiconductors Limited, or FSL, Elpida Memory, Inc., or Elpida, and Semiconductor Manufacturing International Corporation, or SMIC. We also use independent contractors to perform some of the assembly, testing and packaging of our products, including ChipMOS Technologies Limited. We depend on these manufacturers to allocate to us a portion of their manufacturing capacity sufficient to meet our needs. Third-party manufacturers are generally under no obligation to provide us with any specified minimum quantity of product. We also depend on these manufacturers to produce products of acceptable quality and at acceptable manufacturing yields and to deliver those products to us on a timely basis at acceptable prices. In addition, we rely on these manufacturers to invest capital into their facilities and process technologies to meet our needs for new products using advanced process technologies. Given our recent emergence from the Chapter 11 Cases and the current volatility and disruption in the capital and credit markets worldwide, we cannot assure you that they will make the investments in their facilities previously contemplated. We cannot assure you that these manufacturers will be able to meet our near-term or long-term manufacturing requirements and may not be able to attain qualification from our customers, which is required prior to production of products at a third-party facility for a particular customer. In addition, any significant change in the payment terms we have with these manufacturers could adversely affect us.

In the past, Spansion Japan Limited, then a wholly-owned subsidiary of Spansion LLC, or Spansion Japan, facilitated distribution of our products in Japan, manufactured and supplied sorted and unsorted silicon wafers for us, and provided sort services to us. In August 2010, we entered into a new foundry agreement with TI as a result of TI's purchase of two wafer fabrication facilities and equipment from Spansion Japan. Accordingly, we rely on TI to manufacture wafers for and supply sort services to us. A sudden and unanticipated reduction or cessation of the supply of goods and services from TI would likely be disruptive and have a material adverse impact on our results of operations.

Third-party manufacturers with whom we contract also make products for other companies, including certain of our competitors, and/or for themselves and could choose to prioritize capacity for themselves or other customers beyond any minimum guaranteed amounts, reduce deliveries to us or, in the absence of price guarantees, increase the prices they charge us on short notice, such that we may not be able to pass cost increases on to our customers. The likelihood of this occurring may be greater as a result of the Chapter 11 Cases. We may be unable to secure an alternative supply for specific products in a short timeframe or at all at an acceptable cost to satisfy our production requirements. In addition, we may be required to incur additional development, manufacturing and other costs to establish alternative sources of supply. Other risks associated with our increased dependence on third-party manufacturers include: their ability to adapt to our proprietary technology, reduced control over delivery schedules, quality assurance, manufacturing yields and cost, misappropriation of our intellectual property, reduced ability to manage inventory and parts and risks associated with operating in foreign countries. If we are unable to secure sufficient or reliable suppliers of wafers or obtain the necessary assembly, testing and packaging services, our ability to meet customer demand for our products may be adversely affected, which could have a material adverse effect on us.

We rely on Fujitsu Semiconductors Limited to distribute our products in Japan.

We currently rely on FSL through its subsidiary, Fujitsu Electronics Inc., to distribute our products to customers in Japan, which is an important geographic market for us. Under our distribution agreement with FSL, FSL has agreed to use its best efforts to promote the sale of our products in Japan and to other customers served by FSL. In the event that we reasonably determine that FSL's sales performance in Japan and to those customers served by FSL is not satisfactory based on specified criteria, then we have the right to require FSL to propose and implement an agreed-upon corrective action plan. If we reasonably believe that the corrective action plan is inadequate, we can take steps to remedy deficiencies ourselves through means that include appointing another distributor as a supplementary distributor to sell products in Japan and to customers served by FSL. Pursuing these actions would be costly and disruptive to the sales of our products in Japan. If FSL's sales performance in Japan is unsatisfactory or if we are unable to successfully maintain our distribution agreement and relationship with FSL and we cannot timely find a suitable supplementary distributor, we could be materially adversely affected.

Under the terms of our distribution agreement with FSL, either party may terminate the distribution agreement, either in whole or in part, for convenience upon 60 days written notice to the other party. If FSL unexpectedly terminates its distribution agreement with us, or otherwise ceases its support of our customers in Japan, we would be required to develop and rely on a relationship with another distributor or establish our own local sales organization and support functions. We cannot be certain that we will be successful in selling our products to customers currently served by FSL or new customers. If customers currently served by FSL, or potential new customers, refuse to purchase our products directly from us or from another distributor, or either it or we are not successful in distributing our products, our sales in Japan may decline, and we could be materially adversely affected.

Inaccurate forecasting of customer demand could materially and adversely affect our business, results of operations and financial results and may lead to excess inventory and poor gross margins.

Although our manufacturing cycle times are relatively lengthy, often in excess of ten weeks, we nevertheless compete in a market where suppliers' ability to respond quickly to new orders is a competitive differentiator. Thus, we must forecast customer demand and produce requisite amounts of our products in order to fill current and future orders even though demand is volatile and difficult to predict.

To forecast demand and value inventory, we consider, among other factors, the inventory on hand, historical customer demand data, backlog data, competitiveness of product offerings, market conditions and product life cycles. If we are unable to accurately assess these factors and anticipate future demand or market conditions, inventory write-downs may be required and would be reflected in cost of sales in the period the write-down is made. Similarly, when customers change orders booked with us, our planned manufacturing capacity may be greater or less than actual demand, resulting in less than optimal capacity usage. When this occurs, we adjust our production levels but such adjustments may not prevent our production of excess inventory. An inability to address challenges like the ones described above would have a negative impact on our gross margin in that period. Moreover, inaccurate forecasting could also result in excess or obsolete inventory that would reduce our margins or shortages in inventory that would cause us to fail to meet customer demand. If we are unable to produce the types and quantities of products required by our customers in the timeframes and on the delivery schedules required by our customers, we may lose customers or, in certain circumstances, be liable for losses incurred by our customers, which would materially adversely affect our business and financial results.

Industry overcapacity could require us to take actions which could have a material adverse effect on us.

Semiconductor companies with their own manufacturing facilities and specialist semiconductor foundries, which are subcontractors that manufacture semiconductors designed by others, have added significant capacity in recent years and during the first half of 2010 a number of companies announced plans to do so again. In 2008, the

significant excess capacity led to oversupply and a downturn in the memory industry. The contraction of the worldwide economy, especially in the fourth quarter of 2008 and continuing into 2009, further compounded industry overcapacity. Fluctuations in the growth rate of industry capacity relative to the growth rate in demand for Flash memory products can contribute to cyclicality in the Flash memory market, which has in the past and may in the future negatively impact our selling prices and materially adversely affect us.

It is difficult to predict future growth or decline in the markets we serve, making it very difficult to estimate requirements for production capacity. If our target markets do not grow as we anticipate, we may under-utilize our manufacturing capacity or we may be contractually obligated to purchase minimum quantities of certain products from our subcontractors. This may result in write-downs or write-offs of inventories and losses on products the demand for which is lower than we anticipate. In addition, during periods of industry overcapacity, customers do not generally order products as far in advance of the scheduled shipment date as they do during periods when our industry is operating closer to capacity, which can exacerbate the difficulty in forecasting capacity requirements and may result in increased inventory levels.

Many of our costs are fixed. Additionally, pursuant to some of our subcontractor and foundry arrangements with third parties we may incur and pay penalties as a result of our agreements to pay for a certain amount of product even if we do not accept delivery of all of such amount. Accordingly, during periods in which we under-utilize our manufacturing capacity as a result of reduced demand for some of our products, our costs cannot be reduced in proportion to the reduced net sales for such periods. When this occurs, our operating results may be materially adversely affected.

A further significant shift in the Flash memory market to NAND architecture would materially adversely affect us.

Flash memory products are generally based on either NOR or NAND architecture. To date, our Flash memory products have been based on NOR architecture which are typically produced at a higher cost-per-bit than NAND-based products. We are developing our NAND architectures based on MirrorBit charge trapping technology primarily to address embedded applications currently served by NAND-based products or potentially served by NAND-based products in the future, but we cannot be certain that our NAND products will satisfactorily address those market needs.

Since 2004, industry sales of NAND-based Flash memory products increased as a percentage of total Flash memory sales compared to sales of NOR-based Flash memory products, resulting in NAND vendors in aggregate gaining a greater share of the overall Flash memory market and NOR vendors in aggregate losing overall market share. We expect the Flash memory market trend of decreasing market share for NOR-based Flash memory products relative to NAND-based Flash memory products to continue for the foreseeable future.

Customers manufacturing products for embedded applications may increasingly choose floating gate NAND-based Flash memory products over our NOR or NAND Flash memory products based on MirrorBit technology. If this occurs, our sales may be materially adversely affected. Moreover, some of our competitors are able to manufacture floating gate NAND-based Flash memory products on 300-millimeter wafers produced at a lower cost than we can currently achieve. In addition, some of our competitors may choose to utilize more advanced manufacturing process technologies than we may have available in order to offer competitive products at lower costs or with higher densities.

In addition, even if products based on NAND architecture are unsuccessful in displacing products based on NOR architecture, the average selling price for our products may be adversely affected by a significant decline in the price for NAND-based Flash memory products. Such a decline may result in downward price pressure in the overall Flash memory market affecting the price we can obtain for our NOR-based Flash memory products, which would adversely affect us. We believe such downward pricing pressure was a factor in the significant declines in the selling prices of our products in 2007 and 2008. If the prices for NAND Flash memory products similarly decline in the future, we may be materially adversely affected.

If we fail to successfully develop new applications and markets for our products, our future operating results would be materially adversely affected.

We are developing new applications and opportunities for our products beyond our traditional customer base and in some cases plan to deploy our Flash memory solutions beyond current Flash memory markets. However, some of these opportunities require that we succeed in creating, marketing, gaining customer acceptance of, and deploying these new system architectures into, a customer base where we do not have historic business relationships and where our solution is required to replace established and proven solutions. In some cases our solutions rely on third parties to contribute a significant and necessary component of the solution without which the solution will not be viable. If we are unsuccessful in our attempts to bring new products to market due to our failures or those of third parties, experience significant delays in generating sales, fail to establish their value or face competition from third parties or incumbent suppliers that result in lower margins than expected, our future operating results would be materially adversely affected.

We cannot be certain that we will have sufficient resources to invest in the level of research and development required to remain competitive or that our substantial research and development investments will lead to timely improvements in technology needed to successfully develop, introduce and commercialize new products and technologies.

The Flash memory industry is highly competitive and subject to rapid technological change. In order to compete, we are required to make substantial investments in research and development for product design, process technologies and production techniques in an effort to design and manufacture advanced Flash memory products. For example, in fiscal 2007 and 2008, our research and development expenses were approximately \$436.8 million and \$431.8 million, or approximately 17 and 19 percent of our total net sales, respectively. As a result of our new business strategy, research and development expenses for fiscal 2009 were \$136.4 million, or approximately 10 percent of our total net sales. We cannot assure you that we will have sufficient resources independently or through joint development agreements to maintain the level of investment in research and development that is required for us to remain competitive, which could materially adversely affect us.

As part of our reorganization, our strategy has changed to increasingly seek to share research and development costs with third parties. For example, we recently entered into a joint development agreement with Elpida for the development of products based on NAND architecture. However we cannot assure you that we will be able to negotiate such arrangements for more of our research and development needs, or that such arrangements will result in commercially successful technology and products in a timely manner or at all. We will be dependent on the third parties in such agreements to continue to invest financial and skilled human resources, and we cannot assure you that such third parties will make the necessary investments, the absence of which would materially adversely affect our business.

Our success depends to a significant extent on our ability to develop, qualify, produce, introduce and gain market acceptance of new product designs and improvements that provide value to Flash memory customers. Our ability to develop and qualify new products and related technologies to meet evolving industry requirements at prices acceptable to our customers and on a timely basis is critical to our competitiveness in our target markets. If we are delayed in developing or qualifying new products or technologies, we could be materially adversely affected.

Competitors may introduce new memory or other technologies that may make our Flash memory products uncompetitive or obsolete.

Our competitors are working on a number of new competitive technologies, including FRAM, MRAM, polymer, charge trapping and phase-change based memory technologies. If such products are successfully developed and commercialized as a viable alternative to MirrorBit or floating gate Flash memory, these other products could pose a competitive threat to existing Flash memory companies, including us. In addition, some of

the licensees and customers of Saifun Semiconductors Ltd., or Saifun, which we purchased in 2008 and renamed Spansion Israel Ltd., are our competitors or work with our competitors and possess licenses from Saifun for intellectual property associated with charge trapping Flash memory technology. Use of this charge trapping intellectual property or use of independently developed charge trapping Flash memory technology by our competitors, if successfully developed and commercialized, may allow these competitors to develop Flash memory products that may compete with our products based on MirrorBit technology. If we are unable to compete with these new technologies, we may be materially adversely affected.

Intense competition in the Flash memory market could materially adversely affect us.

Our principal NOR Flash memory competitors are Micron Technology, Inc., or Micron, Macronix International Co., Ltd., or Macronix, Winbond Electronics Corp. and Samsung Electronics Co., Ltd., or Samsung. Additional NOR Flash memory competitors include Microchip Technology Inc., EON Silicon Solution Inc., Atmel Corporation and Toshiba Corporation, or Toshiba.

We increasingly compete with NAND Flash memory manufacturers where NAND Flash memory has the ability to replace NOR Flash memory in customer applications. Our principal NAND Flash memory competitors include Samsung and Micron. In the future, our principal NAND Flash memory competitors may include Elpida Memory, Inc., Hynix Semiconductor Inc., Toshiba, Powerchip Technology Corporation, Macronix and Intel Corporation.

The Flash memory market is characterized by intense competition. The basis of competition is cost, selling price, performance, quality, customer relationships and ability to provide value-added solutions. In particular, in the past our competitors have aggressively priced their products, which resulted in decreased selling prices for our products and adversely impacted our results of operations. Some of our competitors, including Samsung and Toshiba, are more diversified than we are and may be able to sustain lower operating margins in their Flash memory business based on the profitability of their other, non-Flash memory businesses. In addition, capital investments by competitors in the past have resulted in substantial industry manufacturing capacity and announced capital investments planned for the future may further contribute to a competitive pricing environment. Some of our competitors are able to manufacture floating gate NAND-based Flash memory products on 300-millimeter wafers at lower cost than to which we may have access or may choose to utilize more advanced manufacturing process technologies than we will have to offer products competitive to ours at a lower cost or higher density. Moreover, our NAND-based Flash memory products based on our proprietary MirrorBit technology may not have the price, performance, quality and other features necessary to compete successfully for these applications.

We expect competition in the Flash memory market to intensify as existing manufacturers introduce new products, new manufacturers enter the market, industry-wide production capacity increases and competitors aggressively price their Flash memory products to increase market share. The competition we face intensified during the Chapter 11 Cases as our ability to compete was reduced. If our competitors, many of whom have greater financial resources than us, increase their focus on the Flash memory products or segments of the Flash memory markets that generate a significant portion of our net sales we could be materially adversely affected.

Competitive pressures may also increase if NOR memory vendors merge, if NAND memory vendors acquire NOR businesses or other NAND businesses, or if our competitors otherwise consolidate their operations. For example, on April 8, 2010, Microchip Technology announced that it had completed its acquisition of Silicon Storage Technology, Inc.; and on May 7, 2010, Micron announced that it had completed its acquisition of Numonyx Holdings B.V. Furthermore, we face increasing competition from NAND Flash memory vendors targeting the embedded portion of the Flash memory market.

To compete successfully, we must decrease our manufacturing costs and develop, introduce and sell products at competitive prices that meet our customers' demands. If we are unable to compete effectively, we could be materially adversely affected.

Unless we maintain manufacturing efficiency, we may not become profitable and our future profitability could be materially adversely affected.

The Flash memory industry is characterized by rapid technological changes. For example, new manufacturing process technologies using smaller feature sizes and offering better performance characteristics are generally introduced every one to two years. The introduction of new manufacturing process technologies allows us to increase the functionality of our products while at the same time optimizing performance parameters, and increasing storage capacity. In addition, the reduction of feature sizes enables us to produce smaller chips offering the same functionality and thereby considerably reduces the cost per bit. In order to remain competitive, it is essential that we secure the capabilities to develop and qualify new manufacturing process technologies. For example, our leading Flash memory products must be manufactured at 65-nanometer and more advanced process technologies. If we are delayed in transitioning to these technologies and other future technologies, we could be materially adversely affected.

Manufacturing our products involves highly complex processes that require advanced equipment. Our manufacturing efficiency is an important factor in achieving profitability, and we cannot be sure that we will be able to maintain or increase our manufacturing efficiency to the same extent as our competitors. For example, we continuously modify our manufacturing processes in an effort to improve yields and product performance and decrease costs. We are continuing to transition to 65-nanometer process technology for the manufacture of some of our products. During periods when we are implementing new process technologies, manufacturing facilities may not be fully productive. We may fail to achieve acceptable yields or may experience product delivery delays as a result of, among other things, capacity constraints, delays in the development of new process technologies, changes in our process technologies, upgrades or expansion of existing facilities, impurities or other difficulties in the manufacturing process. Any of these occurrences could adversely impact our relationships with customers, cause harm to our reputation in the marketplace, cause customers to move future business to our competitors or cause us to make financial concessions to our customers.

Improving our manufacturing efficiency in future periods is dependent on our ability to:

- develop advanced process technologies and advanced products that utilize those technologies;
- successfully transition to advanced process technologies;
- continue to reduce test times;
- ramp product and process technology improvements rapidly and effectively to commercial volumes;
- achieve acceptable levels of manufacturing wafer output and yields, which may decrease as we implement more advanced technologies; and
- maintain our quality controls and rely upon the quality and process controls of our suppliers.

Our ability to generate sufficient operating cash flows depends in part on maintaining our expense reduction efforts.

Our business is capital intensive and our ability to generate operating cash flows depends in large part on the maintenance of our low cost strategy. In response to decreasing cash balances of the Predecessor prior to the Chapter 11 Cases and as part of our strategy going forward, we intend to continue our low cost strategy, which historically included salary reductions, capital expenditure reductions, headcount freezes and reductions, cutting research and development projects; and reducing administrative expenses. Some cost cutting activities may require initial cost outlays before the cost reductions are realized. We cannot assure you that we will be able to achieve anticipated expense reductions. If our expense reduction efforts are unsuccessful, our operating results and business may be materially adversely affected. Furthermore, in certain instances our cost reductions may make it more difficult for us to succeed in the extremely competitive environment in which we operate.

Our working capital, investments and capital requirements may require us to seek additional financing, which may not be available to us.

Our debt instruments may not be sufficient for our future working capital, investments and capital requirements. We also may not be able to access additional financing resources due to a variety of reasons, including the restrictive covenants in our \$450 million credit agreement, or Term Loan, our \$65 million loan and security agreement, or Revolving Credit Facility, or the indenture governing the notes offered hereby, and the lack of available capital due to the tight nature of global credit markets. If our financing requirements are not met by the Term Loan and the Revolving Credit Facility and we are unable to access additional financing, our business, operations, financial condition and cash flows will be materially adversely affected.

If we cannot adequately protect our technology or other intellectual property in the United States and abroad, through patents, copyrights, trade secrets, trademarks and other measures, we may lose a competitive advantage and incur significant expenses as a result of litigation and other claims.

We rely on a combination of protections provided by contracts, including confidentiality and non-disclosure agreements, copyrights, patents, trademarks and common law rights, such as trade secrets, to protect our intellectual property. However, we cannot assure you that we will be able to adequately protect our technology or other intellectual property from third-party infringement or from misappropriation in the United States and abroad. Any patent owned or licensed by us or issued to us could be challenged, invalidated or circumvented or rights granted under these patents or licenses may not provide a competitive advantage to us. Furthermore, patent applications that we file may not result in issuance of a patent or, if a patent is issued, the patent may not be issued in a form that is advantageous to us. Despite our efforts to protect our intellectual property rights, others may independently develop similar products, duplicate our products or design around our patents and other intellectual property rights. In addition, it is difficult to monitor compliance with, and enforce, our intellectual property rights on a worldwide basis in a cost-effective manner. Foreign laws may provide less intellectual property protection than is afforded in the United States. Our efforts to protect our intellectual property in the United States and abroad, through lawsuits such as those that have been filed between us and Samsung, may be time-consuming and costly. If we cannot adequately protect our technology or other intellectual property rights in the United States and abroad, we may be materially adversely affected.

We are currently party to various lawsuits brought by third parties alleging that we infringe their intellectual property rights. In the future, third parties may bring additional actions against us based on similar allegations. To resolve such claims, we may seek to obtain a license under the third party's intellectual property rights. We cannot assure you that we will be able to obtain all of the necessary licenses on satisfactory terms, if at all. These parties have filed or may in the future file lawsuits against us seeking damages (potentially including treble damages for willful infringement) or an injunction against the sale of our products that incorporate allegedly infringed intellectual property or against the operation of our business as presently conducted, which could result in our having to stop the sale of some of our products, increase the costs of selling some of our products, or cause damage to our reputation. The award of damages, including material royalty payments, or the entry of an injunction against the manufacture and sale of some or all of our products, would have a material adverse effect on us. We could decide, in the alternative, to redesign our products or to resort to litigation to challenge or defend such claims, either of which could be expensive and time-consuming and may have a material adverse effect on us.

We expect to attempt to negotiate agreements and arrangements with third parties for the license of intellectual property and technology that are important to our business. We also expect to continue to apply for new patents as our success in negotiating patent cross-license agreements with other industry participants will depend in large part upon the strength of our patent portfolio relative to that of the third party with which we are negotiating. If we are unable to negotiate agreements or arrangements for intellectual property, or to obtain patents, necessary for the success of our business, we may be materially adversely affected.

We provide indemnities relating to non-infringement of patents and other intellectual property indemnities to certain of our customers in connection with the delivery, design, manufacture and sale of our products. If we incur substantial costs in connection with any claim pursuant to such indemnification, our business, results of operations and financial condition could be materially adversely affected.

If essential equipment or adequate supplies of satisfactory materials are not available to manufacture our products, we could be materially adversely affected.

Our manufacturing operations depend upon obtaining deliveries of equipment and adequate supplies of materials on a timely basis. We purchase equipment and materials from a number of suppliers. From time to time, suppliers may extend lead times, limit supply to us or increase prices due to capacity constraints or other factors. Because the equipment that we purchase is complex, it is difficult for us to substitute one supplier for another or one piece of equipment for another. Some raw materials we use in the manufacture of our products are available from a limited number of suppliers or only from a limited number of suppliers in a particular region. In addition, we purchase raw materials such as gold for which prices on the world markets have fluctuated significantly during recent periods. Our manufacturing operations also depend upon the quality and usability of the materials we use in our products, including raw materials and wafers we receive from our suppliers. If the materials we receive from our suppliers do not meet our manufacturing requirements or product specifications, are not obtained in a timely manner or if there are significant increases in costs of materials, we may be materially adversely affected.

We also rely on purchasing commercial memory die such as PSRAM from third-party suppliers to incorporate these die into multi-chip package products. The availability of these third-party purchased commercial die is subject to market availability, and the process technology roadmaps and manufacturing capacities of our vendors. In addition, some of our suppliers may also be our competitors. Interruption of supply from a competitor that is a supplier or otherwise or increased demand in the industry could cause shortages and price increases in various essential materials. If we are unable to procure these materials, or if the materials we receive from our suppliers do not meet our production requirements or product specifications, we may have to reduce our manufacturing operations or our manufacturing yields may be adversely affected. Such a reduction and yield issues have in the past and could in the future have a material adverse effect on us.

Costs related to defective products could have a material adverse effect on us.

One or more of our products may be found to be defective or we may initiate voluntary recalls of products after they have been shipped to customers in volume. We generally provide a limited warranty with respect to our products. Accordingly, if we recall products or are forced to replace defective products, the cost of product replacements or product returns may be substantial, and our reputation with our customers could be damaged. In addition, we could incur substantial costs to implement modifications to fix defects. Any of these problems could materially adversely affect us.

Worldwide economic and political conditions and risks may adversely affect demand for our products and have a material adverse effect on us.

We operate in more than ten countries and we derive a majority of our net sales outside the United States. For example, a significant portion of our planned wafer fabrication capacity for existing and future products is provided by third parties located in Japan and China, and nearly all final test and assembly of our products is performed at our facilities in Malaysia and Thailand and by third parties in China, Taiwan and Japan. Our business depends on the overall worldwide economic conditions and the economic and business conditions within our customers' industries. Our business may also be affected by economic factors that are beyond our control, such as downturns in economic activity in a specific country or region. A further weakening of the worldwide economy or the economy of individual countries or the demand for our customers' products may cause a greater decrease in demand for our products, which could materially adversely affect us.

We could also be significantly and adversely affected by geopolitical concerns and world events, such as wars and terrorist attacks. Our net sales and financial results have been and could be negatively affected to the extent geopolitical concerns continue and similar events occur or are anticipated to occur. Terrorist attacks or armed conflicts may directly impact our physical facilities or those of our suppliers or customers. Furthermore, these attacks may make travel and the transportation of our products more difficult and more expensive, which could materially adversely affect us.

The political and economic risks associated with our sales to, and operations in, foreign countries include:

- expropriation;
- changes in political or economic conditions;
- compliance with U.S. and international laws involving international operations, including the Foreign Corrupt Practices Act and export control laws;
- changes in tax laws, trade protection measures and import or export licensing requirements;
- difficulties in protecting our intellectual property;
- difficulties in achieving headcount reductions;
- changes in foreign currency exchange rates;
- restrictions on transfers of funds and other assets of our subsidiaries between jurisdictions;
- changes in freight and interest rates;
- disruption in air transportation between the United States and our overseas facilities; and
- loss or modification of exemptions for taxes and tariffs.

In particular, consequences of military action in the Middle East have in the past, and may in the future, adversely affect demand for our products and our relationship with various third parties with which we collaborate. Our subsidiary, Spansion Israel, conducts business in Israel, which is affected and surrounded by unstable political, economic and military conditions. We cannot predict the effect of continued or increased violence, or the effect of military action in that region. Continued armed conflicts or political instability in the region would harm business conditions and could adversely affect the combined company's results of operations. Furthermore, several countries continue to restrict or ban business with Israel and Israeli companies. These restrictive laws and policies may limit our ability to make sales in those countries, and, as a global company, may limit our own ability to efficiently administer our worldwide resources.

More generally, any of these events could cause consumer confidence and spending to decrease or result in increased volatility in the U.S. economy and worldwide financial markets.

Unfavorable currency exchange rate fluctuations could adversely affect us.

As a result of our foreign operations, we have sales, expenses, assets and liabilities that are denominated in Japanese yen and other foreign currencies. For example:

- some of our costs are denominated in Japanese yen, Thai baht and Malaysian ringgit;
- sales of our products to, and purchases from, TI are denominated in both U.S. dollars and Japanese yen; and
- some fixed asset purchases are denominated in Japanese yen and European Union euros.

Consequently, movements in exchange rates could cause our net sales and expenses to fluctuate, affecting our results of operations and cash flows. We currently have not entered into any currency hedging contracts and in the future we may not be able to enter into them on acceptable terms, if at all.

We are subject to a variety of environmental laws that could result in liabilities.

Our properties and many aspects of our business operations are subject to various domestic and international environmental laws and regulations, including those relating to materials used in our products and manufacturing processes; chemical use and handling; waste minimization; discharge of pollutants into the environment; the treatment, transport, storage and disposal of solid and hazardous wastes; and remediation of contamination. Certain of these laws and regulations require us to obtain permits for our operations, including permits related to the discharge of air pollutants and wastewater. From time to time, our facilities are subject to investigation by governmental regulators. Environmental compliance obligations and liability risks are inherent in many of our manufacturing and other activities. Any failure to comply with applicable environmental laws, regulations or permits may subject us to a range of consequences, including fines, suspension of production, alteration of manufacturing processes, sales limitations, and criminal and civil liabilities or other sanctions. We could also be held liable for any and all consequences arising out of exposure to hazardous materials used, stored, released, disposed of by us or located at or under our facilities, or for other environmental or natural resource damage. Certain environmental laws, including the U.S. Comprehensive Environmental Response, Compensation and Liability Act of 1980, or the Superfund Act, impose joint and several liability on current and previous owners or operators of real property for the cost of removal or remediation of hazardous substances and costs related to damages to natural resources. Liability can attach even if the owner or operator did not know of, or was not responsible for, the release of such hazardous substances. These environmental laws also can result in liability for persons, like us, who arrange for hazardous substances to be sent to disposal or treatment facilities, in the event such facilities are found to be contaminated. Such persons can be responsible for cleanup costs at a disposal or treatment facility, even if they never owned or operated the contaminated facility. One of our properties is listed on the U.S. Environmental Protection Agency's Superfund National Priorities List. However, other parties currently are responsible for all investigation, cleanup and remediation activities. Although we have not been named a responsible party at this site, if we were so named, costs associated with the cleanup of the site could have material adverse effect upon us. We have not been named a responsible party at any Superfund or other contaminated site. If we were ever so named, costs associated with the cleanup of the site could be material. Additionally, contamination that has not yet been identified could exist at one or more of our facilities, and identification of such contamination could have a material adverse effect on us.

Our business is subject to complex and dynamic environmental regulatory schemes. While we have budgeted for reasonably foreseeable environmental expenditures, we cannot assure you that environmental laws will not change or become more stringent in the future. Future environmental regulations could require us to procure expensive pollution abatement or remediation equipment; to modify product designs; or to incur other expenses associated with compliance with such regulations. For example, the European Union and China recently began imposing stricter requirements regarding reduced lead content in semiconductor packaging. Therefore, we cannot assure you that our costs of complying with current and future environmental and health and safety laws, or liabilities arising from past or future releases of, or exposure to, hazardous substances, will not have a material adverse effect on our business.

Our business, worldwide operations and the operations of our suppliers could be subject to natural disasters and other business disruptions, which could harm our future net sales and financial condition and increase our costs and expenses.

Our worldwide operations and business could be subject to natural disasters and other business disruptions, such as a world health crisis, fire, earthquake, tsunami, volcano eruption, flood, hurricane, power loss, power shortage, telecommunications failure or similar events, which could harm our future net sales and financial condition and increase our costs and expenses. Our corporate headquarters are located near major earthquake fault lines in California and, TI's wafer fabrication facilities, Fujitsu's manufacturing facilities and Elpida's manufacturing facilities are located near major earthquake fault lines in Japan. Also, our assembly and test facilities located in Malaysia and Thailand and our subcontractors' assembly and test facilities in China and other countries in Asia may be affected by tsunamis. In the event of a major earthquake or tsunami, we could experience loss of life of our employees, destruction of facilities or other business interruptions. If such business

disruptions result in cancellations of customer orders or contribute to a general decrease in economic activity or demand for our products, or directly impact our marketing, manufacturing, financial, and logistics functions, our results of operations and financial condition could be materially adversely affected.

Furthermore, the operations of our suppliers could be subject to natural disasters and other business disruptions, which could cause shortages and price increases in various essential materials, which are required to manufacture our products or commercial memory die such as PSRAMs for incorporation into our multi-chip packages, or MCP, products. If we are unable to procure an adequate supply of materials that are required for us to manufacture our products, or if the operations of our other suppliers of such materials are affected by an event that causes a significant business disruption, we may have to reduce our manufacturing operations. Such a reduction could in the future have a material adverse effect on us.

Changes to financial accounting standards may affect our results of operations and cause us to change our business practices.

We prepare our financial statements in accordance with generally accepted accounting principles, or GAAP, in the United States. These accounting principles are subject to interpretation by the Financial Accounting Standards Board, or FASB, the Securities and Exchange Commission, or SEC, and various bodies formed to interpret and create appropriate accounting policies. A change in those policies or other requirements with respect to the reporting of financial statements can have a significant effect on our reported results and may affect our reporting of transactions completed before a change is announced.

For example, the SEC has released a proposed roadmap regarding the potential use by U.S. issuers of financial statements prepared in accordance with International Financial Reporting Standards, or IFRS. Under the proposed roadmap, we may be required to prepare financial statements in accordance with IFRS. The SEC announced it will make a determination in 2011 regarding the mandatory adoption of these new standards. It is unclear at this time how the Commission will propose GAAP and IFRS be harmonized if the proposed changes are adopted. If adopted, we will need to develop new systems and controls around IFRS principles. Since this would be a new endeavor, the specific costs associated with this conversion is uncertain and could have a material impact on our results of operations.

AMD and Fujitsu may continue to use all of our intellectual property and the intellectual property they have transferred to us.

In connection with our reorganization as Spansion LLC in June 2003, Advanced Micro Devices, Inc., or AMD, and Fujitsu transferred approximately 400 patents and patent applications to us. In addition, AMD and Fujitsu contributed additional patents to us at the time of our initial public offering. However, both AMD and Fujitsu have retained license rights under the patents they contributed to us. In addition, under their respective patent cross-license agreements with us, AMD and Fujitsu have also obtained licenses to our present and future patents with effective filing dates prior to June 30, 2013, although the scope of patents under license can be impacted by a change in control of the parties or their semiconductor groups. These licenses continue until the last to expire of the patents under license expires and provide AMD and Fujitsu with licenses to all of our present and future patents in existence through such cross-license termination date. In addition, we have granted a non-exclusive, perpetual, irrevocable fully paid and royalty-free license under our rights, other than patent and trademark rights, in our technology to each of AMD and Fujitsu. Under our non-competition agreement, both AMD and Fujitsu have agreed that they will not directly or indirectly engage in a business, and have agreed to divest any acquired business, that manufactures or supplies standalone semiconductor devices (including single chip, multiple chip or system devices) containing certain Flash memory, which is the business in which we primarily compete. With respect to each of AMD and Fujitsu, this non-competition restriction will last until May 10, 2012. After the expiration of the non-competition restriction period, should either AMD or Fujitsu decide to re-enter the Flash memory business, it could use our present and future patents and technologies licensed by us to AMD and Fujitsu to compete against us. If either AMD or Fujitsu were to compete with us, we could be materially adversely affected.

Risks Related to This Offering

Our level of indebtedness could adversely affect our ability to raise additional capital to fund our operations, limit our ability to react to changes in the economy or our industry and prevent us from meeting our obligations under the notes.

On a pro forma basis after giving effect to this offering and the concurrent equity offering, and the application of the net proceeds from these offerings, our total indebtedness would be approximately \$463.0 million. Our substantial degree of leverage could have important consequences for you, including the following:

- it may limit our ability to obtain additional debt or equity financing for working capital, capital expenditures, product development, debt service requirements, acquisitions or general corporate or other purposes;
- a substantial portion of our cash flows from operations will be dedicated to the payment of principal and interest on our indebtedness and will not be available for other purposes, including our operations, capital expenditures and future business opportunities;
- the debt service requirements of our indebtedness could make it more difficult for us to satisfy our financial obligations, including those related to the notes;
- certain of our borrowings, including borrowings under the Term Loan, are, and any future borrowings under the Revolving Credit Facility will be, at variable rates of interest, exposing us to the risk of increased interest rates;
- it may limit our ability to adjust to changing market conditions and place us at a competitive disadvantage compared to our competitors that have less debt; and
- we may be vulnerable to a downturn in general economic conditions or in our business, or we may be unable to carry out capital spending that is important to our growth.

We may not be able to generate sufficient cash to service all of our indebtedness, including the notes, and be forced to take other actions to satisfy our obligations under our indebtedness, which may not be successful.

Our ability to make scheduled payments or to refinance our debt obligations depends on our financial and operating performance, which is subject to prevailing economic and competitive conditions and to certain financial, business and other factors beyond our control. We cannot assure you that we will maintain a level of cash flows from operating activities sufficient to permit us to pay the principal, premium, if any, and interest on our indebtedness. See “Special Note Regarding Forward-Looking Statements” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources.”

If our cash flows and capital resources are insufficient to fund our debt service obligations, we may be forced to reduce or delay capital expenditures, sell assets or operations, seek additional capital or restructure or refinance our indebtedness, including the notes. We cannot assure you that we would be able to take any of these actions, that these actions would be successful and permit us to meet our scheduled debt service obligations or that these actions would be permitted under the terms of our existing or future debt agreements, including the Term Loan and Revolving Credit Facility or the indenture that will govern the notes.

If we cannot make scheduled payments on our debt, we will be in default and, as a result:

- our debt holders could declare all outstanding principal and interest to be due and payable;
- the lenders under our Term Loan and Revolving Credit Facility could terminate their commitments to lend us money and foreclose against the assets securing their borrowings; and
- we and our parent companies could be forced into bankruptcy or liquidation, which could result in you losing your investment in the notes.

Despite current indebtedness levels, we may still be able to incur substantially more debt and this could further exacerbate the risks described above. The terms of our existing indebtedness and the indenture do not fully prohibit us or our subsidiaries from doing so and do not restrict the ability of our parent companies to incur indebtedness. This debt may include additional debt under our Revolving Credit Facility, which provides commitments of up to \$65 million, or other secured debt that would effectively rank senior to the notes offered hereby to the extent of the value of the collateral securing that additional indebtedness.

Restrictive covenants may adversely affect our operations.

Our Term Loan and Revolving Credit Facility contain, and the indenture governing the notes will contain, various covenants that limit our ability to, among other things:

- incur or assume additional debt or provide guarantees in respect of obligations of other persons;
- pay dividends or distributions or redeem or repurchase capital stock;
- prepay, redeem or repurchase debt;
- make certain investments, including investment in our unrestricted subsidiaries;
- create or permit liens;
- restrict dividends, loans or asset transfers from our subsidiaries;
- sell or otherwise dispose of assets, including capital stock of subsidiaries;
- consolidate or merge with or into, or sell substantially all of our assets to, another person; and
- enter into transactions with affiliates.

In addition, the restrictive covenants in our Term Loan and Revolving Credit Facility require us to maintain specified financial ratios, including a maximum consolidated leverage ratio and a minimum consolidated interest coverage ratio. See “Description of Certain Indebtedness.”

Our ability to meet those financial ratios can be affected by events beyond our control, and we cannot assure you that we will meet them. A breach of any of the provisions, covenants, financial tests or ratios under our debt instruments could prevent us from borrowing under our Revolving Credit Facility and result in an event of default under the applicable agreement, which in turn could trigger cross-defaults under other debt instruments, including the indenture governing the notes, any of which would materially adversely affect us. Upon the occurrence of an event of default under our Term Loan or Revolving Credit Facility, the lenders could elect to declare all amounts outstanding under our these facilities to be immediately due and payable and terminate all commitments to extend further credit. If we were unable to repay those amounts, the lenders under these facilities could proceed against the collateral granted to them to secure that indebtedness. We have pledged a significant portion of our assets as collateral under our Term Loan and Revolving Credit Facility. If the lenders under our facilities accelerate the repayment of borrowings, we cannot assure you that we will have sufficient assets to repay these credit facilities and our other indebtedness, including the notes, or borrow sufficient funds to refinance such indebtedness. Even if we are able to obtain new financing, it may not be on commercially reasonable terms or terms that are acceptable to us.

The notes and the related guarantees will be effectively subordinated to all of our secured debt and if a default occurs, we may not have sufficient funds to fulfill our obligations under the notes and the guarantees.

The notes and the related guarantees will be general senior unsecured obligations that will rank equally in right of payment with all of our existing and future unsecured and unsubordinated indebtedness. The notes will be effectively subordinated to all of our and our guarantors’ secured indebtedness to the extent of the value of the

assets securing that indebtedness. As of September 26, 2010, on a pro forma basis after giving effect to this offering and the Common Stock Offering and the application of the net proceeds therefrom, we would have had approximately \$463.0 million of secured indebtedness. In addition, the indenture governing the notes will, subject to some limitations, permit us to incur additional secured indebtedness, and your notes and the related guarantees will be effectively junior to any additional secured indebtedness we may incur.

In the event of our bankruptcy, liquidation, reorganization or other winding up, our assets that secure our secured indebtedness will be available to pay obligations on the notes only after all secured indebtedness, together with accrued interest, has been repaid in full from those assets. Because our borrowings under the Term Loan and Revolving Credit Facility (to the extent we borrow under the Revolving Credit facility) are or will be secured obligations, if we fail to comply with the terms of these facilities and those lenders accelerated the payment of all the funds borrowed thereunder and we were unable to repay such indebtedness, the lenders could foreclose on substantially all of our assets and the assets of our guarantors which serve as collateral. In this event, our secured lenders would be entitled to be repaid in full from the proceeds of the liquidation of those assets before those assets would be available for distribution to other creditors, including holders of the notes. Holders of the notes will participate in our remaining assets ratably with all holders of our unsecured indebtedness that is deemed to be of the same class as the notes, and potentially with all of our other general creditors. We advise you that there may not be sufficient assets remaining to pay amounts due on any or all the notes and the related guarantees then outstanding. The guarantees of the notes will have a similar ranking with respect to secured and unsecured senior indebtedness of the guarantors as the notes do with respect to our secured and unsecured senior indebtedness, as well as with respect to any unsecured obligations expressly subordinated in right of payment to the guarantees.

The notes will be structurally subordinated to all indebtedness of our existing or future subsidiaries.

You will not have any claim as a creditor against any of our existing or future subsidiaries. Indebtedness and other liabilities, including trade payables, whether secured or unsecured, of those subsidiaries will be effectively senior to your claims against those entities.

For the nine months ended September 26, 2010, our subsidiaries collectively represented approximately 11.5% of our revenues. At September 26, 2010, our subsidiaries collectively represented 17.7% of our total assets and had approximately \$96.4 million of outstanding total liabilities, including trade payables, but excluding intercompany liabilities, all of which would have been structurally senior to the notes.

In addition, the indenture governing the notes will, subject to some limitations, permit these entities to incur additional indebtedness and will not contain any limitation on the amount of other liabilities, such as trade payables, that may be incurred by these subsidiaries.

We may not be able to repurchase the notes upon a change of control.

Upon the occurrence of specific kinds of change of control events, we will be required to offer to repurchase all outstanding notes at 101% of their principal amount, plus accrued and unpaid interest. We may not be able to repurchase the notes upon a change of control because we may not have sufficient funds. Further, we may be contractually restricted under the terms of our Term Loan and Revolving Credit Facility from repurchasing all of the notes tendered by holders upon a change of control. Accordingly, we may not be able to satisfy our obligations to purchase your notes unless we are able to refinance or obtain waivers under our Term Loan and Revolving Credit Facility. Our failure to repurchase the notes upon a change of control would cause a default under the indenture and a cross-default under these facilities and the indenture governing the notes. Our Term Loan and Revolving Credit Facility also provide that a change of control, as defined in such agreement, will be a default that permits lenders to accelerate the maturity of borrowings thereunder and, if such debt is not paid, to enforce security interests in the collateral securing such debt, thereby limiting our ability to raise cash to purchase the notes, and reducing the practical benefit of the offer-to-purchase provisions to the holders of the notes. Any of our future debt agreements may contain similar provisions.

In addition, the change of control provisions in the indenture may not protect you from certain important corporate events, such as a leveraged recapitalization (which would increase the level of our indebtedness), reorganization, restructuring, merger or other similar transaction. Such a transaction may not involve a change in voting power or beneficial ownership or, even if it does, may not involve a change that constitutes a “change of control” as defined in the indenture that would trigger our obligation to repurchase the notes. If an event occurs that does not constitute a “change of control” as defined in the indenture, we will not be required to make an offer to repurchase the notes and you may be required to continue to hold your notes despite the event. See “Description of Certain Indebtedness” and “Description of the Notes—Repurchase at the option of holders upon a change of control.”

Federal and state fraudulent transfer laws permit a court to void the guarantees, and, if that occurs, you may not receive any payments on the notes.

The issuance of the guarantees may be subject to review under federal, state and foreign fraudulent transfer and conveyance statutes. While the relevant laws may vary from jurisdiction to jurisdiction, under such laws the payment of consideration will generally be a fraudulent conveyance if (1) the guarantors paid the consideration with the intent of hindering, delaying or defrauding creditors or (2) any of our guarantors, as applicable, received less than reasonably equivalent value or fair consideration in return for issuing either the notes or a guarantee and, in the case of (2) only, one of the following is also true:

- any of our guarantors were insolvent or rendered insolvent by reason of the incurrence of the indebtedness;
- payment of the consideration left any of our guarantors with an unreasonably small amount of capital to carry on the business; or
- any of our guarantors intended to, or believed that we or it would, incur debts beyond our or its ability to pay as they mature.

If a court were to find that the issuance of a guarantee was a fraudulent conveyance, the court could void the payment obligations under such guarantee or subordinate such guarantee to presently existing and future indebtedness of such guarantor, or require the holders of the notes to repay any amounts received with respect to such guarantee. In the event of a finding that a fraudulent conveyance occurred, you may not receive any repayment on the notes.

Generally, an entity would be considered insolvent if at the time it incurred indebtedness:

- the sum of its debts, including contingent liabilities, was greater than the fair saleable value of all its assets;
- the present fair saleable value of its assets was less than the amount that would be required to pay its probable liability on its existing debts and liabilities, including contingent liabilities, as they become absolute and mature; or
- it could not pay its debts as they become due.

We cannot be certain as to the standards a court would use to determine whether or not the guarantors were solvent at the relevant time, or regardless of the standard that a court uses, that the issuance of the guarantees would not be subordinated to any guarantor’s other debt.

If the guarantees were legally challenged, any guarantee could also be subject to the claim that, since the guarantee was incurred for our benefit, and only indirectly for the benefit of the guarantor, the obligations of the applicable guarantor were incurred for less than fair consideration. A court could thus void the obligations under the guarantees, subordinate them to the applicable guarantor’s other debt or take other action detrimental to the holders of the notes.

There are significant restrictions on your ability to transfer or resell your notes.

The notes are being offered and sold pursuant to exemptions from registration under United States and applicable state securities laws. Therefore, you may transfer or resell the notes in the United States only in a transaction registered under or exempt from the registration requirements of the United States and applicable state securities laws, and you may be required to bear the risk of your investment for an indefinite period of time.

Under the registration rights agreement, we will agree to file the exchange offer registration statement with the SEC and to use our commercially reasonable efforts to cause such registration statement to become effective with respect to the exchange notes. The SEC, however, has broad discretion to declare any registration statement effective and may delay, defer or suspend the effectiveness of any registration statement for a variety of reasons. If issued under an effective registration statement, the exchange notes generally may be resold or otherwise transferred by each holder of the exchange notes with no need for further registration. However, the exchange notes will constitute a new issue of securities with no established trading market. We cannot assure you that there will be an active trading market for the exchange notes, or, in the case of non-exchanging holders of the notes, the trading market for the notes following the exchange offer.

Your ability to transfer the notes may be limited by the absence of an active trading market, and there is no assurance that any active trading market will develop for the notes.

The notes are a new issue of securities for which there is no established public market. We do not intend to have the notes or any exchange notes listed on a national securities exchange or to arrange for quotation on any automated dealer quotation systems. The initial purchasers have advised us that they intend to make a market in the notes and the exchange notes, if issued, as permitted by applicable laws and regulations; however, the initial purchasers are not obligated to make a market in the notes or the exchange notes and they may discontinue their market-making activities at any time without notice. In addition, such market making activities may be limited during the exchange offer or while the effectiveness of a shelf registration statement is pending. Therefore, we cannot assure you as to the development or liquidity of any trading market for the notes or the exchange notes. The liquidity of any market for the notes will depend on a number of factors, including:

- the number of holders of notes;
- our operating performance and financial condition;
- our ability to complete the offer to exchange the notes for the exchange notes;
- the market for similar securities;
- the interest of securities dealers in making a market in the notes; and
- prevailing interest rates.

Historically, the market for non-investment grade debt has been subject to disruptions that have caused substantial volatility in the prices of securities similar to the notes. We cannot assure you that the market, if any, for the notes or the exchange notes will be free from similar disruptions or that any such disruptions may not adversely affect the prices at which you may sell your notes or exchange notes. Therefore, we cannot assure you that you will be able to sell your notes or exchange notes at a particular time or the price that you receive when you sell will be favorable.

USE OF PROCEEDS

We estimate the net proceeds from the issuance and the sale of the notes will be approximately \$195.3 million after deducting the initial purchasers' discounts and estimated transaction expenses payable by us. We intend to use all of the net proceeds of this offering to pay down amounts outstanding under our Term Loan.

The Term Loan is a five-year senior secured loan agreement of \$450 million that matures on February 8, 2015. Interest on the Term Loan accrues at a rate per annum, reset quarterly, equal to the London Interbank Offered Rate, or LIBOR, but in any case not less than 2.00 percent, plus 5.50 percent. As of June 27, 2010, the interest rate on the Term Loan was 7.50 percent. Proceeds of the Term Loan, together with cash on hand and the proceeds from the rights offering, or Rights Offering, that we conducted in early 2010 were used to discharge in full the claims of the holders of our \$625.0 million aggregate principal amount of our senior secured floating rate notes due 2013, other administrative expense claims and priority claims and the fees and expenses related to the Term Loan, the Revolving Credit Facility and the Rights Offering, in each case in accordance with the Plan of Reorganization.

CAPITALIZATION

The following table sets forth our cash, cash equivalents and short-term investments and capitalization as of September 26, 2010:

- on an actual basis;
- on an as adjusted basis to give effect to the sale of the notes offered hereby and the application of the net proceeds therefrom as described under “Use of Proceeds”; and
- on an as further adjusted basis to give further effect to the concurrent Common Stock Offering at the initial public offering price of \$17.00 per share (assuming no exercise of the underwriters’ overallotment option) and the application of the net proceeds therefrom.

You should read this table together with the information under “Use of Proceeds,” “Selected Historical Consolidated Financial Data,” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” and with our consolidated financial statements and related notes included elsewhere in this offering memorandum.

<u>(dollars in thousands)</u>	<u>Actual</u>	<u>As adjusted for this offering</u>	<u>As further adjusted for the Common Stock Offering</u>
Cash and cash equivalents and short-term investments	\$ 329,681	\$ 327,728	\$ 435,641
Total long-term debt and capital lease obligations, including current portion:			
Term Loan	\$ 448,875	\$ 253,575	\$ 253,575
Revolving Credit Facility	—	—	—
Capital lease obligations	9,414	9,414	9,414
7.875% Senior Notes due 2017	—	200,000	200,000
Total long-term debt and capital lease obligations	458,289	462,989	462,989
Total stockholders’ equity	\$ 592,530	\$ 590,577	\$ 698,490
Total capitalization	<u>\$1,050,819</u>	<u>\$1,053,566</u>	<u>\$1,161,479</u>

SELECTED HISTORICAL CONSOLIDATED FINANCIAL DATA

The following tables present Spansion Inc.'s summary historical consolidated financial and other data for its business for the periods indicated. Spansion Inc. derived the consolidated statements of operations data for the years ended December 30, 2007, December 28, 2008 and December 27, 2009 and the consolidated balance sheet data as of December 28, 2008 and December 27, 2009 from its audited consolidated financial statements included elsewhere in this offering memorandum. Spansion Inc. derived the consolidated statements of operations data for the years ended December 25, 2005 and December 31, 2006 and the consolidated balance sheet data as of December 25, 2005, December 31, 2006 and December 30, 2007 from its audited consolidated financial statements not included in this offering memorandum. Fiscal 2005, 2007, 2008 and 2009 each consisted of 52 weeks. Fiscal 2006 consisted of 53 weeks.

Spansion Inc. derived the condensed consolidated statements of operations data for the six months ended June 27, 2010 and June 29, 2009 and the condensed consolidated balance sheet data as of June 27, 2010 from its unaudited consolidated financial statements included elsewhere in this offering memorandum. The condensed consolidated balance sheet data as of June 29, 2009 is derived from Spansion Inc.'s unaudited consolidated financial statements not included in this offering memorandum. The six months ended June 27, 2010 and June 29, 2009 each consisted of 26 weeks.

Spansion Inc.'s historical results are not necessarily indicative of the results to be expected in the future, and the results for the six months ended June 27, 2010 should not be considered indicative of results to be expected for the full fiscal year. Upon emergence from the Chapter 11 Cases on May 10, 2010, Spansion Inc. adopted fresh start accounting as prescribed under Accounting Standards Codification (ASC) 852 *Reorganizations*, which requires it to revalue its assets and liabilities to their related fair values. As such, Spansion Inc. adjusted its stockholders' deficit to equal the reorganization value at the emergence date. Items such as accumulated depreciation, accumulated deficit, accumulated other comprehensive income (loss) and allowances for doubtful debt were reset to zero. Spansion Inc. allocated the reorganization value to the individual assets and liabilities based on their estimated fair values. Items such as accounts receivable, auction rate securities and cash, whose fair values approximated their book values, reflected values similar to those reported prior to emergence. Items such as prepaid and other current assets, inventory, property, plant and equipment, deferred income tax asset and liability, accounts payable, income tax payable, and deferred income were significantly adjusted from amounts previously reported. Because Spansion Inc. adopted fresh start accounting at emergence and because of the significance of liabilities subject to compromise that were relieved upon emergence, the historical financial statements of the Predecessor and the financial statements of the Successor are not comparable. Refer to the Notes to our financial statements included in this offering memorandum for further details relating to fresh start accounting.

You should read this summary financial data in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the consolidated financial statements and related notes of Spansion Inc., all included elsewhere or incorporated by reference in this offering memorandum.

	Six Months Ended June 27, 2010		Predecessor ⁽¹⁾					
	Successor ⁽¹⁾	Predecessor ⁽¹⁾	Year Ended December 27, 2009	Year Ended December 28, 2008 ⁽²⁾	Year Ended December 30, 2007 ⁽²⁾	Year Ended December 31, 2006 ⁽²⁾	Year Ended December 25, 2005	
	Period from May 11, 2010 to June 27, 2010	Period from December 28, 2009 to May 10, 2010	Six Months Ended June 28, 2009	Year Ended December 27, 2009	Year Ended December 28, 2008 ⁽²⁾	Year Ended December 30, 2007 ⁽²⁾	Year Ended December 31, 2006 ⁽²⁾	Year Ended December 25, 2005
Consolidated Statements of Operations:								
<i>(in thousands, except per share amounts)</i>								
Net sales	\$124,569	\$324,914	\$ 630,000	\$ 1,059,408	\$ 1,630,573	\$1,627,253	\$ 1,310,479	\$ —
Net sales to related parties/members	4,801	78,705	145,929	351,245	651,230	873,560	1,268,795	2,002,805
Total net sales	129,370	403,619	775,929	1,410,653	2,281,803	2,500,813	2,579,274	2,002,805
Cost of sales	111,413	274,817	663,301	1,103,757	2,193,345	2,065,143	2,063,639	1,809,929
Gross profit	17,957	128,802	112,628	306,896	88,458	435,670	515,635	192,876
Research and development	13,420	35,068	82,635	136,449	431,808	436,785	342,033	292,926
Sales, general and administrative	18,259	68,105	137,817	216,298	253,878	239,317	264,358	184,833
In-process research and development	—	—	—	—	10,800	—	—	—
Restructuring charges (credits)	—	(2,772)	38,154	46,852	11,161	—	—	—
Asset impairment charges ⁽³⁾	—	—	—	12,538	1,652,622	—	—	—
Operating loss before reorganization items	(13,722)	28,401	(145,978)	(105,241)	(2,271,811)	(240,432)	(90,756)	(284,883)
Interest and other income (expense), net	364	(2,904)	2,396	4,038	5,200	32,595	11,681	3,173
Interest expense ⁽⁴⁾	(4,877)	(30,573)	(33,678)	(50,976)	(105,536)	(87,460)	(74,156)	(45,032)
Gain on deconsolidation of subsidiary ⁽⁵⁾	—	—	30,100	30,100	—	—	—	—
Income (loss) before reorganization items and income taxes	(18,235)	(5,076)	(147,160)	(122,079)	(2,372,147)	(295,297)	(153,231)	(326,742)
Reorganization items	—	370,340	(372,299)	(391,383)	—	—	—	—
Income (loss) before income taxes	(18,235)	365,264	(519,459)	(513,462)	(2,372,147)	(295,297)	(153,231)	(326,742)
Benefit from (provision for) income taxes ⁽⁶⁾	21	(1,640)	(429)	(597)	(62,865)	25,144	2,215	22,626
Net income (loss)	\$(18,214)	\$363,624	\$(519,888)	\$(514,059)	\$(2,435,012)	\$(270,153)	\$(151,016)	\$(304,116)
Net income (loss) per share								
Basic	\$ (0.31)	\$ 2.24	\$ (3.22)	\$ (3.18)	\$ (15.69)	\$ (2.00)	\$ (1.17)	\$ (4.15)
Diluted ⁽⁷⁾	\$ (0.31)	\$ 2.24	\$ (3.22)	\$ (3.18)	\$ (15.69)	\$ (2.00)	\$ (1.17)	\$ (4.15)
Shares used in per share calculation:								
Basic	59,271	162,439	161,530	161,847	155,162	134,924	128,965	73,311
Diluted ⁽⁷⁾	59,271	162,610	161,530	161,847	155,162	134,924	128,965	73,311

	Successor ⁽¹⁾		Predecessor ⁽¹⁾			
	June 27, 2010	December 28, 2008 ⁽¹⁾	December 30, 2007 ⁽¹⁾	December 31, 2006 ⁽¹⁾	December 25, 2005	
Consolidated Balance Sheet:						
<i>(in thousands)</i>						
Working capital (deficit)	\$ 384,265	\$(1,183,337)	\$ 592,518	\$ 1,085,027	\$ 881,902	
Total assets	1,467,269	1,773,872	3,813,863	3,547,726	3,301,965	
Long-term debt and capital lease obligations, including current portion, short term note, and notes payable to banks under revolving loans	461,531	1,442,782	1,294,189	1,004,036	759,613	
Liabilities subject to compromise	—	—	—	—	—	
Total stockholders' equity (deficit)	657,956	(450,647)	1,737,810	1,957,780	1,921,977	

- (1) Successor refers to Spansion and its consolidated subsidiaries after the Emergence Date, after giving effect to: (i) the cancellation of shares of Old Common Stock; (ii) the issuance of shares of New Common Stock, and settlement of existing debt and other adjustments in accordance with the Plan of Reorganization; and (iii) the application of fresh start accounting. Predecessor refers to Spansion and its consolidated subsidiaries up to the Emergence Date.
- (2) Statement of operations and balance sheet data for these periods have been adjusted to reflect the change in accounting for our Exchangeable Senior Subordinated Debentures. See "Management's Discussion and Analysis of Financial Condition and Results of Operations—Adoption of New Accounting Pronouncements—Accounting for Convertible Debt Instruments."
- (3) The asset impairment charge for fiscal 2009 includes pre-tax impairment on an equity investment and loan to an investee. The asset impairment charge for fiscal 2008 includes pre-tax impairment related to long-lived assets held for use of \$1.6 billion, and impairment related to goodwill and intangible assets of \$20.8 million and \$53.5 million, respectively.
- (4) Contractual interest expense for the year ended December 27, 2009 and six months ended June 28, 2009 was \$89.4 million and \$48.0 million, respectively.
- (5) The gain on deconsolidation of subsidiary represents the difference between the carrying value of our investment in and receivables from Spansion Japan immediately before its deconsolidation in March 2009 and the estimated fair value of our retained non-controlling interest in Spansion Japan, which was zero then and as of December 27, 2009. See "Management's Discussion and Analysis of Financial Condition and Results of Operations—Creditor Protection Proceedings Background" for further details regarding the deconsolidation of Spansion Japan.
- (6) The provision for income taxes in fiscal 2009 includes a decrease of \$457.9 million in valuation allowances against deferred tax assets in Spansion Japan resulting from the deconsolidation of Spansion Japan in March 2009. However, the decrease in the amount of deferred tax assets had no impact on the provision for income taxes since the deferred tax assets had a full valuation allowance. The provision for income taxes in fiscal 2008 includes an increase of \$462.6 million in valuation allowances against deferred tax assets in Spansion Japan. This increase occurred because we did not believe it was more likely than not that these deferred tax assets would be realized in these jurisdictions. The increase in valuation allowance resulted in a \$64.5 million income tax expense associated with deferred tax assets of Spansion Japan.
- (7) Diluted net loss per share is computed using the weighted-average number of common shares and excludes potential common shares, as their effect is anti-dilutive.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion of our financial condition and results of operations should be read in conjunction with the consolidated financial statements and related notes included elsewhere in this offering memorandum. The following discussion contains forward-looking statements based on current expectations that involve risks and uncertainties. Our actual results may differ materially from those anticipated in these forward-looking statements as a result of various factors, including those set forth under "Risk Factors" or elsewhere in this offering memorandum. See the disclosure regarding "Forward-Looking Statements" elsewhere in this offering memorandum.

Overview

We are a leading designer, manufacturer and developer of Flash memory semiconductors. We are focused on the embedded Flash market providing our solutions to more than 4,000 customers worldwide. Our Flash memory devices primarily store data and code for microprocessors, controllers and other programmable semiconductors which run the applications in a broad range of electronics systems. These systems include computing and communications, automotive and industrial, consumer and gaming, wireless and machine-to-machine, or M2M, devices. In addition to Flash memory semiconductor products, we assist our customers in developing and prototyping their designs by providing software and hardware development tools, drivers and simulation models for system-level integration.

We are headquartered in Sunnyvale, California, with research and development, manufacturing, assembly and sales operations in the United States, Asia, Europe and the Middle East. The history of our company, and key milestones in our development are as follows:

- In 1993, we were organized as a Flash memory manufacturing joint venture of Advanced Micro Devices, Inc., or AMD, and Fujitsu Limited, or Fujitsu, named Fujitsu AMD Semiconductor Limited, or FASL.
- In 2003, AMD and Fujitsu reorganized the business as a standalone Flash memory company called FASL LLC, later renamed Spansion LLC, by integrating the manufacturing joint venture with other Flash memory assets of AMD and Fujitsu.
- In December 2005, we reorganized from Spansion LLC into Spansion Inc., a Delaware corporation, and completed a \$500 million initial public offering of our common stock.
- In March 2008, we completed the acquisition of Saifun Semiconductor Ltd., or Saifun, a provider of intellectual property solutions for non-volatile memory, or NVM. Prior to the acquisition, Saifun had licensed its intellectual property to semiconductor manufacturers that use this technology to develop and manufacture a variety of stand-alone and embedded NVM products.
- In 2007 and 2008, a series of events including steep average selling price, or ASP, declines, incursion of NAND into the cell phone market, difficulty in ramping production of newer technology products, depressed cash flow from operations, continued large capital expenditure requirements associated with our wafer fabrication facilities, or fabs, loss of liquidity in our investment in auction rate securities and ultimately the contraction of available credit led to a drain on our liquidity.
- On March 1, 2009, we filed a voluntary petition for relief under the Chapter 11 Cases. On February 10, 2009, Spansion Japan Limited, a wholly-owned subsidiary of Spansion LLC, filed a proceeding under the Corporate Reorganization Law of Japan. As we no longer controlled Spansion Japan, we deconsolidated the financial results of Spansion Japan effective March 2009.
- On April 16, 2010, we received confirmation of the Plan of Reorganization from the U.S. Bankruptcy Court and on May 10, 2010, we emerged from the Chapter 11 Cases.
- On May 17, 2010, our common stock began trading on NYSE AMEX, and on June 23, 2010, our listing was transferred to the New York Stock Exchange.

For fiscal 2009, our total net sales were approximately \$1.4 billion as compared with total net sales of approximately \$2.3 billion for fiscal 2008. For the six months ended June 27, 2010, total net sales were approximately \$533 million. The decrease in net sales was primarily attributable to our decision to exit a large portion of the wireless market, as well as a reduction in market share resulting from being in the Chapter 11 Cases for approximately 14 months. There can be no assurance as to whether or how long it may take to regain all or any portion of that lost market share.

We have a highly diversified customer base with over 4,000 customers. We serve our customers worldwide directly or through our distributors who buy products from us and resell them to OEMs and original design manufacturers, or ODMs, either directly or through distributors. No OEM, ODM or contract manufacturer accounted for more than 10 percent of our net sales for fiscal 2009 or the first six months of 2010.

Corporate Reorganization Program

Beginning in March 2009, we began a substantial reorganization of the company to better align our operations with the business environment. The key components of this reorganization were:

New Management Team. In early 2009, we began revamping our management team to execute on a new vision for the company. Our new senior management team has substantial industry experience. John H. Kispert joined us as President and Chief Executive Officer with 15 years experience in the semiconductor industry, with a broad-based background spanning executive, financial and operational roles. Randy W. Furr joined us as Executive Vice President and Chief Financial Officer with 25 years experience in the technology sector, with a background as a financial and operations executive.

Operational Streamlining. We have significantly reduced our overall headcount by reducing corporate redundancy, outsourcing certain functions, exiting unprofitable businesses and leveraging our human resources more effectively. In 2008, our total headcount globally was 8,700. As of June 27, 2010, our total headcount was 3,333. In the future, we will seek to opportunistically outsource or relocate business functions when it can be cost effective to do so. We also significantly curtailed research and development expenses, from \$431.8 million, or approximately 19 percent of net sales, in fiscal 2008 to \$136.4 million, or approximately 10 percent of net sales, in fiscal 2009, as we intend to focus on leveraging our previous investment in process technologies.

Focus on Embedded Solutions. Historically, we addressed both the wireless and embedded portions of the NOR Flash memory market. During the first quarter of 2009, we changed our strategy to focus on delivering solutions to our embedded customers and to selectively engage in portions of the wireless market where we can do so advantageously. As part of our reorganization, we also chose to increase our strategic focus on customer service and quality through our application specific software and solutions. As such, we expect net sales derived from wireless customers to remain significantly below the levels we experienced before the decision to refocus our business.

Flexible Manufacturing Strategy. We have significantly reduced the total amount of manufacturing assets that we control and own. In 2008, we owned and operated three fabs worldwide. As of June 30, 2010, we own and operate one fab, located in Austin, Texas. We consider manufacturing process technology to be one of our core competencies and we believe we are able to port that technology to manufacturing partners for a portion of our wafer supply without sacrificing the quality of our products, substantially increasing supply lead times or significantly increasing cost. We currently have manufacturing relationships with third party manufacturers, including Elpida, Fujitsu, SMIC and Texas Instruments.

In the second quarter of 2010, we delivered sequential quarterly revenue growth after adjusting for the write off of deferred revenue as part of fresh start accounting. These results were driven by increasing unit demand in our broad-based embedded Flash business, as well as increasingly stable ASPs. We continuously evaluate our business, measure the performance of our business model, identify trends impacting our business, determine resource allocations, formulate financial projections and make strategic business decisions. Measures which we

believe are key indicators of our performance include product design activity, average density of product sold, ASP per unit, yield and gross margin. We also track design wins with existing and new customers as an indicator of future sales.

Factors Affecting Our Performance

Declining ASPs. Historically, the selling prices of our products have decreased during the products' lifetime. When our selling prices decline, our net sales and gross margins also decline unless we are able to compensate by selling more units thereby reducing our manufacturing costs per product or introducing and selling new, higher margin products with higher densities and/or advanced features. As part of our reorganization, we have maintained a narrow focus on embedded NOR Flash memory products.

Reliance on Third-Party Manufacturers. As we move to a flexible and cost-efficient manufacturing strategy, we plan to obtain foundry, subcontractor and other arrangements with third party manufacturers to meet demand. If these manufacturers are not able to meet our near-term or long-term manufacturing requirements or not able to attain qualification in time from our customers, we may be unable to fulfill our orders thereby losing customers and adversely affecting our business.

Legal Expenses. We continue to encounter legal expenses substantially due to increased litigation and, to a lesser extent, continued expenses related to the Chapter 11 Cases and the corporate reorganization proceeding of Spansion Japan, which, together with the Chapter 11 Cases, we refer to in this offering memorandum as the Creditor Protection Proceedings. These events have impacted and will continue to impact our results of operations. For example, in each of the first two quarters of fiscal 2010, we incurred significant legal expenses, such as \$9.7 million and \$4.6 million of legal expenses related to our Samsung cases.

Circumstances Leading to the Commencement of Creditor Protection Proceedings in 2009

A variety of external economic factors contributed to the decline in our operating performance prior to our seeking relief under the Chapter 11 Cases, such as persistent oversupply in the Flash memory industry compounded by the global economic recession, which significantly reduced demand for our products beginning in the fourth quarter of 2008 and continues to negatively impact demand. These two factors were further complicated by our inability to obtain the additional external financing necessary to meet capital expenditure needs and operational costs in a market characterized by swift technological advances and constantly changing manufacturing processes.

Our strategy was historically based on aggressive revenue and market share growth, leveraging advanced technology, and low cost, high-volume manufacturing. In our 2006 long range planning cycle, forecasted revenue growth supported the construction of a \$1.2 billion advanced wafer fabrication facility called SP1. Debt financing was arranged and construction on SP1 commenced in early 2007.

Although we continued to increase our NOR memory market segment share, steep ASP declines during the first half of 2007 negatively affected revenue and operating cash flow. At that time, we anticipated an improvement in the market environment for the second half of 2007 and aggressively continued the construction of SP1 and incurred associated capital expenditures with the ultimate goal of significant cost reductions that would enhance our competitive position.

During the second half of 2007, the ASP environment stabilized relative to earlier in the year. However, we faced customer qualification issues resulting in a shortfall of anticipated revenue and increased inventory levels which contributed to our failure to meet financial performance targets in the second half of 2007. For fiscal 2007, cash flow from operations was \$216.3 million, which was significantly lower than anticipated. Driven by the facilitization of SP1 and investments in our research and development facilities, our capital spending in 2007 was approximately \$1.1 billion.

Our 2008 operating plan included capital expenditures of approximately \$535.0 million, of which approximately 80 percent was expected to occur in the first half of the year in order to complete the phase 1 facilitization of SP1. Upon completion of the first phase, SP1 was anticipated to generate approximately \$300 million in revenue in 2008.

In the first quarter of 2008, we lost liquidity in our investment in \$121.9 million of AAA/Aaa-rated auction rate securities, or ARS, because the auctions in which these ARS were traded failed. Throughout the second and third quarters of 2008, the credit markets continued to deteriorate and we intensified our cash management efforts. Operationally, the ramp-up of SP1 was delayed due to slower than expected customer qualifications and a sharp decline in the Japanese wireless market. In the third quarter of 2008, we engaged investment bankers and capital restructuring advisors to evaluate the situation and to accelerate plans to improve liquidity. Multiple initiatives were launched and/or accelerated, including efforts to sell production facilities, raise capital and seek liquidity options for the ARS.

In the fourth quarter of 2008, the macroeconomic environment deteriorated significantly, causing a sharp decline in worldwide demand for consumer goods, and consequently a sharp reduction of demand for our products. Furthermore, continued tightening of credit availability and general market liquidity initiatives curtailed our ability to execute the liquidity initiatives launched in the third quarter of 2008. As these events unfolded, we intensified our strategic restructuring efforts to include, among other things, pursuing a potential sale of some or all of our assets. The sharp decline in demand, coupled with our inability to execute liquidity initiatives limited our ability to generate sufficient funding for our operations and meet our debt servicing requirements, ultimately leading to the Creditor Protection Proceedings.

Creditor Protection Proceedings Background

On March 1, 2009, Spansion Inc., Spansion LLC, Spansion Technology LLC, Spansion International, Inc., and Cerium Laboratories LLC, or, collectively, the Debtors, each filed a voluntary petition for relief under Chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court for the District of Delaware, or the Chapter 11 Cases.

Prior to the Debtors' filing of the Chapter 11 Cases, on February 10, 2009, Spansion Japan Limited, a wholly-owned subsidiary of Spansion LLC, filed a proceeding under the Corporate Reorganization Law of Japan, or the Spansion Japan Proceeding, to obtain protection from Spansion Japan's creditors. On March 3, 2009 the Tokyo District Court approved the filing of the Spansion Japan Proceeding and appointed the incumbent representative director of Spansion Japan as trustee. As a result, we no longer controlled Spansion Japan despite our 100 percent equity ownership interest and, effective March 3, 2009, we deconsolidated Spansion Japan and have accounted for our interest in Spansion Japan as a cost basis investment.

In this offering memorandum, we refer to the Chapter 11 Cases and the Spansion Japan Proceeding collectively as the "Creditor Protection Proceedings."

Upon emergence from the Chapter 11 Cases on May 10, 2010, or the Emergence Date, we adopted fresh start accounting in accordance with Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) 852 "Reorganizations." The adoption of fresh start accounting results in our becoming a new entity for financial reporting purposes. Accordingly, our condensed consolidated financial statements on or after May 10, 2010 are not comparable to our condensed consolidated financial statements prior to that date.

We qualified for fresh start accounting, in accordance with ASC 852, due to:

- the reorganization value of the Debtors' assets immediately before the date of confirmation being less than the total of all their post-petition liabilities and allowed claims; and
- holders of existing voting shares immediately before confirmation receiving less than 50 percent of the voting shares of the post-emerged company.

Reorganization value is the value attributed to the reorganized entity, in addition to the expected net realizable value of those assets that will be disposed of before reorganization occurs. This reorganization value is viewed as the fair value of the entity before considering liabilities and approximates the amount a willing buyer would pay for the assets of the entity immediately after the reorganization. Reorganization value is generally determined by discounting future cash flows. Immediately prior to the Emergence Date, the Debtors' reorganization value of \$1.2 billion was less than the sum of post-petition liabilities of \$617 million and allowed claims of \$939 million.

Also, holders of Class A common stock outstanding prior to the Emergence Date, or Old Common Stock, did not receive any consideration for their shares nor any predetermined allocation of Class A common stock of the Successor, or New Common Stock. Holders of New Common Stock issued by the Successor after the Emergence Date primarily include unsecured creditors who have received or will receive shares of New Common Stock in settlement of their allowed claims, and participants in a rights offering that we conducted in February 2010, as described below under "Effectiveness of the Plan of Reorganization and Exit Financing."

Effectiveness of the Plan of Reorganization and Exit Financing

Under the Plan of Reorganization, most holders of allowed general, unsecured claims against the Predecessor received or will receive New Common Stock in satisfaction of their claims. Holders of allowed general, unsecured claims subject to a low payout threshold received cash in satisfaction of their claims. Holders of Senior Secured Floating Rate Notes, or FRNs, received cash of approximately \$638 million to fully discharge their claims. The \$638 million was primarily provided by the exit financing discussed below.

Pursuant to the Plan of Reorganization, the holders of allowed claims were offered the right to purchase a total of 12,974,496 shares of New Common Stock upon emergence from the Chapter 11 Cases at a price of \$8.43 per share. The number of shares available to each eligible claimant was based on each claimant's proportionate allowed claim. In connection with this rights offering, or the Rights Offering, we entered into a Backstop Rights Purchase Agreement with Silver Lake Sumeru Fund, L.P., or Silver Lake, whereby Silver Lake committed to purchase the remaining balance of Rights Offering shares not otherwise subscribed for by the Rights Offering participants. Based on the agreement, Silver Lake purchased 3,402,704 shares of New Common Stock that had not been subscribed for by the Rights Offering participants. As of May 10, 2010, we had received net proceeds of approximately \$104.9 million through the Rights Offering that was used in full to partially discharge the FRN claims.

On February 9, 2010, we closed a five-year senior secured loan agreement, or the Term Loan, of \$450 million with a group of lenders. The proceeds of the Term Loan, together with cash proceeds from other sources of cash available to us, were used in full to partially discharge the remaining balance of the FRN claims.

On May 10, 2010, we entered into a senior revolving credit facility agreement with Bank of America and other financial institutions, or the Revolving Credit Facility, in an aggregate amount of up to \$65 million to fund bankruptcy related expenses and ongoing working capital. As of June 27, 2010, we had not drawn under this facility.

The Plan of Reorganization contemplates the distribution of 65.8 million shares of New Common Stock, consisting of: (i) 46,247,760 shares to holders of allowed general, unsecured claims; (ii) 12,974,496 shares to subscribers of the Rights Offering; and (iii) 6,580,240 shares reserved for issuance to eligible employees in connection with grants of stock options and restricted stock units (RSUs) under our new 2010 Equity Incentive Award Plan, or 2010 Plan. As of June 27, 2010, 6,049,917 stock options and RSUs under the 2010 Plan had been granted to our employees and 530,323 shares were eligible for future grants.

In accordance with the Plan of Reorganization, holders of Old Common Stock, or stock options exercisable for Old Common Stock and RSUs which convert into Old Common Stock, outstanding as of May 10, 2010 did not receive any distributions, and their equity interests were cancelled on May 10, 2010.

Spansion Japan Matters

Until May 24, 2010, Spansion Japan continued in its historical role as a distributor of our products in Japan. Effective May 24, 2010, we purchased the distribution business from Spansion Japan and since that time, we have been distributing our products in Japan through our newly formed, wholly owned subsidiary, Nihon Spansion Limited, or NSL. Effective June 27, 2010, Spansion Japan's Plan of Reorganization, or POR, was confirmed by the Tokyo District Court. The POR provides for Spansion Japan to redeem shares held by its shareholders without consideration, cancel such shares and issue new shares to unsecured creditors. According to the POR, the redemption, cancellation and new issuance is scheduled to take place at the end of September 2010. Until that time, we will continue to be the 100 percent equity owner of Spansion Japan. However, since we have not controlled Spansion Japan despite our equity ownership interest since March 3, 2009, we continue to account for our interest in Spansion Japan as a cost basis investment.

Ongoing Chapter 11 Matters—Resolution of Outstanding Claims

Pursuant to the Plan of Reorganization, a claims agent was appointed to analyze and, at the claims agent's discretion, contest outstanding disputed claims amounting to \$1.5 billion as of the Emergence Date, which included the \$936 million general unsecured proof of claim filed by Spansion Japan as a result of the November 19, 2009 foundry agreement rejection order. We accrued our best estimate of the liability which is included in the \$939 million of liabilities subject to compromise as of the Emergence Date. Since these claims are being handled by the claims agent and are under the jurisdiction of the U.S. Bankruptcy Court, the sole recourse of persons asserting these claims is to receive shares reserved under the Plan of Reorganization and, therefore, any outcome of the claims adjudication process will have no direct impact on the Successor or the number of our outstanding shares of common stock.

Basis of Presentation

The consolidated financial statements included in this offering memorandum have been prepared under U.S. GAAP and the rules and regulations of the SEC and are presented on a going concern basis, which assumes the Company will be able to realize its assets and discharge its liabilities in the normal course of business for the foreseeable future. The Predecessor consolidated financial statements do not purport to reflect or provide for the outcome of the Chapter 11 Cases. In particular, such consolidated financial statements do not purport to show: (a) as to assets, their realizable value on a liquidation basis or their availability to satisfy liabilities; (b) as to pre-petition liabilities, the amounts that will ultimately be allowed for claims or contingencies, or the status and priority thereof; (c) as to stockholders accounts, the effect of any changes that may be made in our capitalization; or (d) as to operations, the effect of any changes that may be made in our business.

The condensed consolidated financial statements included in this offering memorandum have been prepared in accordance with U.S. GAAP for interim financial information and with the instructions to Article 10 of Regulation S-X. The condensed consolidated financial statements and notes thereto are unaudited. In our opinion, these financial statements contain all adjustments (consisting of normal recurring adjustments) that are necessary for a fair statement of our operating results, financial position and cash flows. Operating results for the interim periods presented are not necessarily indicative of the results to be expected for any subsequent interim period or for the full fiscal year ending December 26, 2010.

In preparing the Condensed Consolidated Financial Statements for the Predecessor, we applied ASC 852 which requires that the financial statements for periods subsequent to the Chapter 11 filing distinguish transactions and events that were directly associated with the reorganization from the ongoing operations of the business. Accordingly, professional fees associated with the Chapter 11 Cases and certain gains and losses resulting from reorganization of our business have been reported separately as reorganization items. In addition, interest expense has been reported only to the extent that it was paid during the Chapter 11 Cases or that it is probable that it will be an allowed priority, secured, or unsecured claim under the Chapter 11 Cases. Interest income earned during the Chapter 11 Cases is reported as a reorganization item.

Upon emergence from the Chapter 11 Cases, we adopted fresh start accounting in accordance with ASC 852. The adoption of fresh start accounting results in our becoming a new entity for financial reporting purposes. Accordingly, the Condensed Consolidated Financial Statements on or after May 10, 2010 are not comparable to the Condensed Consolidated Financial Statements prior to that date. Our Consolidated Statements of Operations for the fiscal quarter ended June 27, 2010 were, and subsequent periods through fiscal year 2013 will be, split into Predecessor and Successor financial statements for as long as any Predecessor financial statements are disclosed.

Fresh start accounting requires resetting the historical net book value of assets and liabilities to fair value by allocating the entity's reorganization value to its assets and liabilities pursuant to ASC 805 *Business Combinations* and ASC 820 *Fair Value Measurements and Disclosures*. The excess reorganization value over the fair value of tangible and identifiable intangible assets is recorded as goodwill on the Condensed Consolidated Balance Sheet. Deferred taxes are determined in conformity with ASC 740 *Income Taxes*. For additional information regarding the impact of fresh start accounting on our Condensed Consolidated Balance Sheet as of June 27, 2010, see Note 2 to our Condensed Consolidated Financial Statements included elsewhere in this offering memorandum.

Furthermore, effective March 3, 2009, we deconsolidated Spansion Japan because, despite our 100 percent equity ownership interest, we no longer controlled Spansion Japan due to the appointment of a trustee in the Spansion Japan Proceeding. Since March 3, 2009, we have accounted for our interest in Spansion Japan as a cost basis investment. Transactions between Spansion Japan and us after March 3, 2009, have been reflected as transactions with a third party.

With the exception of Spansion Japan as described above, the condensed consolidated financial statements include all of our accounts and those of our wholly owned subsidiaries, and all intercompany accounts and transactions have been eliminated.

Critical Accounting Policies

Our discussion and analysis of our financial condition and results of operations are based upon our condensed consolidated financial statements, which have been prepared in accordance with U.S. GAAP. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts in our consolidated financial statements. We evaluate our estimates on an on-going basis, including those related to our net sales, inventories, asset impairments, stock-based compensation expense, legal reserve and income taxes. We base our estimates on experience and on various other assumptions that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities. The actual results may differ from these estimates or our estimates may be affected by different assumptions or conditions.

As a result of our emergence from the Chapter 11 Cases, we adopted fresh start accounting in accordance with ASC 852 and ASC 805. The adoption of fresh start accounting resulted in our becoming a new entity for financial reporting purposes. Accordingly, the consolidated financial statements on or after May 10, 2010 are not comparable to the consolidated financial statements prior to that date. For more information, see “—Basis of Presentation.”

Our critical accounting policies incorporate our more significant judgments and estimates used in the preparation of our condensed consolidated financial statements. We believe the following critical accounting policies are significant to the presentation of our financial statements and require difficult, subjective and complex judgments.

Estimates of Sales Returns and Allowances

From time to time we may accept sales returns or provide pricing adjustments to customers who do not have contractual return or pricing adjustment rights. We record a provision for estimated sales returns and allowances on product sales in the same period that the related revenues are recorded, which primarily impacts gross margin. We base these estimates on historical sales returns, allowances, historical price reductions, market activity and other known or anticipated trends and factors. These estimates are subject to management's judgment, and actual provisions could be different from our estimates and current provisions, resulting in future adjustments to our revenues and operating results.

Impairment of Long-Lived Assets including Acquisition-Related Intangible Assets

We consider quarterly whether indicators of impairment of long-lived assets and intangible assets are present. These indicators may include, but are not limited to, significant decreases in the market value of an asset, significant changes in the extent or manner in which an asset is used or an adverse change in our overall business climate. If these or other indicators are present, we test for recoverability of the asset (asset group) by determining whether the estimated undiscounted cash flows attributable to the asset (asset group) in question are less than their carrying value. If less, we recognize an impairment loss based on the excess of the carrying amount of the asset (asset group) over its respective fair value. Significant judgment is involved in determining whether impairment is measured at the individual asset or at an asset group level.

Our manufacturing processes are vertical in nature and we have had multiple foundry, assembly and test facilities. As a result, the cash flows of our assets and liabilities below the entity level are not largely independent of one another and we concluded impairment should be evaluated at the single entity-wide asset group (i.e., consolidated Spansion) level. Fair value is determined by discounted future cash flows, appraisals or other methods. Significant judgment is involved in estimating future cash flows and deriving the discount rate to apply to the estimated future cash flows and in evaluating the results of appraisals or other valuation methods. If the asset (asset group) determined to be impaired is to be held and used, we recognize an impairment loss through a charge to our operating results which also reduces the carrying basis of the related asset or assets in an asset group. The adjusted carrying value of the related asset (asset group) establishes a new cost basis and accumulated depreciation is reset to zero. The asset (asset group) is depreciated or amortized over the remaining estimated useful life of the asset. We also must make subjective judgments regarding the remaining useful life of the asset. If the asset (asset group) determined to be impaired is held for sale, we measure the new carrying value of the asset (asset group) at fair value less estimated cost to dispose, with the impairment loss being charged to operations.

Income Taxes

We operate as Spansion Inc., which is a taxable entity for U.S. federal tax reporting purposes. Our foreign subsidiaries are wholly owned and are taxable as corporations in their respective foreign countries of formation. In determining taxable income for financial statement reporting purposes, we must make estimates and judgments. These estimates and judgments are applied in the calculation of specific tax liabilities and in the determination of the recoverability of deferred tax assets, which arise from temporary differences between the recognition of assets and liabilities for tax and financial statement reporting purposes. The recognition and measurement of current and deferred income tax assets and liabilities impact our tax provision.

We must assess the likelihood that we will be able to recover our deferred tax assets. Unless recovery of these deferred tax assets is considered more likely than not, we must increase our provision for taxes by recording a charge to income tax expense, in the form of a valuation allowance against those deferred tax assets for which we believe it is not more likely than not they will be realized. We consider past performance, future expected taxable income and prudent and feasible tax planning strategies in determining the need for a valuation allowance.

In addition, the calculation of our tax liabilities involves dealing with uncertainties in the application of complex tax rules and the potential for future adjustment by the relevant tax jurisdiction. If our estimates of these taxes are greater or less than actual results, an additional tax benefit or charge will result.

Stock-Based Compensation Expenses

We estimated the fair value of our stock-based awards to employees using the Black-Scholes-Merton option pricing model, which requires the use of input assumptions, including expected volatility, expected life, expected dividend rate, and expected risk-free rate of return. The assumptions for expected volatility and expected life are the two assumptions that significantly affect the grant date fair value. Stock-based compensation expense recognized during a period is based on the higher of the grant-date fair value of the portion of share-based payment awards that is ultimately expected to vest, or actually vest, during the period. Compensation expense for all share-based payment awards was recognized using the straight-line attribution method reduced for estimated forfeitures.

We estimate volatility based on our recent historical volatility and the volatilities of our competitors who are in the same industry sector with similar characteristics (guideline companies) because of the lack of historical realized volatility data on our business. We have used the simplified calculation of expected life since our initial public offering on December 21, 2005 and continue to use this method as we do not have sufficient historical exercise data to provide a reasonable basis upon which to estimate the expected term of share options since our initial public offering. If we determined that another method used to estimate expected volatility or expected life was more reasonable than our current methods, or if another method for calculating these input assumptions was prescribed by authoritative guidance, the fair value calculated for share-based awards could change significantly. Higher volatility and longer expected lives result in an increase to share-based compensation determined at the date of grant. In addition, we are required to develop an estimate of the number of share-based awards that will be forfeited due to employee turnover. Prior to the fourth quarter of fiscal 2007, we did not have sufficient historical forfeiture experience related to our own stock-based awards and therefore, estimated our forfeitures based on the average of our own fiscal 2006 forfeiture rate and historical forfeiture rates for AMD, as we believed these forfeiture rates to be the most indicative of our own expected forfeiture rate. Beginning the fourth quarter of fiscal 2007, we estimated forfeitures based on a four-year weighted average of our own forfeiture rates. These estimates will be revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates.

Inventory Valuation

At each balance sheet date, we evaluate our ending inventories for excess quantities and obsolescence. This evaluation includes analysis of sales levels by product and projections of future demand. These projections assist us in determining the carrying value of our inventory and are also used for near-term factory production planning. We write off inventories that we consider obsolete and adjust remaining specific inventory balances to approximate the lower of our standard manufacturing cost or market value. Among other factors, management considers forecasted demand in relation to the inventory on hand, competitiveness of product offerings, market conditions and product life cycles when determining obsolescence and net realizable value. If we anticipate future demand or market conditions to be less favorable than our previous projections, additional inventory write-downs may be required and would be reflected in cost of sales in the period the write-down is made. This would have a negative impact on our gross margin in that period. We recorded an inventory write down of approximately \$253.2 million in the fourth quarter of fiscal 2008 as a result of a weak economic outlook and an associated reduction in demand from previous forecasts. In the future we could have additional material write downs of inventory. If in any period we are able to sell inventories that were not valued or that had been written down in a previous period, related revenues would be recorded without any offsetting charge to cost of sales, resulting in a net benefit to our gross margin in that period.

Revenue Recognition for Distribution Arrangements

We sell to distributors and provide such distributors certain rights of return, stock rotation and price protection as discussed below. We defer the recognition of revenue and related product costs on these sales as deferred income on shipments until the merchandise is resold by our distributors. We also sell some of our products to certain distributors under sales arrangements with terms that do not allow for rights of returns or price protection on unsold products held by them. In these instances, we recognize revenue when we ship the product directly to the distributors.

Rights of return are granted whereby we are obligated to repurchase inventory from a distributor upon termination of the distributor's sales agreement with us. However, we are not required to repurchase the distributor's inventory under certain circumstances, such as the failure to return the inventory in saleable condition or we may only be required to repurchase a portion of distributor's inventory, for example when distributor has terminated the agreement for its convenience.

Stock rotation rights are provided to distributors when we have given written notice to the distributor that a product is being removed from our published price list. The distributor has a limited period of time to return the product. All returns are for credit only; the distributor must order a quantity of products, the dollar value of which equals or exceeds the dollar value of the products being returned. Some distributors are also offered quarterly stock rotation. Such stock rotation is limited to a certain percentage of the previous three months' net shipments.

A general price protection is granted to a distributor if we publicly announce a generally applicable price reduction relating specifically to certain products, whereby the distributor is entitled to a credit equal to the difference between the price paid by the distributor and the newly announced price. Price protection adjustments are provided to distributors solely for those products that: 1) are shipped by us to the distributor during the period preceding the price reduction announcement by us, 2) are part of the distributor's inventory at the time of the announcement, and 3) are located at geographic territories previously authorized by us.

In addition, if in our sole judgment, a distributor demonstrates that it needs a price lower than the current published price list in order to secure an order from the distributor's customers, we may, but we have no obligation to, grant the distributor a credit to our current published price. The distributor must submit the request for a reduction in price prior to the sale of products to its customer. If the request is approved and the sale occurs, the distributor must make a claim with the proof of resale to end customers for a credit within a specified time period.

Gross deferred revenue and gross deferred cost of sales on shipments to distributors as of December 27, 2009 and December 28, 2008 are as follows:

	<u>December 27, 2009</u>	<u>December 28, 2008</u>
	(in thousands)	
Deferred revenue	\$ 90,465	\$ 62,183
Less: deferred costs of sales	(36,308)	(31,845)
Deferred income on shipments ⁽¹⁾	<u>\$ 54,157</u>	<u>\$ 30,338</u>

(1) The deferred income of \$63.0 million and \$35.3 million on the consolidated balance sheet as of December 27, 2009 and December 28, 2008 included \$8.8 million and \$4.9 million of deferred revenue related to our licensing revenue that was excluded in the table above, respectively.

Our distributors provide us with periodic data regarding the product, price, quantity, and end customer when products are resold as well as the quantities of our products they still have in stock. We use estimates and apply judgments to reconcile distributors' reported inventories to their activities.

Fair Value of Auction Rate Securities and Put Option

At December 27, 2009, we held \$100.3 million of Auction Rate Securities (ARS) valued at fair value (\$107.1 million at par). The ARS, for which the underlying assets are student loans, have credit ratings of AAA and Aaa. For more information, see Note 4 to our Consolidated Financial Statements included elsewhere in this offering memorandum.

Historically, the fair value of our ARS investments has approximated face value due to the frequent auction periods, generally every seven to 28 days, which provided liquidity to these investments. However, subsequent to February 2008, all auctions involving these securities have failed. The result of a failed auction is that these ARS will continue to pay interest in accordance with their terms at each respective auction date; however, liquidity of the securities will be limited until there is a successful auction, the issuer redeems the securities, the securities mature or until such time as other markets for these ARS investments develop. We cannot be certain regarding the amount of time it will take for an auction market or other markets to develop. Accordingly, we have concluded that the estimated fair value of the ARS no longer approximates the face value primarily due to the lack of liquidity.

In November 2008, we accepted an offer to participate in an ARS settlement from UBS Bank USA, or UBS, our broker, providing us the right, but not the obligation, to sell to UBS up to 100 percent of our ARS at par, commencing June 30, 2010. Our right to sell the ARS to UBS commencing June 30, 2010 through July 2, 2012 represents a put option for a payment equal to the par value of the ARS.

At December 27, 2009, there was insufficient observable ARS market information available to determine the fair value of our ARS investments. Therefore, we estimated the fair values of our ARS investments at December 27, 2009 using a discounted cash flow (DCF) methodology. Significant assumptions considered in the DCF models were the credit quality of the instruments, the percentage and the types of guarantees (such as FFELP), the probability of the auction succeeding or the security being called prior to final maturity, and an illiquidity discount factor. The key assumptions used in the discounted cash flow analysis to determine the fair values as of December 27, 2009 were the discount factor to be applied and the period over which the cash flows would be expected to occur. The discount factor used was based on the three-month LIBOR (0.25 percent as of December 27, 2009) adjusted by 85 basis points (bps) to reflect the current market conditions for instruments with similar credit quality at the date of the valuation. In addition, the discount factor was incrementally adjusted for an illiquidity discount of 125 bps to reflect the risk in the marketplace for these investments that has arisen due to the lack of an active market for these instruments. We applied this discount factor over the expected life of the estimated cash flows of our ARS with projected interest income of 1.36 percent per annum. The projected interest income is based on a trailing 12-month average 91-day T-bill rate at 0.16 percent as of December 27, 2009 plus 120 bps, which is the average annual yield of our ARS assuming auctions continue to fail.

We used a DCF model to estimate the fair value of our put option as of December 27, 2009. The valuation model is based on the following key assumptions:

- A discount rate based on the 6-month U.S. Treasury Bill Rate (0.17 percent as of December 27, 2009), adjusted by 50 bps to reflect the credit risk associated with the put option; and
- An expected life of 6 months.

If different assumptions were used for the various inputs to the valuation approach including, but not limited to, assumptions involving the estimated lives of the ARS investments, the estimated cash flows over those estimated lives, and the estimated discount rates, especially the illiquidity discount rate, applied to those cash flows, the estimated fair value of these investments could be significantly higher or lower than the fair value we determined as of December 27, 2009.

Goodwill and Intangible Assets

Goodwill represents the excess of our enterprise value upon emergence over the fair value of our net tangible and identifiable intangible assets acquired. We recorded goodwill in the second quarter of fiscal 2010 in connection with fresh start accounting (refer to Note 2 and Note 9 for further details relating to fresh start accounting and valuation of Goodwill). In accordance with the provisions of ASC 350 *Intangibles, Goodwill and Other*, goodwill amounts are not amortized, but rather are tested for impairment at the reporting unit level at least annually, or more frequently if there are indicators of impairment present. We have determined that we have a single reporting unit and we will perform an annual goodwill impairment analysis as of the fourth quarter of each fiscal year, with the first annual testing to be carried out in the fourth quarter of fiscal year 2010.

We recorded intangible assets in the second quarter of fiscal 2010 in connection with fresh start accounting. We will consider quarterly whether indicators of impairment relating to the intangible assets are present. These indicators may include, but are not limited to, significant decreases in the market value of an intangible asset, significant changes in the extent or manner in which an intangible asset is used or an adverse change in our overall business climate. If these or other indicators are present, we test for recoverability of the intangible asset by determining whether the estimated undiscounted cash flows attributable to the intangible asset in question is less than its carrying value. If less, we recognize an impairment loss based on the excess of the carrying amount of the intangible asset over its respective fair value.

Estimates relating to Litigation Reserve

Upon emergence and as part of fresh start accounting, we implemented our litigation reserve policy whereby we would record, on a rolling four quarter basis, the estimated litigation costs that we expect to incur in defending ourselves in connection with ongoing lawsuits in accordance with the provisions of ASC 450 *Contingencies*. Considerable judgment is necessary to estimate these costs and an accrual is made when it is probable that a liability has been incurred and the amount of loss can be reasonably estimated.

Combined Quarterly Financial Results of the Predecessor and Successor

For purposes of management's discussion and analysis of the results of operations, we combined the results of operations for (1) the period from March 29, 2010 to May 10, 2010 of the Predecessor with the period from May 10, 2010 to June 27, 2010 of the Successor and (2) the period from December 28, 2009 to May 10, 2010 of the Predecessor with the period from May 10, 2010 to June 27, 2010 of the Successor. We then compare the combined results of operations for the six months ended June 27, 2010 with the corresponding periods in the prior year.

We believe the combined results of operations for the six months ended June 27, 2010 provide management and investors with a more meaningful perspective on our ongoing financial and operational performance and trends than if we did not combine the results of operations of the Predecessor and the Successor in this manner. Similarly, we combine the financial results of the Predecessor and the Successor when discussing our sources and uses of cash for the six months ended June 27, 2010.

Results of Operations for the Six Months Ended June 27, 2010

Comparison of Net Sales, Gross Margin, Operating Expenses, Interest and Other Income, Net, Interest Expense and Income Tax Provision

The following is a summary of operating results for the six months ended June 27, 2010 and June 28, 2009. Please refer to the Condensed Consolidated Statements of Operations in Item 1 for the split between Predecessor and Successor periods.

	Six Months Ended					
	Successor Period from May 11, 2010 to June 27, 2010	Predecessor Period from Dec. 28, 2009 to May 10, 2010	Combined June 27, 2010	Predecessor June 28, 2009	Variance in Dollars	Variance in Percent
Total net sales	\$129,370	\$403,619	\$532,989	\$ 775,929	\$(242,940)	(31)%
Cost of sales	111,413	274,817	386,230	663,301	(277,071)	(42)%
Gross margin	14%	32%	28%	15%		
Research and development	13,420	35,068	48,488	82,635	(34,147)	(41)%
Sales, general and administrative	18,259	68,105	86,364	137,817	(51,453)	(37)%
In-process research and development	—	—	—	—	—	0%
Restructuring charges (credits)	—	(2,772)	(2,772)	38,154	(40,926)	(107)%
Operating gain (loss)	(13,722)	28,401	14,679	(145,978)	160,657	(110)%
Gain on deconsolidation of subsidiary	—	—	—	30,100	(30,100)	(100)%
Interest and other income, net	364	(2,904)	(2,540)	2,396	(4,936)	(206)%
Interest expense	(4,877)	(30,573)	(35,450)	(33,678)	(1,772)	5%
Reorganization items	—	370,340	370,340	(372,299)	742,639	(199)%
Provision for income taxes	(21)	1,640	1,619	429	1,190	277%

Total Net Sales

Total net sales for the six months ended June 27, 2010 decreased by approximately 31 percent or \$242.9 million compared to total net sales for the six months ended June 28, 2009. Shortly after commencement of the Chapter 11 Cases, we began exiting a large portion of the wireless market. This product portfolio adjustment was substantially completed by the beginning of the second quarter of fiscal 2010, resulting in a reduction in wireless net sales of \$181.9 million, or 55.5%, from the six months ended June 28, 2009. Our wireless products are generally sold as multi-chip packages (MCPs) and consequently have higher ASPs than embedded products. The resulting product mix shift caused a lowering of ASPs by 16 percent for the first six months of fiscal 2010. In addition, \$37.0 million of the overall decrease was attributable to deferred revenue lost as a result of fresh start accounting required for the Successor. The additional decline in net sales was principally due to additional market share lost as a result of the Chapter 11 Cases.

Gross Margin

Our gross margin increased by 13 percentage points for the six months ended June 27, 2010, compared to the six months ended June 28, 2009. The increase in gross margin was primarily due to an increase in factory utilization and efficiency from restructuring and consolidation of back-end manufacturing operations, better pricing from suppliers, and a product mix shift from wireless to embedded products. The overall increase was partially offset by a decrease in ASPs as discussed above, fresh start accounting related adjustments in the

Successor including approximately \$18.6 million amortization of inventory mark-up, approximately \$27.7 million loss of deferred margin, approximately \$13.6 million of higher depreciation and amortization expense and approximately \$0.8 million gain from the sale of our test facility located in Suzhou, China.

Research and Development (R&D)

Research and development expenses for the six months ended June 27, 2010 decreased by approximately 41 percent, compared to the corresponding period in fiscal 2009. The decrease in R&D was primarily due to: (i) approximately \$21.3 million in lower R&D-related building and operating expense attributable to the closure of our SDC; (ii) savings of approximately \$6.1 million in labor costs as a result of our restructuring efforts in fiscal 2009; (iii) approximately \$4.9 million lower costs for R&D services sourced from Spansion Japan due to contract renegotiation; and (iv) approximately \$2.0 million less expense due to the transfer of our Milan R&D operations to Elpida in February 2010.

For the Predecessor period from March 29, 2010 to May 10, 2010, R&D expenses in the Predecessor of approximately \$12.1 million included, among other items, approximately \$6.2 million of labor costs; approximately \$2.1 million of expenses relating to outside service providers; approximately \$0.9 million of material costs and approximately \$1.4 million of building and other allocated operating expenses.

R&D expenses in the Successor of approximately \$13.4 million included, among other items, approximately \$5.3 million of labor costs; approximately \$2.4 million of expenses relating to outside service providers; approximately \$1.5 million of material costs and approximately \$1.5 million of building and other allocated operating expenses. The impact of fresh start accounting on R&D for the six months ended June 27, 2010 was immaterial.

Sales, General and Administrative (SG&A)

SG&A expense for the six months ended June 27, 2010 decreased by 37 percent, compared to the corresponding period in fiscal 2009. The decrease in SG&A expense was primarily due to: (i) approximately \$28.7 million lower expenses incurred on litigation, patent, trademark and other related matters; (ii) approximately \$12.1 million decrease in provision for doubtful accounts; (iii) savings of approximately \$7.7 million in labor costs; and (iv) the elimination of SG&A expenses attributable to Spansion Japan as a result of deconsolidation of Spansion Japan on March 3, 2009. We incurred approximately \$4.3 million of Spansion Japan SG&A expenses for the first two months of fiscal 2009 before deconsolidation whereas we incurred no such expenses in fiscal 2010. The overall decrease is partially offset by: (i) an increase of approximately \$3.8 million in accrued bonuses primarily related to our 2010 performance-based bonus plan; and (ii) an increase of approximately \$1.2 million expense due to the start-up of our new office in Kawasaki, Japan during the second quarter of fiscal 2010. The impact of fresh start accounting on SG&A for the six months ended June 27, 2010 was immaterial.

From March 29, 2010 to May 10, 2010, SG&A expenses in the Predecessor of approximately \$20.5 million included among other items, approximately \$8.0 million of labor costs, approximately \$7.4 million of expenses relating to outside service providers and approximately \$1.6 million of building and other allocated operating expenses.

SG&A expenses in the Successor of approximately \$18.3 million included among other items, approximately \$9.0 million of labor costs; approximately \$5.0 million of expenses relating to outside service providers and approximately \$1.9 million of building and other allocated operating expenses. The impact of fresh start accounting on SG&A for the six months ended June 27, 2010 was immaterial.

Restructuring Charges

Restructuring charges for Predecessor from December 28, 2009 to May 10, 2010 decreased by approximately \$40.9 million, compared to the six months ended June 28, 2009. The decrease in restructuring charges was primarily due to: (i) approximately \$31.0 million of lower cash settled restructuring charges on employee severance pay and benefits, professional fees, and relocation of property, plant and equipment in the second quarter of fiscal 2010; (ii) approximately \$5.5 million gain on sale of SDC fixed assets and approximately \$5.2 million gain from the November 2009 sale of our Suzhou plant recorded in the first half of fiscal 2010. There were no restructuring charges in the Successor.

Gain on Deconsolidation of Subsidiary

Effective March 3, 2009, we deconsolidated Spansion Japan and recognized a one-time gain of approximately \$30.1 million, which represents the difference between the carrying value of our investment in Spansion Japan immediately before deconsolidation (100 percent of Spansion Japan's stockholder's deficit) and the estimated fair value of our retained non-controlling interest in Spansion Japan (zero). We did not have a similar gain during the six months ended June 27, 2010.

Interest and Other Income, Net

Interest and other income, net, decreased by approximately \$4.9 million for the six months ended June 27, 2010 compared to the corresponding period of fiscal 2009. The decrease was mainly due to approximately \$3.0 million in impairment charges on certain investments in privately held companies during the second quarter of fiscal 2010 in the Predecessor. In addition, interest and other income, net, was lower due to a decrease in our average investment portfolio yield as a result of a decrease of approximately \$85.0 million on our investment in the ARS, which earned higher interest as compared to the yields on our cash and cash equivalents.

Interest Expense

Interest expense increased by approximately \$1.8 million for the six months ended June 27, 2010, compared to the corresponding period in fiscal 2009.

In the Predecessor, the increase was primarily due to interest expense of approximately \$9.9 million and amortization of financing costs of approximately \$11.2 million on our Term Loan, partially offset by decreases due to the following:

- (i) a decrease of approximately \$7.1 million in interest expenses for Senior Notes and Exchangeable Senior Subordinated Debentures as interest expenses on these obligations were accrued only through the Petition Date as a result of the Chapter 11 Cases;
- (ii) a decrease of approximately \$2.8 million in interest expense for FRNs due to a decrease in interest rate from 4.6 percent in the six months ended June 28, 2009 to 3.4 percent in the Predecessor period from December 28, 2010 through May 10, 2010;
- (iii) a decrease of approximately \$3.4 million in interest expense related to capital leases as a result of lease buy-outs, terminations upon expiration of lease term and lease rejections as a result of reorganization efforts; and
- (iv) a decrease of approximately \$2.2 million in interest expense as a result of the deconsolidation of Spansion Japan effective March 3, 2009.

In the Successor, an increase in interest expense of approximately \$3.9 million on our Term Loan was offset by a corresponding decrease in interest expense on the FRNs, which were fully paid off in May 2010.

The average interest rate on our debt portfolio was 6.3 percent for the six months ended June 27, 2010, compared to 4.4 percent for the corresponding period in fiscal 2009.

Reorganization Items

Reorganization items of approximately \$370.3 million for the six months ended June 27, 2010 primarily consist of a gain of approximately \$434.0 million which resulted from discharge of pre-petition obligations and approximately \$22.5 million gain which resulted from approved settlement of rejected capital leases and various license agreements. The overall gain was partially offset by approximately \$59.5 million in professional fees, approximately \$12.7 million of debt financing cost write-off, approximately \$10.8 million in adjustments related to accrued claims and cancellation of old equity incentive plans and approximately \$7.0 million of withholding tax liability in foreign subsidiaries. Reorganization items of approximately \$372.3 million for the six months ended June 28, 2009 primarily consist of approximately \$355.3 million in provisions for expected allowed claims and approximately \$17.1 million in professional fees. There were no reorganization items in the Successor.

Income Tax Provision

We recorded income tax expense of approximately \$1.6 million for the six months ended June 27, 2010 as compared to income tax expense of approximately \$0.4 million for the six months ended June 28, 2009. The income tax expense recorded in both periods primarily related to tax provisions in profitable foreign locations.

Due to emergence from bankruptcy, in the six months ended June 27, 2010, we also recorded an increase of \$12.0 million in deferred tax liabilities, consisting of previously unrecognized tax benefits of \$10.0 million and interest and penalties of \$2.0 million in connection with certain intercompany arrangements.

As of June 27, 2010, all of our U.S. deferred tax assets, net of deferred tax liabilities, continue to be subject to a full valuation allowance. The valuation allowance is based on our assessment that it is more likely than not that the deferred tax assets will not be realizable in the foreseeable future.

Other Items

Gross deferred revenue and gross deferred cost of sales on shipments to distributors as of June 27, 2010 and December 27, 2009 are as follows:

	<u>Successor</u> <u>June 27, 2010</u>	<u>Predecessor</u> <u>December 27, 2009</u>
	(in thousands)	
Deferred revenue	\$ 35,731	\$ 90,465
Less: deferred costs of sales	<u>(28,541)</u>	<u>(36,308)</u>
Deferred income on shipments ^{(1) (2)}	<u>\$ 7,190</u>	<u>\$ 54,157</u>

(1) The deferred income of \$8.0 million and \$63.0 million on the consolidated balance sheet as of June 27, 2010 and December 27, 2009, respectively, included \$0.9 million and \$8.8 million of deferred revenue related to licensing revenue that was excluded in the table above.

(2) In connection with our adoption of fresh start accounting as of May 10, 2010, an adjustment of \$27.7 million was made to reduce deferred income on shipments to the fair value of our related performance obligations which include primarily price protection and stock rotation.

Results of Operations for Fiscal 2009, Fiscal 2008 and Fiscal 2007

Comparison of Net Sales, Gross Margin, Operating Expenses, Interest and Other Income, Net, Interest Expense, Reorganization Items and Income Tax (Provision) Benefit

The following is a summary of gross margin; operating expenses; interest and other income, net; interest expense and income tax (provision) benefit for fiscal 2009, fiscal 2008 and fiscal 2007.

	Year Ended		
	December 27, 2009	December 28, 2008	December 30, 2007
	(in thousands)		
Net sales	\$1,410,653	\$ 2,281,803	\$2,500,813
Cost of sales	1,103,757	2,193,345	2,065,143
Gross margin	22%	4%	17%
Research and development	136,449	431,808	436,785
Sales, general and administrative	216,298	253,878	239,317
In-process research and development	—	10,800	—
Restructuring charges	46,852	11,161	—
Asset impairment charges	12,538	1,652,622	—
Operating loss	(105,241)	(2,271,811)	(240,432)
Gain on deconsolidation of subsidiary	30,100	—	—
Interest and other income, net	4,038	5,200	32,595
Interest expense	(50,976)	(105,536)	(87,460)
Reorganization items	(391,383)	—	—
Income tax (provision) benefit	(597)	(62,865)	25,144

Total Net Sales

Total net sales in fiscal 2009 decreased 38 percent compared to total net sales in fiscal 2008. The decrease in total net sales was primarily attributable to a 34 percent decrease in unit shipments. The decrease in unit shipments was largely due to (i) a decrease in customer demand for our products, spurred by a worldwide decrease in demand for Flash memory in addition to loss of business as a result of our filing for bankruptcy, and (ii) our strategic decision to exit a large portion of the wireless market. Partially offsetting the decrease in overall demand was an increase in customer purchases of buffer inventory in the period just prior to and after commencement of the Chapter 11 Cases.

Total net sales in fiscal 2008 decreased nine percent compared to total net sales in fiscal 2007. The decrease in total net sales was primarily attributable to an approximately six percent decrease in unit shipments and an approximately three percent decrease in blended ASPs. The decrease in unit shipments was primarily due to a sharp decline in the Japanese wireless market and a significant deterioration in the macroeconomic environment in the fourth quarter of 2008. This caused a decline in the worldwide demand for consumer goods, and consequently a reduction in demand for our products. The decrease in blended ASPs was primarily the result of price declines in the overall Flash memory market during fiscal 2008.

Gross margin

Our gross margin increased by approximately 18 percent in fiscal 2009 compared to gross margin in fiscal 2008. Our gross margin in fiscal 2008 was lower primarily due to (i) the \$253.2 million write-down of inventory in 2008, which is described below and (ii) certain fixed overhead costs and underutilization charges relating primarily to an advanced wafer fabrication facility in Aizu-Wakamatsu, Japan (SP1) in fiscal 2008 that did not fully reoccur in fiscal 2009 because we deconsolidated Spansion Japan in the first quarter of fiscal 2009. Gross margin in fiscal 2009 was also higher due to a decrease in depreciation expense resulting from the write-down of certain manufacturing assets at the end of fiscal 2008. The increase in gross margin due to the aforesaid factors

was partially offset by lower revenues in 2009 and an increase in fixed manufacturing costs resulting from the underutilization of our factories, primarily in the first quarter of 2009.

The decrease in gross margin in fiscal 2008 compared to gross margin in fiscal 2007 was primarily due to a \$253.2 million inventory write-down as a result of a weak economic outlook and an associated reduction in customer demand from previous forecasts during the fourth quarter of fiscal 2008, the impact of our exit of the 90-nanometer content delivery business resulting in \$13 million charges to gross margin, an increase in our manufacturing costs related to SP1, and an approximately three percent decline in our blended ASP during the fourth quarter of fiscal 2008. The \$253.2 million inventory write-down negatively impacted gross margin in fiscal 2008 by 11 percent. The overall decrease in gross margin was partially offset by our cost reduction efforts, improvement of cumulative product yields, reduction of test time and better pricing from suppliers. The gross margin for fiscal 2008 and fiscal 2007 included a portion of the gain recognized from the sale of JV1 and JV2, our two wafer fabrication facilities in Aizu-Wakamatsu, Japan.

Research and development (R&D)

Research and development expenses decreased by approximately 68 percent in fiscal 2009 compared to fiscal 2008. The decrease in R&D expenses was primarily due to: (i) labor cost savings of approximately \$96.4 million from shutdowns, furloughs and workforce reductions, and material cost and technology savings of approximately \$32.0 million, resulting from our continued efforts to reduce costs and conserve cash in fiscal 2009; (ii) a decrease of approximately \$57.1 million in depreciation expense resulting from the write-down of certain long-lived assets at the end of fiscal 2008, which significantly reduced the cost basis of our depreciable assets; (iii) a decrease of approximately \$49.9 million in research and development expenses related to Spansion Japan as a result of the deconsolidation; (iv) a decrease of approximately \$31.3 million attributable to the shutdown of our Submicron Development Center, or SDC, in April 2009; (v) a decrease of approximately \$17.8 million in outside services including engineering, software and consulting services and travel expenses; and (vi) a decrease of approximately \$5.7 million in R&D expenses related to Saifun as a result of its workforce reduction.

R&D expenses of approximately \$431.8 million in fiscal 2008 reflected a decrease of one percent compared to approximately \$436.8 million in fiscal 2007. The decrease in R&D expense in fiscal 2008 was primarily due to a decrease of approximately \$22.6 million in development costs related to SP1 and Fab 25 and a decrease of approximately \$4.7 million due to lower intellectual property and software license-related expense and other outside services including recruitment, consulting and other services. The decrease was partially offset by an increase of approximately \$15.6 million of R&D expenses related to Saifun and an increase of approximately \$7.6 million of labor costs primarily related to the development of our next generation MirrorBit technology.

Sales, general and administrative

Sales, general and administrative expenses in fiscal 2009 decreased by approximately 15 percent compared to fiscal 2008. The decrease in sales, general and administrative expenses in fiscal 2009 was primarily due to: (i) labor cost savings of approximately \$27.4 million from workforce reductions; (ii) a decrease of approximately \$20.7 million in professional services fees; and (iii) a decrease of approximately \$6.8 million in travel expenses and \$8.6 million in other miscellaneous operating expenses including reductions in building cost, supplies, repair, employee training and development, and telecommunication expenses. Further, as a result of the deconsolidation, sales, general and administrative expenses attributable to Spansion Japan decreased to \$4.3 million for fiscal 2009, from \$27.3 million for fiscal 2008.

The decrease in sales, general and administrative expenses was partially offset by an increase of approximately \$19.8 million in provisions for doubtful accounts and approximately \$43.2 million in provisions for litigation and other related matters, which occurred in the first quarter of fiscal 2009.

Sales, general and administrative expenses in fiscal 2008 increased six percent compared to fiscal 2007. The increase in sales, general and administrative expenses in fiscal 2008 was primarily due to higher legal fees and expenses, primarily related to litigation, and the inclusion of sales, general and administrative expenses related to the operations of Saifun. The higher legal fees and expenses represented approximately 71 percent of the increase in our total sales, general and administrative expenses in fiscal 2008.

In-process research and development (IPR&D)

In the first quarter of fiscal 2008, we expensed \$10.8 million of IPR&D charges in connection with the acquisition of Saifun. Projects that qualify as IPR&D are those that have not reached technological feasibility and have no alternative future use at the time of the acquisition. We did not have a similar charge during fiscal 2009.

Restructuring charges

In fiscal 2009, we implemented various restructuring measures, including workforce reductions of approximately 3,200. The related restructuring charges, primarily comprised of severance costs and other related costs, were approximately \$46.9 million for fiscal 2009.

In fiscal 2008, we incurred approximately \$11.2 million of restructuring charges. We did not have similar charges in fiscal years prior to 2008.

Asset impairment charges

We recorded an impairment charge of approximately \$12.5 million in the fourth quarter of fiscal 2009 primarily due to impairment of our equity investment in and loan to an investee. We recorded an impairment charge of approximately \$1.6 billion in the fourth quarter of fiscal 2008. Reduced unit demand resulted in factory underutilization, lower prices and negative margins, and together these effects resulted in a lower fair value for our plant and equipment than their then current carrying value. Furthermore, we determined that the carrying values of goodwill and intangible assets from our Saifun acquisition exceeded fair value. The impairment charges were comprised of impairments of property, plant and equipment (approximately \$1,578.4 million), goodwill (approximately \$20.8 million) and intangible assets (approximately \$53.5 million).

Gain on deconsolidation of subsidiary

Effective March 3, 2009, we deconsolidated Spansion Japan because, despite our 100 percent ownership interest, we are no longer deemed to control Spansion Japan as a result of the appointment of a trustee in the Spansion Japan Proceeding. The gain recognized upon deconsolidation of Spansion Japan was approximately \$30.1 million, which represents the difference between the carrying value of our investment in and receivables from Spansion Japan immediately before deconsolidation and the estimated fair value of our retained non-controlling interest in Spansion Japan, which was zero then and as of December 27, 2009. We did not have a similar gain during fiscal 2008 or fiscal 2007.

Interest and other income, net

Interest and other income, net, decreased by approximately \$1.2 million in fiscal 2009 compared to fiscal 2008. The decrease in interest and other income, net, was mainly due to the combined effect of decreases in our invested cash, cash equivalents and auction rate securities balances, and a decrease in our average investment portfolio yield of approximately 1.9 percent.

Interest and other income, net, decreased by \$27.4 million in fiscal 2008 compared to fiscal 2007, primarily due to the combined effect of decreases in our invested cash, cash equivalents and marketable securities balances, and a decrease in our average investment portfolio yield of approximately 2.7 percent. In addition, we recorded a

charge of approximately \$3.3 million due to other-than-temporary impairment of our auction rate securities. The decrease in interest and other income, net, in fiscal 2008 as compared to fiscal 2007 was also due to the recognition of approximately \$7.5 million of gain from the sale of land in Malaysia in the second quarter of fiscal 2007, which was partially offset by approximately \$3.4 million of loss from an early extinguishment of debt in the same period.

Interest expense

Interest expense decreased by approximately \$54.6 million in fiscal 2009 as compared to fiscal 2008. The decrease in interest expense was primarily due to the following decreases:

- approximately \$32.2 million in interest expense for Senior Notes and Exchangeable Senior Subordinated Debentures as interest expense on these obligations was only accrued through the Petition Date pursuant to the accounting guidance for entities in reorganization, wherein interest expense is recognized during reorganization only to the extent the underlying debt is well secured or the interest will be paid;
- approximately \$13.8 million in interest expense for the Senior Secured Floating Rate Notes, resulting from lower interest rates;
- approximately \$11.2 million in interest expense for Spansion Japan, resulting from the deconsolidation; and
- approximately \$9.2 million in interest expense due to capital lease rejections as a result of reorganization efforts and the cessation of amortization of debt discount and financing costs since the Petition Date pursuant to the accounting guidance for entities in reorganization.

These decreases were partially offset by (i) approximately \$6.5 million of capitalized interest related to the financing of SP1 for the first quarter of fiscal 2008, while no such interest was capitalized for the corresponding period in fiscal 2009 and (ii) an increase of approximately \$3.6 million in interest expense due to accrued interest for liabilities to Spansion Japan.

The average interest rate on our debt portfolio was 3.44 percent in fiscal 2009 as compared to 6.14 percent in fiscal 2008.

Interest expense increased by approximately \$18.0 million in fiscal 2008 as compared to fiscal 2007, primarily due to approximately \$16.9 million of interest capitalized related to the build-out of SP1 in 2007, compared with approximately \$6.5 million in 2008 and an approximately \$8.2 million reduction in interest expense related to an adjustment to a capital lease obligation during fiscal 2007. The increase in interest expense incurred was partially offset by lower average interest rates on our debt portfolio in fiscal 2008. The average interest rates on our debt portfolio were 6.14 percent for fiscal 2008 as compared to 7.58 percent for fiscal 2007.

Reorganization items

Reorganization items for fiscal 2009 were comprised of a provision for expected allowed claims of approximately \$354.9 million related primarily to rejection or repudiation of executory contracts and leases and the effects of approved settlements and approximately \$37.1 million for professional fees. No such charges were incurred in fiscal 2008 and fiscal 2007.

Income tax (provision) benefit

We recorded income tax expense of approximately \$0.6 million in fiscal 2009 compared to approximately \$62.9 million in fiscal 2008, and approximately \$25.1 million of income tax benefit in fiscal 2007.

Income tax expense recorded for fiscal 2009 differs from the benefit for income taxes that would be derived by applying a U.S. statutory 35 percent rate to the loss before income taxes primarily due to our inability to benefit from U.S. operating losses due to lack of a history of earnings, and income that was earned and tax effected in foreign jurisdictions with different tax rates.

The income tax expense recorded for fiscal 2008 differs from the benefit for income taxes that would be derived by applying a U.S. statutory 35 percent rate to the loss before income taxes primarily because we cannot benefit from U.S. operating losses due to lack of a history of earnings, an increase of \$64.5 million in the valuation allowance associated with deferred tax assets of Spansion Japan, and income that was earned and tax effected in foreign jurisdictions with different tax rates.

The increase of \$64.5 million in the valuation allowance associated with deferred tax assets of Spansion Japan was recorded due to our change in judgment about the ability to realize our Japanese deferred tax assets and the filing of the Spansion Japan Proceeding. We believe it is not more likely than not that these deferred tax assets will be realized in Japan.

The benefit for income taxes recorded for fiscal 2007 differs from the benefit for income taxes that would be derived by applying a U.S. statutory 35 percent rate to the loss before income taxes primarily due to our inability to benefit from U.S. operating losses due to lack of a history of earnings, a decrease of \$21.0 million in the valuation allowance associated with deferred tax assets of our Japanese subsidiary and income that was incurred and tax effected in foreign jurisdictions with different tax rates.

As of December 27, 2009, we recorded a valuation allowance of approximately \$723.3 million against our U.S. deferred tax assets, net of deferred tax liabilities. This valuation allowance offsets all of our net U.S. deferred tax assets. As of December 27, 2009, we have also recorded valuation allowances of approximately \$38.5 million against various foreign deferred tax assets for which we believe it is not more likely than not that they will be realized.

Contractual Obligations as of June 27, 2010

The following table summarizes our contractual obligations at June 27, 2010. The table is supplemented by the discussion following the table.

	<u>Total</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015 and Beyond</u>
	(in thousands)						
Term Loan	\$450,000	\$ 2,250	\$ 4,500	\$ 4,500	\$ 4,500	\$ 4,500	\$429,750
Capital lease obligations	11,531	4,860	6,671	—	—	—	—
Interest expense on Term Loan . .	164,077	20,654	34,633	34,780	33,719	32,849	7,442
Interest expense on capital leases	562	349	213	—	—	—	—
Other long-term liabilities ⁽¹⁾	5,092	—	1,750	3,342	—	—	—
Operating leases	8,262	1,606	4,743	923	334	328	328
Unconditional purchase commitments ⁽²⁾	150,355	76,837	73,021	497	—	—	—
Total contractual obligations	<u>\$789,879</u>	<u>\$106,556</u>	<u>\$125,531</u>	<u>\$44,042</u>	<u>\$38,553</u>	<u>\$37,677</u>	<u>\$437,520</u>

- (1) Other long-term liabilities comprise payment commitments under long-term software license agreements with vendors.
- (2) Purchase commitments include agreements to purchase goods or services that are enforceable and legally binding on us and that specify all significant terms, including fixed or minimum quantities to be purchased; fixed, minimum or variable price provisions; and the approximate timing of the transaction. These agreements are related principally to inventory and other items. Purchase commitments exclude agreements that are cancelable without penalty.

Term Loan

Our five-year \$450 million senior secured credit agreement, or Term Loan, is secured by our assets including, among other items, a first priority lien on property, plant and equipment and inventory, and a second priority lien on accounts receivable and cash. Interest on the Term Loan accrues at a rate per annum, reset quarterly, equal to LIBOR, but in any case not less than 2.00 percent, plus 5.50 percent. As of June 27, 2010, the interest rate on the Term Loan was 7.50 percent. The Term Loan requires net cash proceeds from asset sales or other dispositions of property, extraordinary cash receipts, and other cash flows to be agreed upon to be used to prepay the outstanding balance of the Term Loan. Voluntary prepayments of borrowings will be permitted in whole or in part, in minimum principal amounts to be agreed upon, at any time on or prior to May 10, 2011 the at a price equal to 101 percent of the principal amount of such borrowings being prepaid plus all accrued and unpaid interest plus breakage costs, if any, and thereafter at any time without premium or penalty.

Under the Term Loan, we are subject to a number of covenants, including a minimum interest coverage ratio, a maximum leverage ratio and maximum permitted capital expenditures. As of June 27, 2010, we were in compliance with these covenants.

Our Term Loan requires that 50 percent of net proceeds from this offering be used to reduce amounts outstanding thereunder. See "Use of Proceeds" elsewhere in this offering memorandum.

Revolving Credit Facility

In order to fund fees and expenses associated with the Chapter 11 Cases as well as ongoing working capital needs upon emergence, we entered into a senior secured loan and security agreement with Bank of America and other financial institutions, or the Revolving Credit Facility, in an aggregate amount of up to \$65 million. Available amounts for borrowing under this credit facility are limited to 85 percent of eligible accounts receivable, plus the lesser of (i) \$10 million and (ii) 25 percent of eligible foreign accounts receivable, net of reserves. The Revolving Credit Facility requires us to maintain a minimum quarterly fixed charge coverage ratio exceeding 1.00 to 1.00 on a trailing four-quarter basis if the sum of our domestic cash balance and availability from the Revolving Credit Facility falls below \$60 million.

Liquidity and Capital Resources

Cash Requirements

Predecessor – Year-to-date ending May 10, 2010

As a result of the Creditor Protection Proceedings, cash in our various consolidated entities was generally available to fund operations in their respective jurisdictions, but generally was not available to be freely transferred to or among subsidiaries other than in the normal course of intercompany trade and pursuant to specific agreements approved by the U.S. Bankruptcy Court.

Since the Chapter 11 Cases filing on March 1, 2009, we have maintained our cash management system and minimized disruption to our operations, pursuant to various U.S. Bankruptcy Court approvals obtained in connection with the Chapter 11 Cases. Among other things, we received approval to continue paying employee wages and certain benefits in the ordinary course of business, pay certain trade vendor claims, pay certain contractors in satisfaction of liens or other interests, and continue honoring customer program obligations.

We commenced a number of restructuring activities to ultimately achieve positive cash flow by exiting unprofitable markets and realigning our business to support a refined target market of Flash memory applications. We also conducted reviews of our real estate and other property leases, equipment leases and agreements, supplier and customer contracts and general discretionary spending with the goal of achieving further cash savings through renegotiation or cancellation of certain contracts.

The Plan of Reorganization was approved by the U.S. Bankruptcy Court on May 10, 2010. Prior to the Emergence Date, we had \$358.6 million in cash. We made net cash disbursements of \$103.9 million on the Emergence Date pursuant to the Plan of Reorganization which reduced our cash to \$254.7 million post-emergence.

Successor – May 10, 2010 to June 27, 2010

Our cash totaled \$254.7 million at May 10, 2010 and \$254.1 million at June 27, 2010, as compared to \$321.2 million at March 28, 2010. This is the result of our restructured capitalization pursuant to the Plan, which included, among other things, the following:

- Our \$450 million Term Loan;
- Our \$65 million Revolving Credit Facility; and
- Net cash proceeds of \$104.9 million from the Rights Offering.

Proceeds from the Term Loan and Rights Offering and cash on hand were used to pay: (i) approximately \$633 million of FRN claims; (ii) Administrative Expense Claims and Priority Claims (each as defined in the Plan); and (iii) payment of fees and expenses related to the Term Loan, Rights Offering and Revolving Credit Facility.

As of June 27, 2010, we have not borrowed against the Revolving Credit Facility. The availability under this facility was \$39.7 million as of June 27, 2010 after deducting the standby letters of credit of \$1.9 million issued to certain vendors.

Our future uses of cash are expected to be primarily for working capital, debt service, capital expenditures and other contractual obligations. We also expect the remaining disbursements pursuant to the Plan of Reorganization and expenses incurred for outstanding claims resolution will continue using cash from operations for at least for the remainder of fiscal 2010. We estimate cash outflow associated with these future disbursements and expenses will be within a range of \$50 to \$60 million. The final amounts to be paid out will depend on the Bankruptcy Court's approvals of fees and expenses incurred by retained bankruptcy professionals, reimbursement of administrative expenses by different parties that were involved in the Chapter 11 Cases, and the amount of time and expenses to be incurred to resolve outstanding claims. Such liabilities have been accrued for on the Predecessor's financial statements as reorganization expenses.

We believe our anticipated cash flows from operations, current cash balances, and availability under our Revolving Credit Facility will be sufficient to address these future uses of cash for at least the next twelve months.

Sources and Uses of Cash

Our cash consisted of demand deposits and totaled approximately \$254.1 million as of June 27, 2010.

Operating Activities

Net cash used by operations was approximately \$1.4 million during the period from May 11, 2010 to June 27, 2010, primarily due to a net loss of approximately \$18.2 million and the net decrease in operating assets and liabilities of approximately \$28.6 million, offset by net non-cash items of approximately \$45.4 million. Net non-cash items primarily consisted of approximately \$26.1 million of depreciation and amortization, approximately \$18.6 million of amortization of inventory markup relating to fresh start accounting, and approximately \$1.9 million of stock compensation costs, partially offset by a non-cash gain of approximately \$1.3 million from sale of the Suzhou plant.

Net cash provided by operations was approximately \$1.4 million during the period from December 28, 2009 to May 10, 2010, primarily due to net income of approximately \$363.6 million and the net increase in operating assets and liabilities of approximately \$20.5 million, offset by the net non-cash items of approximately \$382.8 million. Net non-cash items primarily consisted of approximately \$434.0 million non-cash gain on discharge of pre-petition obligations, approximately \$22.5 million non-cash gain from write-off of rejected capital lease and various license agreements, approximately \$5.2 million non-cash gain from sale of the Suzhou plant, approximately \$2.1 million gain on sale and disposal of fixed assets, partially offset by approximately \$43.8 million of depreciation and amortization, approximately \$13.0 million write-off of financing cost for old debts, approximately \$7.2 increase in allowance for doubtful accounts, approximately \$7.0 million of stock compensation costs, approximately \$7.0 million provision for income taxes, and approximately \$3.0 million impairment on investments.

While our net loss was \$514.1 million, we generated \$236.5 million in cash from operating activities in fiscal 2009, due to significant non-cash items and changes in operating assets and liabilities. Non-cash items primarily consisted of \$168.4 million of depreciation and amortization, \$14.0 million of asset impairment charges, \$19.8 million of provisions for doubtful accounts, and \$12.4 million of stock compensation costs, and the \$30.1 million of gain from the deconsolidation of Spansion Japan. The approximately \$629.4 million increase in accounts payable and accrued liabilities was primarily due to the various liabilities subject to compromise provided in connection with the Chapter 11 Cases. The approximately \$180.6 million decrease in inventories was primarily due to the reduction of production at our factories in our effort to minimize cash outlays in the first quarter of fiscal 2009, the effects of deconsolidation of Spansion Japan and our strategic decision to exit a large portion of the wireless market. The approximately \$248.4 million increase in receivables primarily reflects sales to Spansion Japan, which were eliminated on consolidation at the end of the prior year, but not as of December 27, 2009, due to the deconsolidation and our strategic decision to exit a large portion of the wireless market.

While our net loss was \$2.435 billion, we generated \$262.6 million in cash from operating activities in fiscal 2008, due to significant non-cash items and changes in operating assets and liabilities. Non-cash items included in the net loss consisted primarily of approximately \$644.5 million of depreciation and amortization, and in-process research and development write-off, approximately \$1.7 billion of asset impairment charges, and approximately \$21.6 million in stock compensation costs. The net changes in operating assets and liabilities in fiscal 2008 consisted primarily of a decrease in accounts receivable of approximately \$141.2 million due to a decline in net sales as a result of the adverse market conditions and a decrease in inventory of approximately \$204.7 million.

Investing Activities

Net cash provided by investing activities was approximately \$3.3 million during the period from May 11, 2010 to June 27, 2010, primarily due to approximately \$16.8 million of proceeds from the sale of ARS and approximately \$4.3 million from sale of property, plant and equipment, offset by approximately \$13.1 million cash decrease due to the purchase of Spansion Japan's distribution business and approximately \$4.6 million of capital expenditures used to purchase property, plant and equipment.

Net cash provided by investing activities was approximately \$76.7 million during the period from December 28, 2009 to May 10, 2010, primarily due to approximately \$62.4 million of proceeds from the sale of ARS, approximately \$18.7 million of proceeds from sale of the Suzhou plant, and approximately \$9.6 million from sale of other property, plant and equipment, offset by approximately \$14.0 million of capital expenditures used to purchase property, plant and equipment.

Net cash used in investing activities was approximately \$62.8 million in fiscal 2009, primarily comprised of a cash reduction of approximately \$52.1 million related to the deconsolidation of Spansion Japan, capital expenditures of approximately \$29.7 million, a decrease in cash of \$10.4 million related to the sale of the Suzhou

assembly and test facility, and a loan (investment) of approximately \$5.3 million made to an investee in January 2009 pursuant to terms of an existing contractual obligation, partially offset by proceeds of \$14.8 million from redemptions of ARS and proceeds of \$15.5 million from the sale of our Suzhou assembly and test facility.

Net cash used in investing activities in fiscal 2008 was approximately \$331.7 million, which consisted of approximately \$430.8 million of capital expenditures used to purchase property, plant and equipment, principally related to our investment in 300-millimeter equipment at SP1 and in our SDC offset by a cash inflow of approximately \$133.7 million from the maturities and sale of ARS.

Financing Activities

Net cash used by financing activities was approximately \$2.7 million during the period from May 11, 2010 to June 27, 2010, primarily due to payments of approximately \$2.7 million on debt and capital lease obligations.

Net cash used by financing activities was approximately \$148.2 million during the period from December 28, 2009 to May 10, 2010, primarily due to payments of approximately \$691.2 million on debt and capital lease obligations, partially offset by \$438.1 million from the Term Loan net of issuance costs and approximately \$104.9 million from the Rights Offering.

Net cash provided by financing activities in fiscal 2009 was primarily comprised of approximately \$117.8 million from borrowings mainly under the UBS Loan and the Spansion Japan 2007 revolving credit facility (borrowed prior to the Spansion Japan Proceeding), offset in part by approximately \$79.9 million in repayments of debts, primarily the senior secured revolving credit facility, the UBS Loan and certain capital lease obligations.

Net cash provided by financing activities was approximately \$8.8 million in fiscal 2008. This amount included approximately \$250.6 million of borrowing proceeds primarily from our Spansion Japan 2007 revolving credit facility, Spansion Japan 2007 credit facility and senior secured revolving credit facility, offset by approximately \$241.8 million in repayments on debt (primarily under the Spansion Japan 2007 revolving credit facility and Spansion Japan 2007 credit facility) and capital lease obligations.

Off-Balance Sheet Arrangements

During the normal course of business, we make certain indemnities and commitments under which we may be required to make payments in relation to certain transactions. These indemnities include non-infringement of patents and intellectual property, indemnities to our customers in connection with the delivery, design, manufacture and sale of our products, indemnities to our directors and officers in connection with legal proceedings, indemnities to various lessors in connection with facility leases for certain claims arising from such facility or lease, and indemnities to other parties to certain acquisition agreements. The duration of these indemnities and commitments varies, and in certain cases, is indefinite. We are unable to estimate the maximum amount of liability related to our indemnities and commitments because such liabilities are contingent upon the occurrence of events which are not reasonably determinable. Historically, these liabilities have not had a material adverse impact on our results of operations or financial condition.

Adoption of New Accounting Pronouncements

Accounting for Convertible Debt Instruments

In May 2008, the FASB issued revised guidance on accounting for convertible debt instruments that may be settled in cash upon conversion. This revised guidance provides that issuers of such instruments should separately account for the liability and equity components of those instruments by allocating the proceeds at the date of issuance of the instrument between the liability component and the embedded conversion option (the

equity component) by first determining the carrying amount of the liability. To calculate this amount, the Company must determine the fair value of the liability excluding the embedded conversion option and by giving effect to other substantive features, such as put and call options, and then allocating the excess of the initial proceeds to the embedded conversion options. The excess of the principal amount of the liability component over its carrying amount is reported as a debt discount and is amortized as interest expense over the expected life of the instrument.

The Company retrospectively adopted the new guidance, which impacted the Company's accounting for its Exchangeable Senior Subordinated Debentures, issued in June 2006. The Exchangeable Senior Subordinated Debentures bear interest at 2.25 percent per annum, payable on June 15 and December 15 of each year beginning December 15, 2006 until the maturity date of June 15, 2016. As a result of adopting the new guidance, the Company recorded an equity component of \$117.4 million, representing the fair value of the embedded conversion options, and a liability component of \$89.6 million, representing the fair value of the debentures as of the date of issuance. The net carrying amount of the liability component of the Exchangeable Senior Subordinated Debentures was included in liabilities subject to compromise at December 27, 2009 and the current portion of long-term debt and obligations under capital leases at December 28, 2008.

The table below shows the components of the net carrying amount of the liability portion of the Exchangeable Senior Subordinated Debentures at December 27, 2009 and at December 28, 2008:

	<u>December 27, 2009</u>	<u>December 28, 2008</u>
	(in thousands)	
Principal amount of liability component	\$207,000	\$207,000
Unamortized discount	(97,767)	(99,241)
Net carrying amount	<u>\$109,233</u>	<u>\$107,759</u>

As a result of adopting the new guidance, the Company recorded additional non-cash interest expense resulting from recognizing the accretion of the discounted carrying value of the Exchangeable Senior Subordinated Debentures to their face amount as interest expense over the term of the debt, which matures on June 15, 2016. However, pursuant to the accounting guidance for entities in reorganization, interest expense recorded subsequent to March 1, 2009 only includes amounts expected to be actually paid during the Creditor Protection Proceedings, and as a result amortization of the discounted carrying value ceased.

The following represents the components of interest expense and effective interest rates relating to the Exchangeable Senior Subordinated Debentures:

	<u>Year Ended December 27, 2009</u>	<u>Year Ended December 28, 2008</u>	<u>Year Ended December 30, 2007</u>
	(in thousands)		
Contractual interest expense	\$ 806	\$ 4,539	\$ 4,709
Amortization of discount	1,475	7,903	6,867
Total interest expense	<u>\$2,281</u>	<u>\$12,442</u>	<u>\$11,576</u>
Effective interest rate	12.23%	12.23%	12.23%

For the years ended December 28, 2008 and December 30, 2007, the effect of retrospectively applying the new guidance was an increase in non-cash interest expense of \$7.7 million and \$6.7 million, respectively, which represents accretion of the unamortized debt discount associated with the Exchangeable Senior Subordinated Debentures, partially offset by lower amortization of capitalized issuance costs as a portion of these were allocated to equity.

The following tables show the financial statement line items affected by retrospective application of the new guidance on the affected financial statement line items for the periods indicated:

Consolidated Statements of Operations
(in thousands, except per share amounts)
Years Ended

	December 28, 2008			December 30, 2007		
	As Adjusted	As reported	Effect of Change	As Adjusted	As reported	Effect of Change
Interest expense	\$ (105,536)	\$ (97,843)	\$(7,693)	\$ (87,460)	\$ (80,803)	\$(6,657)
Other income (expense), net	(100,336)	(92,643)	(7,693)	(54,865)	(48,208)	(6,657)
Loss before income taxes	(2,372,147)	(2,364,454)	(7,693)	(295,297)	(288,640)	(6,657)
Net loss	(2,435,012)	(2,427,319)	(7,693)	(270,153)	(263,496)	(6,657)
Net loss per share:						
Basic and diluted	\$ (15.69)	\$ (15.64)	\$ (0.05)	\$ (2.00)	\$ (1.95)	\$ (0.05)
Shares used in per share calculation:						
Basic and diluted	155,162	155,162		134,924	134,924	

Consolidated Balance Sheet
(in thousands)

	December 28, 2008		
	As Adjusted	As Previously Reported	Effect of Change
Other assets ⁽¹⁾	\$ 101,489	\$ 103,061	\$ (1,572)
Total assets	1,773,872	1,775,444	(1,572)
Current portion of long-term debt ⁽²⁾	1,087,786	1,187,027	(99,241)
Stockholders' deficit:			
Additional paid-in capital ⁽³⁾	2,471,902	2,356,629	115,273
Accumulated deficit ⁽⁴⁾	(2,997,589)	(2,979,985)	(17,604)
Total stockholders' deficit	(450,647)	(548,316)	97,669
Total liabilities and stockholders' deficit	1,773,872	1,775,444	(1,572)

- (1) The effect of the change on other assets includes the allocation of a portion of the capitalized issuance costs to the equity component of \$2.1 million, offset by lower amortization of these costs from the issuance date of \$0.5 million.
- (2) The effect of the change on current portion of long-term debt includes the discount determined as of the original issuance date of the Exchangeable Senior Subordinated Debentures of \$117.4 million, less amortization of the discount from the issuance date of \$18.1 million.
- (3) The effect of the change on paid-in capital includes the discount determined as of the original issuance date of the Exchangeable Senior Subordinated Debentures of \$117.4 million, less the portion of the original debt issuance costs allocated to the equity component of \$2.1 million.
- (4) The effect of the change on accumulated deficit includes the amortization of the discount from the issuance date of \$18.1 million, less adjustment to the amortization of debt issuance costs of \$0.5 million.

In April 2010, the FASB issued revised guidance to clarify that an employee share-based payment award with an exercise price denominated in the currency of a market in which a substantial portion of the entity's equity securities trades should not be considered to contain a condition that is not a market, performance or service condition. Therefore, an entity would not classify such an award as a liability if it otherwise qualifies as equity. The amendments in this guidance are effective for fiscal years, and interim periods within those fiscal years, beginning on or after December 15, 2010. The revised guidance should be implemented by recording a cumulative-effect adjustment to the opening balance of retained earnings. The cumulative-effect adjustment should be calculated for all awards outstanding as of the beginning of the fiscal year in which the amendments are initially applied, as if the amendments had been applied consistently since the inception of the award. The cumulative-effect adjustment should be presented separately. Earlier application is permitted. The Company believes the adoption of this guidance will not have a material impact on its consolidated financial statements.

In January 2010, the FASB issued amended guidance on fair value measurements and disclosures. The new guidance requires additional disclosures regarding fair value measurements, amends disclosures about post-retirement benefit plan assets, and provides clarification regarding the level of disaggregation of fair value disclosures by investment class. This guidance is effective for interim and annual reporting periods beginning after December 15, 2009, except for certain Level 3 activity disclosure requirements that will be effective for reporting periods beginning after December 15, 2010. Accordingly, we adopted this amendment on January 1, 2010, except for the additional Level 3 requirements which will be adopted in 2011. The adoption of this guidance has not had, and the Company believes the adoption will not have, a material impact on its consolidated financial statements.

In October 2009, the FASB amended the accounting standards for revenue recognition to remove tangible products containing software components and non-software components that function together to deliver the product's essential functionality from the scope of industry-specific software revenue recognition guidance. In October 2009, the FASB also amended the accounting standards for multiple deliverable revenue arrangements to:

- provide updated guidance on whether multiple deliverables exist, how the deliverables in an arrangement should be separated, and how the consideration should be allocated;
- require an entity to allocate revenue in an arrangement using estimated selling prices of deliverables if a vendor does not have vendor-specific objective evidence of selling price or third-party evidence of selling price; and
- eliminate the use of the residual method and require an entity to allocate revenue using the relative selling price method.

The accounting changes summarized in this guidance are effective for fiscal years beginning on or after June 15, 2010, with early adoption permitted. Adoption may either be on a prospective basis or by retrospective application. The Company believes the adoption of this guidance will not have a material impact on its consolidated financial statements.

Quantitative and Qualitative Disclosures About Market Risk

Interest Rate Risk

Our exposure to market risk for changes in interest rates relates primarily to our cash deposits, invested cash and debt. At June 27, 2010, we had approximately \$254.1 million held in demand deposit accounts, and approximately \$25.9 million invested in ARS (which provided for frequent interest reset terms). Accordingly, our interest income fluctuates with short-term market conditions. With the exception of our ARS (which were fully redeemed at the beginning of the third quarter of 2010), our cash position is highly liquid and our exposure to interest rate risk is minimal.

As of June 27, 2010, approximately two percent of the principal amounts outstanding under our unrelated third party debt obligations were fixed rate, and approximately 98 percent of our total debt obligations were variable rate which was comprised of the \$450 million Senior Secured Term Loan. The term loan has a LIBOR floor of two percent. While LIBOR is below two percent, our interest expense will not change along with short-term change in interest rate environment. When LIBOR is above two percent, changes in interest rates associated with the term loan could then result in a change to our interest expense. For example, a one percent aggregate change in interest rates would increase/decrease our contractual interest expense by approximately \$4.5 million annually.

We continually monitor market conditions and may enter into hedges if deemed appropriate. At June 27, 2010, we did not have any hedges of interest rate risk in place. We do not use derivative financial instruments for speculative or trading purposes. The Company has entered into a hedging arrangement with a financial institution subsequent to June 27, 2010 to hedge the variability of interest payments attributable to fluctuations in the LIBOR benchmark interest rate.

Default Risk

We intend to actively monitor market conditions and developments specific to the securities and security classes in which we invest. We believe that we take a conservative approach to investing our funds in that our policy is to invest only in highly-rated securities with relatively short maturities, and we do not invest in securities we believe involve a higher degree of risk.

BUSINESS

Our Company

We are a leading designer, manufacturer and developer of Flash memory semiconductors. We are focused on the embedded Flash market providing our solutions to more than 4,000 customers worldwide. Our Flash memory products primarily store data and software code for microprocessors, controllers and other programmable semiconductors which run applications in a broad range of electronics systems. These electronic systems include computing and communications, automotive and industrial, consumer and gaming, wireless and machine-to-machine, or M2M, devices. In addition to Flash memory products, we assist our customers in developing and prototyping their designs by providing software and hardware development tools, drivers and simulation models for system-level integration.

Our Flash memory solutions are incorporated in products from leading original equipment manufacturers, or OEMs, including Huawei Technologies Co., Ltd., Harman/Becker Automotive Systems GmbH, Motorola, Inc., LG Electronics, Technicolor S.A., Continental AG, Pace plc, The Bosch Group, Alpine Electronics of America, Inc., ZTE Corporation, Panasonic Corporation of North America, Sagem Télécommunications, Sharp Electronics Corporation, Pioneer Electronics (USA) Inc., and Future Designs, Inc. Our products are designed to address various voltages, interfaces and memory densities for a wide range of specific applications and customer platforms. The majority of our new product designs are based on our proprietary two-bit-per-cell MirrorBit technology which has a simpler cell architecture requiring fewer manufacturing steps, supporting higher yields and lower costs as compared to competing floating gate NOR Flash technology.

For fiscal 2009, our total net sales were approximately \$1.4 billion as compared with total net sales of approximately \$2.3 billion for fiscal 2008. For the six months ended June 27, 2010, our total net sales were approximately \$533.0 million. According to market research firm iSuppli, in 2009, we were responsible for 31.2 percent of all NOR Flash memory sales, making us the second largest supplier of NOR Flash memory in the world.

We are headquartered in Sunnyvale, California, with research and development, manufacturing, assembly and sales operations in the United States, Asia, Europe and the Middle East. As of June 27, 2010, we held over 2,300 patents.

Industry Overview

The proliferation of electronic systems, such as servers, broadband access devices, automotive powertrains, infotainment, telematics, digital TVs, set-top boxes, printers, digital cameras, gaming machines, mobile phones and M2M modules, drives increasing use of Flash memory to support the reliable operation of embedded software code. Electronic systems need to store both operating instructions in the form of software code as well as content that needs to be processed. As electronic systems add features to process rich multimedia content and require greater performance, they require increasingly complex software code and therefore more code storage. As a result, software code storage and content storage have become critical components of electronic systems across a variety of industries and applications.

The overall memory market can be divided into “volatile” and “non-volatile” categories. Volatile memory loses its content when the system is powered down, such as DRAM used in PCs, while non-volatile memory retains its content even after power is turned off, allowing memory content to be retrieved at a later time. The primary semiconductor component used to store and access software code and digital content today is non-volatile Flash memory.

Overview of Flash Memory

According to iSuppli, the Flash memory market is expected to have estimated revenues of \$23 billion for 2010. Flash memory is well suited for a variety of applications across a broad range of electronic products,

including consumer electronics, networking and telecommunications equipment, mobile phones, PCs, automotive electronics, gaming and industrial equipment.

The Flash memory market consists of two major segments: NOR and NAND Flash. Performance characteristics make NOR and NAND Flash suitable for different uses:

- NOR Flash memory is most often used for reliable code execution and data storage in consumer electronics, automobile and industrial applications and mobile phones. According to iSuppli, the NOR Flash memory market is expected to be approximately \$5 billion in 2010.
- NAND Flash memory is used for data storage in solid-state removable memory applications, such as USB storage devices. This architecture is also used in high-end mobile phones, MP3 players, data cards and other embedded applications. According to iSuppli, the NAND Flash memory market is expected to be approximately \$18 billion in 2010.

NAND Flash memory is not well-suited for code storage and execution because it has slower read speeds along with lower quality and reliability than NOR. On the other hand, NAND has faster write and erase speeds, and is available at higher densities than NOR with a lower cost per bit at these high densities. These attributes make NAND the preferred technology for data storage in removable storage applications and NOR the preferred technology for program code storage and execution. Further, customers seeking fast read performance and superior reliability have traditionally chosen NOR Flash memory over NAND.

Our Addressable Market

The Flash memory market can be divided into two major categories based on application: the integrated category, which includes wireless and embedded applications, and the removable storage category, which includes Flash memory cards and USB drives. Within the integrated category, we refer to portable, battery-powered communications applications as “wireless” and all other applications, such as consumer, telecommunications, automotive and industrial electronics, as “embedded.” We have focused historically on the integrated category of the Flash memory market, including wireless and embedded applications. In early 2009, we narrowed our strategic focus to the embedded portion of the Flash memory market and intend to continue to selectively engage in portions of the wireless market where we believe we can do so advantageously. The embedded Flash memory market is characterized by long design and life cycles, low capital and technology investments, stable average selling prices, or ASPs, and fragmented competition with multiple suppliers.

In addition to our focus on our traditional embedded NOR Flash memory applications, we plan to expand our presence in growing portions of the embedded Flash memory market, including embedded NOR and embedded NAND. We believe our proprietary MirrorBit technology, licensing partners, customer relationships and broad product portfolio will enable us to extend our leadership in the attractive embedded Flash memory markets.

Competitive Advantages

Focus on Embedded Flash Products. We focus on the embedded portion of the Flash memory market. In order to service this market, we leverage our broad product set and software programmability to provide a diverse range of application specific solutions. The diversity of our applications results in a relatively stable market with steady growth driven by the proliferation and increasing complexity of electronic devices. Embedded Flash end markets are large and diverse and include applications in computing & communications, automotive & industrial and consumer & gaming markets. We believe that our focus on the embedded Flash market and our superior customer service distinguishes us from our competitors who generate a large portion of their sales from other markets, such as mobile handsets and PCs.

Customer-Centric, Application Focused Go-To-Market Strategy. We focus on application specific solutions for our customers' embedded Flash requirements. Our field application engineers, or FAEs, are located in close proximity to our customers' design centers across the globe. This enables us to better support our customers by enhancing our ability to anticipate customer needs and industry trends which we believe will allow us to gain market share. We believe that this application and design win focused approach enables a deeper relationship with our customers and strengthens our position in their product lifecycles. Our solutions target end markets which typically have long lifecycles and high switching costs. We have a highly diversified customer base with over 4,000 customers and distributors across a wide range of end markets. By utilizing our global sales force, our FAEs and our broad distribution system, we can leverage multiple channels and engage directly with key customers around the world.

Application-Specific Customizable Software. In addition to our advanced hardware technology, we provide customized, application specific software to our customers. Specifically, we supply customers the necessary software and hardware development tools, drivers and simulation models for system-level integration. As opposed to removable storage memory, embedded Flash memory requires cost-effective customization capability that also meshes with the broader interface and technology platform of the specific customer device. We believe our focused software service strategy contributes to our success with OEMs.

Leading-Edge Technology Platform. Our proprietary MirrorBit technology drives our lower cost, high performance product platform. MirrorBit technology is simpler, has a lower manufacturing cost and can store more data than traditional floating gate technology. We believe leveraging our MirrorBit technology will help us retain and enhance our market position from entry-level to high-end applications. Our two-bit-per-cell MirrorBit technology allows us to offer a broad range of product configurations and capabilities, including high read performance and high reliability. In addition, we believe the ability to easily integrate logic capabilities with our technology will enable us to create new and differentiated types of Flash memory and system on a chip, or SoC, solutions in the future. We have a substantial patent portfolio related to our MirrorBit technology in the areas of devices, circuitry, processes and composition and have successfully ramped production of MirrorBit products to high volume.

Process Technology Leverage. Our MirrorBit technology provides enhanced geometric scalability when shifting to smaller process nodes in comparison to floating gate technology as it has a simpler cell architecture requiring fewer manufacturing steps and supporting higher yields. We invested over \$1.2 billion in R&D between 2006 and 2008 primarily on the development of next-generation process technologies. We have 65-nanometer products in production which currently represent only a small portion of our revenues. With the majority of our customers presently using 110- and 90-nanometer technologies, we anticipate migrating our customers to 65- and 4x-nanometer and eventually to 3x-nanometer technology over the next several years. We do not anticipate having to invest at historical levels on process technology to meet our customers' near to midterm needs. The focus of our efforts, therefore, will be on product development and meeting the specific needs of certain categories of the market.

Broad Product Portfolio. Our products and solutions deliver a combination of high performance and competitive cost for a wide range of customer platforms and applications. These product offerings support various voltages, interfaces and memory densities. Our current broad product offering includes parallel and serial NOR Flash. We offer 3-Volt products to serve the embedded applications, 1.8-volt products to serve wireless applications and 5-volt products for legacy automotive applications. Our NOR Flash memory density spans from low density (1Mb - 32Mb) to mid-size density (64Mb - 128Mb) and high density offerings (256Mb or higher). This broad product offering enables us to pursue diverse embedded Flash end markets which have differing density and performance requirements. For example, our GL product family targets customers demanding high reliability across high densities, our CD and CL product families target customers requiring performance under extreme environmental conditions, our FL product family targets customers seeking low cost and small form factor across a wide band of densities, our WS/NS/Vs product families target wireless customers seeking high performance across high densities, our AS and AL product families target customers seeking low densities and

our F product family targets legacy automotive customers seeking reliable low cost functionality across low densities.

Our Strategy

Our principal objective is to be the leading global supplier of embedded Flash memory products and solutions. We plan to achieve this objective by aggressively pursuing the following strategies:

Regain Embedded Flash Market Share. We intend to continue to focus on regaining market share that we lost due to the negative impact of our reorganization under Chapter 11 of the U.S. Bankruptcy Code, or the Chapter 11 Cases. During the reorganization, some of our key customers significantly reduced or cancelled their purchases with us. We have already begun to regain lost market share and we plan to continue regaining market share by securing new design wins and by further deepening our relationships with our key end-customers and distribution partners through our application specific solutions, our superior customer service and continued investment in our FAEs. Further, we plan to leverage our in-house software and system design expertise, our proprietary MirrorBit technology, and the full breadth of our product portfolio to enable our customers to improve the quality and cost-effectiveness of their designs, accelerate their time-to-market and enhance overall performance of their products.

Continue Product Innovation and New Market Expansion. We aim to expand our products and solutions by selectively targeting embedded Flash applications within our target markets. We plan to achieve this by developing and bringing to market products that allow us to offer higher densities and faster performance. For example, by the end of 2010, we expect to have introduced eight new products within our existing product families that address a broad range of applications in our target markets. In addition, we are developing leading-edge technology to support new products in emerging applications such as 3D graphics in gaming machines, active driver monitoring systems in automobiles and smart meters. We also intend to increase our presence in high growth emerging markets such as China and India. Further, we intend to evaluate and potentially make acquisitions of technologies and products that we can integrate into our solutions in order to broaden our product portfolio functionality and accelerate growth and entry into new markets.

Expand Addressable Market with Embedded Flash Products. We will continue to seek opportunities to develop and commercialize memory solutions based on our MirrorBit technology, software and other design capabilities. We believe that our proprietary charge-trapping NAND solution is more scalable, has a simpler cell structure and offers superior performance, faster read and faster programming speeds when compared to traditional floating gate NAND Flash solutions. Our strategy is to bring our high reliability Flash solutions to support the low-density single-level cell, or SLC, NAND Flash market by leveraging our relationships with our partners and customers. This market has different competitive characteristics than the high density multi-level cell NAND Flash market characterized by storage of large amounts of content. In July 2010, we entered into a joint development agreement with Elpida to co-develop next-generation NAND Flash memory based on our MirrorBit technology. As a result, we have announced our plan to sample with customers SLC NAND Flash in the first half of 2011.

Flexible, Scalable and Cost-Efficient Manufacturing Strategy. As part of our restructuring efforts, we substantially reduced our overall manufacturing footprint. We plan to maintain our low capital intensive model by outsourcing a significant amount of manufacturing activity to our foundry partners while focusing our internal captive manufacturing capacity on products and solutions that differentiate us in terms of process technologies, product features, quality and cost. We intend to maintain an optimal combination of internal and external manufacturing capacity. We believe that a flexible, highly scalable and low-cost operating model will enable us to respond faster to rapidly changing product mix and market demand.

License our Intellectual Property. We intend to evaluate potential licensing arrangements with semiconductor designers and manufacturers who may integrate our MirrorBit technology into their future

products and solutions. We also intend to license our process technology to third party manufacturers to help increase our external manufacturing capacity.

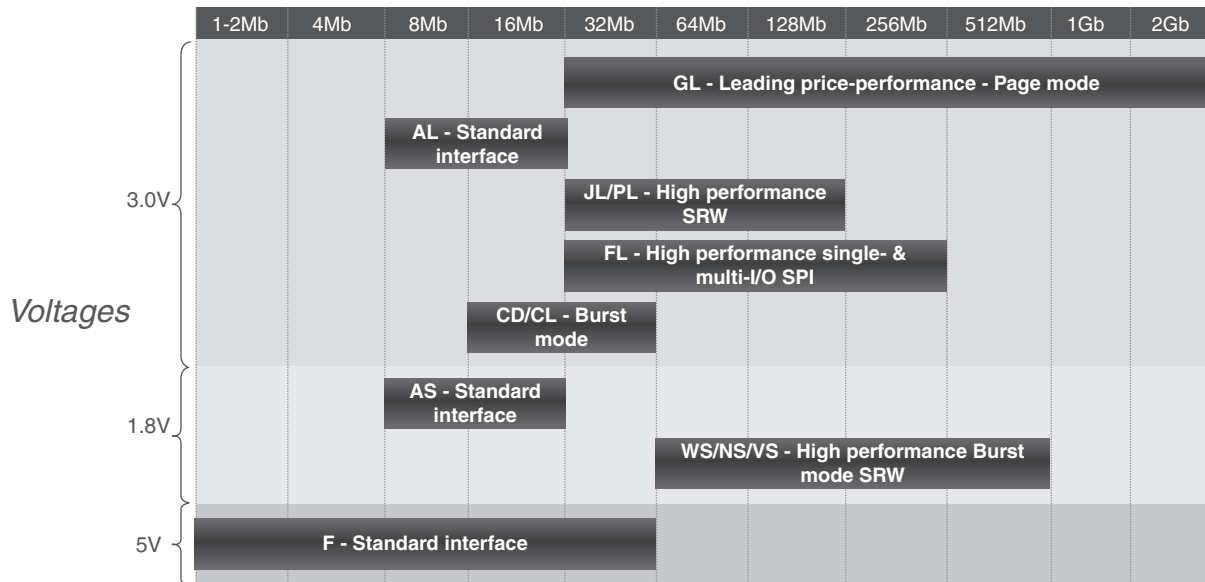
Markets, Applications & Products

We design, develop and sell Flash memory solutions that are primarily used in the computing & communications, automotive & industrial, consumer & gaming and wireless and M2M end markets. The table below provides an overview of our end markets, our key applications and our key customers and distribution partners:

	Computing & Communications	Automotive & Industrial	Consumer & Gaming	Wireless & M2M
<i>Our Applications</i>	<ul style="list-style-type: none"> • Broadband • Enterprise Networking • Printers • Servers • Wireless Infrastructure 	<ul style="list-style-type: none"> • Infotainment • Powertrain • Telematics • TFT Displays 	<ul style="list-style-type: none"> • Digital Cameras • DTV • Gaming Machines • STBs 	<ul style="list-style-type: none"> • Data Cards • Mobile Phones • M2M Modules • USB Cards
<i>Our Customers</i>	<ul style="list-style-type: none"> • Cisco • D-Link • Epson • Foxconn • Gemtek • Hewlett Packard • Lexmark • LG • Motorola • Netgear • Nokia Siemens • Samsung 	<ul style="list-style-type: none"> • Alpine • Bosch • Bose • Continental • Delphi • Denso • Harman Becker • LG • Magnetti Marelli • Panasonic • Pioneer • Visteon 	<ul style="list-style-type: none"> • Canon • LG • Motorola • Pace • Panasonic • Sharp • Sony • Technicolor 	<ul style="list-style-type: none"> • Huawei • LG • Motorola • Sagem • Samsung • Sierra Wireless • SIMCom • ZTE

Our products and solutions deliver a combination of high performance and competitive cost for a wide range of customer platforms and applications. The product offerings support various voltages, interfaces and memory densities. We offer 3-Volt products to serve the Embedded applications, 1.8-volt products to serve the Wireless applications and 5-volt products for legacy automotive applications. The table below provides an overview Memory Densities of our current key product families:

Memory Densities



GL and AL Families. The GL and AL product families address applications where high reliability coupled with low cost are important, including consumer, gaming, networking and telecommunications. The AL product family offers densities as low as 8-megabits, supports a simpler feature set and provides a standard interface for value-focused applications, such as DVD players. The GL product family currently offers densities up to 2-gigabits in production and includes a page-mode interface and Advanced Sector Protection to support high performance consumer applications, such as high-end Set Top Boxes (STB), and digital video recorders (DVR). MirrorBit technology is utilized for the GL family, while both MirrorBit and floating gate technology are utilized for the AL family.

CD and CL Families. The CD (2.5-volt) and CL (3.0-volt) product families address automotive engine and transmission control applications, which require high reliability, feature rich, high performance and wide temperature ranges. The CD and CL product families combine a high performance burst-mode interface, with Simultaneous Read/Write and Advanced Sector Protection at 16- and 32-megabit densities. Because engine and transmission control units must withstand extreme temperatures, this family operates at up to 145°C and is available in a fully tested die-only solution for incorporation into special customer modules.

FL Family. The FL family utilizes our floating gate and MirrorBit technologies with a Serial Peripheral Interface and a low pin count package to provide low cost solutions that currently support densities from 4- to 256-megabits in production. Future plans include higher densities of 512-megabits and 1-gigabit. We anticipate that Spansion will increase its competitive advantage both in die size and performance with SPI densities greater than 128-megabits, due to Eclipse-class MirrorBit-scalable technology. This product line supports the option for single, dual or quad serial I/O data transmission, thereby providing a lower system-cost, high performance solution for Industrial, Automotive and Consumer markets.

WS/ NS/ VS Families. The WS/NS/VS product families, with a 1.8-volt interface, are used for a broad range of mobile phones with features such as complex ring tones, enhanced color displays, higher resolution

cameras and internal storage for multimedia content including music, videos and pictures. The WS and VS families, which include products based on floating gate and MirrorBit technology, combine a high performance burst-mode 1.8-volt interface, with Simultaneous Read/Write and Advanced Sector Protection features at 64-megabits to 512-megabits densities. These products are usually combined with third-party PSRAM or DRAM die in a single MCP to meet mobile phone memory needs.

JL and PL Families. The JL and PL product families, with a 3-volt interface, support mobile phone and automotive applications. Based on floating gate and MirrorBit technology, these products offer a page-mode interface, simultaneous Read/Write capability and Advanced Sector Protection at 32-megabit to 128-megabit densities.

AS Family. The AS product family delivers small form-factor and reliable performance for module-based applications such as Bluetooth for consumer and automotive markets. This product line supports densities from 8- to 16-megabit with a standard interface to optimize value-driven performance.

F Family. The F product family is a 5-volt, legacy offering which supports automotive markets.

Our goal is to streamline and simplify our customers' design and development cycle by providing consistent and comprehensive tools through the development process, from initial system bring-up to final product deployment. In addition to Flash memory products, we assist customers in prototyping their designs by providing the necessary software and hardware development tools, drivers and simulation models for seamless system-level integration.

Technology

Our current product portfolio offers densities ranging from 1-megabit to 2-gigabits and a broad array of interfaces and features. We use two Flash memory technologies, single-bit-per-cell floating gate and multi-bit-per-cell MirrorBit technology. Compared to competing floating gate multilevel cell NOR technology, two-bit-per-cell MirrorBit technology has a simpler cell architecture requiring fewer manufacturing steps and supporting higher yields, resulting in lower costs. Our current products are based primarily on MirrorBit two-bit-per-cell technology and allow us to offer a broad range of product configurations and capabilities, including high density and high performance.

Floating Gate Technology. Floating gate is the conventional memory cell technology that is utilized by most Flash memory companies today for both NOR and NAND products. We own fundamental intellectual property in floating gate technology. We have created innovations in floating gate technology that have become industry standards, such as negative gate erase, single power supply and embedded programming algorithms, and we continue to hold a strong position in the NOR Flash memory market with our products based on floating gate technology.

MirrorBit Technology. MirrorBit NOR technology is the foundation of our current product roadmap. Also referred to as charge-trap technology, MirrorBit NOR technology stores two distinct charges in a single memory cell, with each charge equivalent to one bit of data thereby doubling the density of each memory cell and enabling higher density, lower cost products.

Sales and Marketing

We market and sell our products worldwide under the Spansion trademark. Since the beginning of the second quarter of fiscal 2006, we have sold our products to our customers directly or through distributors. We rely on Fujitsu to act as our largest distributor in Japan and our nonexclusive distributor throughout the rest of the world, other than Europe and the Americas, with limited exceptions.

We market our products through a variety of direct and indirect channels. We have direct relationships with many of our top customers worldwide. We supplement this effort with programs designed to support design-in of

our products on reference designs, which are typically used by our Flash memory customers when choosing Flash memory solutions. In addition, we focus a portion of our marketing efforts on providers of complementary products to ensure our products interoperate effectively with the most widely used components in various embedded applications.

Our marketing activities targeting customers, reference design houses and our potential partners include a combination of direct marketing activities such as trade shows, events and marketing collateral and indirect activities such as public relations and other marketing communications activities.

Customers

We serve our customers worldwide directly or through our distributors who buy products from us and resell them to their OEMs and ODMs, either directly or through their own distributors. Customers for our products consist of OEMs, ODMs and contract manufacturers.

After the deconsolidation of Spansion Japan in March 2009, sales to Spansion Japan accounted for approximately 21 percent of our total net sales. Spansion Japan resold substantially all of its purchases to Fujitsu who in turn acted as a distributor of our products in Japan. Accordingly, we did not have significant transactions directly with Fujitsu for the period from March 3, 2009 through December 27, 2009 as we transacted with Fujitsu through Spansion Japan. Effective May 24, 2010, we purchased the distribution business from Spansion Japan and since that time we have distributed our products in Japan through our wholly owned subsidiary, Nihon Spansion Limited.

We believe that our decision to focus primarily on the embedded portion of the Flash memory market will reduce our customer concentration. No OEM, ODM or contract manufacturer accounted for more than ten percent of our total net sales for fiscal 2009. For fiscal 2008, Nokia Corporation accounted for approximately 18 percent of our total net sales, and for fiscal 2007 and 2008, Fujitsu accounted for approximately 35 percent and 29 percent of our total net sales. Net sales to Fujitsu (in its capacity as a distributor) for fiscal 2009 and first half of 2010 accounted for approximately 24 percent and 18 percent of our total net sales, respectively.

Original Equipment Manufacturers

OEMs consist primarily of foreign and domestic manufacturers of mobile phones, consumer electronics, automotive electronics and networking equipment companies, selected regional accounts and customers in other target applications.

Third-Party Distributors

Our third-party distributors typically resell to OEMs, ODMs and contract manufacturers. Sales through our direct distributors are typically made pursuant to agreements that provide return rights for discontinued products or for products that are not more than twelve months older than their manufacturing date code. In addition, some of our agreements with distributors may contain standard stock rotation provisions permitting limited levels of product returns.

We generally warrant that products sold to our customers and our distributors will, at the time of shipment, be free from defects in workmanship and materials and conform to our approved specifications. Subject to specific exceptions, we offer a one-year limited warranty.

Research and Development

Research and development is critical to our success and is focused on process, product and system level development. We conduct our product and system engineering activities primarily in Sunnyvale, California and Netanya, Israel, with additional design and development engineering teams located in the United States and Asia.

Our primary development focus is on MirrorBit products for embedded Flash memory applications. We conduct our process development primarily in Sunnyvale, California, at our fabrication facility located in Austin, Texas and at third party foundries that provide foundry services to us. We are developing non-volatile memory process technologies with continuing refinement of our 65-nanometer process technology and plans for deployment of 45-nanometer and more advanced technology. In April 2009, we stopped further production of development wafers at our research and development manufacturing facility known as the Sub-micron Development Center, or SDC, in Sunnyvale, California, as part of our strategy to reduce research and development costs by utilizing third party foundries for process development.

Our research and development expenses for fiscal 2009, fiscal 2008 and fiscal 2007 were approximately \$136.4 million, \$431.8 million and \$436.8 million, respectively. The 2009 decline in R&D was primarily driven by our strategic realignment and the optimization of our business model. We invested over \$1.2 billion in R&D between 2006 and 2008 primarily on the development of next-generation process technologies. The majority of this R&D was for the development of next generation process technologies. We have 65-nanometer products in production which currently represent only a small portion of our revenues. Our flexible manufacturing strategy takes advantage of this past process technology investment and leverages that investment with partners for advanced node wafer fabrication. With the majority of our customers presently using 110- and 90-nanometer technologies, we anticipate migrating customers to 65- and 4x-nanometer and then eventually to 3x-nanometer technology over the next several years. We do not anticipate having to invest at historical levels in R&D processes to meet our customers' near to midterm needs. The focus, therefore, will be on product development and specific needs of certain subcategories of the market.

Manufacturing

We own and operate one wafer fabrication facility in Austin, Texas (Fab 25), which has approximately 114,000 square feet of clean room space. This facility produces 200-millimeter wafers, manufactured using 110-nanometer, 90-nanometer and 65-nanometer process technology. We also own two assembly and test facilities in Bangkok, Thailand and in Kuala Lumpur, Malaysia, and we use a number of third party companies to provide supplemental final manufacturing services for us. We own a third facility in Penang, Malaysia which is currently utilized for sort services.

We plan to continue to outsource production of more advanced technology nodes and a significant portion of our manufacturing function to external foundry partners. To augment our internal wafer fabrication capacity, we have foundry agreements with Semiconductor Manufacturing International Corporation, or SMIC, Fujitsu and TI. The arrangement with SMIC provides flexibility to support customer demand for advanced technology products at 65-nanometer if we are unable to support such demand from our in-house capacity. The arrangement with Fujitsu Limited, using our former JV1 and JV2 wafer fabrication facilities which we sold to them in April 2007, provides us with the ability to efficiently support the declining customer demand for legacy products on legacy production process nodes. The arrangement with Texas Instruments provides us with wafer and sort services we previously received from Spansion Japan and enables us to operate our Fab 25 facility with greater flexibility. In September 2009, we sold to Powertech Technology Inc. (PTI) our final manufacturing facility located in Suzhou, China, and certain related equipment. Following the sale, PTI began providing final manufacturing services to us at the Suzhou facility, further representing our shift to an outsourced manufacturing model.

Our manufacturing processes require many raw materials, such as silicon wafers, mold compound, substrates and various chemicals and gases, and the necessary equipment for manufacturing. We obtain these materials and equipment from a large number of suppliers located throughout the world.

Process Technology

Process technology refers to the particular fabrication method used to manufacture semiconductor integrated circuits. Like most semiconductor companies, we direct significant efforts toward the invention and development of manufacturing process technologies that achieve one or more of the following objectives: reduction of our

manufacturing costs, improvement of our device performance and/or addition of product features and capabilities. We achieve these goals primarily through a combination of optimizing the number of process steps required to produce a product, and by reducing the scale or size of key structures in our integrated circuits such as the memory cells or transistors used to store charge and the surrounding circuits that manage and interface to these cells. We develop each process technology using particular design rules and refer to this as the process or technology node using nanometers as a measurement of length of certain critical structures in the process. By shrinking the transistors, we enable more transistors in the same area, which allows us to manufacture more bits per wafer at each successive process node, decreasing material cost per bit and increasing yield for a given density. During fiscal 2009, we offered products manufactured on technology nodes from 320-nanometer to 65-nanometer, utilizing MirrorBit and floating gate cell technology. We continue to manufacture products based on floating gate technology at process nodes from 320-nanometer to 110-nanometer. However, during fiscal 2009, the majority of our wafer production was focused on the manufacture of MirrorBit products using 110- and 90-nanometer process technology. We also manufactured MirrorBit ORNAND products and MirrorBit NOR products on 65-nanometer process technology.

Environmental Matters

Many of our facilities are located on properties or in areas with a long history of industrial activity. Prior to our reorganization in 2003, environmental audits were conducted for each of our manufacturing facilities. The audits described various conditions customary of facilities in our industry and, in particular, noted historical soil and groundwater contamination at our Sunnyvale, California facility arising from the leakage of chlorinated solvent storage tanks that previously had been located on this property. This property is listed on the U.S. Environmental Protection Agency's Superfund National Priorities List. AMD, as the former owner of the property, is investigating and remediating this contamination.

In connection with our reorganization in 2003, each of AMD and Fujitsu agreed to indemnify us against losses arising out of the presence or release, prior to June 30, 2003, of hazardous substances at or from these and other sites they each contributed to us. Conversely, our subsidiary agreed to indemnify each of AMD and Fujitsu from and against liabilities arising out of events or circumstances occurring after June 30, 2003, in connection with the operation of our business. AMD and Fujitsu, on the one hand, and we, on the other, agreed to indemnify the other against liability arising from permit violations attributable to our respective activities. To the extent AMD and Fujitsu cannot meet their obligations under any of their indemnity agreements, or material environmental conditions arise, we may be required to incur costs to address these matters, which could have a material adverse effect on us.

We have made and will continue to make capital and other expenditures to comply with environmental laws, but we do not expect compliance with environmental requirements to result in material expenditures in the foreseeable future. Environmental laws and regulations are complex, change frequently and have tended to become more stringent over time—factors that could alter the current outlook.

Competition

Our principal NOR Flash memory competitors are Micron Technology, Inc., Macronix International Co., Ltd., Winbond Electronics Corp. and Samsung Electronics Co., Ltd. Additional NOR Flash memory competitors include Microchip Technology Inc., EON Silicon Solution Inc., Atmel Corporation and Toshiba Corporation. We increasingly compete with NAND Flash memory manufacturers where NAND Flash memory has the ability to replace NOR Flash memory in customer applications. Our principal NAND Flash memory competitors include Samsung Electronics Co., Ltd. and Micron Technology, Inc. In the future, our principal NAND Flash memory competitors may include Elpida Memory, Inc., Hynix Semiconductor Inc., Toshiba Semiconductor Company, Powerchip Technology Corporation, Macronix International Co., Ltd., Intel Corporation and SanDisk Corporation.

We believe Flash memory providers must also possess the following attributes to remain competitive:

- strong relationships with OEMs, ODMs and contract manufacturers that are acknowledged leaders within their respective industries;
- discipline to continually reduce costs ahead of historically declining semiconductor market prices;
- strong market focus to identify emerging Flash memory applications;
- leadership in research and development;
- flexibility in manufacturing capacity and utilization so as to take advantage of industry conditions through market cycles;
- access to the financial resources needed to maintain a highly competitive technological position;
- focus on sustainable and profitable portions of the Flash memory market;
- the ability to establish and sustain strategic relationships and alliances with key industry participants;
- the ability to manufacture products with a high degree of market acceptance and a low cost structure; and
- rapid time to market for new products, measured by the time elapsed from first conception of a new product to its commercialization.

Employees

After deconsolidation of Spansion Japan in March 2009 and combined workforce reductions of 3,200 employees in February, May and October 2009, we had approximately 3,300 employees at June 27, 2010.

Backlog

A significant portion of our sales are made from inventory on a current basis. Sales are made primarily pursuant to purchase orders for current delivery or agreements covering purchases over a period of time. These orders or agreements may be revised or canceled without penalty. Generally, in light of current industry practice and experience, we do not believe that backlog information is necessarily indicative of actual sales for any succeeding period.

Intellectual Property and Licensing

Our success depends in part on our proprietary technology. While we attempt to protect our proprietary technology through patents, copyrights and trade secrets, we believe that our success will depend more upon technological expertise, continued development of new products, and successful cost reductions achievable by improving process technologies. In addition, we have access to intellectual property through certain cross-license arrangements with AMD and Fujitsu. There can be no assurance that we will be able to protect our technology or that competitors will not be able to develop similar technology independently. We currently have a number of United States and foreign patents and patent applications. There can be no assurance that the claims allowed on any patents we hold will be sufficiently broad to protect our technology, or that any patents will issue from any application pending or filed by us. In addition, there can be no assurance that any patents issued to us will not be challenged, invalidated or circumvented or that the rights granted thereunder will provide competitive advantages to us.

Rights to Intellectual Property

We rely on a combination of protections provided by contracts, including confidentiality and non-disclosure agreements, copyrights, patents, trademarks and common law rights, such as trade secrets, to protect our intellectual property. Our U.S. patents are potentially valid and enforceable for either 17 years from the date they

were issued or 20 years from the date they were filed. Accordingly, some of our existing patents will only survive for a few more years while others will survive for approximately another 15 years. We do not believe that the expiration of any specific patent will have a material adverse effect on us. In addition, the duration of our valid and enforceable trademarks is indefinite.

AMD and Fujitsu have each contributed to us various intellectual property rights pursuant to an Amended and Restated Intellectual Property Contribution and Ancillary Matters Agreement. Under this agreement, we became owners, or joint owners with each of Fujitsu and AMD, of certain patents, patent applications, trademarks, and other intellectual property rights and technology. AMD and Fujitsu reserved rights, on a royalty-free basis, to practice the contributed patents and to license these patents to their affiliates and successors-in-interest to their semiconductor groups. AMD and Fujitsu each have the right to use the jointly-owned intellectual property for their own internal purposes and to license such intellectual property to others to the extent consistent with their non-competition obligations to us.

In connection with our reorganization in June 2003, we entered into separate patent cross-license agreements with each of AMD and Fujitsu in which we granted to AMD or Fujitsu, as applicable, and AMD or Fujitsu, as applicable, each granted to us, non-exclusive licenses under certain patents and patent applications of their semiconductor groups to make, have made, use, sell, offer to sell, lease, import and otherwise dispose of specific semiconductor-related products anywhere in the world. The patents and patent applications that are licensed are those with an effective filing date prior to the termination of our patent cross-license agreements. Each agreement will automatically terminate on June 30, 2013. Each agreement may be terminated by a party on a change in control of the other party or its semiconductor group. The licenses to patents under license at the time of the termination will survive until the last such patent expires. Beginning in November 2008, we no longer incurred royalties associated with licenses that survive the termination of the cross-license agreement.

We are party to various lawsuits, and may in the future be subject to additional claims, based on allegations that we are infringing intellectual property rights of third parties through the manufacture and sale of our products and the operation of our business. Therefore, absent negotiating our own license agreements with the third parties who own such intellectual property, we may be required to pay substantial damages and could be enjoined from selling certain of our products.

We will continue to attempt to negotiate our own agreements and arrangements with third parties for intellectual property and technology that is important to our business, including the intellectual property that we previously had access to through our relationship with AMD. We will also attempt to acquire new patents as our success in negotiating patent cross-license agreements with other industry participants will depend in large part upon the strength of our patent portfolio relative to that of the third party with which we are negotiating.

Patents and Patent Applications

As of June 27, 2010, we had 1,521 U.S. patents, 841 foreign patents and 517 patent applications pending in the United States. We expect to file future patent applications in both the United States and abroad on significant inventions, as we deem appropriate. In addition, under our cross-license agreement with AMD, AMD granted us the right to use a substantial number of patents that AMD owns. Similarly, under our cross-license agreement with Fujitsu, Fujitsu also granted us the right to use a substantial number of patents that Fujitsu owns. There can be no assurance that the claims allowed on any patents we hold will be sufficiently broad to protect our technology, or that any patents will issue from any application pending or filed by us.

Legal Proceedings

Tessera ITC Action

On April 17, 2007, Tessera, Inc. filed a complaint under section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, in the United States International Trade Commission (“ITC”) against respondents ATI Technologies, Inc., Freescale Semiconductor, Inc., Motorola, Inc., Qualcomm, Inc., Spansion Inc., Spansion LLC and

STMicroelectronics N.V. Tessera claims that “face up” and “stacked-chip” small format laminate Ball Grid Array (“BGA”) packages, including the Spansion 5185941F60 chip assembly, infringe certain specified claims of United States Patent Nos. 5,852,326 and 6,433,419 (“Asserted Patents”). The complaint requests that the ITC institute an investigation into the matter. The complaint seeks a permanent exclusion order pursuant to section 337(d) of the Tariff Act of 1930, as amended, excluding from entry into the United States all semiconductor chips with small format laminate BGA semiconductor packaging that infringe any of the Asserted Patents, and all products containing such infringing small format laminate BGA semiconductor packaged chips. The complaint also seeks a permanent cease and desist order pursuant to section 337(f) of the Tariff Act of 1930, as amended, directing respondents with respect to their domestic inventories to cease and desist from marketing, advertising, demonstrating, sampling, warehousing inventory for distribution, offering for sale, selling, distributing, licensing, or using any semiconductor chips with small format laminate BGA semiconductor packaging that infringe any of the Asserted Patents, and/or products containing such semiconductor chips. On May 15, 2007, the ITC instituted an investigation. On February 26, 2008, Administrative Law Judge Essex, who was assigned the ITC Investigation, issued an Initial Determination granting respondents’ motion for a stay of the ITC investigation pending completion of the re-examination of the Asserted Patents by the U.S. Patent and Trademark Office. On March 4, 2008, Tessera filed, with the ITC, a Petition for Review of the Initial Determination Ordering Stay. On March 27, 2008, the ITC issued an order reversing Judge Essex’s Initial Determination, and denying Respondents’ motion for a stay of the ITC investigation pending reexamination of the Asserted Patents. On December 1, 2008, Judge Essex issued an Initial Determination, ruling that the accused small-format BGA packages of Spansion Inc. and Spansion LLC and the other respondents did not infringe the asserted claims of the Asserted Patents and, therefore, Spansion Inc. and Spansion LLC and the other respondents were not in violation of section 337 of the Tariff Act of 1930. On December 15, 2008, Tessera filed with the ITC a petition to review the Initial Determination. On May 20, 2009, the ITC issued a Final Determination reversing the Initial Determination by finding that there was a violation of 19 U.S.C. § 1337 by Spansion Inc. and Spansion LLC, Qualcomm, Inc., ATI Technologies, Motorola, Inc., STMicroelectronics N.V. and Freescale Semiconductor, Inc., and determined that the appropriate form of relief is (1) a limited exclusion order under 19 U.S.C. § 1337(d)(1) prohibiting the unlicensed entry of semiconductor chips with minimized chip package size and products incorporating these chips that infringe one or more of claims 1, 2, 6, 12, 16-19, 21, 24-26, and 29 of the ‘326 patent and claims 1-11, 14, 15,19, and 22-24 of the ‘419 patent, and are manufactured abroad by or on behalf of, or imported by or on behalf of, Spansion, Qualcomm, ATI, Motorola, STMicroelectronics N.V. and Freescale; and (2) cease and desist orders directed to Motorola, Qualcomm, Freescale and Spansion. The cease and desist order directed to Spansion prohibits importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation) and soliciting U.S. agents or distributors for certain semiconductor chips that are covered by the patents asserted in the action. On June 2, 2009, Spansion and the other respondents to the investigation jointly filed with the ITC a motion to stay the effect of the ITC decision pending appeal to the U.S. Court of Appeals for the Federal Circuit (the “Federal Circuit”). On July 17, 2009, the ITC denied the motion. On July 20, 2009, Spansion appealed the ITC decision to the Federal Circuit and filed an emergency motion for stay pending appeal and immediate temporary stay. The Federal Circuit denied the stay motions on September 8, 2009. The principal brief in the Federal Circuit appeal was filed on October 30, 2009. Oral arguments for the appeal were held on June 9, 2010. On September 24, 2010, the Asserted Patents expired thereby terminating the exclusion order.

Tessera District Court Case

On October 7, 2005, Tessera, Inc. filed a complaint, Civil Action No. 05-04063, for patent infringement against Spansion LLC in the United States District Court for the Northern District of California under the patent laws of the United States of America, 35 U.S.C. section 1, et seq., including 35 U.S.C. section 271. The complaint alleges that Spansion LLC’s Ball Grid Array (BGA) and multichip packages infringe the following Tessera patents: United States Patent No. 5,679,977, United States Patent No. 5,852,326, United States Patent No. 6,433,419 and United States Patent No. 6,465,893. On December 16, 2005, Tessera filed a First Amended Complaint naming Spansion Inc. and Spansion Technology Inc., our wholly owned subsidiary, as defendants. On January 31, 2006, Tessera filed a Second Amended Complaint adding Advanced Semiconductor Engineering,

Inc., Chipmos Technologies, Inc., Chipmos U.S.A., Inc., Silicon Precision Industries Co., Ltd., Siliconware USA, Inc., ST Microelectronics N.V., ST Microelectronics, Inc., Stats Chippac Ltd., Stats Chippac, Inc., and Stats 34 Chippac (BVI) Limited. The Second Amended Complaint alleges that Spansion LLC's BGA and multichip packages infringe the four Tessera patents identified above. The Second Amended Complaint further alleges that each of the newly named defendants is in breach of a Tessera license agreement and is infringing on a fifth Tessera patent, United States Patent No. 6,133,627. The Second Amended Complaint seeks unspecified damages and injunctive relief. On February 9, 2006, Spansion filed an answer to the Second Amended Complaint and asserted counterclaims against Tessera. On April 26, 2007, Spansion, along with other defendants, filed a motion to stay the District Court action pending resolution of the proceeding before the International Trade Commission described below. On May 24, 2007, Judge Wilken issued an order staying the District Court action until final resolution of the ITC action.

There is also a related proceeding in the Bankruptcy Court regarding an estimation of damages, for the time period commencing on March 1, 2009, sought by Tessera related to the District Court case. There was a Claims Estimation proceeding hearing on this matter on January 29, 2010 before the Bankruptcy Court and on February 8, 2010, the Court estimated damages for the time period in question to be \$4,232,986.13, which amount we have placed into a segregated restricted account.

There is also a related proceeding in the Bankruptcy Court regarding an estimation of damages, for the time period prior to March 1, 2009, which the Bankruptcy Court has estimated in the amount of \$130 million for purposes of establishing a reserve in connection with our bankruptcy proceedings. Any damages related to this time period would be settled through the issuance of shares reserved in the Chapter 11 Cases.

Fast Memory Erase LLC v. Spansion Inc., et al.

On June 9, 2008, Fast Memory Erase LLC filed a complaint in the U.S. District Court for the Northern District of Texas alleging patent infringement against Spansion Inc., Spansion LLC, Intel Corp., Numonyx B.V., Numonyx, Inc., Nokia Corp., Nokia Inc., Sony Ericsson Mobile Communications AB, Sony Ericsson Mobile Communications (USA), Inc., and Motorola, Inc. Fast Memory Erase's complaint alleges that Spansion's NOR Flash products using floating gate technology infringe one or more claims of U.S. Patent No. 6,236,608 (the '608 patent). Fast Memory Erase has also asserted U.S. Patent No. 6,303,959 (the '959 patent) in its complaint against the products of other defendants, namely Intel and Numonyx, but it has not asserted the '959 patent against any Spansion products. Fast Memory Erase in its complaint is seeking: a declaration that the '608 and '959 patents are valid and enforceable; a declaration that Spansion and the other defendants have infringed the '608 and '959 patents; a declaration that the defendant's infringement was willful; an award of damages in an unspecified amount; entry of a preliminary and, thereafter, permanent injunction against the defendants for direct, active inducement, and/or contributory infringement of the '608 and '959 patents; an award of its expenses, costs and attorneys fees pursuant to 35 U.S.C. § 285; an award of increased damages in an amount not less than (3) three times the amount of damages found by the jury or assessed by the court for the defendant's willful infringement; an award of interest on its damages; and such other relief as the Court deems just and proper. Spansion has answered Fast Memory Erase's complaint and amended complaint. Spansion's answers assert that Spansion does not infringe the '608 patent and that the '608 patent is invalid. In its answers, Spansion also asserts counterclaims against Fast Memory Erase for declaratory judgments of non-infringement and invalidity. The U.S. District Court proceeded with a Markman hearing to determine the meaning of certain claims on September 16, 2009. No ruling has yet been issued as a result of the Markman hearing with respect to the '608 patent. On February 2, 2010, the judge issued a Memorandum Opinion and Order construing the claims of the '959 patent. On December 9, 2009, an order was entered staying the case as it relates to the '608 patent pending a reexamination proceeding pending in the U.S. Patent and Trademark Office (the "PTO") regarding the '608 patent.

The PTO issued a second Office Action in the ex parte reexamination for the '608 patent on March 30, 2010. The Examiner made the second Office Action final. Several claims of the '608 patent, including the claims asserted against Spansion, were rejected as being anticipated by certain prior art, and certain other dependent claims were objected to as being dependent upon a rejected base claim, but the Examiner also indicated that the

objected-to claims would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

On April 12, 2010, the U.S. District Court for the Northern District of Texas issued an Order requesting a joint status report by April 26, 2010 advising the court whether or not the stay should be lifted in light of the second Office Action issued by the PTO. On April 26, 2010, a joint status report pursuant to the Order was filed.

We believe that we have meritorious defenses against Fast Memory Erase's claims and we intend to continue to defend this proceeding vigorously.

LSI, Agere ITC Investigation

On April 18, 2008, LSI Corporation and Agere Systems, Inc. (collectively "Complainants") filed a complaint under section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, in the ITC against respondents United Microelectronics Corporation, Integrated Device Technology, Inc., AMIC Technology Corporation, Elpida Memory, Inc., Freescale Semiconductor, Inc., Grace Semiconductor Manufacturing Corporation, Microchip Technology, Inc., Micromas Semiconductor Holding, AG, National Semiconductor Corporation, Nanya Technology Corporation, NXP B.V., ON Semiconductor Corporation, Powerchip Semiconductor Corporation, ProMOS Technologies, Inc., Spansion, Inc., STMicroelectronics NV and Vanguard International Semiconductor Corporation. The complaint alleges that certain Spansion Flash products, including Spansion's 4 Mb CMOS 3.0 Volt-only Simultaneous Read/Write Flash Memory and 1 G MirrorBit NOR Flash products, infringe at least claim 1 of U.S. Patent No. 5,227,335 (the "Asserted Patent"). The complaint requests that the ITC institute an investigation into the matter. The complainant seeks a permanent exclusion order pursuant to section 337(d) of the Tariff Act of 1930, as amended, excluding from entry into the United States all semiconductor IC devices and products containing same, made by a method that infringes one or more claims of the Asserted Patent. The complainant also seeks a permanent cease and desist order pursuant to section 337(1) of the Tariff Act of 1930, as amended, directing respondents to cease and desist from importing, selling, offering for sale, using, demonstrating, promoting, marketing, and/or advertising in the United States, or otherwise transferring outside the United States for sale in the United States, semiconductor IC devices and products containing same made by a method that infringes one or more claims of the Asserted Patent. On May 16, 2008, the ITC instituted an investigation. A hearing was held July 20, 2009 through July 27, 2009. The initial determination based upon that hearing was issued on September 21, 2009. The judge held that the patent asserted by LSI and Agere is invalid and that Spansion is not a proper party to the action. On September 21, 2009, the judge issued an Initial Determination ruling that claims 1, 3, and 4 of the '335 patent were invalid due to anticipation in view of certain IBM prior art, and that LSI/Agere had not established that Spansion Inc. imported or sold a product in the United States according to an accused process. Consequently, the judge ruled that Spansion Inc. was not in violation of section 337 of the Tariff Act as accused by LSI/Agere. On March 22, 2010, the ITC issued its Final Determination and Opinion affirming the Initial Determination of the administrative law judge. On May 14, 2010, LSI/Agere filed in the United States Court of Appeals for the Federal Circuit a Notice of Appeal from the Final Determination.

We believe that we have meritorious defenses against LSI's and Agere's claims and we intend to continue to defend this proceeding vigorously.

LSI, Agere v. Spansion, Inc., et al.

On April 18, 2008, LSI Corporation and Agere Systems, Inc. filed a complaint, Civil Action No. 2—08 CV-165, in the United States District Court for the Eastern District of Texas, against defendants United Microelectronics Corporation, Integrated Device Technology, Inc., AMIC Technology Corporation, Elpida Memory, Inc., Freescale Semiconductor, Inc., Grace Semiconductor Manufacturing Corporation, Microchip Technology, Inc., Micromas Semiconductor Holding, AG, National Semiconductor Corporation, Nanya Technology Corporation, NXP B.V., ON Semiconductor Corporation, Powerchip Semiconductor Corporation, ProMOS Technologies, Inc., Spansion, Inc., STMicroelectronics NV and Vanguard International Semiconductor

Corporation (“Defendants”). The complaint alleges that certain Spansion Flash products, including Spansion’s 4 Mb CMOS 3.0 Volt-only Simultaneous Read/Write Flash Memory and 1 G MirrorBit NOR Flash products, infringe at least claim 1 of U.S. Patent No. 5,227,335 (the “Asserted Patent”). The complaint seeks a declaration that Spansion infringes the Asserted Patent, permanent injunctive relief and unspecified reasonable royalty and other damages, a trebling of damages for alleged willful conduct and attorney’s fees. On June 13, 2008 Defendants filed an Unopposed Motion to stay the Eastern District of Texas action pending resolution of an International Trade Commission investigation (“ITC”) that is described below. On June 13, 2008, Judge T. John Ward issued an order staying the Eastern District of Texas action until a final determination of the ITC investigation described below.

We believe that we have meritorious defenses against LSI’s and Agere’s claims and we intend to defend the lawsuit vigorously.

Spansion v. Samsung Patent Infringement Litigations

Samsung ITC Investigation

On November 17, 2008, Spansion Inc. and Spansion LLC filed a complaint under section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, in the United States International Trade Commission (“ITC”) against respondents Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., Samsung International, Inc., Samsung Semiconductor, Inc., and Samsung Telecommunications America, LLC, Apple, Inc., Hon Hai Precision Industry Co., Ltd., AsusTek Computer Inc., Asus Computer International, Inc., Kingston Technology Company, Inc., Kingston Technology (Shanghai) Co. Ltd., Kingston Technology Far East Co., Kingston Technology Far East (Malaysia) Sdn. Bhd., Lenovo Group Limited, Lenovo (United States) Inc., Lenovo (Beijing) Limited, Lenovo Information Products (Shenzhen) Co., Ltd., Lenovo (Huiyang) Electronic Industrial Co., Ltd., Shanghai Lenovo Electronic Co., Ltd., PNY Technologies, Inc., Research In Motion, Ltd., Research In Motion Corporation, Sony Corporation, Sony Corporation of America, Sony Ericsson Mobile Communications AB, Sony Ericsson Mobile Communications (USA), Inc., Beijing SE Putian Mobile Communication Co., Ltd., Transcend Information Inc., Transcend Information Inc. (US), Transcend Information Inc. (Shanghai Factory), Verbatim Americas LLC, and Verbatim Corporation (collectively, “Downstream Respondents”). In the ITC Complaint, Spansion alleges that Samsung and Downstream Respondents infringe United States Patent Nos. 6,376,877 and 5,715,194 (the “Asserted Patents”), which are owned by Spansion, through the unlawful importation into the United States of certain Samsung Flash memory chips. The complaint seeks a permanent general exclusion order pursuant to section 337(d) of the Tariff Act of 1930, as amended, excluding from entry into the United States the Samsung chips that infringe any of the Asserted Patents, and all products produced by Downstream Respondents that contain such chips. The complaint also seeks a permanent cease and desist order pursuant to section 337(f) of the Tariff Act of 1930, as amended, prohibiting Samsung and Downstream Respondents from importing, selling for importation, using, offering for sale, selling after importation, building inventory for distribution, distributing, licensing, or otherwise transferring within the United States, Samsung chips that infringe any of the Asserted Patents, and/or products containing such chips. On December 18, 2008, the ITC instituted an investigation. Discovery in this case is ongoing. A Markman hearing was held on November 10, 2009. No order has been issued as a result of the Markman hearing. A trial was held from May 3, 2010 through May 14, 2010. On October 22, 2010 the judge issued his Initial Determination concluding that there was no violation of 19 U.S.C. § 1337 with respect to either of the two remaining Asserted Patents.

Spansion v. Samsung District Court Action

On November 17, 2008, Spansion LLC filed a complaint, Civil Action No. 08-855-SLR, in the United States District Court for the District of Delaware, against defendants Samsung Electronics Co. LTD., Samsung Electronics America, Inc., Samsung Semiconductor, Inc., Samsung Telecommunications America, LLC, and Samsung Austin Semiconductor, LLC (“Samsung U.S.”). The complaint alleges that certain Samsung Flash memory chips infringe United States Patent Nos. 6,455,888, 6,509,232, 5,831,901, 5,991,202, 6,433,383, and 6,246,610 (the “Spansion Patents”). The complaint seeks a judgment that Samsung infringes the Spansion Patents, permanent injunctive relief and damages, a trebling of damages for alleged willful conduct, and attorney’s fees,

costs, and expenses. On January 8, 2009, Samsung U.S. answered the Complaint and asserted a number of affirmative defenses. Samsung U.S.'s answer seeks a judgment of non-infringement as well as attorney's fees, costs, and expenses in connection with defending against Spansion's claims. On January 16, 2009, Samsung answered the Complaint, asserted affirmative defenses and counterclaimed that Spansion infringes United States Patent Nos. 6,930,050, 5,748,531, 5,740,065, 5,567,987, and 5,173,442 (the "Samsung Patents"), owned by Samsung. Samsung's counterclaim seeks a judgment that Spansion infringes the Samsung Patents, permanent injunctive relief and damages, a trebling of damages for alleged willful conduct, and attorney's fees, costs, and expenses. On August 3, 2009, Samsung amended its counterclaims to remove Patent Nos. 6,930,050 and 5,740,065, from the action. On August 13, 2009, Spansion responded to Samsung's counterclaims as to the remaining patents asserted by Samsung (i.e., United States Patent Nos., 5,748,531, 5,567,987, and 5,173,442). The action is presently scheduled for trial in October 2011, and discovery is underway.

Samsung v. Spansion Japan Ltd.

On January 28, 2009, Samsung filed two patent infringement actions in the Tokyo District Court in Japan against Spansion Japan Ltd. ("Spansion Japan") alleging that certain Flash memory chips manufactured or sold by Spansion Japan infringe certain Japanese patents allegedly owned by Samsung. The actions allege infringement of Japanese patents JP 3834189 and JP 3505324. The two actions have been consolidated for trial. The complaints seek both injunctive relief and damages. On March 31, 2009, this action by Samsung against Spansion Japan was stayed pending approvals of the U.S. Bankruptcy Court and the Tokyo District Court of a settlement agreement between Spansion and Samsung. A technical hearing was held on December 18, 2009, and a subsequent hearing occurred on January 28, 2010. Additional briefing has been requested by the court, the next of which is due March 1, 2010. On August 31, 2010 the Tokyo High Court issued a decision in case H21-Wa-1986 that Spansion Japan did not infringe the Samsung patent at issue in that case.

Samsung v. Spansion ITC Investigation

On July 31, 2009, Samsung filed a patent infringement complaint with the ITC against Spansion Inc. and Spansion LLC (collectively, "Spansion"), Spansion Japan Limited, and the following downstream respondents: Alpine Electronics, Inc., Alpine Electronics of America, Inc., D-Link Corporation, D-Link Systems, inc., Slacker, Inc., Synology, Inc., Synology North America Corp., Shenzhen Egreat Co., Ltd., EGreat USA, Appro International, Inc., BenQ (Qisda), Samsung XM Radio, Kingston and Magellan (MiTAC). The ITC commissioned its investigation of Samsung's complaint on August 27, 2009. On March 17, 2010, the administrative law judge issued an Order setting a target date for completion of the Investigation on June 28, 2011. On March 23, 2010, the administrative law judge issued an Order scheduling a hearing in the Investigation from December 6-17, 2010. The stay of the Investigation was lifted on April 30, 2010.

Samsung v. Spansion International, Inc.

On July 31, 2009, Samsung Electronics Co., Ltd. commenced an action in the Fourth Civil Division of the Federal Court in Dusseldorf, Germany against Spansion International, Inc. and other third parties alleging patent infringement since March 2, 2009 of German patent DE 693 27 499 T2 (EP 0 591 009 B1). The action seeks damages in the amount of € 500,000 (approximately \$703,460 as of December 27, 2009). An initial hearing to establish the schedule for the case was set for October 20, 2009. On September 4, 2009, Spansion filed a motion seeking to enforce the automatic stay as to this action, and on November 4, 2009, the U.S. Bankruptcy Court issued an order granting Spansion's motion to stay this action. On August 27, 2010 Spansion filed a nullity action (Case no. 2 Ni 22/10 (EP)) in the Federal Patent Court in Munich, Germany seeking a decision that the patent asserted by Samsung is invalid.

Spansion LLC v. Samsung Electronics Co., Ltd., et al. (ITC)

On August 6, 2010, Spansion LLC filed a complaint (Investigation No. 337-TA-735) with the ITC seeking institution of an investigation by the ITC pursuant to Section 337 of the Tariff Act of 1930, as amended, with

respect to violations of Section 337 based on the sale for importation into the United States, importation and/or sale within the United States after importation of Samsung Chips and downstream products containing those chips that infringe one or more claims of certain Spansion U.S. Patents. The proposed Respondents in the action are Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., Samsung International, Inc., Samsung Semiconductor, Inc., Samsung Telecommunications America, LLC, Apple, Inc., BenQ Corp., BenQ America Corp., Qisda Corp., Kingston Technology Company, Inc., Kingston Technology (Shanghai) Co. Ltd., Kingston Technology Far East Co., Kingston Technology Far East (Malaysia) Sdn Bhd, MiTAC Digital Corporation (aka Magellan), MiTAC International Corporation, Nokia Corp., Nokia Inc., PNY Technologies, Inc., Research In Motion Ltd., Research In Motion Corporation, Sirius XM Radio Inc., Transcend Information Inc., Transcend Information, Inc. (US), and Transcend Information Inc. (Shanghai Factory).

The Complaint alleges infringement of U.S. Patent Nos.: 7,018,922; 6,900,124; 6,459, 625; and 6,369,416, which are owned by Spansion. The Complaint seeks issuance of a permanent general exclusion order excluding from entry into the United States Samsung Chips and downstream products containing Samsung Chips as described and claimed in Spansion's Patents, a permanent limited exclusion order excluding from entry into the United States Samsung Chips and all Respondents' downstream products containing Samsung Chips as described and claimed in Spansion's Patents, and a permanent cease and desist order prohibiting the importation, sale for importation, use, offering for sale, sale after importation, inventory for distribution, distribution, licensing, or otherwise transferring within the United States Samsung Chips and downstream products containing Samsung Chips.

On September 7, 2010, the ITC issued a Notice of Investigation advising us that it has instituted an investigation based upon the Complaint filed by Spansion.

On October 7, 2010 the judge issued an order establishing the procedural schedule in this action. The order sets certain procedural due dates including June 20, 2011 as the trial date, September 12, 2011 as the due date for the Initial Determination, and January 12, 2012 as the Target Date for completion of the investigation.

Spansion LLC v. Samsung Electronics Co., Ltd., et al (N.D. Cal.)

On August 6, 2010, Spansion LLC filed a complaint in the U.S. District Court for the Northern District of California—San Jose Division (CV 10-03446 JCS) for patent infringement against Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., Samsung Telecommunications America, LLC, and Samsung Austin Semiconductor, LLC ("Samsung Defendants"). The complaint alleges infringement of U.S. Patent Nos.: 7,018,922; 6,900,124; 6,459, 625; and 6,369,416, which are owned by Spansion ("Spansion Patents").

The Complaint seeks entry of a judgment that:

- the Samsung Defendants have infringed the Spansion Patents;
- the infringement of the Spansion Patents has been willful;
- the Samsung Defendants be preliminarily and permanently enjoined from infringement of the Spansion Patents;
- Spansion be awarded compensatory damages, together with prejudgment interest and costs;
- Spansion be awarded treble damages for willful past infringement;
- This case be adjudged an exceptional case under 35 U.S.C. § 285 in favor of Spansion and that Spansion be awarded its costs, attorneys' fees, and all other expenses incurred in this action; and
- Spansion be awarded such other relief as the Court deems just and proper.

The Samsung Defendants have not yet answered the Complaint.

Spansion LLC v. Samsung Electronics Co., Ltd, et al (E.D. Va.)

On August 6, 2010, Spansion LLC filed a complaint in the U.S. District Court for the Eastern District of Virginia—Alexandria Division (1-10 CV 881 CMH/JFA) for patent infringement against Samsung Electronics

Co., Ltd., Samsung Electronics America, Inc., Samsung Telecommunications America, LLC, and Samsung Austin Semiconductor, LLC (“Samsung Defendants”). The complaint alleges infringement of U.S. Patent Nos.: 7,151,027; 6,359,307; and 6,232,630, which are owned by Spansion (“Spansion Patents”).

The Complaint seeks entry of a judgment that:

- the Samsung Defendants have infringed the Spansion Patents;
- the infringement of the Spansion Patents has been willful;
- the Samsung Defendants be preliminarily and permanently enjoined from infringement of the Spansion Patents;
- Spansion be awarded compensatory damages, together with prejudgment interest and costs;
- Spansion be awarded treble damages for willful past infringement;
- This case be adjudged an exceptional case under 35 U.S.C. § 285 in favor of Spansion, and that Spansion be awarded its costs, attorneys’ fees, and all other expenses incurred in this action; and
- Spansion be awarded such other relief as the Court deems just and proper.

The Samsung Defendants have not yet answered the Complaint. Samsung filed a motion to transfer this case to the Northern District of California. A hearing on this motion was held on October 22, 2010 at which the judge denied the motion.

Spansion LLC v. Samsung Electronics Co., Ltd, et al (W.D. Wi.)

On August 13, 2010, Spansion LLC filed a complaint in the U.S. District Court for the Western District of Wisconsin (Civil Action No. 3:10-cv-453) for patent infringement against Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., Samsung Telecommunications America, LLC, and Samsung Austin Semiconductor, LLC (“Samsung Defendants”). The complaint alleges infringement of U.S. Patent Nos.: 5,793,677 (“Spansion Patent”).

The Complaint seeks entry of a judgment that:

- the Samsung Defendants have infringed the Spansion Patent;
- the infringement of the Spansion Patent has been willful;
- the Samsung Defendants be preliminarily and permanently enjoined from infringement of the Spansion Patent;
- Spansion be awarded compensatory damages, together with prejudgment interest and costs;
- Spansion be awarded treble damages for willful past infringement;
- This case be adjudged an exceptional case under 35 U.S.C. § 285 in favor of Spansion, and that Spansion be awarded its costs, attorneys’ fees, and all other expenses incurred in this action; and
- Spansion be awarded such other relief as the Court deems just and proper.

The Samsung Defendants have not yet answered the Complaint.

Creditor Proceedings

Many creditors initiated proceedings against one or more of the Debtors referred to in the Chapter 11 Cases to collect amounts allegedly due those creditors. After the filing date of the petition, all actions to enforce or otherwise effect payment or repayment of liabilities of any Debtor preceding the Petition Date, as well as pending litigation against any Debtor, are stayed as of the Petition Date. Absent further order of the applicable courts and subject to certain exceptions, no party may take any action to recover on pre-petition claims against any Debtor.

MANAGEMENT

The following table presents information with respect to our board of directors (the Board) and executive officers as of October 1, 2010.

Name	Age	Position(s)
John H. Kispert	47	President, Chief Executive Officer and Director
Raymond Bingham	64	Chairman of the Board of Directors
Eugene I. Davis	55	Director
Hans Geyer	59	Director
Paul Mercadante	49	Director
Ajay Shah	51	Director
Clifton Thomas Weatherford	64	Director
Randy W. Furr	56	Executive Vice President and Chief Financial Officer
Jim Reid	56	Executive Vice President, Sales and Marketing
Ahmed Nawaz	60	Executive Vice President, Wireless Solutions Group

John H. Kispert has served as a Class III Director since May 10, 2010 and shall hold office for an initial term expiring at the annual meeting of stockholders to be held in 2013. Mr. Kispert previously served as a Class A Director from February 2009 to May 2010. Mr. Kispert has served as President and Chief Executive Officer of Spansion since February 2009. Mr. Kispert also served as Interim Chief Financial Officer from April 29, 2009 through May 19, 2009. From 1995 through January 2009, Mr. Kispert served in a number of finance and operational roles at KLA-Tencor, a supplier of semiconductor manufacturing process control and yield management solutions, including serving as President and Chief Operations Officer from January 2006 to January 2009 and also serving as Executive Vice President and Chief Financial Officer from March 2000 to December 2005. In 2004, Mr. Kispert also assumed responsibility for Global Service Business, Information Technology and Human Resources at KLA-Tencor. Prior to KLA-Tencor, Mr. Kispert held several senior management positions with IBM. Mr. Kispert has served as a director of Extreme Networks, Inc., a network hardware company, since May 2009. Mr. Kispert holds a Master of Business Administration degree from the University of California, Los Angeles and a Bachelor of Arts degree in Political Science from Grinnell College. Our Board of Directors has concluded that Mr. Kispert should serve on the Board based on Mr. Kispert's significant senior leadership, industry, financial and operational experience. In addition, as Spansion's President and Chief Executive Officer, Mr. Kispert has direct responsibility for Spansion's strategy and operations.

Raymond Bingham has served as Chairman of the Board and a Class III Director since May 10, 2010 and shall hold office for an initial term expiring at the annual meeting of stockholders to be held in 2013. Mr. Bingham is the Chairman of the Compensation Committee and a member of the Nominating and Corporate Governance Committee. Mr. Bingham has served as a Managing Director of General Atlantic LLC, a global private equity firm, since November 2006. From August 2005 to October 2006, Mr. Bingham was a self-employed private investor. He was Executive Chairman of the Board of Directors of Cadence Design Systems, Inc., a supplier of electronic design automation software and services, from May 2004 to July 2005 and served as a director of Cadence from November 1997 to July 2005. Prior to being Executive Chairman, he served as President and Chief Executive Officer of Cadence from April 1999 to May 2004 and as Executive Vice President and Chief Financial Officer from April 1993 to April 1999. He has served as a director and as a member of the Finance and Audit Committee of Oracle Corporation, a database software company, since November 2002, and has served as a member and Chairman of its Committee on Independence Issues since July 2003 and as a member and Chairman of its Governance Committee since August 2005. Mr. Bingham is also a director at Flextronics International Ltd., an electronics manufacturing services provider, STMicroelectronics N.V., a semiconductor manufacturing company, and Dice Holdings, Inc., a supplier of specialized websites for professional communities. Mr. Bingham received a Master of Business Administration degree from the Harvard Business School and a Bachelor of Science degree in Economics (with Honors) from Weber State University. Our Board of Directors has concluded that Mr. Bingham should serve on the Board based on Mr. Bingham's

extensive and significant senior leadership, industry and financial experience, and his service as a public company director on the boards and board committees of technology companies.

Eugene I. Davis has served as a Class I Director since May 10, 2010 and shall hold office for an initial term expiring at the annual meeting of stockholders to be held in 2011. Mr. Davis is a member of the Nominating and Corporate Governance Committee. Since 1999, Mr. Davis has served as the Chairman and Chief Executive Officer of PIRINATE Consulting Group, LLC, a business consultancy, which he founded, and where he has managed numerous debtor and creditor side restructuring assignments. Prior to PIRINATE, Mr. Davis served as Chief Operations Officer of Total-Tel Communications, Inc., an integrated communications service provider. Previously, Mr. Davis served as President, Vice Chairman and director of Emerson Radio Corp, a consumer electronics distributor, where he was responsible for numerous post-bankruptcy restructuring and strategic business activities. Mr. Davis also practiced law as a partner/shareholder and head of the Corporate Securities Practice for Holmes, Millard & Duncan, P.C., and as a partner at Arter & Hadden LLP. Mr. Davis received a Bachelor of Arts degree in International Politics and a Master of International Affairs degree from Columbia University. Our Board of Directors has concluded that Mr. Davis should serve on the Board based on Mr. Davis's extensive and significant senior leadership, legal background and experience, and his debtor and creditor side restructuring and financial experience.

Hans Geyer has served as a Class II Director since May 10, 2010 and shall hold office for an initial term expiring at the annual meeting of stockholders to be held in 2012. Mr. Geyer is a member of the Compensation Committee and the Audit Committee. Since December 2006, Mr. Geyer has been a consultant for the private equity industry. Mr. Geyer served as Corporate Vice President and General Manager of Intel Corporation's Storage Group from 2005 until his retirement in December 2006, and as General Manager, Networking and Storage Group from 2004 to 2005. In 1995, Mr. Geyer was elected Vice President of Intel and in 1993, was appointed Vice President of Intel's Microprocessor Group. Mr. Geyer joined Intel in 1980 and has since held various positions, including general manager of European Operations, general manager of the 386/486 microprocessor division, general manager of the FLASH memory group, and general manager of the cellular and application processor group. Prior to joining Intel, Mr. Geyer was involved in hardware and software development for intelligent and point-of-sales terminals at Siemens AG, Germany. He served as a director of Trident Microsystems, Inc. from May 2007 to February 2010. Mr. Geyer studied computer science and mathematics at the Technical University of Munich and holds a master's degree (Diplom-Informatiker) in Computer Science. He is also an alumnus of INSEAD. Our Board of Directors has concluded that Mr. Geyer should serve on the Board based on Mr. Geyer's extensive and significant senior leadership, extensive industry and technical experience related to Spansion's semiconductor research and development, and his service on the boards and board committees of technology companies.

Paul Mercadante has served as a Class I Director since May 10, 2010 and shall hold office for an initial term expiring at the annual meeting of stockholders to be held in 2011. Mr. Mercadante is Chairman of the Nominating and Corporate Governance Committee and a member of the Audit Committee. Mr. Mercadante joined Silver Lake, a private equity firm, in 2007 and is a Managing Director in the firm's middle market strategy, Silver Lake Sumeru. Previously, he was at Shah Capital Partners, a private equity firm, where he served as Operating Partner from 2004 to 2006. Prior to Shah Capital Partners, Mr. Mercadante was President of Force Computers, a leading provider of embedded computing systems and a wholly owned subsidiary of Solectron, Inc., which was subsequently sold to Motorola, Inc. in 2004. Prior to his service at Force Computers, he was the Vice President of Strategic Planning for the Technology Solutions Business Unit of Solectron, an electronics manufacturing services provider that was subsequently acquired by Flextronics. Mr. Mercadante also has previous experience with SMART Modular Technologies, Rose Communications, Activision and Apex Data. He currently is a director at Ingenient Technologies, a provider of embedded multimedia systems solutions, PulseCore, a semiconductor design company, Magellan, a portable GPS navigation consumer electronics company, and Mobile Messenger, a mobile technology solutions provider. Mr. Mercadante holds a Bachelor of Arts degree in Economics from the State University of New York. Our Board of Directors has concluded that Mr. Mercadante should serve on the Board based on Mr. Mercadante's extensive experience in venture capital and finance, and his service on the boards and board committees of technology companies.

Ajay Shah has served as a Class III Director since May 10, 2010 and shall hold office for an initial term expiring at the annual meeting of stockholders to be held in 2013. Mr. Shah is a member of the Compensation Committee. Mr. Shah joined Silver Lake in 2007 as the Managing Director to found and develop the private equity firm's middle market strategy, Silver Lake Sumeru. Prior to joining Silver Lake, Mr. Shah was at Shah Capital Partners, which he formed in 2004 and where he served as the Managing Partner. Prior to that, Mr. Shah formed Shah Management, a technology business services company, in 2003, and founded and managed the Technology Solutions Business of Solectron. Mr. Shah was previously the Chief Executive Officer of SMART Modular Technologies, a computer memory hardware manufacturing company, which he co-founded in 1989 and led through its public offering in 1995. Mr. Shah is a director at several companies, including TES Electronic Solutions, a custom electronics design and manufacturing company, C-MAC MicroTechnology, an electronics design company, Power-One, a high-efficiency power solutions company, Ashtech, a mapping technology company, AVI-SPL, Inc., an audio/video system design and installation company, and Mobile Messenger, and is Chairman of the Board at SMART Modular. Mr. Shah received a bachelor's degree in Engineering from the Maharaja Sayajirao University of Baroda and a Master of Science degree in Engineering Management from Stanford University. Our Board of Directors has concluded that Mr. Shah should serve on the Board based on Mr. Shah's extensive experience in venture capital and finance, his experience in the technology industry, and his service on the boards and board committees of technology companies.

Clifton Thomas Weatherford has served as a Class II Director since May 10, 2010 and shall hold office for an initial term expiring at the annual meeting of stockholders to be held in 2012. He is Chairman of the Audit Committee. Mr. Weatherford served as Executive Vice President and Chief Finance Officer at Business Objects, a provider of business intelligence software, from September 1997 until his retirement in January 2003. Mr. Weatherford brings over 37 years in global technology expertise with senior financial positions at Business Objects, NETCOM On-Line Communication Services, Logitech, Texas Instruments, Schlumberger and Tandem Computers. Mr. Weatherford is a director at several public companies, including Tesco Corporation, an oil and gas drilling industry services company, Advanced Analogic Technologies, a semiconductor manufacturing company, SMART Modular Technologies, and Mellanox Technologies, a supplier of high-bandwidth computer hardware, as well as several private companies. Mr. Weatherford holds a Bachelor of Business Administration degree in Finance from the University of Houston in Texas. Our Board of Directors has concluded that Mr. Weatherford should serve on the Board based on Mr. Weatherford's extensive and significant senior leadership, industry and financial experience, and his service as a public company director on the boards and board committees of technology companies and as a public company executive.

Randy W. Furr has served as Spansion's Executive Vice President and Chief Financial Officer since June 2009. Mr. Furr has 30 years of experience in the technology sector and is an experienced financial and operations executive. Most recently, Mr. Furr held senior executive positions as Executive Vice President and Chief Financial Officer at Magellan Navigation, Inc. from August 2008 to June 2009, and as Chief Operating Officer and Chief Financial Officer at Aliph, a consumer Bluetooth telephony device company, from April 2008 to August 2008. Prior to that, Mr. Furr was at Adobe Systems, Inc., where he served as Senior Vice President, Business Process Improvement from May 2007 to January 2008, as Senior Vice President and Interim Chief Information Officer from November 2006 to May 2007, and as Executive Vice President and Chief Financial Officer from May 2006 to November 2006. Before joining Adobe Systems, Inc., Mr. Furr spent 13 years at Sanmina-SCI Corporation, an electronics manufacturing services provider, where he served as President and Chief Operating Officer from 1996 to 2005, and as Executive Vice President and Chief Financial Officer from 1992 to 1996. Mr. Furr holds a Bachelor of Business Administration degree from the University of Oklahoma.

Jim Reid has served as Spansion's Executive Vice President, Sales and Marketing, since September 2010. From May 2010 until September 2010, Mr. Reid served as Spansion's Executive Vice President, Marketing. Mr. Reid brings 25 years of experience in senior management, sales and marketing, business development and semiconductors to his role. Prior to joining Spansion, he worked with several venture capital firms serving in executive and senior management positions at several semiconductor and software companies. Mr. Reid served as a general partner at Westport Partners, a venture capital firm, from October 2006 to March 2010. During his

time at Westport, Mr. Reid also served as the Senior Vice President, Sales Marketing and Business Development, at DVDPlay Corp, a DVD rental kiosk development and manufacturing company, from October 2006 to August 2008, when the company was sold to NCR, a consumer service technology company. He served as President and CEO at Encentuate Corp, an enterprise identity and access management company, from December 2005 to October 2006, when the company was sold to IBM. Mr. Reid served as the Vice President, Worldwide Sales, Business Development, Customer Care and Professional Services at Wolfe Ventures, a venture capital firm, and Liberty Venture Partners, a venture capital firm, from January 2003 to June 2005. Mr. Reid has also held key sales and marketing positions at Fujitsu Microelectronics, Adaptec, LSI Logic, AMD and Intel Corporation. Mr. Reid holds a Bachelor of Science degree from The University of California and a Master of Business Administration degree from Santa Clara University.

Ahmed Nawaz has served as Spansion's Executive Vice President, Wireless Solutions Group, since September 2010. From April 2010 until September 2010, Mr. Nawaz served as Spansion's Executive Vice President, Worldwide Sales. From July 2009 until April 2010, Mr. Nawaz served as Spansion's Executive Vice President, Worldwide Sales and Marketing. From November 2006 to July 2009, Mr. Nawaz was Spansion's Executive Vice President, Wireless Solutions Division. Prior to joining Spansion, Mr. Nawaz was an independent management consultant from January 2006 to November 2006. From March 2001 to December 2005, he was Executive Vice President of worldwide sales at Agere Systems, an integrated circuit components company. Prior to that, Mr. Nawaz was President of Worldwide Sales, Strategy and Business Development, from April 2000 to March 2001, and President, Integrated Circuits Division, from June 1998 to April 2000, of Lucent's Microelectronics and Communications Technologies Group. He joined AT&T in 1992 and moved to Lucent following its spin-off from AT&T in 1996. Mr. Nawaz also spent 14 years in various engineering, marketing and general management positions in Texas Instruments Incorporated's semiconductor group. Mr. Nawaz has served as a director of Digi International, a supplier of wireless machine-to-machine and commercial grade device networking, since 2006. Mr. Nawaz holds a Master of Science degree in Electrical Engineering from the University of Missouri and a Master of Business Administration degree from Houston Baptist University.

Section 16(a) Beneficial Ownership Reporting Compliance

Section 16(a) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), requires our directors and executive officers (as defined under Section 16) and any persons holding more than ten percent of a registered class of equity securities to file reports of ownership and changes in ownership with the SEC. Their initial reports must be filed using Form 3 and they must report subsequent stock purchases, sales, option exercises and other changes using Form 4, which must be filed within two business days of most transactions. In some cases, such as changes in ownership arising from gifts and inheritances, the SEC allows delayed reporting at year-end on Form 5. Executive officers, directors and persons who beneficially own more than ten percent of a registered class of our equity securities are required by SEC regulations to furnish us with copies of all reports they file pursuant to Section 16(a). We make the services of our legal department available to our executive officers and directors to assist them in meeting their filing obligations.

Based solely on our review of these reports and written representations from our directors and executive officers, we believe that during fiscal 2009, each of Spansion's directors, executive officers and ten percent security-holders complied with all applicable Section 16(a) filing requirements, other than Mr. Furr, who made a late Form 3 filing due to an administrative error by Spansion.

Codes of Business Conduct and Ethics

The Board of Directors has adopted a code of conduct entitled "Code of Business Conduct," which applies to all directors and employees and which was designed to help directors and employees resolve ethical and compliance issues encountered in the business environment. The Code of Business Conduct governs matters such as conflicts of interest, compliance with laws, confidentiality of company information, encouraging the reporting of any illegal or unethical behavior, fair dealing and use of company assets. The Board of Directors has also

adopted a Code of Ethics for the Chief Executive Officer, the Chief Financial Officer, the Corporate Controller and All Other Senior Finance Executives. This Code of Ethics governs matters such as financial reporting, conflicts of interest and compliance with laws, rules, regulations and Spansion’s policies.

Stockholders can access Spansion’s Principles of Corporate Governance, Code of Business Conduct and Code of Ethics at the Investor Relations page of our website at www.spansion.com or by writing to us at Corporate Secretary, Spansion Inc., 915 DeGuigne Drive, P.O. Box 3453, Sunnyvale, California 94088, or emailing us at Corporate.Secretary@spansion.com. We will provide this information free of charge. Please note that information contained on our website is not incorporated by reference in, or considered to be a part of, this document and the inclusion of our website address in this offering memorandum is an inactive textual reference only. We will post on our website any amendment to the Code of Ethics, as well as any waivers of the Code of Ethics, that are required to be disclosed by the rules of the SEC or the New York Stock Exchange.

Board of Directors

Our Board of Directors currently consists of seven directors. Our Certificate of Incorporation provides that the Board of Directors consists of three classes of directors, each serving staggered three-year terms. At each annual meeting of stockholders, directors will be elected for a term of three years to succeed those directors whose terms are expiring.

Our Certificate of Incorporation also provides that the holders of Class A Common Stock, voting together as a separate class, are entitled to vote for all Class A Directors and holders of Class B Common Stock, voting together as a separate class, are entitled to vote for all Class B directors.

Our Board of Directors is currently composed of the following classes of directors:

<u>Class</u>	<u>Expiration</u>	<u>Member</u>	<u>Voting Class</u>
Class I	2011	Eugene Davis	Class A
		Paul Mercadante	Class B
Class II	2012	Hans Geyer	Class A
		Clifton Thomas Weatherford	Class A
Class III	2013	Ajay Shah	Class B
		Raymond Bingham	Class A
		John Kispert	Class A

Board Leadership Structure

Currently, Mr. Kispert serves as President and Chief Executive Officer and Mr. Bingham, an independent director, serves as Chairman of the Board of Directors. The Board believes that Spansion and its stakeholders are best served at this time by this leadership structure because it is valuable to have strong independent leadership to assist the Board in fulfilling its role of overseeing the management of Spansion and its risk management practices separate from the CEO. However, the Principles of Corporate Governance permit the roles of the Chairman and the CEO to be filled by the same or different individuals. This provides the Board with flexibility to determine whether the two roles should be combined in the future based on Spansion’s needs and the Board’s assessment of Spansion’s leadership from time to time. The Principles of Corporate Governance provide for a lead independent director if the roles are combined.

Nominating and Corporate Governance Committee

The Nominating and Corporate Governance Committee consists of Mr. Mercadante as Chair, Mr. Bingham, Mr. Weatherford and Mr. Davis, each of whom was determined by the Board of Directors to be “independent” in accordance with Nasdaq and NYSE rules. The Nominating and Corporate Governance Committee assists the

Board with its oversight responsibilities regarding the identification of qualified candidates to become Board members, the selection of nominees for election as directors at the next Annual Meeting of Stockholders (or special meeting of stockholders at which directors are to be elected), the selection of candidates to fill any vacancies on the Board, the selection of Board members for each committee of the Board, the development and recommendation to the Board of a set of applicable corporate governance guidelines and principles and oversight of the evaluation of the Board. In seeking candidates to determine if they are qualified to become Board members, the Nominating and Corporate Governance Committee looks for the following attributes, which, among others, the Nominating and Corporate Governance Committee deems appropriate: personal and professional integrity, ethics and values; experience in corporate management, such as serving as an officer or former officer of a publicly held company; experience serving as a director of a privately or publicly held company; experience in our industry and with relevant social policy concerns; ability to make independent analytical inquiries; academic expertise in an area of our operations; and practical and mature business judgment. The Nominating and Corporate Governance Committee has established minimum criteria for evaluating prospective director candidates. In addition, the Nominating and Corporate Governance Committee considers a number of other factors, including whether the prospective director nominee will foster a diversity of skills and experiences and will add to or complement the Board's existing strengths. The Nominating and Corporate Governance Committee will use the same standards to evaluate all director candidates, whether or not the candidates are proposed by stockholders. There have been no material changes to the process by which stockholders can nominate directors for election to the Board.

Audit Committee

The Audit Committee, which has been established in accordance with Section 3(a)(58)(A) of the Exchange Act currently consists of Mr. Weatherford, as Chair, Mr. Geyer and Mr. Mercadante, each of whom was determined by the Board of Directors to be financially literate and "independent" as such term is defined for Audit Committee members by Nasdaq and NYSE listing standards. The Board has designated Mr. Weatherford as the Audit Committee's financial expert.

The Audit Committee assists the Board with its oversight responsibilities regarding our accounting and financial reporting processes, the audit of our financial statements, the integrity of our financial statements, our internal accounting and financial controls, our compliance with legal and regulatory requirements, the independent registered public accounting firm's qualifications and independence and the performance of our internal audit function and the independent registered public accounting firm. The Audit Committee is also directly responsible for the appointment, compensation, retention and oversight of the work of the independent registered public accounting firm, which reports directly to the Audit Committee. The Audit Committee meets alone with our financial and legal personnel, our internal auditor and with our independent registered public accounting firm, who have free access to the Audit Committee at any time. The Vice President of our Internal Audit Department reports directly to the Audit Committee, confers regularly with our Chief Financial Officer and serves a staff function for the Audit Committee.

Compensation Committee

The compensation committee consists of Messrs. Bingham, as Chair, Geyer and Shah, each of whom was determined by the board to be "independent" in accordance with Nasdaq and NYSE listing standards. The role of the Compensation Committee is to oversee our compensation strategies and programs for our executive officers. The compensation committee has the authority to determine the form and amount of compensation to be paid or awarded to all our executive officers and to all other employees as delegated from time to time by the board of directors. The compensation committee's responsibilities, among other things, include (i) reviewing and approving the corporate goals and objectives relevant to chief executive officer compensation and evaluating chief executive officer performance in light of those goals and objectives, (ii) reviewing and approving the corporate goals and objectives relevant to non-CEO executive officer compensation, (iii) reviewing and making recommendations to the board of directors with respect to the adoption and approval of, or amendments to, all

umbrella cash-based plans, incentive compensation plans and equity-based compensation plans and approving for submission to stockholders all new stock option and equity compensation plans, (iv) providing oversight with respect to succession planning for the chief executive officer and other executive officers, and (v) reviewing and making recommendations to the board of directors with respect to all forms and amounts of compensation for members of the board of directors.

Compensation Committee Interlocks and Insider Participation

The individuals who served as members of the Compensation Committee during fiscal 2009 were Messrs. Lucas, Stich and Delfassy (until his resignation from the Board in October 2009). No member of that Compensation Committee (or the current Compensation Committee) was at any time during fiscal 2009 or at any other time an officer or employee of Spansion, and no member had any relationship with Spansion requiring disclosure under Item 404 of Regulation S-K. None of our executive officers has served on the board of directors or compensation committee of any other entity that has or has had one or more executive officers who served as a member of the Board of Directors or the Compensation Committee during fiscal 2009.

COMPENSATION DISCUSSION AND ANALYSIS

Executive Compensation

Introduction

This Compensation Discussion and Analysis presents material information necessary to understand the objectives and policies of our compensation program for executive officers. Throughout this discussion, those individuals named in the Fiscal 2009 Summary Compensation Table beginning on page 98 are referred to as the “Named Executive Officers” and the Compensation Committee of the Board of Directors is referred to as the “Committee.”

Challenges for 2009

Beginning in the third quarter of 2008, Spansion implemented a series of significant cash management measures in response to the severe economic downturn that was occurring. Spansion continued implementing these cash management measures throughout 2009. On March 1, 2009, Spansion Inc. and several of its subsidiaries filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code. The Chapter 11 Cases and the cash management measures have affected the way in which we have compensated employees, including our Named Executive Officers. In January 2009, the Committee approved management’s recommendation for Spansion to forego annual merit salary increases and stock awards for fiscal 2009 for all employees, including the Named Executive Officers. On April 16, 2010, the U.S. Bankruptcy Court confirmed the Plan of Reorganization. Under the Plan of Reorganization, all of our then existing equity securities, including all shares of our Old Common Stock and stock option awards to purchase shares of our Old Common Stock were cancelled upon our emergence from the Chapter 11 Cases on May 10, 2010.

In 2009, there were some significant changes in the employment of our Named Executive Officers. In February 2009, Dr. Bertrand F. Cambou, formerly the President and Chief Executive Officer of Spansion, resigned from his position. Following Dr. Cambou’s resignation, Dr. Boaz Eitan, who was an Executive Vice President and member of the Board of Directors, briefly served as Interim President until the appointment of Mr. John H. Kispert as our new President and Chief Executive Officer. Dr. Eitan continued to serve as a member of the Board of Directors until our emergence from the Chapter 11 Cases on May 10, 2010. In addition, in April 2009, Mr. Dario Sacomani resigned as Executive Vice President and Chief Financial Officer and took a personal leave of absence. Following Mr. Sacomani’s resignation in April 2009, Ms. Thora Thoroddsen was appointed as our Interim Chief Financial Officer as a consultant. Ms. Thoroddsen resigned after a two week period due to an ongoing pre-existing business relationship between Ernst & Young LLP, then our independent registered public accounting firm, and Brincko Associates, the consulting firm through which Ms. Thoroddsen was engaged. Upon Ms. Thoroddsen’s resignation, Mr. Kispert served as Interim Chief Financial Officer until later in April 2009 when Mr. Nathan M. Sarkisian was appointed as Interim Chief Financial Officer as a consultant. Mr. Sarkisian served until June 2009 when Mr. Randy W. Furr was hired as our new Executive Vice President and Chief Financial Officer. All employment-related agreements with the Named Executive Officers are described below.

Roles and Responsibilities

The role of the Committee is to oversee Spansion’s compensation strategies and programs for our executive officers, including total compensation for the Named Executive Officers. The role of Spansion’s management is to review Spansion’s executive compensation programs, policies and governance and make recommendations regarding these matters. Management is responsible for, among other things:

- Reviewing the effectiveness of the compensation programs, including competitiveness and alignment with Spansion’s objectives;
- recommending changes to compensation programs, as may be required, to ensure achievement of all program objectives; and

- recommending salaries, bonuses and other awards for Named Executive Officers other than the Chief Executive Officer.

The Committee is authorized to engage its own independent advisors to provide advice on matters related to executive compensation and general compensation programs. In August 2008, the Committee engaged Compensia, Inc., or Compensia, as its independent compensation consultant to provide data and expertise related to the composition of the group of publicly traded semiconductor industry companies with which we compete for talent, or the Compensation Peer Group. At the Committee's request, Compensia attended the Committee's September 2008 meeting in which the 2009 Compensation Peer Group, or the Initial Compensation Peer Group, was determined. In April 2009, in light of the Chapter 11 Cases and Spansion's changed business operations, Spansion engaged Watson Wyatt Worldwide, Inc. to provide advice to the Committee and management with regard to, among other things, compensation programs and the composition of a new 2009 Compensation Peer Group, or the Final Compensation Peer Group.

All other analyses related to executive compensation were conducted internally, relying primarily on data from Radford Associates, which provides compensation and benefits data specializing in the high technology sector and Equilar, Inc., which provides executive compensation information based on publicly available information contained in SEC filings. Internal analyses included gathering and analyzing data, and reviewing and advising on principal aspects of executive compensation. Base salaries and bonuses for executive officers were among the items reviewed.

Compensation Program Philosophy and Objectives

Spansion has a market-based, "pay for performance" compensation philosophy that is designed to both attract and retain talented Named Executive Officers while supporting our business strategy. In line with that philosophy, a significant percentage of the total potential compensation for the Named Executive Officers is performance-based. We do not have a pre-established policy or target for allocating between cash and non-cash or short-term and long-term incentive compensation. Rather, the Committee periodically reviews relevant market data to determine the appropriate components of, and level for, the Named Executive Officers' compensation.

The compensation program for the Named Executive Officers is designed to:

- Recognize and reward executives for achieving both company and individual performance objectives in support of Spansion's business strategy;
- Provide competitive pay opportunities relative to the Compensation Peer Group;
- Align the respective interests of the Named Executive Officers and our stockholders through compensation that varies based on achievement of financial objectives; and
- Maintain flexible pay programs that can be modified to respond to changes in competitive trends and Spansion's business strategy and financial position.

Setting Compensation

Generally, we set compensation for the Named Executive Officers in the same manner used to set compensation for our other executive officers. Details regarding the specific compensation for each of our Named Executive Officers are set forth in the Fiscal 2009 Summary Compensation Table beginning on page 98.

Competitive Market Data

In September 2008, based on the review and recommendations presented by Compensia, and in consultation with Compensia, the Committee reviewed and approved the Initial Compensation Peer Group to be used for benchmarking and for setting executive compensation for fiscal 2009. The Committee considered companies

within the semiconductor industry that have revenue, net income, number of employees, market capitalization, location and scope of international operations similar to our corresponding components. The Committee will continue to periodically review and update the Compensation Peer Group, as appropriate.

Based on the cited criteria, including a significant drop in Spansion's market capitalization, ten companies (Altera Corporation; Analog Devices, Inc., Juniper Networks, Inc., KLA-Tencor Corporation; Lam Research Corporation; Linear Technology Corporation; Maxim Integrated Products, Inc., Novellus Systems, Inc., NVIDIA Corporation; and Xilinx, Inc.) were removed from our 2008 Compensation Peer Group, and seven companies (Conexant Systems, Inc., Integrated Device Technology, Inc., Micron Technology, Inc., RF Micro Devices, Inc., Skyworks Solutions, Inc., SMART Modular Technologies, Inc. and Vishay Intertechnology, Inc.) were added to the group. The Initial Compensation Peer Group established in September 2008 for fiscal 2009 is as follows:

- Amkor Technology, Inc.
- Atmel Corporation
- Conexant Systems, Inc.
- Cypress Semiconductor Corporation
- Fairchild Semiconductor Corporation
- Integrated Device Technology, Inc.
- LSI Corporation
- Micron Technology, Inc.
- National Semiconductor Corporation
- ON Semiconductor
- RF Micro Devices, Inc.
- SanDisk Corporation
- Skyworks Solutions, Inc.
- SMART Modular Technologies, Inc.
- Vishay Intertechnology, Inc.

As a result of Spansion's changed business circumstances during the Chapter 11 Cases, in June 2009, the Committee reevaluated the Initial Compensation Peer Group. Taking into consideration advice from Watson Wyatt, Spansion's lower revenue, net income and market capitalization, and Spansion's smaller number of employees and anticipated geographical footprint, seven companies (Amkor Technology, Inc., Conexant Systems, Inc., LSI Corporation, ON Semiconductor Corp., RF Micro Devices, Inc., SMART Modular Technologies, Inc., and Vishay Intertechnology, Inc.) were removed from our prior Compensation Peer Group, and four companies (Altera Corporation, International Rectifier Corporation, Intersil Corporation and Numonyx B.V.) were added to the group. The Committee established the Final Compensation Peer Group as follows:

- Altera Corporation
- Atmel Corporation
- Cypress Semiconductor Corporation
- Fairchild Semiconductor Corporation
- Integrated Device Technology, Inc.
- International Rectifier Corporation
- Intersil Corporation
- Micron Technology, Inc.
- National Semiconductor Corp.
- Numonyx B.V.
- SanDisk Corporation
- Skyworks Solutions, Inc.

Market Positioning

Total compensation for the Named Executive Officers, taking into consideration the market data for base salary, bonus and equity awards, has historically been referenced between the 50th and 60th percentiles for compensation paid to similarly situated executives in the Compensation Peer Group. We set these reference points slightly higher than the median compensation of executives in the Compensation Peer Group to better position Spansion to attract and retain highly qualified executive officers. Actual compensation may vary within a reasonable range of these reference points based on additional factors, including current market conditions. As part of our annual compensation review process for 2009, total compensation reference points were adjusted for the Named Executive Officers based on data for the Initial Compensation Peer Group. In the case of Messrs. Nawaz and Eby, reference points were derived using aggregated market data from a group of high technology companies (including the Initial Compensation Peer Group) because insufficient data was available for the Initial Compensation Peer Group. Largely as a result of the significant change to the Initial Compensation Peer Group as compared to the 2008 Compensation Peer Group, the market comparisons for base salary, total cash (calculated as base salary plus bonus) and total direct compensation (calculated as base salary plus bonus plus equity award) were modified for the Named Executive Officers. Base salary reference points were reduced for

Dr. Cambou and Messrs. Sacomani, Nawaz and Eby and, in addition, the total direct compensation reference points were reduced for Dr. Cambou and Mr. Sacomani. Total compensation reference points for Messrs. Nawaz and Eby increased, largely based on the use of the aggregated market data from high technology companies and their respective positions and responsibilities at the time of the review. In January 2009, in light of the Chapter 11 Cases and macroeconomic conditions, the Committee approved management's recommendation for Spansion to not implement annual merit salary increases and stock awards for fiscal 2009 for all employees, including the Named Executive Officers. As discussed below under the heading "Compensation Review," market data is just one consideration in setting actual compensation for our Named Executive Officers.

Our incentive compensation, including cash and equity, is structured so that when our corporate performance meets or exceeds our established objectives Named Executive Officers have an opportunity to receive incentive compensation equal to or greater than comparable market targets. When our corporate performance does not meet our established objectives, Named Executive Officers receive incentive compensation that is generally below comparable market targets.

For fiscal 2009, total direct compensation for our Named Executive Officers was well below our collective compensation reference points, primarily because below-target short term incentives (if any) were paid and Spansion's stock value declined considerably more than the stock value of our Compensation Peer Group, resulting in below-market long-term incentive compensation.

Performance Evaluations

We generally conduct annual performance evaluations of all Spansion employees, including our Named Executive Officers. As part of the evaluation of Named Executive Officers, we consider a number of performance criteria, including among other things, each Named Executive Officer's ability to:

- Meet specific performance objectives;
- Set the strategy and direction of his organization, consistent with Spansion's overall objectives; and
- Effectively lead his or her organization.

The Chief Executive Officer evaluates the performance of each of the other Named Executive Officers, and presents the evaluations to the Committee for review and approval. The Committee performs an independent evaluation of the Chief Executive Officer's performance. Due in large part to the Chapter 11 Cases and the Committee's decision in January 2009 to not implement annual merit salary increases or grant equity awards for any Spansion employees, including the Named Executive Officers, formal performance evaluations were not conducted for the Named Executive Officers during fiscal 2009.

Compensation Review

In preparation for decisions regarding compensation actions for each of the Named Executive Officers for the upcoming year, the Committee generally reviews tally sheets that reflect total current compensation, equity awards (vested and unvested) and benefits information. In addition, the Committee considers each Named Executive Officer's performance, contributions, role and responsibilities, leadership abilities, growth potential and compensation relative to peers within Spansion. The Committee also considers the competitive market for comparable executives in the Compensation Peer Group. Following this review, the Committee sets the compensation for the Chief Executive Officer and for the other Named Executive Officers, taking into consideration the Chief Executive Officer's compensation recommendations for each of the other Named Executive Officers.

2009 Executive Compensation Components

Spancion seeks to achieve the compensation program objectives, as provided in the “Compensation Program Philosophy and Objectives” section above through five principal compensation components:

- base salary;
- short-term performance-based incentive compensation;
- long-term equity-based incentive compensation;
- change of control agreements; and
- benefits and perquisites.

Spancion’s total rewards program was modified significantly in 2009 to address changes in the economy and business operations, including the Chapter 11 Cases. Some highlights of these changes are as follows:

- reduced base salaries for the Named Executive Officers in October 2008, some of which were reinstated in February 2009 and later reduced in October 2009;
- eliminated the U.S. executive car allowance and financial planning perquisites in February 2009;
- suspended the 401(k) match for all eligible employees, including the Named Executive Officers, in February 2009;
- canceled broad-based short-term performance-based incentive plan payments for all employees for 2009;
- canceled broad-based merit salary increases and annual stock awards in 2009; and
- implemented a Key Employee Incentive Plan (KEIP) for eight key employees, including Messrs. Furr, Eby, Nawaz and Manocha, to maximize the prospects for a successful conclusion to the Chapter 11 Cases.

The details of Spancion’s practices with respect to each of the components of the total rewards program, including the modifications highlighted above, are set forth below.

Base Salary

Spancion provides base salaries to compensate Named Executive Officers for services performed during the fiscal year. Each executive officer’s salary is intended to reflect the individual’s job responsibilities and value to Spancion in terms of expertise and performance, taking into account competitive market data and internal pay relationships. For our Named Executive Officers, generally, base salaries were targeted at the 60th percentile of base salaries paid to similarly situated individuals in the Compensation Peer Group.

Base salaries for the Named Executive Officers are evaluated on an annual basis using the criteria described above. Following cost-cutting measures taken in October 2008, annual base salaries were reduced for each of the then-active Named Executive Officers (Messrs. Cambou, Eitan, Sacomani, Manocha, Eby and Nawaz). The base salary for the CEO was reduced by twenty percent, while base salaries for the other Named Executive Officers (and other executive officers) were reduced by ten percent. There was no corresponding reduction in work for the Named Executive Officers. None of our Named Executive Officers were eligible for annual merit salary increases during 2009.

Effective February 9, 2009, the Board of Directors approved an employee retention program that provided for, among other things, the reinstatement of full salary for the Named Executive Officers (other than the Chief Executive Officer) and certain other key employees. The purpose of the employee retention program was to provide an incentive for the Named Executive Officers and certain other key employees to remain employed with us during the reorganization in 2009. On October 8, 2009, following a review of updated market data from the Final Compensation Peer Group, the Committee approved a proposal made by Spancion’s Chief Executive Officer to

implement a ten percent reduction in the base salary of the President and Chief Executive Officer and certain of the other currently employed Named Executive Officers effective as of October 19, 2009. Messrs. Kispert, Nawaz, Eby and Manocha each received a ten percent base salary reduction. Mr. Furr did not receive a ten percent reduction in his base salary because he had recently joined Spansion, and Ms. Thoroddsen and Mr. Sarkisian did not receive reductions in their respective salaries because they were engaged by Spansion through consulting arrangements. Mr. Sacomani did not receive a reduction in base salary because of his personal leave agreement. Mr. Kispert's base salary was restored to \$900,000 on May 10, 2010 following our emergence from the Chapter 11 Cases. The annualized base salaries as of the end of fiscal 2008, February 9, 2009, October 19, 2009 and May 10, 2010 for each of our Named Executive Officers, if employed by Spansion on those dates, are as follows:

<u>Name⁽¹⁾</u>	<u>Base Salary as of December 28, 2008</u>	<u>Base Salary as of February 9, 2009</u>	<u>Base Salary as of October 19, 2009</u>	<u>Base Salary as of May 10, 2010</u>
John H. Kispert	N/A	\$900,000	\$810,000	\$900,000
Randy W. Furr	N/A	N/A	\$440,000	\$440,000
Ahmed Nawaz	\$409,275	\$454,750	\$409,275	\$409,275
Boaz Eitan ⁽²⁾	\$244,695	\$271,884	N/A	N/A
Bertrand F. Cambou	\$601,020	N/A	N/A	N/A
Dario Sacomani	\$400,950	\$445,500	\$445,500	N/A
Thomas T. Eby	\$396,309	\$440,343	\$396,309	\$396,309
Ajit Manocha	\$382,500	\$425,000	\$382,500	N/A

- (1) Ms. Thoroddsen and Mr. Sarkisian are not included in this table because they were paid under consulting agreements.
- (2) Dr. Eitan's salary was reinstated effective February 25, 2009. The amounts reflect Israel shekels converted to U.S. dollars at an exchange rate of 3.793 shekels per dollar as of December 27, 2009.

Short-Term Performance-Based Incentive Compensation

Historically, the Named Executive Officers had an opportunity to earn annual cash awards under a short-term performance-based incentive compensation plan (the "STIP") designed to compensate them for the achievement of pre-determined annual corporate objectives and individual objectives that correlate closely with the corporate objectives. The STIP was canceled for 2009. However, in July 2009 the Committee recommended and the U.S. Bankruptcy Court approved an interim incentive plan for key employees to maximize the prospect for a successful conclusion to the Chapter 11 Cases. The Key Employee Incentive Plan (KEIP) provided an incentive for eight key executives, including four Named Executive Officers (Messrs. Furr, Eby, Nawaz and Manocha), for the achievement of specific cash and profit metrics related to our emergence from the Chapter 11 Cases. The objectives for each metric were set at performance levels that we believed would be very difficult to achieve and were approved by Spansion's creditors. The KEIP performance metrics were as follows:

- Milestone 1 (measured October 1, 2009 for the prior two fiscal quarters):
 - achieve a minimum corporate cash balance of \$176 million; and
 - achieve minimum adjusted EBITDA of \$99 million.
- Milestone 2 (measured April 1, 2010 for the four prior fiscal quarters):
 - achieve minimum adjusted EBITDA of \$212 million.

For KEIP purposes, adjusted EBITDA represents earnings before interest, taxes, depreciation and amortization, adjusted for (i) any cost identified as bankruptcy or restructuring related including asset impairment, (ii) payments, expenses and settlement costs related to Spansion's Japanese subsidiaries, and (iii) expenses or credits recorded on unconventional line items in GAAP Operating Income due to unforeseen accounting situations.

The total KEIP award opportunity for our eligible Named Executive Officers was 70 percent of their June 30, 2009 annual base salary, with a maximum opportunity of 100 percent of base salary. Because Mr. Furr was not an employee of Spansion for the entire period, his opportunity was calculated using 75 percent of his annual base salary. Actual awards were determined as follows:

- Milestone 1: Payment of 17.5 percent of base salary would be made for each of the two metrics assuming the minimum level of performance was achieved, for a total award opportunity of 35 percent of base salary for Milestone 1. No award would be paid for a metric if achievement for that metric was below the minimum objective. No additional amount would be paid if the metrics were exceeded. Payment would be made as soon as possible following the close of the quarter and assessment of Spansion's performance.
- Milestone 2: Payment of 35 percent of base salary would be made if the minimum performance is achieved. For EBITDA performance between \$212 million and \$265 million, an upside award of up to 30% of salary would be earned with the amount of additional award earned calculated using straight line interpolation. Payment would be made on the later of April 1, 2010 or 30 days following confirmation of the Plan of Reorganization.
- No awards would be paid if Spansion did not achieve the minimum performance objectives for at least one of the metrics.

Spansion exceeded the minimum performance objectives for Milestone 1, achieving a cash balance of \$264 million and adjusted EBITDA of \$126 million at October 1, 2009. The eligible Named Executive Officers were paid 35 percent of their respective annual base salaries on October 30, 2009. Performance against the objectives for Milestone 2 was assessed as of April 1, 2010. We achieved an adjusted EBITDA of 236.7 million, which resulted in a payment of 49 percent of each eligible Named Executive Officer's annual base salary. Since the Plan of Reorganization was confirmed by the U.S. Bankruptcy Court on April 16, 2010, payment was made to the Named Executive Officers on May 21, 2010.

The table below describes for each eligible Named Executive Officer the target percentage of base salary, target amount attainable, award as a percent of base salary and actual award amount for that portion of the KEIP that was earned in fiscal 2009 for Milestone 1:

<u>Named Executive Officer</u>	<u>Target Percent of Base Salary</u>	<u>Target Award Amount</u>	<u>Award as Percent of Base Salary</u>	<u>Actual Award Amount</u>
Randy W. Furr ⁽¹⁾	35%	\$115,500	35%	\$115,500
Ahmed Nawaz	35%	\$159,163	35%	\$159,163
Thomas T. Eby	35%	\$154,120	35%	\$154,120
Ajit Manocha	35%	\$148,750	35%	\$148,750

(1) Mr. Furr's base salary, for purposes of the award calculation was 75 percent of his annual base salary.

The table below describes for each eligible Named Executive Officer the target percentage of base salary, target amount attainable, maximum award as a percent of base salary, maximum award amount, award as a percent of base salary and actual award amount for that portion of the KEIP that was earned in fiscal 2009 and 2010 for Milestone 2:

<u>Named Executive Officer</u>	<u>Target Percent of Base Salary</u>	<u>Target Award Amount</u>	<u>Maximum Percent of Base Salary</u>	<u>Maximum Award Amount</u>	<u>Award as Percent of Base Salary</u>	<u>Actual Award Amount</u>
Randy W. Furr ⁽¹⁾	35%	\$115,500	65%	\$214,500	49%	\$161,700
Ahmed Nawaz	35%	\$159,163	65%	\$295,588	49%	\$222,820
Thomas T. Eby	35%	\$154,120	65%	\$286,223	49%	\$215,768
Ajit Manocha ⁽²⁾	N/A	N/A	N/A	N/A	N/A	N/A

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- (1) Mr. Furr's base salary, for purposes of the award calculation was 75 percent of his annual base salary.
 - (2) Mr. Manocha is ineligible for payment based upon achievement of Milestone 2 because he resigned from his employment with Spansion effective February 28, 2010.

The amounts of the KEIP awards for fiscal 2009 for Named Executive Officers are presented in the Non-Equity Incentive Plan Compensation column of the Fiscal 2009 Summary Compensation Table on page 98.

Other Performance-Based Incentive Compensation

In order to provide Mr. Kispert additional incentive to maximize the value of Spansion during the pendency of the Chapter 11 Cases and to pursue transactions that could benefit Spansion's stockholders, the Board approved a special one-time bonus opportunity for Mr. Kispert. As set forth in Mr. Kispert's February 12, 2009 offer letter, or Offer Letter, Mr. Kispert is entitled to a bonus of \$1.75 million upon the first to occur of either of the following transactions, each a Transaction:

- A merger or consolidation of Spansion with any other corporation which constitutes a change in ownership of the securities of Spansion representing more than fifty percent (50%) of the total voting power represented by Spansion's then outstanding securities, other than a merger or consolidation which would result in holders of our pre-transaction debts generally holding at least fifty percent (50%) of the total voting power represented by the voting securities of Spansion or such surviving entity outstanding immediately after such merger or consolidation; or
- The sale, lease or other disposition by Spansion of all or substantially all of our assets, which occurs on the date that any one person, or more than one person acting as a group, acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such person or persons) assets from us that have a total gross fair market value equal to or more than eighty-five percent (85%) of the total fair market value of all of our assets immediately prior to such acquisition or acquisitions;

provided, however, that the payment of such bonus is subject to certain additional conditions as set forth in the Offer Letter.

On July 9, 2009, the Board amended the bonus opportunity to provide that upon either Spansion's successful closing of a Transaction or the U.S. Bankruptcy Court's confirmation of the Plan of Reorganization (which occurred on April 16, 2010) Mr. Kispert would be entitled to the \$1.75 million bonus, provided that such Transaction or Plan of Reorganization confirmation occurred on or prior to March 31, 2010. Because of unexpected delays in obtaining the U.S. Bankruptcy Court's confirmation of the Plan of Reorganization which were not within Mr. Kispert's control, we filed a motion with the U.S. Bankruptcy Court seeking to extend the March 31, 2010 deadline for completion to May 31, 2010. Our motion was approved by the U.S. Bankruptcy Court and the \$1.75 million bonus was paid to Mr. Kispert on May 28, 2010.

Long-Term Equity-Based Incentive Compensation

A fundamental tenet of our compensation philosophy has been that equity participation by the Named Executive Officers creates a vital long-term partnership between the Named Executive Officers and our stockholders. We believe that equity-based compensation promotes equity ownership among the Named Executive Officers, drives performance toward the achievement of long-term stockholder value, provides balance to the awards provided under the STIP, and helps to promote the retention of the officers through vesting contingencies. Historically, one of our stockholder-approved equity plans is our long-term incentive plan (the "LTIP"), which is designed to align the interests of the Named Executive Officers over a multi-year period directly with the interests of stockholders. As a result of the Chapter 11 Cases, the Committee did not grant equity awards to any employees, including the Named Executive Officers, in fiscal 2009. Under the Plan of Reorganization, all of our equity securities, including all shares of our Class A Common Stock and stock option awards to purchase shares of our Class A Common stock were cancelled upon our emergence from the Chapter 11 Cases on May 10, 2010.

Change of Control Agreements

The Committee recognizes that from time to time Spansion may consider potential transactions that could result in a change of control of the ownership and management of Spansion. Therefore, the Committee determined that it is in the best interests of Spansion and its stockholders to provide the Named Executive Officers with an incentive in the form of certain benefits to maintain their focus and dedication to Spansion notwithstanding a possible transaction that could result in a change of control. Generally, change of control benefits for our Named Executive Officers are in the form of enhanced severance benefits as described for each of our Named Executive Officers below under the heading “Agreements with Executive Officers.” During 2009, we also were party to a change of control severance agreement with Mr. Nawaz that provided him with benefits in the amount of two times the aggregate of his base salary and his target bonus opportunity under the STIP, accelerated vesting of equity awards and reimbursement for healthcare continuation coverage upon certain terminations of his employment following a change of control. Mr. Nawaz’s change of control severance agreement was terminated on April 10, 2010 in connection with the Chapter 11 Cases.

In May 2010, Mr. John Kispert entered into a change of control severance agreement with Spansion. In August 2010, each of Mr. Nawaz and Mr. Eby entered into a new change of control severance agreement with Spansion. Under the new change of control severance agreements, the individuals will be entitled to receive a cash severance payment equal to 12-24 months base salary, accelerated vesting of all outstanding unvested equity awards, and payment of health coverage (medical, dental and vision) for the same period. Cash severance payments under the change of control severance agreements are to be paid in lump sum no later than 60 days after the effective date of the employment termination.

Benefits and Perquisites

Retirement Savings Plan. The Spansion Retirement Savings Plan (the “401(k) Plan”) is a tax-qualified 401(k) plan to which all U.S. employees may contribute on a before-tax basis up to the lesser of 89 percent of eligible pay or the contribution limit prescribed by the Internal Revenue Code. Prior to February 2009, Spansion contributed to each employee’s 401(k) account \$0.50 on each \$1 of pay deferred by employees under the 401(k) Plan. Spansion’s contributions were capped at three percent of the employee’s pay. All contributions to the 401(k) Plan, including Spansion’s matching contributions, are fully vested at the time the contribution is made. In February 2009, Spansion determined that it was in the best interest of the shareholders to suspend the Spansion matching contribution to each employee’s 401(k) account.

Executive Deferred Compensation Program. The Named Executive Officers, as well as our other U.S. executives, were eligible to participate in the Spansion Executive Deferred Compensation (“EDC”) Plan, which we put in place to mitigate the impact of the Named Executive Officers and other highly compensated employees being unable to make the maximum contribution permitted under the 401(k) plan due to certain limitations imposed by the Internal Revenue Code. None of the Named Executive Officers participated in the EDC Plan in 2009. The EDC Plan was terminated in April 2010.

Life and Long-Term Disability Insurance. We provide the Named Executive Officers who are employed in the U.S. with life insurance such that the executive officer’s beneficiary will receive a death benefit of up to three times the executive’s annual salary, up to a maximum of \$3 million. In addition, the Named Executive Officers are eligible to participate in our Executive Long-Term Disability Plan, which pays up to \$20,000 a month if an executive is unable to work due to a disability.

Other Health and Welfare Benefits, Perquisites and Termination Provisions. Spansion offers health and welfare benefits, in accordance with applicable local regulations and competitive practice, to employees in all of the countries in which we operate. During fiscal 2009, the Named Executive Officers were eligible to participate in those plans offered in their respective work locations. We also provided the Named Executive Officers with a monthly automobile allowance and company-paid financial counseling benefits. The automobile allowance and

financial counseling benefits were canceled in February 2009, following a review of competitive practices and affordability. No adjustments to salary were made as a result of the elimination of these plans. We may offer relocation benefits to employees when their job requires relocation. In the event that an executive officer voluntarily terminates his or her employment, additional benefits may be provided based on the circumstances of the termination as discussed on page 102 under “—Potential Payments upon Termination, a Change of Control or Other Event.” Named Executive Officers who are terminated may be required to repay to Spansion a portion of any relocation benefits, sign-on bonus or retention bonus, depending on the terms of their agreement with Spansion.

Fiscal 2009 Summary Compensation Table

The table below summarizes the total compensation paid to or earned by each of the Named Executive Officers for the fiscal year ended December 27, 2009. No stock or option awards were granted to the Named Executive Officers in fiscal 2009, no defined benefit pension plan was offered to the Named Executive Officers in fiscal 2009, and none of the Named Executive Officers elected to defer compensation under our EDC Plan in fiscal 2009.

During 2009, Spansion experienced several changes within the Named Executive Officer group described in the Compensation Discussion and Analysis, above. Our two Interim Chief Financial Officers were non-employees and were engaged through consulting agreements with Spansion. They were not eligible for any compensation other than a monthly consulting fee and reimbursement of business expenses.

<u>Name and Principal Position</u>	<u>Year</u>	<u>Salary (\$)⁽¹⁾</u>	<u>Bonus (\$)</u>	<u>Stock Awards (\$)⁽²⁾</u>	<u>Option Awards (\$)⁽³⁾</u>	<u>Non-Equity Incentive Plan Compensation (\$)</u>	<u>All Other Compensation (\$)⁽⁴⁾</u>	<u>Total(\$)</u>
John H. Kispert President and Chief Executive Officer	2009	796,155	—	—	—	—	8,400	804,555
Randy W. Furr Executive Vice President and Chief Financial Officer	2009	220,000	—	—	—	115,500	515	336,015
Ahmed Nawaz Executive Vice President, Worldwide Sales	2009	440,758	—	—	—	159,163	6,069	605,990
	2008	437,391	—	108,720	119,556	—	39,013	704,680
	2007	425,000	—	274,810	318,975	40,000	236,559	1,295,344
Boaz Eitan ⁽⁵⁾ Former Interim President	2009	78,157	—	—	—	—	123,547	201,704
	2008	216,901	—	—	—	—	29,330	246,231
Bertrand F. Cambou ⁽⁶⁾ Former President and Chief Executive Officer	2009	60,102	—	—	—	—	791,681	851,783
	2008	708,345	—	265,760	292,248	—	37,680	1,304,033
	2007	703,038	—	780,750	906,225	125,000	39,447	2,554,460
Nathan M. Sarkisian ⁽⁷⁾ Former Interim Chief Financial Officer	2009	280,571	—	—	—	—	—	280,571
Thora Thoroddsen ⁽⁸⁾ Former Interim Chief Financial Officer	2009	600,000 ⁽⁸⁾	—	—	—	—	—	600,000
Dario Sacomani ⁽⁹⁾ Former Executive Vice President and Chief Financial Officer	2009	440,360	—	—	—	—	26,603	466,963
	2008	425,873	—	144,960	159,408	—	98,219	828,460
	2007	395,769	—	312,300	362,490	60,000	143,016	1,273,575
Thomas T. Eby Senior Vice President, Strategy and Communications	2009	419,173	—	—	—	154,120	6,082	579,375
	2008	423,533	—	108,720	119,556	—	34,792	686,601
	2007	404,368	—	312,300	362,490	40,000	50,172	1,169,330
Ajit Manocha ⁽¹⁰⁾ Former Executive Vice President, Operations	2009	411,923	—	—	—	148,750	6,197	566,870
	2008	415,192	150,000	89,400	92,558	—	33,110	780,260
	2007	16,346	150,000	—	—	—	923	167,269

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- (1) The amounts shown in the Salary column reflect 52 weeks of salary in each of fiscal years 2007, 2008, and 2009 for the Named Executive Officers who were employed by Spansion for the full fiscal years. All Named Executive Officers were employed for the full years except as noted.
 - (2) The amounts shown in the Stock Awards column reflect the aggregate grant date fair value for stock awards granted during fiscal years ended December 30, 2007 and December 28, 2008. No Stock Awards were granted in fiscal year ended December 27, 2009.
 - (3) The amounts shown in the Option Awards column reflect the aggregate grant date fair value for non-qualified stock option awards granted during fiscal years ended December 30, 2007 and December 28, 2008. No Option Awards were granted in fiscal year ended December 27, 2009.
 - (4) The amounts shown in the All Other Compensation column reflect the following compensation for each Named Executive Officer. At a minimum, values exceeding ten percent of the total amount of perquisites and personal benefits are specified in these footnotes:
 - Matching 401(K) contributions in fiscal 2007 for each of Dr. Cambou and Messrs. Sacomani, Nawaz and Eby of \$6,750. The contribution in fiscal 2008 for each of Dr. Cambou and Messrs. Kispert, Sacomani, Nawaz, Eby and Manocha was \$6,900. The contribution in fiscal 2009 for each of Dr. Cambou and Messrs. Sacomani, Nawaz, Eby and Manocha of \$3,486, \$7,350, \$2,365, \$2,414, \$2,109 and \$2,256, respectively.
 - Car allowance for fiscal 2007 and fiscal 2008 for each of Dr. Cambou and Messrs. Sacomani, Nawaz and Eby was \$24,000. The allowance in fiscal 2008 for Mr. Manocha was \$24,000. The allowance in fiscal 2009 for Dr. Cambou was \$3,692 and for each of Messrs. Sacomani, Nawaz, Eby and Manocha was \$3,046.
 - Financial planning services reimbursements in fiscal 2007 to Dr. Cambou of \$6,600. The reimbursements in 2008 to Dr. Cambou and Mr. Nawaz were \$6,000 and \$5,300, respectively.
 - Vacation balances upon termination were paid in fiscal 2009 to Drs. Cambou and Eitan in the amount of \$32,993 and \$20,780, respectively. Mr. Eby received a vacation cash payout in 2007 of \$14,932.
 - Relocation and/or temporary living expense paid in fiscal 2007 to Messrs. Sacomani and Nawaz in the amounts of \$107,435 and \$202,279, respectively. Expense paid to Messrs. Sacomani and Nawaz in fiscal 2008 of \$66,538 and \$2,033, respectively. Expense paid to Mr. Sacomani in fiscal 2009 of \$20,679.
 - Severance benefits paid in fiscal 2009 to Drs. Cambou and Eitan in the amounts of \$751,275 and \$100,349, respectively.
 - (5) Dr. Eitan resigned as Interim President on February 3, 2009. Amounts in the Summary Compensation chart were converted to U.S. dollars from Israeli shekel using the exchange rate at each fiscal year end.
 - (6) Dr. Cambou resigned as President and Chief Executive Officer effective February 2, 2009.
 - (7) Mr. Sarkisian resigned as Interim Chief Financial Officer on June 25, 2009 and continued to serve as a consultant to Spansion.
 - (8) Ms. Thoroddsen was retained as a consultant through Brincko Associates. The amount reflects payment for her services made to Brincko Associates. Ms. Thoroddsen was then paid by Brincko Associates. No payments were made by Spansion directly to Ms. Thoroddsen. Ms. Thoroddsen resigned as Interim Chief Financial Officer on April 24, 2009 and continued to serve as a consultant to Spansion.
 - (9) Mr. Sacomani resigned as Executive Vice President and Chief Financial Officer on April 10, 2009. He was a part-time employee for a transition period of nine months.
 - (10) Mr. Manocha resigned as Executive Vice President, Worldwide Operations effective February 28, 2010.

Grants of Plan-Based Awards for Fiscal 2009

The table below summarizes all grants of plan-based awards to the Named Executive Officers during fiscal 2009, which ended on December 27, 2009. No restricted stock unit or stock option awards were granted to the Named Executive Officers in fiscal 2009.

<u>Name</u>	Estimated Possible Payouts Under Non-Equity Incentive Plan Awards⁽¹⁾	
	<u>Target (\$)</u>	<u>Maximum (\$)</u>
Randy W. Furr	231,000	330,000
Ahmed Nawaz	318,326	454,750
Thomas T. Eby	308,240	440,343
Ajit Manocha	148,750	N/A ⁽²⁾

- (1) Reflects the combined bonus amounts for Milestones 1 and 2 under the Key Employee Incentive Plan, as described in “Compensation Discussion and Analysis—Short-Term Performance-Based Incentive Compensation.” The target award (50 percent of the above Target amount) was earned for Milestone 1 in fiscal 2009.
- (2) Mr. Manocha is ineligible for payment based on achievement of Milestone 2 because he resigned from his employment with us effective February 28, 2010.

Outstanding Equity Awards at Fiscal 2009 Year-End

The table below summarizes the outstanding Spansion equity awards held and exercisable by Named Executive Officers at the end of fiscal 2009. For fiscal 2009, Spansion did not offer an equity incentive plan, as defined under Item 402(a)(6)(iii) of Regulation S-K. Pursuant to the Plan of Reorganization, all of our equity securities, including all shares of our Class A Common Stock and stock option awards to purchase shares of our Class A Common Stock were cancelled upon our emergence from the Chapter 11 Cases.

<u>Name</u>	<u>Option Awards</u>				<u>Stock Awards</u>	
	<u>Number of Securities Underlying Unexercised Options (#)</u>	<u>Number of Securities Underlying Unexercised Options (#)</u>	<u>Option Exercise Price (\$)</u>	<u>Option Expiration Date</u>	<u>Number of Shares or Units of Stock That Have Not Vested (#)⁽¹⁾</u>	<u>Market Value of Shares or Units of Stock That Have Not Vested (\$)⁽²⁾</u>
Bertrand F. Cambou	168,749	—	12.00	12/15/2012	—	—
	82,031	—	10.41	04/20/2014	—	—
Dario Sacomani	93,749	31,251 ⁽³⁾	14.74	03/03/2013	—	—
	32,812	42,188 ⁽⁴⁾	10.41	04/20/2014	—	—
	—	120,000 ⁽⁵⁾	3.02	04/28/2015	—	—
Thomas T. Eby	117,187	7,813 ⁽⁶⁾	12.00	12/15/2012	—	—
	46,875	28,125 ⁽⁴⁾	10.41	04/20/2014	11,250 ⁽⁷⁾	1,181
	33,750	56,250 ⁽⁵⁾	3.02	04/28/2015	22,500 ⁽⁸⁾	2,363
Ahmed Nawaz	56,250	18,750 ⁽⁹⁾	14.93	12/07/2013	—	—
	18,750	11,250 ⁽⁴⁾	10.41	04/20/2014	—	—
	20,312	12,188 ⁽¹⁰⁾	11.53	06/13/2014	—	—
	33,750	56,250 ⁽⁵⁾	3.02	04/28/2015	—	—
Ajit Manocha	32,812	42,188 ⁽¹¹⁾	2.98	02/21/2015	16,875 ⁽¹²⁾	1,772

- (1) Each restricted stock unit represents a contingent right to receive one share of Spansion Class A Common Stock. There is no exercise price.
- (2) Based on closing price of \$0.105 of Spansion Class A Common Stock on December 24, 2009.
- (3) The stock option was granted on March 3, 2006 and vests over a four-year period, with 25 percent of the shares vesting on January 28, 2007, and the remaining shares vesting in equal quarterly installments over the remaining 36 months beginning April 28, 2007.
- (4) The stock option was granted on April 20, 2007 and vests over a four-year period, with 25 percent of the shares vesting on the anniversary of the date of grant and the remaining shares vesting in equal quarterly installments over the remaining 36 months beginning July 20, 2007.
- (5) The stock option was granted on April 28, 2008 and vests over a four-year period, with 25 percent of the shares vesting on the anniversary of the date of grant and the remaining shares vesting in equal quarterly installments over the remaining 36 months beginning April 28, 2009.
- (6) The stock option was granted on December 15, 2005 and vests over a four-year period, with 25 percent of the shares vesting on January 28, 2007 and the remaining shares vesting in equal quarterly installments over the remaining 36 months beginning April 28, 2007.
- (7) The restricted stock unit award was granted on April 20, 2007 and vests over a four-year period, with 25 percent of the shares vesting on the anniversary of the date of grant and the remaining shares vesting in equal quarterly installments over the remaining 36 months beginning July 20, 2007. The unvested shares were voluntarily cancelled by the Named Executive Officer on December 15, 2009.
- (8) The restricted stock unit award was granted on April 28, 2008 and vests over a four-year period with 25 percent of the shares vesting on the anniversary of the date of grant and the remaining shares vesting in equal quarterly installments over the remaining 36 months beginning April 28, 2009.
- (9) The stock option was granted on December 7, 2006 and vests over a four-year period, with 25 percent of the shares vesting on the anniversary of the date of grant and the remaining shares vesting in equal quarterly installments over the remaining 36 months beginning December 7, 2007.
- (10) The stock option was granted on June 13, 2007 and vests over a four-year period, with 25 percent of the shares vesting on the anniversary of the date of grant and the remaining shares vesting in equal quarterly installments over the remaining 36 months beginning September 13, 2008.
- (11) The stock option was granted on February 21, 2008 and vests over a four-year period, with 25 percent of the shares vesting on the anniversary of the date of grant and the remaining shares vesting in equal quarterly installments over the remaining 36 months beginning February 21, 2009.
- (12) The restricted stock unit award was granted on February 21, 2008 and vests over a four-year period with 25 percent of the shares vesting on the anniversary of the date of grant and the remaining shares vesting in equal quarterly installments over the remaining 36 months beginning February 21, 2009.

Option Exercises and Stock Vested for Fiscal 2009

The table below summarizes the Spansion restricted stock units held by Named Executive Officers that vested during fiscal 2009. There were no stock option exercises by Named Executive Officers during fiscal 2009.

<u>Name</u>	<u>Stock Awards</u>	
	<u>Number of Shares Acquired on Vesting (#)</u>	<u>Value Realized on Vesting (\$)⁽¹⁾</u>
Bertrand F. Cambou	11,831	930
Dario Sacomani	1,875	169
Ahmed Nawaz	24,750	3,585
Thomas T. Eby	26,716	4,104
Ajit Manocha	13,125	1,181

- (1) The value realized equals the fair market value of Spansion Class A Common Stock on the vesting date, as measured by the closing price on that date, multiplied by the number of shares that vested.

Potential Payments upon Termination, a Change of Control or Other Event

Following is a general discussion of the compensation available to our Named Executive Officers in the event an executive's employment terminates. The actual payments can be determined only at the time of the executive's separation from Spansion, as illustrated by the tables that follow.

Termination for Any Reason

When employment terminates for any reason, each Named Executive Officer is entitled to receive compensation earned during the time the executive was employed. Such compensation includes:

- Compensation earned during the fiscal year;
- Vested equity awards issued under any Spansion equity plan pursuant to the applicable terms and conditions of each award;
- Amounts deferred under the EDC Plan;
- Benefits accrued under Spansion's Retirement Savings Plan; and
- Accrued unused vacation pay for which they were eligible under the terms of our bankruptcy proceedings.

Termination Due to Death

In the event employment termination is due to death, in addition to compensation listed above under "Termination for Any Reason," each Named Executive Officer's beneficiary receives all or a pro-rata portion of the payment he or she would otherwise have been entitled to receive under the STIP, as long as the Named Executive Officer was an active participant in the STIP for at least six months of the plan year, and life insurance benefits, and if eligible, a survivor income benefit. In addition, if the executive has at least 15 years of service, all equity awards that would have vested any time during the calendar year in which the death occurred are accelerated to vest on the executive's employment termination date. Some awards also require the executive to be at least 50 years of age. The STIP provision was not applicable for fiscal 2009, though we have assumed that each Named Executive Officer would have been eligible for a pro-rated portion of his KEIP Incentive.

Termination Due to Disability

In the event employment is terminated due to a disability, in addition to compensation listed above under "Termination for Any Reason," each Named Executive Officer is eligible to receive benefits under the Spansion disability plans in which he or she participated at the time of the termination; and if the executive has at least 15 years of service, all equity awards that would have vested any time during the calendar year in which the disability occurred are accelerated to vest on the executive's employment termination date. Some awards also require the executive to be at least 50 years of age.

Involuntary Termination in Connection with a Reduction in Force

In the event employment termination is involuntary due to a reduction in force, in addition to any compensation due under "Termination for Any Reason" listed above, each Named Executive Officer receives a lump sum severance payment equivalent to two months of COBRA medical insurance premiums (grossed up to cover taxes).

Termination in Connection With a Change of Control

Only Mr. Nawaz was eligible for enhanced severance payments in the event of certain terminations of employment following a change of control as of fiscal year end. Pursuant to his change of control severance

agreement, Mr. Nawaz would receive, subject to certain conditions, the following benefits in the event of a change of control and termination of employment:

- A lump sum separation payment of two times the aggregate of his base salary and his target bonus opportunity;
- Acceleration of unvested equity;
- Reimbursement for premium payments for medical and dental COBRA continuation coverage for a limited time; and
- In certain cases, tax-related benefits.

The Agreement with Mr. Nawaz was terminated in April 2010 in connection with the Chapter 11 Cases.

The following tables show the potential payments that would have been made to each of the Named Executive Officers if their employment with us had terminated as of December 27, 2009 and they were otherwise active Spansion employees on that date.

John H. Kispert

<u>Executive Benefits and Payments Upon Termination as of December 27, 2009</u>	<u>Voluntary Termination</u>	<u>Involuntary Not for Cause Termination (Reduction in Force)</u>	<u>For Cause Termination</u>	<u>Involuntary or for Good Reason Following Change of Control Within 24 Months⁽¹⁾</u>	<u>Death</u>	<u>Disability</u>
Benefits and Perquisites:						
Post-Employment Health						
Insurance (COBRA)	—	\$ 3,602	—	—	—	—
Life Insurance Proceeds	—	—	—	—	\$2,000,000	—
AD&D	—	—	—	—	\$ 500,000	—
Survivor Income Benefit	—	—	—	—	\$ 4,000	—
Accrued Vacation Pay	\$ 8,119	\$ 8,119	\$ 8,119	\$ 8,119	\$ 8,119	\$ 8,119
Subtotal:	\$ 8,119	\$11,721	\$ 8,119	\$ 8,119	\$2,512,119	\$ 8,119
Vested Benefits:						
Retirement Savings Plan	\$36,279	\$36,279	\$36,279	\$36,279	\$ 36,279	\$36,279
Subtotal:	\$36,279	\$36,279	\$36,279	\$36,279	\$ 36,279	\$36,279
TOTAL	\$44,398	\$48,000	\$44,398	\$44,398	\$2,548,398	\$44,398

(1) Mr. Kispert became eligible for Change of Control benefits upon the effectiveness of Spansion's Plan of Reorganization.

Randy W. Furr

Executive Benefits and Payments Upon Termination as of December 27, 2009	Voluntary Termination	Involuntary Not for Cause Termination (Reduction in Force)	For Cause Termination	Involuntary or for Good Reason Following Change of Control Within 24 Months⁽¹⁾	Death	Disability
Compensation:						
Base Salary	—	—	—	—	—	—
Short-term Incentive	—	\$57,750 ⁽²⁾	—	\$57,750 ⁽²⁾	\$ 57,750 ⁽²⁾	\$57,750 ⁽²⁾
Long-term Incentive	—	—	—	—	—	—
Stock Options—Unvested and Accelerated	—	—	—	—	—	—
Restricted Stock Units—Unvested and Accelerated	—	—	—	—	—	—
Bonus Repayment	—	—	—	—	—	—
Subtotal:	—	\$57,750	—	\$57,750	\$ 57,750	\$57,750
Benefits and Perquisites:						
Post-Employment Health Insurance (COBRA)	—	\$ 2,609	—	—	—	—
Life Insurance Proceeds	—	—	—	—	\$1,321,000	—
AD&D	—	—	—	—	\$ 750,200	—
Survivor Income Benefit	—	—	—	—	\$ 4,000	—
Accrued Vacation Pay	\$ 3,459	\$ 3,459	\$ 3,459	\$ 3,459	\$ 3,459	\$ 3,459
Subtotal:	\$ 3,459	\$ 6,068	\$ 3,459	\$ 3,459	\$2,070,459	\$ 3,459
Vested Benefits:						
Stock Awards	—	—	—	—	—	—
Retirement Savings Plan	\$14,637	\$14,637	\$14,637	\$14,637	\$ 14,637	\$14,637
Subtotal:	\$14,637	\$14,637	\$14,637	\$14,637	\$ 14,637	\$14,637
TOTAL	\$18,096	\$78,455	\$18,096	\$75,846	\$2,150,846	\$75,846

- (1) Mr. Furr became eligible for Change of Control benefits upon the effectiveness of Spansion's Plan of Reorganization.
- (2) Mr. Furr would be eligible to receive a prorated portion of the KEIP incentive for Milestone 2, which is estimated for these purposes at target and prorated at 50 percent.

Dario Sacomani

<u>Executive Benefits and Payments Upon Termination as of December 27, 2009</u>	<u>Voluntary Termination</u>	<u>Involuntary Not for Cause Termination (Reduction in Force)</u>	<u>For Cause Termination</u>	<u>Involuntary or for Good Reason Following Change of Control Within 24 Months</u>	<u>Death</u>	<u>Disability</u>
Compensation:						
Base Salary	—	—	—	—	—	—
Short-term Incentive	—	—	—	—	—	—
Long-term Incentive						
Stock Options—Unvested and Accelerated	—	—	—	—	—	—
Restricted Stock Units— Unvested and Accelerated ...	—	—	—	—	—	—
Bonus Repayment	—	—	—	—	—	—
Subtotal:	—	—	—	—	—	—
Benefits and Perquisites:						
Post-Employment Health						
Insurance (COBRA)	—	\$ 3,602	—	—	—	—
Life Insurance Proceeds	—	—	—	—	\$1,000,000	—
Survivor Income Benefit	—	—	—	—	\$ 4,000	—
Accrued Vacation Pay	\$ 22,555	\$ 22,555	\$ 22,555	\$ 22,555	\$ 22,555	\$ 22,555
Subtotal:	\$ 22,555	\$ 26,157	\$ 22,555	\$ 22,555	1,026,555	\$ 22,555
Vested Benefits:						
Stock Awards	—	—	—	—	—	—
Retirement Savings Plan	\$108,976	\$108,976	\$108,976	\$108,976	\$ 108,976	\$108,976
Subtotal:	\$108,976	\$108,976	\$108,976	\$108,976	\$ 108,976	\$108,976
TOTAL	\$131,531	\$135,133	\$131,531	\$131,531	\$1,135,531	\$131,531

Ahmed Nawaz

Executive Benefits and Payments Upon Termination as of December 27, 2009	Voluntary Termination	Involuntary Not for Cause Termination (Reduction in Force)	For Cause Termination	Involuntary or for Good Reason Following Change of Control Within 24 Months ⁽¹⁾	Death	Disability
Compensation:						
Base Salary	—	—	—	\$ 818,550	—	—
Short-term Incentive	—	\$ 79,582 ⁽²⁾	—	\$ 79,582 ⁽²⁾	\$ 79,582 ⁽²⁾	\$ 79,582 ⁽²⁾
Long-term Incentive						
Stock Options—Unvested and Accelerated	—	—	—	—	—	—
Restricted Stock Units— Unvested and Accelerated	—	—	—	—	—	—
Subtotal:	—	\$ 79,582	—	\$ 898,132	\$ 79,582	\$ 79,582
Benefits and Perquisites:						
Post-Employment Health Insurance (COBRA)	—	\$ 2,609	—	\$ 35,746	—	—
Life Insurance Proceeds	—	—	—	—	\$1,000,000	—
Survivor Income Benefit	—	—	—	—	\$ 4,000	—
Accrued Vacation Pay	—	—	—	—	—	—
Subtotal	—	\$ 2,609	—	\$ 35,746	\$1,004,000	—
Vested Benefits:						
Stock Awards	—	—	—	—	—	—
Retirement Savings Plan	\$78,768	\$ 78,768	\$78,768	\$ 78,768	\$ 78,768	\$ 78,768
Subtotal:	\$78,768	\$ 78,768	\$78,768	\$ 78,768	\$ 78,768	\$ 78,768
TOTAL	\$78,768	\$160,959	\$78,768	\$1,012,646	\$1,162,350	\$158,350

- (1) Mr. Nawaz is eligible to receive 2 times his annual base salary of \$409,275 upon termination as described under “Termination in Connection With a Change of Control” above.
- (2) Mr. Nawaz would be eligible to receive a prorated portion of the KEIP incentive for Milestone 2, which is estimated for these purposes at target and prorated at 50 percent.

Thomas T. Eby

Executive Benefits and Payments Upon Termination as of December 27, 2009	Voluntary Termination	Involuntary Not for Cause Termination (Reduction in Force)	For Cause Termination	Involuntary or for Good Reason Following Change of Control Within 24 Months	Death	Disability
Compensation:						
Base Salary	—	—	—	—	—	—
Short-term Incentive	—	\$ 77,060 ⁽¹⁾	—	\$ 77,060 ⁽¹⁾	\$ 77,060 ⁽¹⁾	\$ 77,060 ⁽¹⁾
Long-term Incentive						
Stock Options—Unvested and Accelerated	—	—	—	—	—	—
Restricted Stock Units— Unvested and Accelerated . . .	—	—	—	—	—	—
Subtotal:	—	\$ 77,060	—	\$ 77,060	\$ 77,060	\$ 77,060
Benefits and Perquisites:						
Post-Employment Health						
Insurance (COBRA)	—	\$ 3,602	—	—	—	—
Life Insurance Proceeds	—	—	—	—	1,189,000	—
Survivor Income Benefit	—	—	—	—	4,000	—
Accrued Vacation Pay	—	—	—	—	—	—
Subtotal:	\$ —	\$ 3,602	\$ —	\$ —	\$1,193,000	\$ —
Vested Benefits:						
Stock Awards	—	—	—	—	—	—
Retirement Savings Plan	\$735,839	\$735,839	\$735,839	\$735,839	\$ 735,839	\$735,839
Subtotal:	\$735,839	\$735,839	\$735,839	\$735,839	\$ 735,839	\$735,839
TOTAL	\$735,839	\$816,501	\$735,839	\$812,899	\$2,005,899	\$812,899

(1) Mr. Eby would be eligible to receive a prorated portion of the KEIP incentive for Milestone 2, which is estimated for these purposes at target and prorated at 50 percent.

Ajit Manocha

Executive Benefits and Payments Upon Termination as of December 27, 2009	Voluntary Termination	Involuntary Not for Cause Termination (Reduction in Force)	For Cause Termination	Involuntary or for Good Reason Following Change of Control Within 24 Months	Death	Disability
Compensation:						
Base Salary	—	—	—	—	—	—
Short-term Incentive	—	\$ 74,375 ⁽¹⁾	—	\$ 74,375 ⁽¹⁾	\$ 74,375 ⁽¹⁾	\$ 74,375 ⁽¹⁾
Long-term Incentive						
Stock Options—Unvested and Accelerated	—	—	—	—	—	—
Restricted Stock Units—Unvested and Accelerated	—	—	—	—	—	—
Subtotal:	—	\$ 74,375	—	\$ 74,375	\$ 74,375	\$ 74,375
Benefits and Perquisites:						
Post-Employment Health Insurance (COBRA)	—	3,602	—	—	—	—
Life Insurance Proceeds	—	—	—	—	\$2,211,000	—
AD&D	—	—	—	—	\$ 500,000	—
Survivor Income Benefit	—	—	—	—	\$ 4,000	—
Accrued Vacation Pay	—	—	—	—	—	—
Subtotal	—	\$ 3,602	—	—	\$2,715,000	—
Vested Benefits:						
Stock Awards	—	—	—	—	—	—
Retirement Savings Plan	\$57,322	\$ 57,322	\$57,322	\$ 57,322	\$ 57,322	\$ 57,322
Subtotal:	\$57,322	\$ 57,322	\$57,322	\$ 57,322	\$ 57,322	\$ 57,322
TOTAL	\$57,322	\$135,299	\$57,322	\$131,697	\$2,846,697	\$131,697

(1) Mr. Manocha would have been eligible to receive a prorated portion of the KEIP incentive for Milestone 2, which is estimated for these purposes at target and prorated at 50 percent. Mr. Manocha resigned effective February 28, 2010 and did not receive any prorated portion of the KEIP incentive for Milestone 2.

Mitigation of Risk Relating to Compensation

Spancion has reviewed its compensation plans, practices and policies and has determined that it does not have any such plans, practices or policies that create risks that are reasonably likely to have a material adverse effect on Spancion.

Tax and Accounting Implications Associated with Compensation

\$1 Million Deduction Limit. Section 162(m) of the Internal Revenue Code, or Code, generally limits a tax deduction to public corporations for certain executive compensation in excess of \$1 million per taxable year. Certain types of compensation are deductible only if performance criteria are approved by stockholders. The Committee will endeavor to structure compensation plans to achieve maximum deductibility under Section 162(m) with minimal sacrifices in flexibility and corporate objectives. While the Committee will consider deductibility under Section 162(m) with respect to future compensation arrangements with Named Executive Officers, deductibility will not be the sole factor used in ascertaining appropriate levels or modes of compensation. Since corporate objectives may not always be consistent with the requirements for full deductibility, certain compensation paid by Spancion in the future may not be fully deductible under

Section 162(m). For 2009, all elements of compensation paid to the Named Executive Officers were fully deductible by Spansion.

Accounting for Equity-Based Compensation. Beginning on December 26, 2005, Spansion began accounting for equity-based awards in accordance with the requirements of FASB Statement 123(R) "Share-Based Payment," which has been codified as ASC Topic 718.

Agreements with Executive Officers

John H. Kispert. On February 2, 2009, the Board appointed Mr. Kispert as our President and Chief Executive Officer. In addition, the Board appointed Mr. Kispert to serve as a Class III member of the Board of Directors (as a Class A director). On February 12, 2009, we entered into the Offer Letter with Mr. Kispert, pursuant to which he is entitled to compensation of \$75,000 per month. We paid Mr. Kispert a nonrefundable advance of four months' salary. In addition, Mr. Kispert is entitled to a bonus of \$1.75 million upon the first to occur of either of the following Transactions:

- A merger or consolidation of Spansion with any other corporation which constitutes a change in ownership of the securities of Spansion representing more than fifty percent (50%) of the total voting power represented by Spansion's then outstanding securities, other than a merger or consolidation which would result in holders of our pre-transaction debts generally holding at least fifty percent (50%) of the total voting power represented by the voting securities of Spansion or such surviving entity outstanding immediately after such merger or consolidation; or
- The sale, lease or other disposition by Spansion of all or substantially all of our assets, which occurs on the date that any one person, or more than one person acting as a group, acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such person or persons) assets from us that have a total gross fair market value equal to or more than eighty-five percent (85%) of the total fair market value of all of our assets immediately prior to such acquisition or acquisitions;

provided, however, that the payment of such bonus is subject to certain additional conditions as set forth in the Offer Letter.

On July 9, 2009, the Board of Directors approved an amendment (the "Amendment") to the Offer Letter. Under the Amendment, Mr. Kispert is entitled to a bonus in the amount of \$1.75 million upon either Spansion's successful closing of a Transaction or the U.S. Bankruptcy Court's confirmation of the Plan of Reorganization (which occurred on April 16, 2010), provided that such Transaction or Plan of Reorganization confirmation occurs on or prior to March 31, 2010. We filed a motion with the U.S. Bankruptcy Court seeking to extend the March 31, 2010 date to May 31, 2010 in order to pay the bonus to Mr. Kispert. Our motion was approved by the U.S. Bankruptcy Court and the \$1.75 million bonus was paid to Mr. Kispert on May 28, 2010.

On October 8, 2009, the Committee approved Mr. Kispert's proposal to implement a ten percent reduction in the base salary of Mr. Kispert and other executives, including the Named Executive Officers, effective October 19, 2009. Mr. Kispert's base salary was restored to \$900,000 on May 10, 2010 following our emergence from the Chapter 11 Cases.

Mr. Kispert also (i) receives comprehensive benefits, including medical, dental, life and disability coverage; and (ii) may participate in our 401(k) retirement savings plan and executive deferred compensation plan as long as such plans remain generally available to Spansion.

Randy W. Furr. On June 4, 2009, we entered into an employment offer letter, or the Furr Offer Letter, with Mr. Furr in connection with his appointment as Spansion's Executive Vice President and Chief Financial Officer, effective as of June 29, 2009. Pursuant to the Furr Offer Letter, Mr. Furr is entitled to compensation of \$36,667 per month. Mr. Furr may also (i) receive comprehensive benefits, including medical, dental, life and disability

coverage; (ii) participate in Spansion's 401(k) retirement savings plan; and (iii) participate in any executive incentive plan that we adopt. Mr. Furr's target bonus opportunity in any executive incentive plan that is adopted will be 70 percent of his annual base salary, with at maximum award of 100 percent of base salary. The Furr Offer Letter also provides that subject to certain other conditions, Mr. Furr will receive a change of control agreement pursuant to which he will receive (i) a lump sum payment of up to 24 months of his salary, (ii) up to 24 months of continued health coverage, and (iii) 100 percent accelerated vesting of any of Spansion's equity that he holds, if within 12 months following a change of control of Spansion, Spansion terminates his employment without cause, or if he terminates his employment for good reason. In addition, if Spansion terminates Mr. Furr's employment without cause or Mr. Furr terminates his employment with good reason, in either case more than six months after Mr. Furr's employment commences but either prior to a change of control or more than 12 months after a change of control, in exchange for a general release of claims against us, Mr. Furr will receive (i) a lump sum payment of 12 months of his base salary and 12 months of continued health coverage if the termination occurs after he has been employed by Spansion for six months but before he reaches the 24 month anniversary of his employment with Spansion; or (ii) a lump sum payment of 24 months of his base salary and 24 months of continued health coverage if the termination occurs after the 24 month anniversary of his employment with Spansion. These severance and change of control provisions became effective upon the effectiveness of our Plan of Reorganization.

Boaz Eitan. On March 18, 2008, in connection with our acquisition of Saifun Semiconductors Limited, or Saifun, the Board of Directors appointed Dr. Boaz Eitan as a member of the Board effective as of the closing of the acquisition. Dr. Eitan served as a Class II director until May 10, 2010. We also entered into a Noncompetition and Retention Agreement with Dr. Eitan whereby he received an annual gross salary equal to the Israeli shekel equivalent of \$260,000 (as determined according to the representative rate of exchange published by the Bank of Israel). In addition, Dr. Eitan was eligible for an annual performance bonus and one time retention bonus if he remained employed by Spansion at the one year anniversary of the closing of the Saifun acquisition. Dr. Eitan remained employed by Spansion at the one year anniversary of the Saifun acquisition closing but did not receive the retention bonus due to the commencement of the Chapter 11 Cases. The Noncompetition and Retention Agreement also contains a two-year non-competition provision and a two-year non-solicitation provision. Dr. Eitan did not receive any additional compensation for his service as Interim President in February 2009. Dr. Eitan resigned from his employment with Spansion in March 2009 and no longer served on the Board of Directors upon our emergence from the Chapter 11 Cases in accordance with the Plan of Reorganization.

Bertrand F. Cambou. On January 30, 2009, Dr. Bertrand Cambou resigned as our President and Chief Executive Officer and as a member of our Board of Directors, effective as of February 2, 2009. On February 4, 2009, we entered into a Separation Agreement and Release with Dr. Cambou, pursuant to which Dr. Cambou received a severance package that included a lump-sum payment equal to one year of Dr. Cambou's base salary of \$751,274.94, plus we reimbursed out-of-pocket expenses incurred by Dr. Cambou in connection with the preparation of his 2008 tax returns. Pursuant to the Separation Agreement and Release, Dr. Cambou released any and all claims against us and his rights under the change of control and severance agreement we entered into with him were terminated. Under a separate Consulting Agreement, Dr. Cambou agreed to provide transition services to us on a consultant basis for a four month period or less, at a monthly rate equal to 50 percent of his monthly base salary. The Consulting Agreement was rejected by the U.S. Bankruptcy Court in connection with the Chapter 11 Cases. Therefore, Dr. Cambou did not provide any consulting services or receive any payments under the Consulting Agreement.

Dario Sacomani. On April 10, 2009, we entered into a Personal Leave Agreement and Release with Mr. Sacomani (the "Leave Agreement"). Under the terms of the Leave Agreement, Mr. Sacomani resigned as Executive Vice President and Chief Financial Officer of Spansion, effective immediately, but remained a part-time employee for a transition period of up to nine months. Mr. Sacomani also agreed to provide transition services during his leave. Mr. Sacomani continued to receive his current base salary and health insurance benefits through the transition period, as well as up to \$7,500 in relocation expenses. Mr. Sacomani's rights under the change of control and severance agreement we entered into with him were terminated upon his execution of the Leave Agreement. Mr. Sacomani's Leave Agreement terminated in January 2010.

Thora Thoroddsen. On February 26, 2009, we entered into a Services Agreement (the “Services Agreement”) with Brincko Associates, John P. Brincko and Ms. Thoroddsen, pursuant to which we paid Brincko Associates \$60,000 a month for Ms. Thoroddsen’s services in connection with our Chapter 11 Cases and related restructuring efforts, as well as reimbursed them for expenses reasonably incurred by Ms. Thoroddsen. In addition, the Services Agreement provided that we indemnify Ms. Thoroddsen for her acts during the term of the Services Agreement. On April 10, 2009, the Board of Directors appointed Ms. Thoroddsen as Spansion’s Interim Chief Financial Officer. Ms. Thoroddsen previously held several senior finance positions and holds a bachelor’s degree in business, with emphasis in accounting and auditing; a master’s degree in economics, with emphasis in econometrics and statistics; and a master’s degree in business administration, with emphasis in finance. On April 24, 2009, Ms. Thoroddsen resigned as Interim Chief Financial Officer as a result of an ongoing pre-existing business relationship between Ernst & Young LLP, Spansion’s independent registered public accountants, and Brincko Associates, the firm through which Ms. Thoroddsen is engaged.

Nathan M. Sarkisian. On April 30, 2009, in connection with Mr. Sarkisian’s appointment as Interim Chief Financial Officer on April 29, 2009, we executed a consulting agreement (the “Agreement”) with Mr. Sarkisian, effective May 20, 2009. Mr. Sarkisian has over 20 years of experience in senior finance positions, and spent 11 years as chief financial officer at a large publicly-traded semiconductor company. Before that, Mr. Sarkisian held various management and finance positions at high technology companies. Mr. Sarkisian holds a bachelor’s degree in economics and a master’s degree in business administration. Under the Agreement, we paid Mr. Sarkisian a monthly fee of \$40,000, plus reimbursement of out of pocket expenses for required travel and other necessary business expenses in accordance with our reimbursement policies. We also executed an indemnification agreement with Mr. Sarkisian in the form provided to Spansion’s executive officers, pursuant to which we provide Mr. Sarkisian with customary indemnification rights. Mr. Sarkisian served as Spansion’s Interim Chief Financial Officer from May 20, 2009 until the appointment of Mr. Furr (discussed below).

Equity Incentive Plan

2010 Equity Incentive Award Plan

Our Board of Directors adopted our 2010 Equity Incentive Award Plan, or the 2010 Plan, on May 10, 2010 and the 2010 Plan was amended on May 10, 2010. The principal purpose of the 2010 Plan is to attract, retain and motivate selected employees, consultants and directors through the granting of stock-based compensation awards and cash-based performance bonus awards.

The principal features of the 2010 Plan are summarized below. This summary is qualified in its entirety by reference to the text of the 2010 Plan.

Share Reserve. Under the 2010 Plan, the aggregate number of shares of our common stock that were initially reserved for issuance pursuant to a variety of stock-based compensation awards, including stock options, stock appreciation rights, or SARs, restricted stock awards, restricted stock unit awards, deferred stock awards, dividend equivalent awards, stock payment awards and performance awards under the Plan was the sum of (i) 6,580,240 (provided that, subject to the provisions of the 2010 Plan, the aggregate number of shares that may be issued or transferred pursuant to full value awards is 3,290,120) and (ii) an annual increase on the first day of each year beginning in 2011 and ending in 2015, equal to the lesser of (A) seven million (7,000,000) shares; (B) a percentage of the shares of common stock outstanding (on an as converted basis) on the last day of the immediately preceding fiscal year as follows: 7% for the increase made January 1, 2011, 6% for the increase made January 1, 2012, 4.5% for the increase made January 1, 2013 and 3.5% for the increases made thereafter; and (C) such smaller number as may be determined by the Board of Directors prior to the first day of such year. Notwithstanding the foregoing, no more than 6,580,240 shares of common stock may be issued upon the exercise of Incentive Stock Options.

Administration. The compensation committee of our board of directors will administer the 2010 Plan unless our board of directors assumes authority for administration. The compensation committee must consist of

at least two members of our board of directors, each of whom is intended to qualify as an “outside director,” within the meaning of Section 162(m) of the Code, a “non-employee director” for purposes of Rule 16b-3 under the Securities Exchange Act of 1934, as amended, or the Exchange Act, and an “independent director” within the meaning of the rules of the NYSE, or other principal securities market on which shares of our common stock are traded. The 2010 Plan provides that the compensation committee may delegate its authority to grant awards to employees other than executive officers and certain senior executives of the company to a committee consisting of one or more members of our board of directors or one or more of our executive officers.

Subject to the terms and conditions of the 2010 Plan, the administrator has the authority to select the persons to whom awards are to be made, to determine the number of shares to be subject to awards and the terms and conditions of awards, and to make all other determinations and to take all other actions necessary or advisable for the administration of the 2010 Plan. The administrator is also authorized to adopt, amend or rescind rules relating to administration of the 2010 Plan.

With respect to awards to non-employee directors, the Board will administer the 2010 Plan and grant awards pursuant to a non-discretionary formula setting forth the type of awards to be granted to non-employee directors, the number of shares subject to the awards and the terms and conditions of the awards, known as the “Non-Employee Director Equity Compensation Policy,” subject to the limitations of the 2010 Plan. Awards to non-employee directors will only be made under the Non-Employee Director Equity Compensation Policy.

Eligibility. Persons eligible to participate in the 2010 Plan include all of our employees, non-employee directors and consultants, as determined by the Administrator. Only employees of our company or certain of our subsidiaries may be granted incentive stock options, or ISOs.

Awards.

The 2010 Plan provides that the administrator may grant or issue stock options, SARs, restricted stock, restricted stock units, deferred stock, dividend equivalents, performance awards, stock payments, or any combination thereof. Each award will be set forth in a separate agreement with the person receiving the award and will indicate the type, terms and conditions of the award.

Nonstatutory Stock Options, or NSOs, will provide for the right to purchase shares of our common stock at a specified price which may not be less than fair market value on the date of grant, and usually will become exercisable (at the discretion of the administrator) in one or more installments after the grant date, subject to the participant’s continued employment or service with us. NSOs may be granted for any term specified by the administrator that does not exceed seven years.

Incentive Stock Options, or ISOs, will be designed in a manner intended to comply with the provisions of Section 422 of the Code and will be subject to specified restrictions contained in the Code. Among such restrictions, ISOs must have an exercise price of not less than the fair market value of a share of common stock on the date of grant, may only be granted to employees, and must not be exercisable after a period of seven years measured from the date of grant. In the case of an ISO granted to an individual who owns (or is deemed to own) at least 10% of the total combined voting power of all classes of our capital stock, the 2010 Plan provides that the exercise price must be at least 110% of the fair market value of a share of common stock on the date of grant and the ISO must not be exercisable after a period of five years measured from the date of grant.

Restricted Stock may be granted to any eligible individual and made subject to such restrictions as may be determined by the administrator. Restricted stock, typically, may be forfeited for no consideration or repurchased by us at the original purchase price if the conditions or restrictions on vesting are not met. In general, restricted stock may not be sold or otherwise transferred until restrictions are removed or expire. Unless otherwise provided by the administrator, purchasers of restricted stock, unlike recipients of options, will have voting rights and will have the right to receive dividends, if any, prior to the time when the restrictions lapse, however, extraordinary dividends will generally be placed in escrow, and will not be released until restrictions are removed or expire.

Restricted Stock Units may be awarded to any eligible individual, typically without payment of consideration, but subject to vesting conditions based on continued employment or service or on performance criteria established by the administrator. Like restricted stock, restricted stock units may not be sold, or otherwise transferred or hypothecated, until vesting conditions are removed or expire. Unlike restricted stock, stock underlying restricted stock units will not be issued until the restricted stock units have vested, and recipients of restricted stock units generally will have no voting or dividend rights prior to the time when vesting conditions are satisfied.

Deferred Stock Awards represent the right to receive shares of our common stock on a future date. Deferred stock may not be sold or otherwise hypothecated or transferred until issued. Deferred stock will not be issued until the deferred stock award has vested, and recipients of deferred stock generally will have no voting or dividend rights prior to the time when the vesting conditions are satisfied and the shares are issued. Deferred stock awards generally will be forfeited, and the underlying shares of deferred stock will not be issued, if the applicable vesting conditions and other restrictions are not met.

Stock Appreciation Rights, or SARs, may be granted in connection with stock options or other awards, or separately. SARs granted in connection with stock options or other awards typically will provide for payments to the holder based upon increases in the price of our common stock over a set exercise price. Unless otherwise determined by the administrator, the exercise price of a SAR granted under the 2010 Plan must be at least 100% of the fair market value of a share of our common stock on the date of grant. Except as required by Section 162(m) of the Code with respect to a SAR intended to qualify as performance-based compensation as described in Section 162(m) of the Code, there are no restrictions specified in the 2010 Plan on the exercise of SARs or the amount of gain realizable therefrom, although restrictions may be imposed by the administrator in the SAR agreements. The term of SARs issued pursuant to the 2010 Plan shall be set by the administrator, provided that the term may not exceed a period of seven years from the date the SARs are granted. SARs under the 2010 Plan will be settled in cash or shares of our common stock, or in a combination of both, at the election of the administrator.

Dividend Equivalents represent the value of the dividends, if any, per share paid by us, calculated with reference to the number of shares covered by the award. Dividend equivalents may be settled in cash or shares and at such times as determined by the compensation committee or board of directors, as applicable.

Performance Awards may be granted by the administrator on an individual or group basis. Generally, these awards will be based upon specific performance targets and may be paid in cash or in common stock or in a combination of both.

Stock Payments may be authorized by the administrator in the form of common stock or an option or other right to purchase common stock as part of an arrangement in lieu of all or any part of compensation, including bonuses, that would otherwise be payable in cash to the employee, consultant or non-employee director. The number and value of stock payments shall be determined by the administrator and may be based on one or more performance criteria or any other specified criteria, including continued service.

Change in Control. In the event of a change in control of the Company, outstanding awards shall be assumed by or substituted by the successor corporation or its affiliate or shall terminate. If the successor corporation refuses such assumption or substitution, the administrator may, in its sole discretion, cause any outstanding awards to become fully exercisable immediately prior to the consummation of the transaction effecting the change of control. If awards are exercisable in lieu of assumption or substitution upon a change in control, the administrator will notify participants that their awards are fully exercisable for a period of fifteen (15) days from the date of such notice and will terminate upon the expiration of such period. Under the 2010 Plan, a change in control is generally defined as:

- the transfer or exchange in a single or series of related transactions by our stockholders of more than 50% of our voting stock to a person or group;

- a change in the composition of our board of directors over a two-year period such that 50% or more of the members of the board of directors were elected through one or more contested elections;
- a merger, consolidation, reorganization or business combination in which we are involved, directly or indirectly, other than a merger, consolidation, reorganization or business combination which results in our outstanding voting securities immediately before the transaction continuing to represent a majority of the voting power of the acquiring company's outstanding voting securities and after which no person or group beneficially owns 50% or more of the outstanding voting securities of the surviving entity immediately after the transaction;
- the sale, exchange, or transfer of all or substantially all of our assets; or
- stockholder approval of our liquidation or dissolution.

Adjustment of Awards. In the event of any stock dividend, stock split, combination or exchange of shares, merger, consolidation, spin-off, recapitalization, distribution of our assets to stockholders (other than normal cash dividends) or any other corporate event affecting the number of outstanding shares of our common stock or the share price of our common stock that would require adjustments to the 2010 Plan or any awards under the 2010 Plan in order to prevent the dilution or enlargement of the potential benefits intended to be made available thereunder, the administrator will make appropriate, proportionate adjustments to:

- the aggregate number and type of shares subject to the 2010 Plan;
- the number and kind of shares subject to outstanding awards and terms and conditions of outstanding awards (including, without limitation, any applicable performance targets or criteria with respect to such awards); and
- the grant or exercise price per share of any outstanding awards under the 2010 Plan.

Amendment and Termination. The Board may terminate, amend or modify the 2010 Plan at any time; *provided, however*, that stockholder approval will be obtained within 12 months to increase the limit on the aggregate number of shares that can be issued under the Plan as Incentive Stock Options. Except to the extent required to ensure compliance with Section 409A of the Code, no amendment, suspension or termination of the Plan shall impair existing rights or obligations under an outstanding award without the consent of the holder unless the award expressly provides for such impairment.

In no event may an award be granted pursuant to the Plan on or after the tenth anniversary of the date the Plan was adopted by the Board of Directors.

Expiration. The 2010 Plan will expire on, and no option or other award may be granted pursuant to the 2010 Plan after, the tenth anniversary of the effective date of the 2010 Plan. Any award that is outstanding on the expiration date of the 2010 Plan will remain in force according to the terms of the 2010 Plan and the applicable award agreement.

Securities Laws and U.S. Federal Income Taxes. The 2010 Plan is designed to comply with various securities and U.S. federal tax laws as follows:

Securities Laws. The 2010 Plan is intended to conform to all provisions of the Securities Act of 1933, as amended, or the Securities Act, and the Exchange Act and any and all regulations and rules promulgated by the SEC thereunder, including without limitation, Rule 16b-3. The 2010 Plan will be administered, and options will be granted and may be exercised, only in such a manner as to conform to such laws, rules and regulations.

Section 409A of the Code. Certain awards under the 2010 Plan may be considered "nonqualified deferred compensation" for purposes of Section 409A of the Code, which imposes certain additional requirements regarding the payment of deferred compensation. Generally, if at any time during a taxable year a nonqualified

deferred compensation plan fails to meet the requirements of Section 409A, or is not operated in accordance with those requirements, all amounts deferred under the 2010 Plan and all other equity incentive plans for the taxable year and all preceding taxable years by any participant with respect to whom the failure relates are includible in gross income for the taxable year to the extent not subject to a substantial risk of forfeiture and not previously included in gross income. If a deferred amount is required to be included in income under Section 409A, the amount also is subject to interest and an additional income tax. The interest imposed is equal to the interest at the underpayment rate plus one percentage point, imposed on the underpayments that would have occurred had the compensation been includible in income for the taxable year when first deferred, or if later, when not subject to a substantial risk of forfeiture. The additional U.S. federal income tax is equal to 20% of the compensation required to be included in gross income. In addition, certain states, including California, have laws similar to Section 409A, which impose additional state penalty taxes on such compensation.

Section 162(m) of the Code. In general, under Section 162(m) of the Code, income tax deductions of publicly held corporations may be limited to the extent total compensation (including, but not limited to, base salary, annual bonus, and income attributable to stock option exercises and other non-qualified benefits) for certain executive officers exceeds \$1,000,000 (less the amount of any “excess parachute payments” as defined in Section 280G of the Code) in any taxable year of the corporation. However, under Section 162(m), the deduction limit does not apply to certain “performance-based compensation” established by an independent compensation committee that is adequately disclosed to and approved by stockholders. In particular, stock options and SARs will satisfy the “performance-based compensation” exception if the awards are made by a qualifying compensation committee, the 2010 Plan sets the maximum number of shares that can be granted to any person within a specified period and the compensation is based solely on an increase in the stock price after the grant date. Specifically, the option exercise price must be equal to or greater than the fair market value of the stock subject to the award on the grant date.

Director Compensation

Spansion uses a combination of cash and equity-based incentive compensation to attract and retain qualified candidates to serve on the Board of Directors. Our independent director compensation is determined by the Board of Directors acting upon the recommendation of the Compensation Committee. In setting director compensation, our Board of Directors considers, among other things, the significant amount of time that directors spend in fulfilling their duties, the skill-level required by directors and competitive market data. Directors who are also employees of Spansion, or who are otherwise determined to not be independent, receive no additional compensation for service as a director. In accordance with our expense reimbursement policy, we reimburse our directors for travel, lodging and related expenses they incur in attending Board of Directors and Board committee meetings.

Cash Compensation

In fiscal 2009, our independent directors received fees for their services as set forth in the table below. These amounts reflect a retainer and meeting fee reduction of 10 percent approved by the Board of Directors in October 2008. This reduction was in alignment with the base salary reduction taken by all exempt employees as part of our efforts to preserve cash. The reduction was applied to payments made for the fourth quarter of 2008 and fiscal 2009, and will remain in effect until the Board takes action to lift the reduction. All annual cash compensation was paid in quarterly installments.

Annual Retainer ⁽¹⁾	54,000
Additional Annual Retainers:	
Chairperson	90,000
Audit Committee Chair	13,500
Compensation Committee Chair	6,750
Finance Committee Chair	6,750
Nominating and Corporate Governance Committee Chair	6,750
Fees Per Board Meeting in Excess of Eight Board Meetings ⁽²⁾	1,800
Fees Per Committee Meeting in Excess of Twelve Committee Meetings ⁽²⁾	1,800

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- (1) All independent directors, including directors serving as Chairperson, receive this annual retainer.
 - (2) If in any calendar year an independent director is required to and does attend (i) more than eight meetings of our Board of Directors, such director will receive \$1,800 for each Board meeting attended in excess of eight, or (ii) more than 12 meetings of a specific Board committee on which he or she serves, such director will receive \$1,800 per such Board committee meeting in excess of 12.

In fiscal 2010, our independent directors shall receive fees for their services as set forth in the table below. All annual cash compensation is paid in quarterly installments.

Annual Retainer ⁽¹⁾	60,000
Additional Annual Retainer :	
Chairperson	60,000
Audit Committee Chair	20,000
Compensation Committee Chair	20,000
Nominating and Corporate Governance Committee Chair	10,000
Fees for serving on a Board Committee ⁽²⁾	5,000
Fees Per Board Meeting in Excess of Ten Board Meetings ⁽³⁾	2,000

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- (1) All independent directors, including directors serving as Chairperson, receive this annual retainer.
 - (2) All independent directors serving on a Board Committee, excluding directors serving as Chairperson and Committee Chairs, receive this annual fee.
 - (3) If in any calendar year an independent director is required to and does attend more than an aggregate of ten meetings of (i) our Board of Directors or (ii) the specific Board Committees on which he or she serves, such director will receive \$2,000 (\$1,000 if telephonic) for each Board of Directors or Board committee meeting attended in excess of ten.

Equity-Based Incentive Compensation

Prior to 2010, each independent director received an initial stock option award exercisable for 20,000 shares of our Class A Common Stock and an initial restricted stock unit award of 20,000 units that convert upon vesting into 20,000 shares of our Class A Common Stock. These awards were made at the time of our initial public offering of our Class A Common Stock in December 2005 or, if later, upon the director's appointment to our Board of Directors. An independent director who served as Chairperson of the Board would have received an additional initial restricted stock unit award of 10,000 units that convert upon vesting into 10,000 shares of our Class A Common Stock.

In addition, for each year of continued service through fiscal 2008, independent directors received an annual stock option award exercisable for 10,000 shares of our Class A Common Stock and an annual restricted stock unit award of 10,000 units that convert upon vesting into 10,000 shares of our Class A Common Stock. For each year of continued service through fiscal 2008, an independent director serving as the Chairperson of the Board received an additional annual stock option award exercisable for 5,000 shares of our Class A Common Stock and an additional annual restricted stock unit award of 5,000 units that convert upon vesting into 5,000 shares of our Class A Common Stock. All annual equity-based compensation was awarded to independent directors on the date of the annual stockholders meeting. At the annual stockholders meeting, each independent director who (i) joined our Board of Directors at or prior to the last annual stockholders meeting, or (ii) joined our Board of Directors after the last annual stockholders meeting but attended at least three meetings of the full Board of Directors, was entitled to receive an annual equity award at that annual stockholders meeting.

All stock option and restricted stock unit awards previously granted to our independent directors vest 25 percent on the anniversary of the grant date and the remainder vests in equal installments quarterly over the remaining 36 months, except for the stock option and restricted stock unit awards granted to our independent directors in December 2005 at the time of the initial public offering of our Class A Common Stock. Those awards vested 25 percent on January 28, 2007 and the remainder vested in equal installments quarterly over the remaining 36 months. We did not grant any equity awards to independent directors in fiscal 2009. Under the Plan of Reorganization, all of our existing equity securities, including all shares of our Class A Common Stock and stock option awards to purchase shares of our Class A Common Stock were cancelled upon our emergence from the Chapter 11 Cases.

For fiscal 2010, each independent director receives an initial stock option award exercisable for 25,000 shares of our Class A Common Stock and an initial restricted stock unit award of 15,000 units that convert upon vesting into 15,000 shares of our Class A Common Stock. These awards are made upon the director's appointment to our Board of Directors. In addition:

- an independent director who serves as Chairperson of the Board will receive an additional initial stock option award exercisable for 35,000 shares of our Class A Common Stock and an additional initial restricted stock unit award of 25,000 units that convert upon vesting into 25,000 shares of our Class A Common Stock;
- independent directors who serve as Chairs of the Audit or Compensation Committees will receive an additional initial stock option award exercisable for 30,000 shares of our Class A Common Stock and an additional initial restricted stock unit award of 10,000 units that convert upon vesting into 10,000 shares of our Class A Common Stock; and
- an independent directors who serves as Chair of the Nominating and Governance Committee will receive an additional initial stock option award exercisable for 15,000 shares of our Class A Common Stock and an additional initial restricted stock unit award of 5,000 units that convert upon vesting into 5,000 shares of our Class A Common Stock.

All of the stock options and restricted stock unit awards to be granted to our independent directors starting in fiscal 2010 will vest in equal installments quarterly until the third anniversary of the grant date.

For each year of continued service starting with fiscal 2011, independent directors shall receive an annual stock option award exercisable for 20,000 shares of our Class A Common Stock and an annual restricted stock unit award of 7,500 units that convert upon vesting into 7,500 shares of our Class A Common Stock. In addition, for each year of continued service starting with fiscal 2011:

- an independent director serving as the Chairperson of the Board will receive an additional annual stock option award exercisable for 30,000 shares of our Class A Common Stock and an additional annual restricted stock unit award of 12,500 units that convert upon vesting into 12,500 shares of our Class A Common Stock;
- independent directors serving as Chairs of the Audit or Compensation Committees will receive an additional annual stock option award exercisable for 25,000 shares of our Class A Common Stock and an additional annual restricted stock unit award of 7,500 units that convert upon vesting into 7,500 shares of our Class A Common Stock; and
- an independent director serving as Chair of the Nominating and Governance Committee will receive an additional annual stock option award exercisable for 12,500 shares of our Class A Common Stock and an additional annual restricted stock unit award of 3,750 units that convert upon vesting into 3,750 shares of our Class A Common Stock.

All annual equity-based compensation is awarded to independent directors on the first trading day in April of each year. On such day, each independent director who joined our Board of Directors at or prior to September 30 of the previous year is entitled to receive an annual equity award at that annual stockholders meeting, while each remaining independent director shall receive an annual equity award prorated to equate to the number of months served.

Director Compensation Table for Fiscal 2009

The following table provides information concerning compensation expense paid to or earned by each of our independent directors for fiscal 2009. Mr. John H. Kispert, our President and Chief Executive Officer, Dr. Boaz Eitan, a director, our former Interim President and Executive Vice President, and Dr. Bertrand F. Cambou, our former President and Chief Executive Officer, do not and did not receive additional compensation for their services as a director.

<u>Name</u>	<u>Fees Earned or Paid in Cash (\$)</u>	<u>Stock Awards⁽¹⁾⁽²⁾ (\$)</u>	<u>Option Awards⁽¹⁾⁽²⁾ (\$)</u>	<u>Total (\$)</u>
David K. Chao	75,600	—	—	75,600
Gilles Delfassy ⁽³⁾	80,437	—	—	80,437
Donald L. Lucas ⁽⁴⁾	219,450	—	—	219,450
John M. Stich ⁽⁵⁾	144,450	—	—	144,450

- (1) No Stock Option Awards or Restricted Stock Units were granted to our directors in fiscal 2009.
(2) As of December 27, 2009, the aggregate number of shares of Class A Common Stock underlying stock option and restricted stock unit awards for each of our independent directors was:

<u>Name</u>	<u>Aggregate Number of Shares Underlying Stock Options</u>	<u>Aggregate Number of Shares Underlying Restricted Stock Units</u>
David K. Chao	40,000	11,250
Gilles Delfassy	13,125	—
Donald L. Lucas	0	—
John M. Stich	0	—

- (3) Mr. Delfassy resigned from the board on October 14, 2009.
(4) On October 15, 2009, Mr. Lucas cancelled all unvested stock awards and option awards previously awarded to him by Spansion.
(5) Mr. Stich cancelled all unvested stock awards and option awards previously awarded to him by Spansion on October 15, 2009.

CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

Review and Approval of Transactions with Related Persons

The Audit Committee has adopted a written policy for approval of transactions between Spansion and its directors, director nominees, executive officers, greater than five percent beneficial owners and their respective immediate family members, where the amount involved in the transaction exceeds or is expected to exceed \$120,000 in a single calendar year. Some of the transactions described in this offering memorandum were approved by the Board of Directors before this policy was adopted.

The policy provides that the Audit Committee reviews certain transactions subject to the policy and determines whether or not to approve or ratify those transactions. In doing so, the Audit Committee takes into account, among other factors it deems appropriate:

- the related person's interest in the transaction;
- the approximate dollar value of the amount involved in the transaction;
- the approximate dollar value of the amount of the related person's interest in the transaction without regard to the amount of any profit or loss;
- whether the transaction was undertaken in the ordinary course of business of Spansion;
- whether the transaction with the related person is proposed to be, or was, entered into on terms no less favorable to Spansion than terms that could have been reached with an unrelated third party;
- the purpose, and the potential benefits to Spansion, of the transaction; and
- any other information regarding the transaction or the related person in the context of the proposed transaction that would be material to investors in light of the circumstances of the particular transaction.

In addition, the Audit Committee has delegated authority to the Chair of the Audit Committee to pre-approve or ratify certain transactions. A summary of any new transactions pre-approved or ratified by the Chair is provided to the full Audit Committee for its review in connection with its next scheduled Audit Committee meeting.

The Audit Committee has considered and adopted standing pre-approvals under the policy for limited transactions with related persons. Pre-approved transactions include:

- employment of executive officers, subject to certain conditions;
- any compensation paid to a director if the compensation is required to be reported in Spansion's proxy statement under Item 402 of Regulation S-K promulgated by the SEC;
- any transaction with another company at which a related person's only relationship is as an employee (other than an executive officer or director) or beneficial owner of less than ten percent of that company's equity, if the aggregate amount involved does not exceed the greater of \$1,000,000, or two percent of that company's total annual revenues;
- any charitable contribution, grant or endowment by Spansion to a charitable organization, foundation or university at which a related person's only relationship is as an employee (other than an executive officer or director), if the aggregate amount involved does not exceed the lesser of \$1,000,000, or two percent of the charitable organization's total annual receipts; and
- any transaction where the related person's interest arises solely from the ownership of Spansion's Class A Common Stock and all holders of Spansion's Class A Common Stock received the same benefit on a pro rata basis.

A summary of new transactions covered by the standing pre-approvals described above is provided to the Audit Committee for its review at each regularly scheduled Audit Committee meeting.

Overview

On March 18, 2008, we completed our acquisition of Saifun Semiconductors Limited, or Saifun. In connection with the Saifun acquisition, the Board of Directors appointed Dr. Boaz Eitan, former Executive Vice President and Chief Executive Officer, Saifun, as a member of the Board effective as of the closing of the acquisition. Dr. Eitan served as a Class II director until our emergence from the Chapter 11 Cases in accordance with our Plan of Reorganization. Also in connection with the Saifun acquisition, we entered into a Noncompetition and Retention Agreement with Dr. Eitan whereby he received an annual gross salary equal to the Israeli shekel equivalent of \$260,000 (as determined according to the representative rate of exchange published by the Bank of Israel). In addition, Dr. Eitan was eligible for an annual performance bonus and one time retention bonus for remaining employed by Spansion at the one year anniversary of the closing of the Saifun acquisition. Dr. Eitan resigned from his employment with Spansion in March 2009 and resigned from Spansion's Board of Directors upon our emergence from the Chapter 11 Cases on May 10, 2010. The Noncompetition and Retention Agreement also contains a two-year non-competition provision and a two-year non-solicitation provision.

We also have had an ongoing relationship and transactions with Fujitsu Limited, which owned more than ten percent of our Old Common Stock until such securities were cancelled in accordance with the Plan of Reorganization. We are currently party to several agreements with Fujitsu and its affiliates. These agreements include:

- the Amended and Restated Fujitsu Distribution Agreement;
- the Amended and Restated Intellectual Property Contribution and Ancillary Matters Agreement;
- the Amended and Restated Patent Cross-License Agreement with Fujitsu;
- the Amended and Restated Non-Competition Agreement;
- various software license, maintenance, consulting and development agreements;
- various service agreements and leases; and
- agreements with Fujitsu related to the sale of our JV1 and JV2 wafer fabrication facilities (the "JV1/JV2 Facilities") and certain equipment, assets and inventory located at these facilities (the "JV1/JV2 Transaction").

Agreements and Arrangements

Amounts paid by us under the following agreements and arrangements do not reflect any claims the contracting party may have asserted against us in the Chapter 11 Cases. In addition, the reported amounts paid to or from Fujitsu and its affiliates in fiscal 2009 under the agreements and arrangements do not reflect amounts that may have been paid or received by Spansion Japan, our subsidiary, subsequent to March 3, 2009, which is when we were no longer deemed to have control over Spansion Japan for financial reporting purposes and we excluded Spansion Japan's financial results from our condensed consolidated financial statements.

Amended and Restated Fujitsu Distribution Agreement

We and Fujitsu Semiconductor Limited (FSL), through its subsidiary Fujitsu Electronics Inc. (FEI, together with FSL and Fujitsu Limited, "Fujitsu") are party to the Amended and Restated Fujitsu Distribution Agreement, which provides that Fujitsu acts as a distributor for sales of our products in Japan and throughout the rest of the world, except for Europe and the Americas, with limited exceptions. We license use of the Spansion trademark to Fujitsu so that our products are sold under our own brand name. We also indemnify Fujitsu from and against any

third-party action claiming our products infringe upon a third-party's intellectual property rights up to the amounts paid to Fujitsu by their customers for the affected products.

Under the Fujitsu Distribution Agreement, our prices are based on our recommended sales prices, subject to adjustment in certain cases based on Fujitsu's sales prices to their customers, less an agreed-upon distribution margin. Fujitsu has agreed to use its best efforts to promote the sale of our products in Japan and to specified customers served by Fujitsu. In the event that we reasonably determine that Fujitsu's sales performance is not satisfactory based on specified criteria, then we have the right to require Fujitsu to propose and implement an agreed-upon corrective action plan. If we reasonably believe that the corrective action plan is inadequate, we can take steps to remedy deficiencies ourselves through means that include selling products ourselves or appointing another distributor as a supplementary distributor. The Fujitsu Distribution Agreement continues in effect indefinitely or until a successor agreement is executed. We and Fujitsu can mutually agree to terminate the Fujitsu Distribution Agreement for convenience at any time upon 60 days notice. Either party can also terminate the Fujitsu Distribution Agreement for a material breach of performance thereunder after a failure to cure the breach within 120 days. Currently, the distribution margin earned by Fujitsu on the sale of certain of our products is 5.0 percent.

We and Fujitsu entered into an agreement in September 2008, in which we agreed to pay Fujitsu royalties on certain of our products sold or transferred under the Fujitsu Distribution Agreement in exchange for Fujitsu's release of claims on account of an alleged breach of our alleged obligation to defend and/or indemnify Fujitsu against assertions by a third party against our products. In fiscal 2009 and the first half of fiscal 2010, we paid \$0.4 million and \$0.3 million to Fujitsu under this agreement.

Amended and Restated Intellectual Property Contribution and Ancillary Matters Agreement

AMD and Fujitsu have each contributed to us various intellectual property rights and technologies pursuant to an Amended and Restated Intellectual Property Contribution and Ancillary Matters Agreement. Under this agreement, we became owners, or joint owners with each of Fujitsu and AMD, of certain patents, patent applications, trademarks, and other intellectual property rights and technology. AMD and Fujitsu reserved rights, on a royalty-free basis, to practice the contributed patents and to license these patents to their affiliates and successors-in-interest to their semiconductor groups. AMD and Fujitsu each have the right to use the jointly owned intellectual property for their own internal purposes and to license such intellectual property to others to the extent consistent with their non-competition obligations to us. We also have granted to each of AMD and Fujitsu a non-exclusive, perpetual, irrevocable fully paid and royalty-free license of our rights, other than patent and trademark rights, in technology developed by us prior to AMD's and Fujitsu's ownership interests in us falling below 12.5%. AMD may grant licenses under our patents, provided that these licenses are of no broader scope than, and are subject to the same terms and conditions that apply to, any license of AMD's patents granted in connection with such license, and the recipient of such license grants to us a license of similar scope under its patents.

Amended and Restated Patent Cross-License Agreements

In connection with our reorganization as Spansion LLC in June 2003, we granted to each of AMD and Fujitsu, and AMD and Fujitsu each granted to us, non-exclusive licenses under certain patents and patent applications of their semiconductor groups to make, have made, use, sell, offer to sell, lease, import and otherwise dispose of certain semiconductor-related products anywhere in the world. The patents and patent applications that are licensed are those with an effective filing date prior to the termination of our patent cross-license agreements. The agreements will automatically terminate on the later of June 30, 2013 and the date AMD or Fujitsu, as applicable, sells its entire equity interest in us. The agreements may be terminated by a party on a change in control of the other party or its semiconductor group. The licenses to patents under license at the time of the termination will survive until the last such patent expires.

In cases where there is a change of control of us, AMD, Fujitsu, or the semiconductor group of AMD or Fujitsu, as the case may be, each other party to the cross-license agreement shall have the right to terminate the agreement (or to invoke the provisions described in this paragraph if the agreement had been previously terminated) by giving 30 days written notice within 90 days after receiving notice of the change of control. If so terminated, the rights, licenses and immunities granted under the agreement will continue solely with respect to those licensed patents that are entitled to an effective filing date that is on or before, and are licensed as of, the date of such change of control, and will continue until the expiration of the last to expire of such licensed patents. Moreover, with respect to circuit patents, which are patents (other than process patents) covering elements using electrical signals to achieve a particular function, the rights, licenses and immunities granted to the party undergoing the change of control are limited solely to:

- each existing and pending product of such party as of the date of change of control;
- each existing and pending product of the acquiring third party of such party as of the date of change of control that would have been in direct competition with products described in (i) above; and
- successor products of products described in (i) and (ii) above.

We were required to make royalty payments to each of AMD and Fujitsu associated with licenses. The royalty rates were reduced to zero percent in November 2008. In fiscal 2009, we did not incur any expenses related to royalties under the patent cross-license agreements we have with AMD and Fujitsu.

Amended and Restated Non-Competition Agreement

We are party to a non-competition agreement with AMD and Fujitsu, whereby AMD and Fujitsu each agree not to directly or indirectly engage in a business that manufactures or supplies standalone semiconductor devices (including single chip, multiple chip or system devices) containing certain Flash memory, which is the business in which we primarily compete. This non-competition agreement does not prevent AMD or Fujitsu from manufacturing or selling products that incorporate Flash memory (whether it be Spansion Flash memory or a competitive product). Although AMD currently has no other operations that compete in the Flash memory market, Fujitsu currently produces and sells products that incorporate Spansion Flash memory or competitive Flash memory. Furthermore, AMD and Fujitsu each agree that if either of them acquires a business that has a division or other operations that manufactures or supplies standalone semiconductor devices (including single chip, multiple chip or system devices) containing certain Flash memory, AMD and Fujitsu will provide us with a right of first offer to acquire the competing division or operations. AMD and Fujitsu are required to use their commercially reasonable efforts to divest the competing division or operations if we do not purchase them. These non-competition obligations of AMD will last until the earlier of (i) the dissolution of our company, and (ii) two years after the date on which AMD's ownership interest in us is less than or equal to five percent. These non-competition obligations of Fujitsu will last until the earlier of (i) the dissolution of our company, and (ii) May 10, 2010.

We, AMD and Fujitsu also agreed not to solicit each other's employees. Without our prior written consent, each of AMD and Fujitsu will not directly or indirectly either for itself or another person, (i) hire any individual employed by our company or (ii) solicit or encourage any individual to terminate his or her employment with our company. These obligations not to solicit or hire do not apply if (A) our company has terminated the employment of such individual or (B) at least two years has elapsed since such individual has voluntarily terminated his or her employment with our company. Similarly, without the prior written consent of AMD or Fujitsu, we agreed not to directly or indirectly either for ourselves or another person, (i) hire any individual employed by AMD or Fujitsu or (ii) solicit or encourage any individual to terminate his or her employment with AMD or Fujitsu. These obligations not to solicit or hire do not apply if (A) AMD or Fujitsu, as applicable, has terminated the employment of such individual or (B) at least two years has elapsed since such individual has voluntarily terminated his or her employment with AMD or Fujitsu, as applicable. These non-solicitation obligations of AMD will last until the earlier of (i) the dissolution of our company, and (ii) two years after the date on which AMD's ownership interest in us is less than or equal to five percent. These non-solicitation obligations of Fujitsu

will last until the earlier of (i) the dissolution of our company, and (ii) two years after the date on which Fujitsu's ownership interest in us is less than or equal to five percent. These non-solicitation obligations of our company with respect to AMD employees or Fujitsu employees will terminate at the same time as the non-solicitation obligations of AMD or Fujitsu, as applicable, terminate.

Fujitsu IT Services Agreement

We were party to an IT Services Agreement and General Services Agreement with Fujitsu (including certain of Fujitsu's subsidiaries). Under the agreement, Fujitsu provided, among other things, information technology, research and development, quality assurance, insurance, facilities, environmental, and human resources services primarily to our manufacturing facilities in Japan. For services rendered, Fujitsu was paid fees in an amount equal to cost plus five percent except for services procured by Fujitsu from third parties, which were provided to us at cost. Fujitsu had the right to approve certain amendments to the other's service agreements with us. We assigned the agreement to Spansion Japan on March 31, 2009. The term of the agreement expired on October 31, 2009, but is automatically renewed on a monthly basis thereafter until terminated by either party to the agreement. For fiscal 2009 and the first half of 2010, the total charges to us for services from Fujitsu were approximately \$0.6 million and \$0.1 million.

Fujitsu Manufacturing Services Agreement

Prior to September 30, 2006, we were party to an agreement pursuant to which Fujitsu provided manufacturing services to us at volumes ordered by us and prices established on a quarterly basis. Prices were on the basis of product-type and were equal to Fujitsu's good faith estimate of its projected material, labor and overhead costs for the applicable product-type plus three percent. If Fujitsu's aggregate expended labor and overhead costs for the manufacturing services actually purchased by us during a fiscal quarter were less than 97 percent of the projected labor and overhead costs for such fiscal quarter, then we were required to pay Fujitsu the amount of such deficiency in order to protect Fujitsu's labor and overhead commitments from situations where the actual amounts of services purchased by us were materially different from projected orders. These services consisted of assembly and testing services for our products. The Manufacturing Services Agreement expired on September 30, 2006. Currently, such manufacturing services are provided by Fujitsu to us on a purchase order basis. As a result of manufacturing services provided by Fujitsu, we incurred approximately \$40,000 and \$4,000 of expenses in fiscal 2009 and fiscal 2010.

Lease

Spansion Japan leases from Fujitsu the land upon which JV3 and SP1, Spansion Japan's wafer fabrication facilities in Aizu-Wakamatsu, Japan, are located. As a result of this lease with Fujitsu, we incurred approximately \$2.04 million and \$0.7 million in expenses in fiscal 2009 and fiscal 2010.

Stockholders Agreement

We were party to a Stockholders Agreement with AMD and Fujitsu that imposed certain restrictions and obligations on AMD and Fujitsu and on their respective shares of our Old Common Stock and that provided for certain matters pertaining to our management and governance. Pursuant to the Stockholders Agreement, AMD and Fujitsu agree to vote all shares of Old Common Stock held by them or their affiliates so as to cause the election of each Class A Director proposed for election by the nominating committee of our board of directors. The Stockholders Agreement also provided for certain rights relating to the appointment of directors to serve on our Board. The rights under the Stockholder Agreement terminated upon the cancellation of our Old Common Stock in accordance with the Plan of Reorganization at the time we emerged from the Chapter 11 Cases.

JV1/JV2 Transaction

Master Lease Agreement

In connection with the sale of the JV1/JV2 Facilities, on September 28, 2006, Spansion Japan and Fujitsu entered into a Master Lease Agreement for certain equipment, located at the JV1/JV2 Facilities and identified on equipment schedules agreed to by the parties. Effective upon the JV1/JV2 Closing, Spansion Japan began to lease to Fujitsu the equipment under the Master Lease Agreement. The initial term of each lease schedule will continue for the number of months specified in the applicable schedule unless otherwise terminated in accordance with the terms of the applicable schedule or the Master Lease Agreement. Fujitsu has the option to renew or extend the lease term for any or all of the equipment at the end of the initial term or any extension thereof for up to six months. If specified demand targets for wafers are not met, and subject to conditions described in the Master Lease Agreement, each of Spansion Japan and Fujitsu will have a right to terminate the lease of some or all of the leased equipment on or after June 30, 2008, by giving notice to the other party prior to December 31, 2007.

Subject to the terms of the Master Lease Agreement, Fujitsu will have a right of first refusal in the event of the sale by Spansion Japan of any equipment for a purchase price equal to the highest offer received from a third party. In addition, subject to the terms of the Master Lease Agreement, Fujitsu will have the option to purchase any or all of the equipment at the expiration of the applicable term, upon any early lease termination or if any equipment is not returned in its proper condition for a purchase price equal to the fair market value of the equipment at the time of purchase or any other purchase price as may be set forth in the applicable schedule.

The obligations of Spansion Japan under the Master Lease Agreement are being guaranteed by Spansion Inc., Spansion LLC and Spansion Technology Inc. Fujitsu paid approximately \$0.3 million in fees to Spansion Japan in fiscal 2009 under the Master Lease Agreement.

Foundry Agreement

In connection with the sale of the JV1/JV2 Facilities, Spansion Japan and Fujitsu entered into a Foundry Agreement, pursuant to which Fujitsu provides certain foundry services for the manufacture of our products at the JV1/JV2 Facilities.

Pursuant to the Foundry Agreement, Fujitsu began to provide foundry services to us commencing upon the JV1/JV2 Closing. The Foundry Agreement also includes minimum capacity and purchase commitments between both the parties resulting in financial penalties if such capacity and purchase commitments are not achieved. The term of the Foundry Agreement ends on July 26, 2011. Fujitsu has agreed to give Spansion Japan at least 12 months prior notice of its intent to cease providing foundry services to Spansion Japan under the Foundry Agreement. Either Spansion Japan or Fujitsu may terminate the Foundry Agreement in the event that the other party fails to correct or cure its material breach under the Foundry Agreement within 60 days of receipt of written notice from the non-defaulting party specifying such breach. We incurred approximately \$52.1 million and \$14.9 million in expenses in fiscal 2009 and fiscal 2010 under the Foundry Agreement.

Secondment and Transfer Agreement

In connection with the sale of the JV1/JV2 Facilities, Spansion Japan and Fujitsu entered into a Secondment and Transfer Agreement, or Secondment Agreement, pursuant to which Spansion Japan seconded certain employees to Fujitsu commencing upon the JV1/JV2 Closing. In addition, certain employees will ultimately be transferred to Fujitsu. Unless the parties otherwise agree, the period of secondment for seconded employees not designated for transfer ended June 30, 2008, and will end no later than December 31, 2009 for seconded employees designated for transfer.

The seconded employees remain employees of Spansion Japan and remain eligible to participate in Spansion Japan's various benefit plans, and Fujitsu is required to reimburse Spansion Japan for all compensation and expenses associated with such seconded employees and incurred by Spansion Japan during the secondment period.

The Secondment Agreement can be terminated (i) by the mutual written agreement of Spansion Japan and Fujitsu, (ii) by either Spansion Japan or Fujitsu in the event that the other party materially defaults in the performance of a material obligation under the Secondment Agreement and the breaching party has not cured such breach within 120 days after receipt of notice of default by the non-breaching party and (iii) by either Spansion Japan or Fujitsu in the event that the other party is subject to bankruptcy or insolvency proceedings. The Secondment Agreement automatically terminates (i) on the transfer date of the last of the transferred employees or (ii) upon the termination of the Foundry Agreement unless otherwise agreed by Spansion Japan and Fujitsu. Fujitsu paid approximately \$6.1 million in fees to Spansion Japan in fiscal 2009 under the Secondment Agreement.

Wafer Processing Services Agreement

In connection with the JV1/JV2 Closing, on April 2, 2007, Spansion Japan and Fujitsu entered into a Wafer Processing Services Agreement (the "Wafer Processing Agreement"), pursuant to which Fujitsu provides certain wafer processing services to Spansion Japan at the JV1/JV2 Facilities. The term of the Wafer Processing Agreement commenced on April 2, 2007 and is effective until December 31, 2009. The Wafer Processing Agreement will automatically terminate upon termination or expiration of that certain Foundry Agreement dated as of September 28, 2006, among Spansion Japan, Spansion Inc., Spansion LLC and Spansion Technology Inc. and Fujitsu. Either Spansion Japan or Fujitsu may terminate the Wafer Processing Agreement in the event that the other party fails to correct or cure any material breach by such other party of any covenant or obligation under the Wafer Processing Agreement within 60 days of receipt of written notice from the non-defaulting party specifying such breach. We incurred approximately \$0.3 million in expenses in fiscal 2009 under the Wafer Processing Services Agreement.

Sort Services Agreement

In connection with the JV1/JV2 Closing, on April 2, 2007, Spansion Japan and Fujitsu entered into a Sort Services Agreement (the "Sort Services Agreement"), pursuant to which Fujitsu provides probe testing services of Spansion Japan's wafers at the JV1/JV2 Facilities. The term of the Sort Services Agreement commenced on April 2, 2007 and was effective until the Sort Services Agreement was terminated March 31, 2009. We incurred approximately \$4.2 million in expenses in fiscal 2009 under the Sort Services Agreement.

Rental Agreement

In connection with the JV1/JV2 Closing, on April 2, 2007, Spansion Japan and Fujitsu Semiconductor Technology, Inc., a Japanese corporation ("FSET"), entered into a Rental Agreement (the "Rental Agreement"), pursuant to which Spansion Japan rented certain equipment (the "Rental Equipment") to FSET for the sole purpose of fulfilling the obligations of Fujitsu in the Sort Services Agreement. Spansion Japan retained title to the Rental Equipment, and FSET was prohibited from selling, pledging or otherwise encumbering or disposing of the Rental Equipment. The term of the Rental Agreement commenced on April 2, 2007 and was effective until March 31, 2009, which is when the Sort Services Agreement was terminated. FSET paid approximately \$0.2 million in fees to Spansion Japan in fiscal 2009 under the Rental Agreement.

Services Agreement

In connection with the JV1/JV2 Closing, on April 2, 2007, Spansion Japan and FSET entered into a Services Agreement (the "Services Agreement"), pursuant to which Spansion Japan provides certain human resource services and information technology ("IT") services to FSET (collectively, the "Services"). Any services are to

be provided pursuant to statements of works, which may be updated by Spansion Japan and FSET from time to time upon mutual agreement. Spansion Japan will provide the Services to FSET at cost plus five percent (5%). Pursuant to the Services Agreement, Spansion Japan shall perform the Services with the same degree of accuracy, quality and completeness as it would provide similar services to its own divisions or affiliates (“Service Level”). The term of the Services Agreement commenced on April 2, 2007 and was effective until March 31, 2009. FSET paid approximately \$0.2 million in fees to Spansion Japan in fiscal 2009 under the Services Agreement.

Eitan-Mehulal Law Group

We have an ongoing engagement with Eitan-Mehulal Law Group (the “Eitan Firm”), a law firm where the spouse of Dr. Boaz Eitan, a former member of our Board of Directors, is a founder and partner. The Eitan Firm provides us with legal services for mergers and acquisitions, commercial, corporate and intellectual property matters. In fiscal 2009 and the first half of fiscal 2010, we paid approximately \$0.7 million and \$0.2 million to the Eitan Firm for legal services.

Sitrick Brincko Group, LLC

We engaged Sitrick And Company Inc. (“Sitrick”) as corporate communications consultants and Brincko Associates (“Brincko”) as management and restructuring consultants in March 2009. In November 2009, Brincko merged with Sitrick to form Sitrick Brincko Group, LLC. Following the merger, Resource Connection, Inc., a professional services firm, acquired all the membership interests in Sitrick Brincko Group and it became a wholly-owned subsidiary of Resources Connection. Brincko employed and Sitrick Brincko Group employs Thora Thoroddsen. In fiscal 2009 and the first half of fiscal 2010, we paid approximately \$1.6 million and \$0.4 million to Sitrick.

KLA-Tencor Corporation

We have purchased equipment and services from KLA-Tencor Corporation (“KLA”), a semiconductor equipment manufacturer. Mr. John H. Kispert was employed by KLA until January 1, 2009. Pursuant to Mr. Kispert’s severance agreement with KLA, he receives severance payments and agreed to perform certain services for KLA through January 1, 2011. In fiscal 2009 and the first half of fiscal 2010, we paid approximately \$2.3 million and \$1.0 million to KLA.

Claims Agent Agreement

On May 7, 2010, we entered into a Claims Agent Agreement with PIRINATE Consulting Group, LLC, a privately-held consulting firm, pursuant to which PIRINATE performs claims agent services in connection with the resolution of certain claims resulting from the Chapter 11 Cases and described in the Plan of Reorganization. Upon execution of the Claims Agent Agreement, we paid to PIRINATE a \$750,000 retainer for the performance of the duties and responsibilities of claims agent set forth in the Plan of Reorganization and Claims Agent Agreement. Pursuant to the Claims Agent Agreement, PIRINATE is entitled to (i) a monthly fee equal to \$15,000, and (ii) an incentive fee equal to between \$25,000 and \$400,000 depending on the final aggregate amount of the claims administered by PIRINATE. The Claims Agent Agreement terminates in accordance with the terms of the Plan of Reorganization. Mr. Eugene I. Davis, a member of our Board of Directors, is the Chairman and Chief Executive Officer of PIRINATE. For the first six months of fiscal 2010, PIRINATE has earned \$30,000.

Director Independence

The Board of Directors affirmatively determines the independence of each director in accordance with the elements of independence set forth in the NYSE listing standards. On May 10, 2010, the Board conducted a

review of director independence. During this review, the Board considered transactions and relationships between each director or any member of his or her immediate family and Spansion and our subsidiaries and affiliates. The Board also considered whether there were any transactions or relationships between directors or any member of their immediate families (or any entity on which a director or an immediate family member is an executive officer, general partner or significant equity holder) and members of Spansion's executive team or their affiliates. The purpose of this review was to determine whether any transactions or relationships exist that are inconsistent with a determination of director independence.

The Board affirmatively determined that each member of the Board was independent in accordance with Nasdaq and NYSE listing standards except for Mr. Kispert as a result of him being the President and Chief Executive Officer of Spansion.

DESCRIPTION OF CERTAIN INDEBTEDNESS

Senior Secured Term Loan

Our five-year \$450 million senior secured credit agreement, or Term Loan, is secured by our assets, including, among other items, a first priority lien on property, plant and equipment and inventory, and a second priority lien on accounts receivable and cash. Interest on the Term Loan accrues at a rate per annum, reset quarterly, equal to LIBOR, but in any case not less than 2.00 percent, plus 5.50 percent. As of June 27, 2010, the interest rate on the Term Loan was 7.50 percent. The Term Loan requires net cash proceeds from asset sales or other dispositions of property, extraordinary cash receipts, and other cash flows to be used to prepay the outstanding balance of the Term Loan. Voluntary prepayments of borrowings will be permitted in whole or in part, in minimum principal amounts to be agreed upon, at any time on or prior to May 10, 2011 at a price equal to 101 percent of the principal amount of such borrowings being prepaid plus all accrued and unpaid interest plus breakage costs, if any, and thereafter at any time without premium or penalty, other than breakage costs, if any.

Under the Term Loan, we are subject to a number of financial covenants as of June 27, 2010, including the following:

- a minimum consolidated interest coverage ratio of 3.75 to 1.0;
- a maximum leverage ratio of 2.50 to 1.0 until September 25, 2011 and a maximum leverage ratio of 2.0 to 1.0 thereafter; and
- maximum permitted capital expenditures of \$75 million in 2010, \$100 million in 2011, and \$125 million in 2012 and each fiscal year thereafter.

Any capital expenditure amount not expended in the fiscal year for which the we are permitted may be carried over for expenditure in the succeeding fiscal year in an amount not to exceed \$25 million in any fiscal year. As of June 27, 2010, we were in compliance with all of the financial covenants under the Term Loan.

In addition, and subject to exceptions, under the Term Loan we and our subsidiaries are not permitted, among other things, to:

- create or incur any new liens except for liens in connection with the Term Loan and Revolving Credit Facility, inchoate liens, restrictions affecting real property, equipment leases and liens on the property of our foreign subsidiaries securing indebtedness of such foreign subsidiary;
- incur additional debt other than debt to be incurred in connection with the Term Loan and Revolving Credit Facility, capital leases, debt incurred by our foreign subsidiaries, and in limited cases, loans to subsidiaries;
- make investments, except for loans and advances to employees in the ordinary course of business, extensions of credit arising from the grant of trade credit in the ordinary course of business, the purchase or other acquisition of all of the equity interests in any person or entity or all or any substantial portion of the property of any person or entity so long as such person or entity will be wholly owned by us or our subsidiary, and stock or other securities received in settlement of debts created in the ordinary course of business;
- merge, dissolve, liquidate or consolidate with or into another person or entity;
- make any dispositions, including any sale and leaseback transactions;
- amend any of our organizational documents in any manner which adversely affects the rights of the lenders;
- prepay any debt, except that debt of foreign subsidiaries may be prepaid by the applicable foreign subsidiary; and
- engage in transactions with affiliates unless in the normal course of business, negotiated at arms-length terms and disclosed to the agent for the lenders.

We recently negotiated with our lenders under the Term Loan to amend and restate the Term Loan to modify certain terms of the Term Loan, one of which is a waiver to the requirement that Spansion Inc. use 50% of the net proceeds from the Common Stock Offering to pay down the Term Loan.

Under the amended and restated Term Loan, we will be subject to a number of financial covenants, including the following:

- a minimum consolidated interest coverage ratio of 3.00 to 1.0;
- a maximum leverage ratio of 3.50 to 1.0; and
- maximum permitted capital expenditures of \$150 million.

In addition, among other things, under the amended and restated Term Loan it is anticipated that:

- the covenant to maintain interest rate agreements will be removed;
- the debt covenant of the Term Loan will be amended to permit (i) the issuance of the notes offered hereby, (ii) the incurrence of debt subject to no default or event of default and pro forma financial covenant compliance and (iii) the incurrence of debt in connection with the proposed restructuring of certain Japanese accounts receivable (the “Japanese Restructuring”);
- the basket for permitted acquisitions will be amended to allow for acquisitions subject to no default or event of default and pro forma financial covenant compliance;
- the basket for permitted dispositions will be amended to (i) increase the basket for dispositions of intellectual property rights to an aggregate amount of \$250,000,000 without annual limits, (ii) increase the basket for dispositions (other than dispositions of intellectual property rights) to the greater of \$100,000,000 and 10% of consolidated total assets and (iii) include a basket for transfers of probe cards in an aggregate amount of \$10,000,000;
- the investments covenant will be amended to include a general investments basket of an aggregate amount of \$25,000,000 plus an amount equal to excess cash flow plus net cash proceeds of equity issuances and capital contributions received and not otherwise used to make investments or restricted payments (the “Available Amount”);
- the investments covenant will be amended to increase the basket for investments in joint ventures from \$25,000,000 to \$40,000,000;
- the restricted payments covenant will be amended to include a general restricted payments basket of an aggregate amount of \$25,000,000 plus the Available Amount; and
- the transactions with affiliates covenant will be amended to permit the Japanese Restructuring.

Senior Revolving Credit Facility

In order to fund fees and expenses associated with the Chapter 11 Cases as well as ongoing working capital needs, upon emergence from the Chapter 11 Cases on May 10, 2010, we entered into a senior secured loan and security agreement with Bank of America and other financial institutions, or the Revolving Credit Facility, in an aggregate amount of up to \$65 million. Available amounts for borrowing under this credit facility are limited to 85 percent of eligible accounts receivable, plus the lesser of (i) \$10 million and (ii) 25 percent of eligible foreign accounts receivable, net of reserves. The Revolving Credit Facility requires us to maintain a minimum quarterly fixed charge coverage ratio exceeding 1.00 to 1.00 on a trailing four-quarter basis if the sum of our domestic cash balance and availability from the Revolving Credit Facility falls below \$60 million. As of September 26, 2010, we had not drawn down any amounts under the Revolving Credit Facility.

DESCRIPTION OF THE NOTES

You can find the definitions of certain terms used in this description under the subheading “—Certain definitions.” In this description, the word “Issuer” refers only to Spansion LLC, and not to any of its subsidiaries, the word “Parent” refers only to Spansion Inc., the Issuer’s indirect parent and the direct parent of Spansion Technology LLC, and not to any of Parent’s subsidiaries, and the term “Intermediate Holdco” refers only to Spansion Technology LLC, the Issuer’s direct parent and a wholly-owned subsidiary of Parent, and not to any of Intermediate Holdco’s subsidiaries.

The Issuer will issue the 7.875% Senior Notes due 2017 (the “**notes**”), pursuant to an indenture (the “**Indenture**”), to be dated as of November 9, 2010, by and among the Issuer, Parent, Intermediate Holdco and Wells Fargo Bank, National Association, as trustee (the “**Trustee**”).

The Indenture will be subject to and governed by the Trust Indenture Act of 1939, as amended (the “**Trust Indenture Act**”), and the terms of the notes include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act.

The following description is a summary of the material provisions of the Indenture. It does not restate that agreement in its entirety. We urge you to read the Indenture because it contains additional information and defines your rights as a holder of the notes. A copy of the Indenture is available upon request to Parent at the address indicated under “Available Information.”

Principal, maturity and interest

The Issuer intends to issue \$200.0 million aggregate principal amount of notes in this offering. The Indenture provides for the issuance of additional notes having identical terms and conditions to the notes (the “**additional notes**”), subject to compliance with the covenants contained in the Indenture, including without limitation the provisions described under “—Certain covenants—Limitation on debt,” and *provided* that any additional notes will be fungible with the notes offered hereby for U.S. federal income tax purposes. The notes will be issued in denominations of \$2,000 and multiples of \$1,000 in excess of that amount.

The notes will mature on November 15, 2017.

Interest on the notes will accrue at a rate of 7.875% per annum and will be payable semi-annually in arrears on May 15 and November 15, commencing on May 15, 2011. The Issuer will pay interest to those persons who were holders of record of the notes on the May 1 or November 1 immediately preceding each interest payment date.

Interest on the notes will accrue from the date of original issuance or, if interest has already been paid, from the date it was most recently paid. Interest will be computed on the basis of a 360-day year comprised of twelve 30-day months.

Ranking

The notes are the general unsecured senior obligations of the Issuer. The notes will:

- rank *pari passu* with any current and future unsecured senior Debt of the Issuer;
- be effectively subordinated to any existing and future secured Debt of the Issuer to the extent of the value of the assets securing such Debt;
- be structurally subordinated to any Debt and other liabilities, including trade payables, of the Issuer’s Subsidiaries with respect to the assets and earnings of those Subsidiaries;
- be senior in right of payment to all existing and future Subordinated Obligations; and
- be guaranteed by Parent and Intermediate Holdco.

As of September 26, 2010, after giving effect to the issuance of the notes and the application of the net proceeds therefrom, Parent would have had consolidated Debt of approximately \$463.0 million. Of such Debt, approximately \$463.0 million would have constituted Debt directly borrowed (or issued) by the Issuer or a Guarantor and approximately \$263.0 million of which would have been secured.

Parent conducts all of its operations through the Issuer and its Subsidiaries, and the Issuer conducts a substantial portion of its operations through its Subsidiaries. The claims of creditors (including trade creditors) of any Subsidiary of the Issuer will generally have priority as to the assets of such Subsidiary over the claims of holders of the notes. In the event of a liquidation of any Subsidiary of the Issuer, our right to receive the assets of any such Subsidiary (and the resulting right of the Holders of the notes to participate in the distribution of the proceeds of those assets) will be structurally subordinated by operation of law to the claims of creditors (including trade creditors) of such Subsidiary and holders of such Subsidiary's Preferred Stock and any Guarantees by such Subsidiary of Debt of the Issuer or any Guarantor. If the Issuer or any Guarantor were a creditor of such Subsidiary or a holder of its Preferred Stock, then the Issuer or such Guarantor would be entitled to participate in the distribution of the proceeds of such Subsidiary's assets. Their claims would, however, remain subordinate to any Debt or Preferred Stock of such Subsidiary which is senior in right of payment to the Debt or Preferred Stock held by the Issuer or such Guarantor. In the event of the liquidation, bankruptcy, reorganization, insolvency, receivership or similar proceedings or any assignment for the benefit of the Issuer's creditors or a marshaling of the Issuer's assets or liabilities, holders of the notes may receive ratably less than other such creditors or interest holders.

As of the date of this offering memorandum, all of the Issuer's subsidiaries are "Restricted Subsidiaries" and subject to the covenants to be included in the Indenture. Subject to the terms of the Indenture and as described under the subheading "—Certain covenants—Designation of restricted and unrestricted subsidiaries," the Issuer may designate subsidiaries as "Unrestricted Subsidiaries," in which case those subsidiaries will not be subject to most of those restrictive covenants.

Note Guarantees

The obligations of the Issuer pursuant to the notes, including any repurchase obligation resulting from a Change of Control, will be unconditionally guaranteed (each a "Note Guarantee"), jointly and severally, by (1) Parent and (2) Intermediate Holdco.

The Note Guarantees will be senior unsecured obligations of the Guarantors. The Note Guarantees will:

- rank *pari passu* with all existing and future senior unsecured Debt of the Guarantors;
- be effectively junior to all existing and future secured Debt of the Guarantors, to the extent of the value of the collateral, including Parent's and Intermediate Holdco's Guarantee of Debt under the Credit Agreements; and
- be senior in right of payment to all existing and future Subordinated Obligations.

The Note Guarantee of a Guarantor will terminate upon defeasance or discharge of the notes.

Optional redemption

Except as set forth below, the notes will not be redeemable at the option of the Issuer prior to November 15, 2013. Starting on that date, the Issuer may redeem all or any portion of the notes, at once or over time, after giving the required notice under the Indenture. The notes may be redeemed at the redemption prices set forth below, plus accrued and unpaid interest to, but excluding, the redemption date (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date). The following prices are for notes redeemed during the 12-month period commencing on November 15 of the years set forth below, and are expressed as percentages of principal amount:

<u>Year</u>	<u>Redemption price</u>
2013	103.938%
2014	102.625%
2015	101.313%
2016 and thereafter	100.000%

In addition, at any time and from time to time prior to November 15, 2013, the Issuer may elect to redeem all or any portion of the notes, after giving the notice required under the Indenture, at a redemption price equal to the sum of:

- (1) 100% of the principal amount of notes to be redeemed; and
- (2) the excess of
 - (a) the sum of the present values of (1) the redemption price of the notes to be redeemed at November 15, 2013 (as set forth in the prior paragraph), and (2) the remaining scheduled payments of interest (based on the rate of interest in effect on the date notice of redemption is provided) from the redemption date to November 15, 2013, but excluding accrued and unpaid interest to the redemption date, discounted to the date of redemption on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months) at the Treasury Rate plus 50 basis points, *over*
 - (b) 100% of the principal amount of the notes to be redeemed,

plus accrued and unpaid interest to, but excluding, the redemption date (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date).

In addition, at any time and from time to time, prior to November 15, 2013, the Issuer may redeem up to a maximum of 35% of the aggregate principal amount of the notes (including any additional notes) with the proceeds of one or more Qualified Equity Offerings, at a redemption price equal to 107.875% of the principal amount of the notes to be redeemed, plus accrued and unpaid interest to, but excluding, the redemption date (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date); *provided, however*, that after giving effect to any such redemption, at least 65% of the aggregate principal amount of the notes (including any additional notes) remains outstanding. Any such redemption shall be made within 90 days of such Qualified Equity Offering upon not less than 30 nor more than 60 days' prior notice.

Selection and notice

If less than all of the notes are to be redeemed at any time, the Trustee will select notes for redemption on a pro rata basis (with such adjustments as may be deemed appropriate by the Trustee so that only notes in denominations of \$2,000, or multiples of \$1,000 in excess thereof shall be purchased); *provided*, that no notes of \$2,000 or less may be redeemed in part.

Notices of redemption will be mailed by first class mail at least 30 but not more than 60 days before the redemption date to each holder of notes to be redeemed at its registered address, except that redemption notices may be mailed more than 60 days prior to a redemption date if the notice is issued in connection with a defeasance of the notes or a satisfaction and discharge of the Indenture. Notices of redemption may not be conditional.

If any note is to be redeemed in part only, the notice of redemption that relates to that note will state the portion of the principal amount of that note that is to be redeemed. A new note in principal amount equal to the unredeemed portion of the original note will be issued in the name of the holder of the original note upon cancellation of the original note. Notes called for redemption become due on the date fixed for redemption. On and after the redemption date, interest ceases to accrue on notes or portions of them called for redemption.

Sinking fund

There will be no mandatory sinking fund payments for the notes.

Repurchase at the option of holders upon a change of control

Upon the occurrence of a Change of Control, each holder of notes shall have the right to require the Issuer to repurchase all or any part of such holder's notes pursuant to the offer described below (the "**Change of Control Offer**") at a purchase price (the "**Change of Control Purchase Price**") equal to 101% of the principal amount thereof, plus accrued and unpaid interest, if any, to, but excluding, the repurchase date (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date); *provided, however*, that notwithstanding the occurrence of a Change of Control, the Issuer shall not be obligated to purchase the notes pursuant to this covenant in the event that it has mailed the notice to exercise its right to redeem all the notes under the terms of the covenant entitled "**—Optional redemption**" at any time prior to the requirement to consummate the Change of Control Offer and redeems the notes in accordance with such notice.

Within 30 days following any Change of Control, the Issuer shall:

- (a) cause a notice of the Change of Control Offer to be sent at least once to the Dow Jones News Service or similar business news service in the United States; and
- (b) send, by first-class mail, with a copy to the Trustee, to each holder of notes, at such holder's address appearing in the note register, a notice stating:
 - (1) that a Change of Control has occurred and a Change of Control Offer is being made pursuant to the covenant entitled "**Repurchase at the option of holders upon a change of control**" and that all notes timely tendered will be accepted for payment;
 - (2) the Change of Control Purchase Price and the repurchase date, which shall be, subject to any contrary requirements of applicable law, a Business Day and a point in time occurring after the consummation of the Change of Control and not later than 60 days from the date such notice is mailed;
 - (3) the circumstances and relevant facts regarding the Change of Control; and
 - (4) the procedures that holders of notes must follow in order to tender their notes (or portions thereof) for payment, and the procedures that holders of notes must follow in order to withdraw an election to tender notes (or portions thereof) for payment.

The Issuer will not be required to make a Change of Control Offer following a Change of Control if (1) a third party makes the Change of Control Offer in the manner, at the times and otherwise in compliance with the requirements set forth in the Indenture applicable to a Change of Control Offer made by the Issuer and purchases all notes validly tendered and not withdrawn under such Change of Control Offer or (2) notice of redemption has been given pursuant to the Indenture as described under the caption "**—Optional redemption,**" unless and until

there is a default in payment of the applicable redemption price. Notwithstanding anything to the contrary contained herein, a Change of Control Offer may be made in advance of a Change of Control, conditioned upon the consummation of such Change of Control, if a definitive agreement is in place for the Change of Control at the time the Change of Control Offer is made.

The Issuer will comply, to the extent applicable, with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws or regulations in connection with the repurchase of notes pursuant to a Change of Control Offer. To the extent that the provisions of any securities laws or regulations conflict with the provisions of this covenant, the Issuer will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this covenant by virtue of such compliance.

Management has no present intention to engage in a transaction involving a Change of Control, although it is possible that Parent would decide to do so in the future. Subject to certain covenants described below, Parent could, in the future, enter into certain transactions, including acquisitions, refinancings or other recapitalizations, that would not constitute a Change of Control under the Indenture, but that could increase the amount of Debt outstanding at such time or otherwise affect Parent's capital structure or credit ratings.

The definition of Change of Control includes a phrase relating to the sale, transfer, assignment, lease, conveyance or other disposition of "all or substantially all" the Property of Parent and the Restricted Subsidiaries, considered as a whole. Although there is a developing body of case law interpreting the phrase "substantially all," there is no precise established definition of the phrase under applicable law. Accordingly, if Parent and the Restricted Subsidiaries, considered as a whole, dispose of less than all this Property by any of the means described above, the ability of a holder of notes to require the Issuer to repurchase its notes may be uncertain. In such a case, holders of the notes may not be able to resolve this uncertainty without resorting to legal action.

The definition of Change of Control also provides that a Change of Control would occur if during any period of two consecutive years, individuals who at the beginning of such period constituted the Board of Directors (together with any new directors whose election or appointment by such Board or whose nomination for election by the stockholders of Parent was approved by a vote of not less than a majority of the directors then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute at least a majority of the Board of Directors then in office. A Delaware Chancery Court has interpreted a similar "Continuing Directors" provision and found that, under Delaware law, for purposes of such definition, a board of directors may approve a slate of shareholder-nominated directors without endorsing them or while simultaneously recommending and endorsing its own slate instead, in each case without such action resulting in a Change of Control. If a New York court were to adopt a similar interpretation under New York law, the foregoing interpretation would permit our Parent's Board of Directors to approve a slate of directors that included a majority of dissident directors nominated pursuant to a proxy contest, and the ultimate election of such dissident slate would not constitute a Change of Control that would trigger your right to require Change of Control Offer by us to repurchase your Notes as described above.

Existing Debt of the Issuer contains, and future Debt of Parent or any Subsidiary of Parent or the Issuer may contain, limitations on certain events that would constitute a Change of Control or require such Debt to be repurchased upon a Change of Control. Moreover, the exercise by holders of notes of their right to require the Issuer to repurchase such notes could cause a default under existing or future Debt of Parent or its Subsidiaries, even if the Change of Control itself does not. In addition, the Issuer's ability to pay cash to holders of notes upon a repurchase may be limited by the Issuer's then existing financial resources. Parent cannot assure you that sufficient funds will be available when necessary to make any required repurchases. The Issuer's failure to repurchase notes in connection with a Change of Control would result in a default under the Indenture. Such a default would, in turn, constitute a default under existing Debt of the Issuer and may constitute a default under future Debt of Parent or its Subsidiaries as well. The Issuer's obligation to make an offer to repurchase the notes

as a result of a Change of Control may be waived or modified at any time prior to the occurrence of such Change of Control with the written consent of the holders of at least a majority in aggregate principal amount of the notes. See “—Amendments and waivers.” See also “Risk Factors—Risks Related to This Offering—We may not be able to repurchase the notes upon a change of control.”

Certain covenants

Covenant suspension. During any period of time that:

- (a) the notes have Investment Grade Ratings from both Rating Agencies; and
- (b) no Default or Event of Default has occurred and is continuing under the Indenture,

the Issuer and the Restricted Subsidiaries will not be subject to the following provisions of the Indenture:

- “—Limitation on debt”;
- “—Limitation on restricted payments”;
- “—Limitation on asset sales”;
- “—Limitation on restrictions on distributions from restricted subsidiaries”;
- “—Limitation on transactions with affiliates”;
- clauses (a) and (b) of the first paragraph and clause (x) of the fifth paragraph of “—Designation of restricted and unrestricted subsidiaries”; and
- clause (d) of the first paragraph of “—Merger, consolidation and sale of property”

(collectively, the “**Suspended Covenants**”). In the event that the Issuer and the Restricted Subsidiaries are not subject to the Suspended Covenants for any period of time as a result of the preceding sentence and, subsequently, one or both of the Rating Agencies withdraws its ratings or downgrades the ratings assigned to the notes below the required Investment Grade Ratings or a Default or Event of Default occurs and is continuing, then the Issuer and the Restricted Subsidiaries will thereafter again be subject to the Suspended Covenants and compliance with the Suspended Covenants with respect to Restricted Payments made after the time of such withdrawal, downgrade, Default or Event of Default will be calculated in accordance with the terms of the covenant described below under “—Limitation on restricted payments” as though such covenant had been in effect during the entire period of time from the Issue Date.

Limitation on debt. The Issuer shall not, and shall not permit any Restricted Subsidiary to, Incur, directly or indirectly, any Debt unless, after giving effect to the application of the proceeds therefrom, no Default or Event of Default would occur as a consequence of such Incurrence or be continuing following such Incurrence and either:

- (1) in the case of an Incurrence of Debt by the Issuer or a Guarantor, after giving effect to the Incurrence of such Debt and the application of the proceeds thereof, the Consolidated Fixed Charge Coverage Ratio would be at least 2.0 to 1.0; or
- (2) such Debt is Permitted Debt.

The term “**Permitted Debt**” is defined to include the following:

- (a) Debt of the Issuer evidenced by the notes (excluding any additional notes) issued in this offering and any notes issued in exchange for the notes (excluding any additional notes) pursuant to the Registration Rights Agreement and Debt of any Guarantor under a Guarantee of the notes or any Guarantee of any such exchange notes;

- (b) Debt of the Issuer or a Restricted Subsidiary under Credit Facilities, *provided* that the aggregate principal amount of all such Debt under Credit Facilities at any one time outstanding shall not exceed \$500.0 million;
- (c) Debt of the Issuer or a Restricted Subsidiary in respect of Capital Lease Obligations and Purchase Money Debt, *provided* that:
 - (1) the aggregate principal amount of such Debt does not exceed the Fair Market Value (on the date of the Incurrence thereof) of the Property acquired, constructed or leased; and
 - (2) the aggregate principal amount of all Debt Incurred and then outstanding pursuant to this clause (c) (together with all Permitted Refinancing Debt Incurred and then outstanding in respect of Debt previously Incurred pursuant to this clause (c)) does not exceed 15% of Total Assets;
- (d) Debt of the Issuer owing to and held by any Restricted Subsidiary and Debt of a Restricted Subsidiary owing to and held by the Issuer or any Restricted Subsidiary; *provided*, that if the Issuer is the obligor on such Debt Incurred after the Issue Date, then such Debt is expressly subordinated by its terms to the prior payment in full in cash of the notes; *provided, however*, that any subsequent issue or transfer of Capital Stock or other event that results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any subsequent transfer of any such Debt (except to the Issuer or a Restricted Subsidiary) shall be deemed, in each case, to constitute the Incurrence of such Debt by the issuer thereof;
- (e) Debt of a Restricted Subsidiary outstanding on the date on which such Restricted Subsidiary is acquired by the Issuer or otherwise becomes a Restricted Subsidiary (other than Debt Incurred as consideration in, or to provide all or any portion of the funds or credit support utilized to consummate, the transaction or series of transactions pursuant to which such Restricted Subsidiary became a Subsidiary of the Issuer or was otherwise acquired by the Issuer); *provided* that after giving effect to the Incurrence of such Debt either (i) the Consolidated Fixed Charge Coverage Ratio for the Issuer would be at least 2.0 to 1.0, or (ii) the Consolidated Fixed Charge Coverage Ratio would be greater than such ratio immediately prior to such Incurrence;
- (f) Debt under Interest Rate Agreements entered into by the Issuer or a Restricted Subsidiary for the purpose of managing interest rate risk in the ordinary course of the financial management of the Issuer or such Restricted Subsidiary and not for speculative purposes;
- (g) Debt under Currency Exchange Protection Agreements entered into by the Issuer or a Restricted Subsidiary for the purpose of managing currency exchange rate risks in the ordinary course of business and not for speculative purposes;
- (h) Guarantees by (i) the Issuer of Debt or any other obligation of any Restricted Subsidiary otherwise permitted pursuant to this covenant, (ii) any Restricted Subsidiary that is not a Guarantor of Debt or any other obligation of any Restricted Subsidiary otherwise permitted pursuant to this covenant, (iii) any Guarantor of Debt or any other obligation of the Issuer or any Restricted Subsidiary otherwise permitted pursuant to this covenant or (iv) any Restricted Subsidiary of Debt of the Issuer that is incurred pursuant to clause (b) above or is secured by a Permitted Lien;
- (i) Debt in connection with one or more standby letters of credit or performance or surety bonds issued by the Issuer or a Restricted Subsidiary in the ordinary course of business or pursuant to self-insurance obligations and not in connection with the borrowing of money or the obtaining of advances or credit not to exceed 2.5% of Total Assets at any time outstanding;
- (j) Debt of the Issuer or a Restricted Subsidiary outstanding on the Issue Date not otherwise described in clauses (a) through (i) above;
- (k) Debt of the Issuer or a Guarantor in an aggregate principal amount outstanding at any one time not to exceed the greater of (i) \$100.0 million and (ii) 5.0% of Total Assets (which amount can include Guarantees of Debt of Unrestricted Subsidiaries, *provided* such Guarantee is Incurred in compliance with the covenant described under “—Limitation on restricted payments”);

- (l) Debt of Restricted Subsidiaries in an aggregate principal amount outstanding at any one time not to exceed \$10.0 million (which amount can include Guarantees of Debt of Unrestricted Subsidiaries, *provided* such Guarantee is Incurred in compliance with the covenant described under “—Limitation on restricted payments”);
- (m) Debt of the Issuer or a Restricted Subsidiary in connection with any customary receivables discounting, factoring or securitization facility that is Non-Recourse Debt (other than pursuant to customary undertakings (as determined in good faith by the Issuer) in connection with off-balance sheet securitization and factoring facilities) outstanding at any one time not to exceed \$100.0 million; and
- (n) Permitted Refinancing Debt Incurred in respect of Debt Incurred pursuant to clause (1) of the first paragraph of this covenant and clauses (a), (c), (e) and (j) above and this clause (n).

Notwithstanding anything to the contrary in this covenant:

- (a) the Issuer shall not Incur any Debt pursuant to this covenant if the proceeds thereof are used, directly or indirectly, to Refinance any Subordinated Obligations unless such Debt shall be subordinated to the notes to at least the same extent as such Subordinated Obligations;
- (b) the Issuer shall not permit any Restricted Subsidiary to Incur any Debt pursuant to clause (2) of this covenant if the proceeds thereof are used, directly or indirectly, to Refinance any Debt of the Issuer; and
- (c) accrual of interest, accretion or amortization of original issue discount and the payment of interest or dividends in the form of additional Debt will be deemed not to be an Incurrence of Debt for the purposes of this covenant.

For purposes of determining compliance with this covenant, in the event that an item of Debt meets the criteria of more than one of the categories of Permitted Debt described in clauses (a) through (n) above or is entitled to be incurred pursuant to clause (1) of the first paragraph of this covenant, the Issuer shall, in its sole discretion, classify (or later reclassify in whole or in part, in its sole discretion) such item of Debt in any manner that complies with this covenant; *provided* that Debt outstanding under the Credit Facilities after the application of the net proceeds from the sale of the notes and the concurrent equity offering will be treated as Incurred on the Issue Date under clause (b) above.

For purposes of determining compliance with any dollar-denominated restriction on the Incurrence of Debt, with respect to any Debt which is denominated in a foreign currency, the dollar-equivalent principal amount of such Debt Incurred pursuant thereto shall be calculated based on the relevant currency exchange rate in effect on the date that such Debt was Incurred, and any such foreign-denominated Debt may be Refinanced or replaced or subsequently Refinanced or replaced in an amount equal to the dollar equivalent principal amount of such Debt on the date of such refinancing or replacement whether or not such amount is greater or less than the dollar equivalent principal amount of the Debt on the date of initial incurrence.

Limitation on restricted payments. The Issuer shall not make, and shall not permit any Restricted Subsidiary to make, directly or indirectly, any Restricted Payment if at the time of, and after giving effect to, such proposed Restricted Payment,

- (a) a Default or Event of Default shall have occurred and be continuing,
- (b) the Issuer could not Incur at least \$1.00 of additional Debt pursuant to clause (1) of the first paragraph of the covenant described under “—Limitation on debt,” or
- (c) the aggregate amount of such Restricted Payment and all other Restricted Payments declared or made since the Issue Date (the amount of any Restricted Payment, if made other than in cash, to be based upon Fair Market Value at the time of such Restricted Payment) would exceed an amount equal to the sum of:
 - (1) 50% of the aggregate amount of Consolidated Net Income accrued during the period (treated as one accounting period) from the beginning of the fiscal quarter during which the Issue Date occurs

to the end of the most recently ended fiscal quarter for which internal financial statements are available (or if the aggregate amount of Consolidated Net Income for such period shall be a deficit, minus 100% of such deficit), plus

- (2) 100% of Capital Stock Sale Proceeds and 100% of the aggregate net cash proceeds of a Qualified Equity Offering, plus
- (3) the sum of:
 - (A) the aggregate net cash proceeds received by Parent, the Issuer or any Restricted Subsidiary from the issuance or sale after the Issue Date of convertible or exchangeable Debt or Disqualified Stock that has been converted into or exchanged for Capital Stock (other than Disqualified Stock) of the Issuer or Parent; *provided* that, in the case of Parent, such proceeds are contributed to the Issuer's common equity, and
 - (B) the aggregate amount by which Debt (other than Subordinated Obligations) of the Issuer or any Restricted Subsidiary is reduced on the Issuer's consolidated balance sheet on or after the Issue Date upon the conversion or exchange of any such Debt issued or sold on or prior to the Issue Date that is convertible or exchangeable for Capital Stock (other than Disqualified Stock) of the Issuer or Parent,

excluding, in the case of clause (A) or (B):

- (x) any such Debt issued or sold to Parent or a Subsidiary of Parent or an employee stock ownership plan or trust established by Parent or any such Subsidiary for the benefit of their employees, and
 - (y) the aggregate amount of any cash or other Property (other than Capital Stock of the Issuer or Parent which is not Disqualified Stock) distributed by the Issuer, Parent or any Restricted Subsidiary upon any such conversion or exchange, plus
- (4) an amount equal to the sum of:
 - (A) the net reduction in Investments (other than Permitted Investments) in any Person other than the Issuer or a Restricted Subsidiary resulting from dividends, repayments of loans or advances or other transfers of Property, in each case to the Issuer or a Restricted Subsidiary from such Person;
 - (B) to the extent that any Investment (other than a Permitted Investment) that was made after the Issue Date is sold for cash or otherwise liquidated or repaid for cash, the cash return of capital to the Issuer or its Restricted Subsidiaries with respect to such Investment (but only to the extent that such items in (A) and (B) above are not included in the calculation of Consolidated Net Income); and
 - (C) the portion (proportionate to the Issuer's equity interest in such Unrestricted Subsidiary) of the Fair Market Value of the net assets of an Unrestricted Subsidiary at the time such Unrestricted Subsidiary is designated a Restricted Subsidiary;

provided, however, that the amounts in (A), (B) and (C) shall not exceed, in the case of any Person, the amount of Investments previously made (and treated as a Restricted Payment) by the Issuer or any Restricted Subsidiary in such Person, plus

- (5) \$50.0 million.

Notwithstanding the foregoing limitation, the Issuer and its Restricted Subsidiaries, as applicable, may:

- (a) pay dividends on its Capital Stock within 60 days of the declaration thereof if, on the declaration date, such dividends could have been paid in compliance with the Indenture; *provided, however*, that such dividend shall be included in the calculation of the amount of Restricted Payments at the time declared;

- (b) purchase, repurchase, redeem, legally defease, acquire or retire for value Capital Stock of the Issuer or Subordinated Obligations in exchange for, or out of the proceeds of the substantially concurrent sale of, Capital Stock of the Issuer (other than Disqualified Stock and other than Capital Stock issued or sold to a Subsidiary of the Issuer or an employee stock ownership plan or trust established by the Issuer or any such Subsidiary for the benefit of their employees); *provided, however*, that
 - (1) such purchase, repurchase, redemption, legal defeasance, acquisition or retirement shall be excluded in the calculation of the amount of Restricted Payments, and
 - (2) the Capital Stock Sale Proceeds from such exchange or sale shall be excluded from the calculation pursuant to clause (c)(2) above;
- (c) purchase, repurchase, redeem, legally defease, acquire or retire for value any Subordinated Obligations in exchange for, or out of the proceeds of the substantially concurrent sale of, Permitted Refinancing Debt; *provided, however*, that such purchase, repurchase, redemption, legal defeasance, acquisition or retirement shall be excluded in the calculation of the amount of Restricted Payments;
- (d) repurchase, or make dividends or other payments to Parent (or to Intermediate Holdco for prompt distribution to Parent) to permit Parent to repurchase, shares of, or options to purchase shares of, common stock of Parent or any of its Subsidiaries from current or former officers, directors or employees of Parent or any of its Subsidiaries (or permitted transferees of such current or former officers, directors or employees), pursuant to the terms of agreements (including employment agreements) or plans (or amendments thereto) approved by Parent's Board of Directors under which such individuals purchase or sell, or are granted the option to purchase or sell, shares of such common stock; *provided, however*, that:
 - (1) the aggregate amount of such repurchases shall not exceed \$5.0 million in any calendar year; and
 - (2) at the time of such repurchase, no other Default or Event of Default shall have occurred and be continuing (or result therefrom);

provided further, however, that such repurchases shall be excluded in the calculation of the amount of Restricted Payments;

- (e) make payments on intercompany Debt, the Incurrence of which was permitted pursuant to the covenant described under “—Limitation on debt”; *provided* that such purchase, repurchase, redemption, legal defeasance, acquisition or retirement shall be excluded in the calculation of the amount of Restricted Payments made after the Issue Date;
- (f) make, or make dividends or other payments to Parent (or to Intermediate Holdco for prompt distribution to Parent) to permit Parent to make cash payments, in lieu of issuance of fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for the Capital Stock of Parent, Intermediate Holdco, the Issuer or a Restricted Subsidiary; *provided* that any such payments and dividends shall not be included in the calculation of the amount of Restricted Payments;
- (g) repurchase Capital Stock to the extent such repurchase is deemed to occur upon a cashless exercise of stock options or warrants; *provided* that all such repurchases and dividends shall not be included in the calculation of the amount of Restricted Payments and no proceeds in respect of the issuance of Capital Stock shall be deemed to have been received for the purposes of clause (c)(2) above;
- (h) repurchase or redeem, or make dividends or other payments to Parent (or to Intermediate Holdco for prompt distribution to Parent) to permit Parent to repurchase or redeem, for nominal consideration, preferred stock purchase rights issued in connection with any shareholder rights plan of Parent; *provided* that any such payments shall not be included in the calculation of the amount of Restricted Payments;

- (i) make dividends or other payments to Parent (or to Intermediate Holdco for prompt distribution to Parent) of (i) such amounts and at such times as are necessary for Parent to pay taxes, in an amount not to exceed the amount of taxes the Issuer and its Subsidiaries would pay on a stand-alone basis, plus (ii) such amounts to pay general corporate and overhead expenses (including salaries and other compensation for employees) incurred by Parent in the ordinary course of business as a holding company of Issuer; *provided* that all such payments shall be excluded in the calculation of the amount of Restricted Payments;
- (j) acquire claims against the Issuer, Parent and related debtors in the Chapter 11 Cases and the shares of Parent's common stock issuable in connection therewith in an aggregate amount not to exceed \$85 million;
- (k) in the event of a Change of Control, and if no Default or Event of Default shall have occurred and be continuing, the payment, purchase, repurchase, redemption, legal defeasance or other acquisition or retirement of Subordinated Obligations of the Issuer or Parent, in each case at a purchase price not greater than 101% of the principal amount of such Subordinated Obligations, plus accrued and unpaid interest thereon; *provided* that prior to such payment, purchase, repurchase, redemption, legal defeasance or other acquisition or retirement, the Issuer (or a third party to the extent permitted by the Indenture) has made a Change of Control Offer with respect to the notes offered hereby as a result of such Change of Control and has repurchased all notes validly tendered and not withdrawn in connection with such Change of Control Offer; and
- (l) other Restricted Payments in an aggregate amount not to exceed \$50.0 million.

Limitation on liens. The Issuer shall not directly or indirectly, Incur or permit any Guarantor to Incur or suffer to exist, any Lien (other than Permitted Liens) upon any of the Property of the Issuer or a Guarantor (including Capital Stock of a Restricted Subsidiary), whether owned at the Issue Date or thereafter acquired, or any interest therein or any income or profits therefrom, unless it has made or will make effective provision whereby the notes will be secured by such Lien equally and ratably with (or, if such other Debt constitutes Subordinated Obligations, prior to) all other Debt or other obligations of the Issuer or such Guarantor secured by such Lien for so long as such other Debt or other obligations are secured by such Lien; *provided, however*, that if the Debt or other obligations so secured are expressly subordinated to the notes or the Guarantee of such Guarantor, then the Lien securing such Debt or other obligations shall be subordinated and junior to the Lien securing the notes.

Limitation on asset sales. The Issuer shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, consummate any Asset Sale unless:

- (a) the Issuer or such Restricted Subsidiary receives consideration at the time of such Asset Sale at least equal to the Fair Market Value of the Property subject to such Asset Sale;
- (b) at least 75% of the consideration paid to the Issuer or such Restricted Subsidiary in connection with such Asset Sale is in the form of cash or Cash Equivalents; and
- (c) the Issuer delivers an Officers' Certificate to the Trustee certifying that such Asset Sale complies with the foregoing clauses (a) and (b).

Solely for the purposes of clause (b) above of this "Limitation on asset sales" provision, the following will be deemed to be cash:

- (x) the assumption by the purchaser of liabilities of the Issuer or any Restricted Subsidiary (other than contingent liabilities or liabilities that are by their terms subordinated to the notes) as a result of which the Issuer and the Restricted Subsidiaries are no longer obligated with respect to such liabilities;
- (y) any securities, notes or other obligations received by the Issuer or any such Restricted Subsidiary from such purchaser to the extent they are converted or monetized by the Issuer or such Restricted Subsidiary into cash within 60 days (to the extent of the cash received); and

(z) Additional Assets.

The Net Available Cash (or any portion thereof) from Asset Sales may be applied by the Issuer or a Restricted Subsidiary, to the extent the Issuer or such Restricted Subsidiary elects (or is required by the terms of any Debt) to:

- (a) permanently prepay or permanently repay any (1) Debt under any Credit Facility permitted by clause (b) of the definition of Permitted Debt, (2) Debt which had been secured by the assets sold in the relevant Asset Sale, and (3) Debt of a Restricted Subsidiary; and/or
- (b) to reinvest in Additional Assets (including by means of an Investment in Additional Assets by a Restricted Subsidiary with Net Available Cash received by the Issuer or another Restricted Subsidiary).

Any Net Available Cash from an Asset Sale not applied in accordance with the preceding paragraph within 365 days from the date of the receipt of such Net Available Cash shall constitute “Excess Proceeds.”

When the aggregate amount of Excess Proceeds exceeds \$25.0 million (taking into account income earned on such Excess Proceeds, if any), the Issuer will be required to make an offer to repurchase (the “**Prepayment Offer**”) the notes, which offer shall be in the amount of the Allocable Excess Proceeds (rounded to the nearest \$1,000), on a pro rata basis according to principal amount, at a purchase price equal to 100% of the principal amount thereof, plus accrued and unpaid interest, to but not including the repurchase date (subject to the right of holders of record on the relevant record date to receive interest due on the relevant interest payment date), in accordance with the procedures (including prorating in the event of oversubscription) set forth in the Indenture. To the extent that any portion of the amount of Net Available Cash remains after compliance with the preceding sentence and *provided* that all holders of notes have been given the opportunity to tender their notes for repurchase in accordance with the Indenture, the Issuer or such Restricted Subsidiary may use such remaining amount for any purpose permitted by the Indenture, and the amount of Excess Proceeds will be reset to zero.

The term “**Allocable Excess Proceeds**” shall mean the product of:

- (a) the Excess Proceeds; and
- (b) a fraction,
 - (1) the numerator of which is the aggregate principal amount of the notes outstanding on the date of the Prepayment Offer, and
 - (2) the denominator of which is the sum of the aggregate principal amount of the notes outstanding on the date of the Prepayment Offer and the aggregate principal amount of other Debt of the Issuer (other than Subordinated Obligations) outstanding on the date of the Prepayment Offer and subject to terms and conditions in respect of Asset Sales similar in all material respects to this covenant and requiring the Issuer to make an offer to repurchase such Debt at substantially the same time as the Prepayment Offer.

Within five business days after the Issuer is obligated to make a Prepayment Offer as described in the preceding paragraph, the Issuer shall send a written notice, by first-class mail, to the holders of notes, accompanied by such information regarding the Issuer and its Subsidiaries as the Issuer in good faith believes will enable such holders to make an informed decision with respect to such Prepayment Offer. Such notice shall state, among other things, the purchase price and the repurchase date, which shall be, subject to any contrary requirements of applicable law, a business day no earlier than 30 days nor later than 60 days from the date such notice is mailed.

The Issuer will comply, to the extent applicable, with the requirements of Rule 14e-1 under the Exchange Act and any other securities laws or regulations in connection with the repurchase of notes pursuant to this covenant. To the extent that the provisions of any securities laws or regulations conflict with provisions of this covenant, the Issuer will comply with the applicable securities laws and regulations and will not be deemed to have breached its obligations under this covenant by virtue thereof.

Limitation on restrictions on distributions from restricted subsidiaries. The Issuer shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, create or otherwise cause or suffer to exist any consensual restriction on the right of any Restricted Subsidiary to:

- (a) pay dividends, in cash or otherwise, or make any other distributions on or in respect of its Capital Stock, or pay any Debt or other obligation owed, to the Issuer or any other Restricted Subsidiary;
- (b) make any loans or advances to the Issuer or any other Restricted Subsidiary; or
- (c) transfer any of its Property to the Issuer or any other Restricted Subsidiary.

The foregoing limitations will not apply:

- (1) with respect to clauses (a), (b) and (c), to restrictions:
 - (A) in effect on the Issue Date (including, without limitation, restrictions pursuant to the notes, the Indenture and any Credit Facility in existence on the Issue Date);
 - (B) relating to Debt of a Restricted Subsidiary and existing at the time it became a Restricted Subsidiary if such restriction was not created in connection with or in anticipation of the transaction or series of transactions pursuant to which such Restricted Subsidiary became a Restricted Subsidiary or was acquired by the Issuer;
 - (C) that result from the Refinancing of Debt Incurred pursuant to an agreement referred to in clause (1)(A) or (B) above or in clause (2)(A) or (B) below, *provided* such restrictions are not materially less favorable, taken as a whole, to the holders of notes than those under the agreement evidencing the Debt so Refinanced;
 - (D) relating to Debt incurred after the Issue Date, so long as such restrictions (x) are not materially less favorable, taken as whole, to the holders of notes than those restrictions in effect on the Issue Date pursuant to the notes, the Indenture and any Credit Facility in existence on the Issue Date, (y) will not, in the good faith judgment of the Issuer, materially impair the ability of the Issuer to make regularly scheduled payments of interest and principal on the notes when due or (z) relate to Debt incurred pursuant to clause (c) of the definition of Permitted Debt contained herein, so long as the respective restrictions apply only to specific Property or projects financed with the respective Incurrence of Debt and/or to any Subsidiary substantially of all whose assets consist of Property or a project financed with proceeds of such Debt;
 - (E) existing under or by reason of applicable law or governmental regulation; or
 - (F) that constitute customary restrictions contained in joint venture agreements, asset sale agreements, sale-leaseback agreements, stock sale agreements and other similar agreements entered into in good faith and not otherwise prohibited by the Indenture; and
- (2) with respect to clause (c) only, to restrictions:
 - (A) relating to Debt that is permitted to be Incurred and secured without also securing the notes pursuant to the covenants described under “—Limitation on debt” and “—Limitation on liens” that limit the right of the debtor to dispose of the Property securing such Debt;
 - (B) encumbering Property at the time such Property was acquired by the Issuer or any Restricted Subsidiary, so long as such restrictions relate solely to the Property so acquired and were not created in connection with or in anticipation of such acquisition;
 - (C) resulting from customary provisions restricting subletting or assignment of leases or customary provisions in other agreements that restrict assignment of such agreements or rights thereunder;
 - (D) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business; or
 - (E) customary restrictions contained in asset sale agreements limiting the transfer of such Property pending the closing of such sale.

Limitation on transactions with affiliates. The Issuer shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, conduct any business or enter into or suffer to exist any transaction or series of related transactions (including the purchase, sale, transfer, assignment, lease, conveyance or exchange of any Property or the rendering of any service) with, or for the benefit of, any Affiliate of the Issuer (an “**Affiliate Transaction**”), unless:

- (a) the terms of such Affiliate Transaction are:
 - (1) set forth in writing; and
 - (2) no less favorable to the Issuer or such Restricted Subsidiary, as the case may be, than those that could be obtained in a comparable arm’s-length transaction with a Person that is not an Affiliate of the Issuer;
- (b) if such Affiliate Transaction involves aggregate payments or value in excess of \$25.0 million, the Board of Directors (including at least a majority of the disinterested members of the Board of Directors) approves such Affiliate Transaction and, in its good faith judgment, believes that such Affiliate Transaction complies with clause (a)(2) of this paragraph as evidenced by a resolution of the Board of Directors; and
- (c) if such Affiliate Transaction involves aggregate payments or value in excess of \$50.0 million, the Issuer obtains a written opinion from an Independent Financial Advisor to the effect that the consideration to be paid or received in connection with the such Affiliate Transaction is fair, from a financial point of view, to the Issuer and any relevant Restricted Subsidiaries; *provided* that this subclause (c) shall not apply to the acquisition of claims against the Issuer, Parent and related debtors in the Chapter 11 Cases and shares of Parent’s common stock issuable in connection therewith in an aggregate amount not to exceed \$85 million.

Notwithstanding the foregoing limitation, the Issuer or any Restricted Subsidiary may enter into or suffer to exist the following:

- (a) any transaction or series of transactions between the Issuer and one or more Restricted Subsidiaries or between two or more Restricted Subsidiaries;
- (b) any Restricted Payment permitted to be made pursuant to the covenant described under “—Limitation on restricted payments” or any Permitted Investment;
- (c) any employment, indemnification or other similar agreement or employee benefit plan entered into by the Issuer or a Restricted Subsidiary with an employee, officer or director (and payments pursuant thereto) in the ordinary course of business and consistent with past practice that is not otherwise prohibited by the Indenture;
- (d) loans and advances to employees made in the ordinary course of business consistent with past practices of the Issuer or a Restricted Subsidiary, as the case may be; *provided* that such loans and advances do not exceed \$5.0 million in the aggregate at any one time outstanding;
- (e) payment of reasonable directors’ fees to persons who are not otherwise Affiliates of the Issuer;
- (f) any issuances of Capital Stock (other than Disqualified Stock) of the Issuer to Affiliates of the Issuer; and
- (g) agreements (and the transactions contemplated thereunder) in effect on the Issue Date and any modifications, extensions or renewals thereto that are not materially less favorable, taken as a whole, to the Issuer or any Restricted Subsidiary than such agreements as in effect on the Issue Date.

Designation of restricted and unrestricted subsidiaries. The Board of Directors may designate any Subsidiary of the Issuer to be an Unrestricted Subsidiary if:

- (a) either (1) the Issuer or a Restricted Subsidiary, as the case may be, is permitted to make an Investment in such Subsidiary equal to the sum of the (A) Fair Market Value of the Capital Stock of such Subsidiary plus (B) the amount of any Debt owed by such Subsidiary to the Issuer, in each case pursuant to the first paragraph of the covenant under the caption “—Limitation on restricted payments,” or (2) such Investment constitutes a Permitted Investment;
- (b) immediately after giving pro forma effect to such designation, the Issuer could Incur at least \$1.00 of additional Debt pursuant to clause (1) of the first paragraph of the covenant described under “—Limitation on debt”; and
- (c) such Subsidiary does not own any Capital Stock or Debt of, or own or hold any Lien on any Property of, the Issuer or any Restricted Subsidiary and does not have any Debt other than Non-Recourse Debt.

Unless so designated as an Unrestricted Subsidiary, any Person that becomes a Subsidiary of the Issuer will be classified as a Restricted Subsidiary; *provided, however*, that such Subsidiary shall not be designated a Restricted Subsidiary and shall be automatically classified as an Unrestricted Subsidiary if such Person is a Subsidiary of an Unrestricted Subsidiary.

Except as provided in the first sentence of the first paragraph of this covenant, and except as provided in the immediately preceding paragraph, no Restricted Subsidiary may be redesignated as an Unrestricted Subsidiary, and neither the Issuer nor any Restricted Subsidiary shall at any time be directly or indirectly liable for any Debt (other than Debt pursuant to the Indenture) that provides that the holder thereof may (with the passage of time or notice or both) declare a default thereon or cause the payment thereof to be accelerated or payable prior to its Stated Maturity upon the occurrence of a default with respect to any Debt, Lien or other obligation of any Unrestricted Subsidiary (including any right to take enforcement action against any such Unrestricted Subsidiary).

The Board of Directors may designate any Unrestricted Subsidiary to be a Restricted Subsidiary if, immediately after giving pro forma effect to such designation,

- (x) the Issuer could Incur at least \$1.00 of additional Debt pursuant to clause (1) of the first paragraph of the covenant described under “—Limitation on debt,” and
- (y) no Default or Event of Default shall have occurred and be continuing or would result therefrom.

Any such designation or redesignation by the Board of Directors will be evidenced to the Trustee by filing with the Trustee a resolution of the Board of Directors giving effect to such designation or redesignation and an Officers’ Certificate that:

- (a) certifies that such designation or redesignation complies with the foregoing provisions; and
- (b) gives the effective date of such designation or redesignation,

such filing with the Trustee to occur within 60 days after the end of the fiscal quarter of the Issuer in which such designation or redesignation is made (or, in the case of a designation or redesignation made during the last fiscal quarter of the Issuer’s fiscal year, within 90 days after the end of such fiscal year).

Merger, consolidation and sale of property

The Issuer

The Issuer shall not merge or consolidate with or into any other Person (other than a merger of a Wholly Owned Restricted Subsidiary and the Issuer) or sell, transfer, assign, lease, convey or otherwise dispose of all or substantially all its Property (other than sales, transfers, assignments, leases, conveyances or dispositions to a Wholly Owned Restricted Subsidiary) in any one transaction or series of transactions unless:

- (a) the Issuer shall be the Surviving Person in such merger or consolidation, or the Surviving Person (if other than the Issuer) formed by such merger or consolidation or to which such sale, transfer, assignment, lease, conveyance or disposition is made shall be a corporation organized and existing under the laws of the United States of America, any State thereof or the District of Columbia;
- (b) the Surviving Person (if other than the Issuer) expressly assumes, by supplemental indenture in form reasonably satisfactory to the Trustee, executed and delivered to the Trustee by such Surviving Person, the due and punctual payment of the principal of, and premium, if any, and interest on, all the notes, according to their tenor, and the due and punctual performance and observance of all the covenants and conditions of the Indenture to be performed by the Issuer;
- (c) immediately before and after giving effect to such transaction or series of transactions on a *pro forma* basis (and treating, for purposes of this clause (c) and clause (d) below, any Debt that becomes, or is anticipated to become, an obligation of the Surviving Person or any Restricted Subsidiary as a result of such transaction or series of transactions as having been Incurred by the Surviving Person or such Restricted Subsidiary at the time of such transaction or series of transactions), no Default or Event of Default shall have occurred and be continuing;
- (d) immediately after giving effect to such transaction or series of transactions on a *pro forma* basis, (x) the Issuer or the Surviving Person, as the case may be, would be able to Incur at least \$1.00 of additional Debt under clause (1) of the first paragraph of the covenant described under “—Certain covenants— Limitation on debt,” or (y) the Consolidated Fixed Charge Coverage Ratio for the Issuer or the Surviving Person would be greater than such ratio immediately prior to such transaction or series of transactions; and
- (e) the Issuer shall deliver, or cause to be delivered, to the Trustee, in form and substance reasonably satisfactory to the Trustee, an Officers’ Certificate and an Opinion of Counsel, each stating that such transaction or series of transactions and the supplemental indenture, if any, in respect thereto comply with this covenant and that all conditions precedent herein provided for relating to such transaction or series of transactions have been satisfied; *provided* that clauses (d) and (e) shall not apply to a merger of the Issuer and Intermediate Holdco or a merger of the Issuer and Parent.

The Surviving Person shall succeed to, and be substituted for, and may exercise every right and power of the Issuer under the Indenture; *provided* that the predecessor company in the case of:

- (a) a sale, transfer, assignment, conveyance or other disposition of all or substantially all of its Property (unless such sale, transfer, assignment, conveyance or other disposition is of all the Property of the Issuer as an entirety or virtually as an entirety), or
- (b) a lease,

shall not be released from any of the obligations or covenants under the Indenture, including with respect to the payment of the notes.

Guarantors

No Guarantor may merge or consolidate with or into any Person, or sell, transfer, assign, lease, convey or otherwise dispose of all or substantially all its Property, to any Person, unless:

- (a) in the case of Parent, the other Person is Intermediate Holdco or the Issuer; or
- (b) in the case of Intermediate Holdco, the other Person is Parent or the Issuer.

Payments for consents

The Issuer will not, and will not permit any of its Subsidiaries to, directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fee or otherwise, to any holder of any notes for or as an inducement to any consent, waiver or amendment of any of the terms or provisions of the Indenture or the notes unless such consideration is offered to be paid or is paid to all holders of the notes that consent, waive or agree to amend in the time frame set forth in the solicitation documents relating to such consent, waiver or agreement.

SEC reports

Notwithstanding that Parent may in the future not be subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, Parent shall at all times file with the Commission and provide the Trustee and holders of notes with such annual reports and such information, documents and other reports as are specified in Sections 13 and 15(d) of the Exchange Act and applicable to a U.S. corporation subject to such Sections, such information, documents and reports to be so filed with the Commission and provided at the times specified for the filing of such information, documents and reports under such Sections; *provided, however*, that Parent shall not be so obligated to file such information, documents and reports with the Commission if the Commission does not permit such filings.

For so long as any of the notes remain outstanding and constitute “restricted securities” under Rule 144, Parent and the Issuer will furnish to the holders of the notes and prospective investors, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act.

Events of default

Events of Default in respect of the notes include:

- (1) failure to make the payment of any interest on the notes when the same becomes due and payable, and such failure continues for a period of 30 days;
- (2) failure to make the payment of any principal of, or premium, if any, on, any of the notes when the same becomes due and payable at its Stated Maturity, upon acceleration, redemption, optional redemption, required repurchase or otherwise;
- (3) failure to comply with the covenant described under “—Merger, consolidation and sale of property”;
- (4) failure to comply with any other covenant or agreement in the notes or in the Indenture (other than a failure that is the subject of the foregoing clause (1), (2) or (3)), and such failure continues for 45 days after written notice is given to the Issuer as provided below;
- (5) a default under any Debt by the Issuer, Intermediate Holdco, Parent or any Restricted Subsidiary that results in acceleration of the maturity of such Debt, or failure to pay any such Debt at maturity, in an aggregate amount greater than \$25.0 million or its foreign currency equivalent at the time (the “**cross acceleration provisions**”);
- (6) any judgment or judgments for the payment of money in an aggregate amount in excess of \$25.0 million (or its foreign currency equivalent at the time) that shall be rendered against the Issuer, Intermediate Holdco, Parent or any Significant Subsidiary and that shall not be waived, satisfied or

discharged for any period of 60 consecutive days during which a stay of enforcement shall not be in effect (the “**judgment default provisions**”);

- (7) certain events involving bankruptcy, insolvency or reorganization of the Issuer, Intermediate Holdco, Parent or any Significant Subsidiary (the “**bankruptcy provisions**”); and
- (8) any Note Guarantee ceases to be in full force and effect, other than in accordance with the terms of the Indenture, or a Guarantor denies or disaffirms its obligations under its Note Guarantee, other than in accordance with the terms of the Indenture.

A Default under clause (4) is not an Event of Default until the Trustee or the holders of not less than 25% in aggregate principal amount of the notes then outstanding notify the Issuer of the Default and the Issuer does not cure such Default within the time specified after receipt of such notice. Such notice must specify the Default, demand that it be remedied and state that such notice is a “Notice of Default.”

The Issuer shall deliver to the Trustee, within 30 days after the occurrence thereof, written notice in the form of an Officers’ Certificate of any event that with the giving of notice or the lapse of time or both would become an Event of Default, its status and what action the Issuer is taking or proposes to take with respect thereto.

If an Event of Default with respect to the notes (other than an Event of Default resulting from certain events involving bankruptcy, insolvency or reorganization with respect to Parent, Intermediate Holdco or the Issuer) shall have occurred and be continuing, the Trustee or the holders of not less than 25% in aggregate principal amount of the notes then outstanding may declare to be immediately due and payable the principal amount of all the notes then outstanding, plus accrued but unpaid interest to the date of acceleration. In case an Event of Default resulting from certain events of bankruptcy, insolvency or reorganization with respect to Parent, Intermediate Holdco or the Issuer shall occur, such amount with respect to all the notes shall be due and payable immediately without any declaration or other act on the part of the Trustee or the holders of the notes. After any such acceleration, but before a judgment or decree based on acceleration is obtained by the Trustee, the holders of at least a majority in aggregate principal amount of the notes then outstanding may, under certain circumstances, rescind and annul such acceleration if all Events of Default, other than the nonpayment of accelerated principal, premium or interest, have been cured or waived as provided in the Indenture.

Notwithstanding the foregoing, the Indenture will provide that, to the extent elected by the Issuer, the sole remedy for an Event of Default relating to the failure to file any documents or reports that Parent is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act and for any failure to comply with the requirements of Section 314(a)(1) of the Trust Indenture Act or of the covenant described above in “—SEC reports,” will for the first 60 days after the occurrence of such an Event of Default consist exclusively of the right to receive an extension fee on the notes in an amount equal to 0.25% of the principal amount of the notes. The extension fee will be in addition to any additional interest that may accrue as a result of a registration default as described below under the caption “Exchange Offer; Registration Rights.” If the Issuer so elects, such extension fee will be payable on all outstanding notes on or before the date on which such Event of Default first occurs. On the 61st day after such Event of Default (if the Event of Default relating to the reporting obligations is not cured or waived prior to such 61st day), the notes will be subject to acceleration as provided above. The provisions of the Indenture described in this paragraph will not affect the rights of holders of notes in the event of the occurrence of any other Event of Default. In the event the Issuer does not elect to pay the extension fee in accordance with this paragraph, the notes will be subject to acceleration as provided above.

In order to elect to pay the extension fee as the sole remedy during the first 60 days after the occurrence of an Event of Default relating to the failure to comply with the reporting obligations in accordance with the immediately preceding paragraph, the Issuer must (i) notify all holders of notes and the Trustee and paying agent of such election and (ii) pay such extension fee on or before the close of business on the date on which such Event of Default occurs. Upon the Issuer’s failure to timely give such notice or pay the extension fee, the notes will be subject to acceleration as provided above.

Subject to the provisions of the Indenture relating to the duties of the Trustee, in case an Event of Default shall occur and be continuing, the Trustee will be under no obligation to exercise any of its rights or powers under the Indenture at the request or direction of any of the holders of the notes, unless such holders shall have offered to the Trustee reasonable indemnity. Subject to such provisions for the indemnification of the Trustee, the holders of at least a majority in aggregate principal amount of the notes then outstanding will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee with respect to the notes.

No holder of notes will have any right to institute any proceeding with respect to the Indenture, or for the appointment of a receiver or trustee, or for any remedy thereunder, unless:

- (a) such holder has previously given to the Trustee written notice of a continuing Event of Default;
- (b) the holders of at least 25% in aggregate principal amount of the notes then outstanding have made a written request and offered reasonable indemnity to the Trustee to institute such proceeding as trustee; and
- (c) the Trustee shall not have received from the holders of at least a majority in aggregate principal amount of the notes then outstanding a direction inconsistent with such request and shall have failed to institute such proceeding within 60 days.

However, such limitations do not apply to a suit instituted by a holder of any note for enforcement of payment of the principal of, and premium, if any, or interest on, such note on or after the respective due dates expressed in such note.

No personal liability of directors, officers, employees and stockholders

No director, officer, employee, incorporator or stockholder of Parent, Intermediate Holdco or the Issuer, as such, will have any liability for any obligations of Parent, Intermediate Holdco or the Issuer under the notes, any Note Guarantee or the Indenture for any claim based on, in respect of, or by reason of, such obligations or their creation. Each holder of notes by accepting a note waives and releases all such liability. The waiver and release are part of the consideration for issuance of the notes. The waiver may not be effective to waive liabilities under federal securities laws.

Amendments and waivers

Subject to certain exceptions, the Issuer and the Trustee with the consent of the holders of at least a majority in aggregate principal amount of the notes then outstanding (including consents obtained in connection with a tender offer or exchange offer for the notes) may amend the Indenture, the notes and the Note Guarantees, and the holders of at least a majority in aggregate principal amount of the notes outstanding may waive any past Default or compliance with any provisions of the Indenture and the notes (except a Default in the payment of principal, premium, interest, and certain covenants and provisions of the Indenture which cannot be amended without the consent of each holder of an outstanding note). However, without the consent of each affected holder of an outstanding note, no amendment may, among other things:

- (1) reduce the amount of notes whose holders must consent to an amendment or waiver;
- (2) reduce the rate of, or extend the time for payment of, interest on any note;
- (3) reduce the principal of, or extend the Stated Maturity of, any note;
- (4) make any note payable in money other than that stated in the note;
- (5) impair the right of any holder of the notes to receive payment of principal of, premium, if any, and interest on, such holder's notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such holder's notes;

- (6) release Parent's or Intermediate Holdco's Note Guarantee other than pursuant to the terms of the Indenture;
- (7) release any security interest that may have been granted in favor of the holders of the notes other than pursuant to the terms of such security interest;
- (8) subordinate the notes or any Note Guarantee in right of payment to any other obligation of the Issuer ;
- (9) reduce the premium payable upon the redemption of any note or change the time at which any note may be redeemed, as described under "—Optional redemption";
- (10) reduce the premium payable upon a Change of Control or, at any time after a Change of Control has occurred, change the time at which the Change of Control Offer relating thereto must be made or at which the notes must be repurchased pursuant to such Change of Control Offer; *provided*, that, prior to the occurrence of a Change of Control, the holders of a majority in aggregate principal amount of the notes then outstanding may waive the requirement to complete a Change of Control Offer; or
- (11) at any time after the Issuer is obligated to make a Prepayment Offer with the Excess Proceeds from Asset Sales, change the time at which such Prepayment Offer must be made or at which the notes must be repurchased pursuant thereto.

The Indenture and the notes may be amended by the Issuer and the Trustee without the consent of any holder of the notes to:

- (1) cure any ambiguity, omission, defect or inconsistency in any manner that is not adverse in any material respect to any holder of the notes;
- (2) provide for the assumption by a Surviving Person of the obligations of the Issuer under the Indenture or the assumption by a surviving person in any merger or consolidation of any Guarantor, of the obligations of such Guarantor under its Note Guarantee;
- (3) provide for uncertificated notes in addition to or in place of certificated notes (provided that the uncertificated notes are issued in registered form for purposes of Section 163(f) of the Internal Revenue Code of 1986, as amended, or the Code, or in a manner such that the uncertificated notes are described in Section 163(f)(2)(A)(iv) and 163(f)(2)(B) of the Code, if then applicable);
- (4) add Guarantees with respect to the notes and release any Note Guarantee in accordance with the Indenture;
- (5) secure the notes, add to the covenants of the Issuer for the benefit of the holders of the notes or surrender any right or power conferred upon the Issuer;
- (6) make any change that does not adversely affect the rights of any holder of the notes;
- (7) comply with any requirement of the Commission in connection with the qualification of the Indenture under the Trust Indenture Act;
- (8) provide for the issuance of additional notes in accordance with the Indenture; or
- (9) conform the Indenture or the notes to any provision of this "Description of the Notes."

The consent of the holders of the notes is not necessary to approve the particular form of any proposed amendment. It is sufficient if such consent approves the substance of the proposed amendment. After an amendment becomes effective, the Issuer is required to mail to each holder of the notes at such holder's address appearing in the Security Register a notice briefly describing such amendment. However, the failure to give such notice to all holders of the notes, or any defect therein, will not impair or affect the validity of the amendment.

Defeasance

The Issuer at any time may terminate all its obligations under the notes and the Indenture and the Note Guarantees by each Guarantor (“**legal defeasance**”), except for certain obligations, including those respecting the defeasance trust and obligations to register the transfer or exchange of the notes, to replace mutilated, destroyed, lost or stolen notes and to maintain a registrar and paying agent in respect of the notes. The Issuer at any time may terminate:

- (1) its obligations under the covenants described under “—Repurchase at the option of holders upon a change of control” and “—Certain covenants”;
- (2) the operation of the cross acceleration provisions, the judgment default provisions, the bankruptcy provisions with respect to Significant Subsidiaries described under “—Events of default” above; and
- (3) the limitation contained in clause (d) under the first paragraph of “—Merger, consolidation and sale of property” above (“**covenant defeasance**”). Each Note Guarantee will be released upon covenant defeasance.

The Issuer may exercise its legal defeasance option notwithstanding its prior exercise of its covenant defeasance option.

If the Issuer exercises its legal defeasance option, payment of the notes may not be accelerated because of an Event of Default with respect thereto. If the Issuer exercises its covenant defeasance option, payment of the notes may not be accelerated because of an Event of Default specified in clause (4) (with respect to the covenants described under “—Repurchase at the option of holders upon a change of control” and “—Certain covenants”), (5), (6), (7) (with respect only to Significant Subsidiaries) or (8) under “—Events of default” above or because of the failure of the Issuer to comply with clause (d) under the first paragraph of “—Merger, consolidation and sale of property” above.

The legal defeasance option or the covenant defeasance option may be exercised only if:

- (a) the Issuer irrevocably deposits in trust with the Trustee money or U.S. Government Obligations for the payment of principal of, premium, if any, and interest on the notes to maturity or redemption, as the case may be;
- (b) the Issuer delivers to the Trustee a certificate from a nationally recognized investment bank, appraisal firm or firm of independent certified public accountants expressing their opinion that the payments of principal, premium, if any, and interest when due and without reinvestment on the deposited U.S. Government Obligations plus any deposited money without investment will provide cash at such times and in such amounts as will be sufficient to pay principal, premium, if any, and interest when due on all the notes to be defeased to maturity or redemption, as the case may be;
- (c) 123 days pass after the deposit is made, and during the 123-day period, no Default described in clause (7) under “—Events of default” occurs with respect to the Issuer or any other Person making such deposit which is continuing at the end of the period;
- (d) no Default or Event of Default has occurred and is continuing on the date of such deposit and after giving effect thereto;
- (e) such deposit does not constitute a default under any other material agreement or material instrument binding on the Issuer;
- (f) the Issuer delivers to the Trustee an Opinion of Counsel to the effect that the trust resulting from the deposit does not constitute, or is qualified as, a regulated investment company under the Investment Company Act of 1940;

(g) in the case of the legal defeasance option, the Issuer delivers to the Trustee an Opinion of Counsel stating that:

- (1) the Issuer has received from the Internal Revenue Service a ruling; or
- (2) since the date of the Indenture there has been a change in the applicable U.S. federal income tax law,

to the effect, in either case, that, and based thereon such Opinion of Counsel shall confirm that, the holders of the notes will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same time as would have been the case if such defeasance has not occurred;

- (h) in the case of the covenant defeasance option, the Issuer delivers to the Trustee an Opinion of Counsel to the effect that the holders of the notes will not recognize income, gain or loss for U.S. federal income tax purposes as a result of such covenant defeasance and will be subject to U.S. federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such covenant defeasance had not occurred; and
- (i) the Issuer delivers to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance and discharge of the notes have been complied with as required by the Indenture.

Satisfaction and discharge

The Indenture will be discharged and will cease to be of further effect as to all notes issued thereunder, when:

- (a) either:
 - (1) all notes that have been authenticated, except lost, stolen or destroyed notes that have been replaced or paid and notes for whose payment money has been deposited in trust and thereafter repaid to the Issuer, have been delivered to the Trustee for cancellation; or
 - (2) all notes that have not been delivered to the Trustee for cancellation have become due and payable by reason of the mailing of a notice of redemption or otherwise or will become due and payable within one year, and the Issuer has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust solely for the benefit of the holders, cash in U.S. dollars, U.S. Government Obligations, or a combination of cash in U.S. dollars and U.S. Government Obligations, in such amounts as will be sufficient without consideration of any reinvestment of interest, to pay and discharge the entire indebtedness on the notes not delivered to the trustee for cancellation for principal, premium and accrued interest to the date of maturity or redemption;
- (b) no Default or Event of Default has occurred and is continuing on the date of the deposit or will occur as a result of the deposit and the deposit will not result in a breach or violation of, or constitute a default under, any other instrument to which the Issuer is a party or by which the Issuer is bound;
- (c) the Issuer has paid or caused to be paid all sums payable by it under the Indenture; and
- (d) the Issuer has delivered irrevocable instructions to the Trustee under the Indenture to apply the deposited money toward the payment of the notes at maturity or the redemption date, as the case may be.

In addition, the Issuer must deliver an Officers' Certificate and an Opinion of Counsel to the Trustee stating that all conditions precedent to satisfaction and discharge have been satisfied.

Governing law

The Indenture, the notes and the Note Guarantees are governed by the internal laws of the State of New York without reference to principles of conflicts of law.

The trustee

Wells Fargo Bank, National Association will be the Trustee under the Indenture.

Except during the continuance of an Event of Default, the Trustee will perform only such duties as are specifically set forth in the Indenture. During the existence of an Event of Default, the Trustee will exercise such of the rights and powers vested in it under the Indenture and use the same degree of care and skill in its exercise as a prudent person would exercise under the circumstances in the conduct of such person's own affairs.

Certain definitions

Set forth below is a summary of certain of the defined terms used in the Indenture. Reference is made to the Indenture for the full definition of all such terms as well as any other capitalized terms used herein for which no definition is provided. Unless the context otherwise requires, an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP.

“Additional Assets” means:

- (a) any Property (other than cash, Cash Equivalents and securities) to be owned by the Issuer or any Restricted Subsidiary and used in a Related Business;
- (b) Capital Stock of a Person that becomes a Restricted Subsidiary as a result of the acquisition of such Capital Stock by the Issuer or another Restricted Subsidiary from any Person other than the Issuer or an Affiliate of the Issuer; *provided, however*, that such Restricted Subsidiary is primarily engaged in a Related Business; or
- (c) Capital Stock of a Permitted Joint Venture; *provided, however*, that the acquisition of such Capital Stock complies with the covenant described under “—Certain covenants—Limitation on restricted payments.”

“Affiliate” of any specified Person means:

- (a) any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person; or
- (b) any other Person who is a director or executive officer of:
 - (1) such specified Person;
 - (2) any Subsidiary of such specified Person; or
 - (3) any Person described in clause (a) above.

For the purposes of this definition, “control,” when used with respect to any Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“Asset Sale” means any sale, lease, transfer, issuance or other disposition (or series of related sales, leases, transfers, issuances or dispositions) by the Issuer or any Restricted Subsidiary, including any disposition by means of a merger, consolidation or similar transaction (each referred to for the purposes of this definition as a “disposition”), of

- (a) any shares of Capital Stock of a Restricted Subsidiary (other than directors' qualifying shares), or
- (b) any other Property of the Issuer or any Restricted Subsidiary outside of the ordinary course of business of the Issuer or such Restricted Subsidiary,

other than, in the case of clause (a) or (b) above,

- (1) any disposition by a Restricted Subsidiary to the Issuer or by the Issuer or a Restricted Subsidiary to a Restricted Subsidiary,
- (2) any disposition that constitutes a Permitted Investment or Restricted Payment permitted by the covenant described under “—Certain covenants—Limitation on restricted payments,”
- (3) any disposition effected in compliance with the first paragraph of the covenant described under “—Merger, consolidation and sale of property—The Issuer,”
- (4) the sale or other disposition of cash or Cash Equivalents,
- (5) the exchange of assets held by the Issuer or a Restricted Subsidiary of the Issuer for assets held by any Person (including Capital Stock of such Person), *provided* that (i) the assets received by the Issuer or such Restricted Subsidiary of the Issuer in any such exchange will immediately constitute, be part of or be used in a Related Business, and (ii) any such assets received are of a comparable Fair Market Value to the assets exchanged,
- (6) any disposition in a single transaction or a series of related transactions of assets for aggregate consideration of less than \$10.0 million, and
- (7) any disposition of surplus, discontinued, damaged or worn-out equipment or other immaterial assets no longer used in the ongoing business of the Issuer and its Restricted Subsidiaries.

“**Attributable Debt**” in respect of a Sale and Leaseback Transaction means, at any date of determination,

- (a) if such Sale and Leaseback Transaction is a Capital Lease Obligation, the amount of Debt represented thereby according to the definition of “Capital Lease Obligations,” and
- (b) in all other instances, the present value (discounted at the interest rate implicit in such transaction, determined in accordance with GAAP) of the total obligations of the lessee for rental payments during the remaining term of the lease included in such Sale and Leaseback Transaction (including any period for which such lease has been extended).

“**Average Life**” means, as of any date of determination, with respect to any Debt or Preferred Stock, the quotient obtained by dividing:

- (a) the sum of the product of the numbers of years (rounded to the nearest one-twelfth of one year) from the date of determination to the dates of each successive scheduled principal payment of such Debt or redemption or similar payment with respect to such Preferred Stock multiplied by the amount of such payment by
- (b) the sum of all such payments.

“**Board of Directors**” means the board of directors or board of managers of the referent person. Unless the context otherwise requires, “Board of Directors” shall refer to the managing member or Board of Directors, as applicable, of the Issuer.

“**Business Day**” means a day other than a Saturday, Sunday or other day on which commercial banking institutions in New York City (or where the paying agent’s office is located) are authorized or required by law to close.

“**Capital Lease Obligations**” means any obligation under a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP; and the amount of Debt represented by such obligation shall be the capitalized amount of such obligations determined in accordance with GAAP; and the Stated Maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to

the first date upon which such lease may be terminated by the lessee without payment of a penalty. For purposes of “—Certain covenants—Limitation on liens,” a Capital Lease Obligation shall be deemed secured by a Lien on the Property being leased.

“**Capital Stock**” means, with respect to any Person, any shares or other equivalents (however designated) of any class of corporate stock, membership interests or partnership interests or any other participations, rights, warrants, options or other interests in the nature of an equity interest in such Person, including Preferred Stock, but excluding any debt security convertible or exchangeable into such equity interest.

“**Capital Stock Sale Proceeds**” means the aggregate cash proceeds received by the Issuer from the issuance or sale (other than to a Subsidiary of Parent or an employee stock ownership plan or trust established by Parent or any such Subsidiary for the benefit of their employees) by the Issuer of its Capital Stock (other than Disqualified Stock) after the Issue Date, net of attorneys’ fees, accountants’ fees, underwriters’ or placement agents’ fees, discounts or commissions and brokerage, consultant and other fees actually incurred in connection with such issuance or sale and net of taxes paid or payable as a result thereof.

“**Cash Equivalents**” means any of the following:

- (a) United States dollars or euros;
- (b) Investments in U.S. Government Obligations maturing within 365 days of the date of acquisition thereof;
- (c) certificates of deposit and eurodollar time deposits with maturities of 12 months or less from the date of acquisition, bankers’ acceptances with maturities not exceeding 12 months and overnight bank deposits, in each case with any domestic commercial bank or any commercial bank in a member state of the European Union, in each case, having capital and surplus in excess of \$500.0 million;
- (d) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clauses (b) and (c) above entered into with any financial institution meeting the qualifications specified in clause (c) above;
- (e) commercial paper, having the highest rating obtainable from Moody’s Investors Service, Inc. or Standard & Poor’s Rating Services and in each case maturing within one year after the date of acquisition; and
- (f) money market funds at least 90% of the assets of which constitute Cash Equivalents of the kinds described in clauses (a) through (e) of this definition.

“**Change of Control**” means the occurrence of any of the following events:

- (a) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act or any successor provisions to either of the foregoing), including any group acting for the purpose of acquiring, holding, voting or disposing of securities within the meaning of Rule 13d-5(b)(1) under the Exchange Act, becomes the “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act, except that a person will be deemed to have “beneficial ownership” of all shares that any such person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of 50% or more of the total voting power of the Voting Stock of Parent; or
- (b) the sale, transfer, assignment, lease, conveyance or other disposition, directly or indirectly, of all or substantially all the Property of Parent, the Issuer and the Restricted Subsidiaries, considered as a whole (other than a disposition of such Property as an entirety or virtually as an entirety to a Wholly Owned Restricted Subsidiary), shall have occurred or Parent merges or consolidates with or into any other Person or any other Person merges or consolidates with or into Parent, in any such event pursuant to a transaction in which the outstanding Voting Stock of Parent is reclassified into or exchanged for cash, securities or other Property, other than any such transaction where:

- (1) the outstanding Voting Stock of Parent is reclassified into or exchanged for other Voting Stock of Parent or for Voting Stock of the Surviving Person; and
- (2) the holders of the Voting Stock of Parent immediately prior to such transaction own, directly or indirectly, not less than a majority of the Voting Stock of Parent or the Surviving Person immediately after such transaction and in substantially the same proportion as before the transaction; or
- (c) during any period of two consecutive years, individuals who at the beginning of such period constituted the Board of Directors of Parent (together with any new directors whose election or appointment by such Board or whose nomination for election by the stockholders of Parent was approved by a vote of not less than a majority of the directors then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute at least a majority of the Board of Directors of Parent then in office;
- (d) Parent ceases to own directly or indirectly 100% of the Capital Stock of the Issuer or any successor-in-interest to the Issuer, except in connection with the merger of the Issuer with Intermediate Holdco or Parent; or
- (e) the stockholders of Parent or the Issuer shall have approved any plan of liquidation or dissolution of Parent or the Issuer, except, with respect to the Issuer, in connection with the merger of the Issuer with Intermediate Holdco or Parent.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Commission**” means the U.S. Securities and Exchange Commission.

“**Consolidated Cash Flow**” means, for any period, an amount equal to, for the Issuer and its Consolidated Restricted Subsidiaries:

- (a) the sum of Consolidated Net Income for such period, plus the following to the extent reducing Consolidated Net Income for such period:
 - (1) the provision for taxes based on income or profits or utilized in computing net loss,
 - (2) Consolidated Fixed Charges,
 - (3) depreciation and amortization (including amortization of goodwill and other intangibles but excluding amortization of prepaid cash expenses that were paid in a prior period) of the Issuer and its Consolidated Restricted Subsidiaries for such period, and
 - (4) any other non-cash items (other than any such non-cash item to the extent that it represents an accrual of, or reserve for, cash expenditures in any future period), minus
- (b) all non-cash items increasing Consolidated Net Income for such period (other than any such non-cash item to the extent that it will result in the receipt of cash payments in any future period).

“**Consolidated Current Liabilities**” means, as of any date of determination, the aggregate amount of liabilities of the Issuer and its Consolidated Restricted Subsidiaries which may properly be classified as current liabilities (including taxes accrued as estimated), after eliminating:

- (a) all intercompany items between the Issuer and any Restricted Subsidiary or between Restricted Subsidiaries; and
- (b) all current maturities of long-term Debt.

“**Consolidated Fixed Charge Coverage Ratio**” means, as of any date of determination, the ratio of:

- (a) the aggregate amount of Consolidated Cash Flow for the most recent four consecutive fiscal quarters for which internal financial statements are available, to

(b) Consolidated Fixed Charges for such four fiscal quarters;

provided, however, that:

- (1) if
 - (A) since the beginning of such period the Issuer or any Restricted Subsidiary has Incurred any Debt that remains outstanding or Repaid any Debt, or
 - (B) the transaction giving rise to the need to calculate the Consolidated Fixed Charge Coverage Ratio is an Incurrence or Repayment of Debt,

Consolidated Fixed Charges for such four-quarter period shall be calculated after giving effect on a pro forma basis to such Incurrence or Repayment as if such Debt was Incurred or Repaid on the first day of such four-quarter period; *provided* that, in the event of any such Repayment of Debt, Consolidated Cash Flow for such period shall be calculated as if the Issuer or such Restricted Subsidiary had not earned any interest income actually earned during such period in respect of the funds used to Repay such Debt, and

- (2) if
 - (A) since the beginning of such period the Issuer or any Restricted Subsidiary shall have made any Asset Sale or an Investment (by merger or otherwise) in any Restricted Subsidiary (or any Person that becomes a Restricted Subsidiary) or an acquisition of Property which constitutes all or substantially all of an operating unit of a business,
 - (B) the transaction giving rise to the need to calculate the Consolidated Fixed Charge Coverage Ratio is such an Asset Sale, Investment or acquisition, or
 - (C) since the beginning of such period any Person, that subsequently became a Restricted Subsidiary or was merged with or into the Issuer or any Restricted Subsidiary since the beginning of such period, shall have made such an Asset Sale, Investment or acquisition,

then Consolidated Cash Flow for such four-quarter period shall be calculated after giving pro forma effect to such Asset Sale, Investment or acquisition as if such Asset Sale, Investment or acquisition had occurred on the first day of such four-quarter period.

If any Debt bears a floating rate of interest and is being given pro forma effect, the interest expense on such Debt shall be calculated as if the base interest rate in effect for such floating rate of interest on the date of determination had been the applicable base interest rate for the entire period (taking into account any Interest Rate Agreement applicable to such Debt if such Interest Rate Agreement has a remaining term in excess of 12 months). In the event the Capital Stock of any Restricted Subsidiary is sold during the period, the Issuer shall be deemed, for purposes of clause (1) above, to have Repaid during such period the Debt of such Restricted Subsidiary to the extent the Issuer and its continuing Restricted Subsidiaries are no longer liable for such Debt after such sale.

“Consolidated Fixed Charges” means, for any period, the total interest expense of the Issuer and its Consolidated Restricted Subsidiaries, plus, to the extent not included in such total interest expense, and to the extent Incurred by the Issuer or its Restricted Subsidiaries, without duplication,

- (a) interest expense attributable to leases constituting part of a Sale and Leaseback Transaction and to Capital Lease Obligations,
- (b) amortization of debt discount and debt issuance costs, including commitment fees,
- (c) capitalized interest,
- (d) non-cash interest expense,

- (e) commissions, discounts and other fees and charges owed with respect to letters of credit and banker's acceptance financing,
- (f) net costs associated with Hedging Obligations (including amortization of fees) related to Interest Rate Agreements,
- (g) Disqualified Stock Dividends,
- (h) Preferred Stock Dividends,
- (i) interest Incurred in connection with Investments in discontinued operations, and
- (j) interest actually paid by the Issuer or any Restricted Subsidiary under any Guarantee of Debt of any other Person.

“Consolidated Net Income” means, for any period, the net income (loss) of the Issuer and its Consolidated Restricted Subsidiaries; *provided, however*, that there shall not be included in such Consolidated Net Income:

- (a) any net income of any Person (other than the Issuer) if such Person is not a Restricted Subsidiary, except that, subject to the exclusion contained in clause (c) below, equity of the Issuer and its Consolidated Restricted Subsidiaries in the net income of any such Person for such period shall be included in such Consolidated Net Income up to the aggregate amount of cash distributed by such Person during such period to the Issuer or a Restricted Subsidiary as a dividend or other distribution (subject, in the case of a dividend or other distribution to a Restricted Subsidiary, to the limitations contained in clause (b) below),
- (b) any net income of any Restricted Subsidiary if such Restricted Subsidiary is subject to restrictions, directly or indirectly, on the payment of dividends or the making of distributions, directly or indirectly, to the Issuer, except that, subject to the exclusion contained in clause (d) below, the equity of the Issuer and its Consolidated Restricted Subsidiaries in the net income of any such Restricted Subsidiary for such period shall be included in such Consolidated Net Income up to the greater of (i) the aggregate amount of cash actually distributed by such Restricted Subsidiary during such period to the Issuer or another Restricted Subsidiary as a dividend or other distribution (subject, in the case of a dividend or other distribution to another Restricted Subsidiary, to the limitation contained in this clause (b)) and (ii) the aggregate amount of cash that could have been distributed by such Restricted Subsidiary during such period to the Issuer or another Restricted Subsidiary as a dividend or other distribution (subject, in the case of a dividend or other distribution to another Restricted Subsidiary, to the limitation contained in this clause (b)),
- (c) any gain or loss realized upon the sale or other disposition of any Property of the Issuer or any of its consolidated Subsidiaries (including pursuant to any Sale and Leaseback Transaction) that is not sold or otherwise disposed of in the ordinary course of business,
- (d) any net after-tax extraordinary gain or loss,
- (e) to the extent non-cash, any unusual, non-operating or non-recurring gain or loss,
- (f) the cumulative effect of a change in accounting principles,
- (g) any non-cash compensation expense realized for grants of performance shares, stock options or other rights to officers, directors and employees of the Issuer or any Restricted Subsidiary; *provided* that such shares, options or other rights can be redeemed at the option of the holder only for Capital Stock of the Issuer (other than Disqualified Stock),
- (h) any cash or non-cash expenses attributable to the closing of manufacturing facilities or the lay-off of employees, in either case which are recorded as “restructuring and other specific charges” in accordance with GAAP, and
- (i) gains or losses due to fluctuations in currency values and the related tax effect.

Notwithstanding the foregoing, for purposes of the covenant described under “—Certain covenants—Limitation on restricted payments” only, there shall be excluded from Consolidated Net Income any dividends, repayments of loans or advances or other transfers of Property from Unrestricted Subsidiaries to the Issuer or a Restricted Subsidiary to the extent such dividends, repayments or transfers increase the amount of Restricted Payments permitted under such covenant pursuant to clause (c)(4) thereof.

“**Consolidated Net Tangible Assets**” means Total Assets (less accumulated depreciation and amortization, allowances for doubtful receivables, other applicable reserves and other properly deductible items) of the Issuer and its Restricted Subsidiaries, after deducting therefrom Consolidated Current Liabilities and, to the extent otherwise included, the amounts of (without duplication):

- (a) the excess of cost over Fair Market Value of assets or businesses acquired;
- (b) any revaluation or other write-up in book value of assets subsequent to the last day of the fiscal quarter of the Issuer immediately preceding the Issue Date as a result of a change in the method of valuation in accordance with GAAP;
- (c) unamortized debt discount and expenses and other unamortized deferred charges, goodwill, patents, trademarks, service marks, trade names, copyrights, licenses, organization or developmental expenses and other intangible items;
- (d) minority interests in consolidated Subsidiaries held by Persons other than the Issuer or any Restricted Subsidiary;
- (e) treasury stock;
- (f) cash or securities set aside and held in a sinking or other analogous fund established for the purpose of redemption or other retirement of Capital Stock to the extent such obligation is not reflected in Consolidated Current Liabilities; and
- (g) Investments in and assets of Unrestricted Subsidiaries.

“**Consolidated Restricted Subsidiary**” means, for any Person, each Restricted Subsidiary of such Person (whether now existing or hereinafter created or acquired) the financial statements of which are consolidated for financial statement reporting purposes with the financial statements of such Person in accordance with GAAP.

“**continuing**” means, with respect to any Default or Event of Default, that such Default or Event of Default has not been cured or waived.

“**Credit Agreements**” mean (i) the Loan and Security Agreement dated as of May 10, 2010, by and between Parent and the Issuer, and certain of its Subsidiaries, as Borrowers, and Certain Financial Institutions, as Lenders and Bank of America, N.A., as Administrative Agent, Sole Lead Arranger, Sole Bookrunner, and Agent and (ii) the Credit Agreement, dated as of February 9, 2010, among the Issuer, as Borrower, Parent and Intermediate Holdco, as guarantors, Barclays Bank PLC, as Administrative Agent, Collateral Agent and Documentation Agent, the lenders party thereto, Barclays Capital, as Joint Lead Arranger and Joint Book Runner and Morgan Stanley Senior Funding, Inc., as Joint Lead Arranger, Joint Book Runner and Syndication Agent.

“**Credit Facilities**” means, with respect to the Issuer or any Restricted Subsidiary, one or more debt or commercial paper facilities (including, without limitation, under the Credit Agreements) with banks or other institutional lenders providing for revolving credit loans, term loans, notes, receivables or inventory financing (including through the sale of receivables or inventory to such lenders or to special purpose, bankruptcy remote entities formed to borrow from such lenders against such receivables or inventory) or trade or standby letters of credit, in each case as any such facility may be revised, restructured or Refinanced from time to time, including to extend the maturity thereof, to increase the amount of commitments thereunder (*provided* that any such increase is permitted under the covenant described under “—Certain covenants—Limitation on debt”), or to add

Restricted Subsidiaries as additional borrowers or guarantors thereunder, whether by the same or any other agent, lender or group of lenders or investors and whether such revision, restructuring or Refinancing is under one or more Debt facilities or commercial paper facilities, indentures or other agreements, in each case with banks or other institutional lenders or trustees or investors providing for revolving credit loans, term loans, notes or letters or credit, together with related documents thereto (including, without limitation, any guarantee agreements and security documents).

“**Currency Exchange Protection Agreement**” means, in respect of a Person, any foreign exchange contract, currency swap agreement, currency option or other similar agreement or arrangement designed to protect such Person against fluctuations in currency exchange rates.

“**Debt**” means, with respect to any Person on any date of determination (without duplication):

- (a) the principal of and premium (if any) in respect of:
 - (1) debt of such Person for money borrowed; and
 - (2) debt evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable;
- (b) all Capital Lease Obligations of such Person and all Attributable Debt in respect of Sale and Leaseback Transactions entered into by such Person;
- (c) all obligations of such Person representing the deferred purchase price of Property, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement (but excluding trade accounts payable arising in the ordinary course of business);
- (d) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker’s acceptance or similar credit transaction (other than obligations with respect to letters of credit securing obligations (other than obligations described in (a) through (c) above) entered into in the ordinary course of business of such Person to the extent such letters of credit are not drawn upon or, if and to the extent drawn upon, such drawing is reimbursed no later than the third business day following receipt by such Person of a demand for reimbursement following payment on the letter of credit);
- (e) the amount of all obligations of such Person with respect to the Repayment of any Disqualified Stock or, with respect to any Subsidiary of such Person, any Preferred Stock (but excluding, in each case, any accrued dividends);
- (f) all obligations of the type referred to in clauses (a) through (e) above of other Persons and all dividends of other Persons the payment of which, in either case, such Person is responsible or liable for, directly or indirectly, as obligor, guarantor or otherwise, including by means of any Guarantee;
- (g) all obligations of the type referred to in clauses (a) through (f) above of other Persons secured by any Lien on any Property of such Person (whether or not such obligation is assumed by such Person), the amount of such obligation being deemed to be the lesser of the Fair Market Value of such Property and the amount of the obligation so secured; and
- (h) to the extent not otherwise included in this definition, Hedging Obligations of such Person.

The amount of Debt of any Person at any date shall be the outstanding balance, or the accreted value of such Debt in the case of Debt issued with original issue discount, at such date of all unconditional obligations as described above and the maximum liability, upon the occurrence of the contingency giving rise to the obligation, of any contingent obligations at such date. The amount of Debt represented by a Hedging Obligation shall be equal to:

- (1) zero if such Hedging Obligation has been Incurred pursuant to clause (f) or (g) of the second paragraph of the covenant described under “—Certain covenants—Limitation on debt,” or

- (2) the notional amount of such Hedging Obligation if not Incurred pursuant to such clauses.

“**Default**” means any event which is, or after notice or passage of time or both would be, an Event of Default.

“**Disqualified Stock**” means any Capital Stock of Parent or the Issuer or any of its Restricted Subsidiaries that by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable, in either case at the option of the holder thereof) or otherwise:

- (a) matures or is mandatorily redeemable pursuant to a sinking fund obligation or otherwise;
- (b) is or may become redeemable or repurchasable at the option of the holder thereof, in whole or in part; or
- (c) is convertible or exchangeable at the option of the holder thereof for Debt or Disqualified Stock, on or prior to, in the case of clause (a), (b) or (c), 123 days following the Stated Maturity of the notes. Notwithstanding the foregoing, any Capital Stock that would constitute Disqualified Stock solely because the holders of the Capital Stock have the right to require the Issuer to repurchase such Capital Stock upon the occurrence of a change of control or an asset sale will not constitute Disqualified Stock if the terms of such Capital Stock provide that the Issuer may not repurchase or redeem any such Capital Stock pursuant to such provisions unless such repurchase or redemption complies with the covenant described above under the caption “—Certain covenants—Limitation on restricted payments.”

“**Disqualified Stock Dividends**” means all dividends with respect to Disqualified Stock held by Persons other than a Restricted Subsidiary. The amount of any such dividend shall be equal to the quotient of such dividend divided by the difference between one and the maximum statutory federal income tax rate (expressed as a decimal number between 1 and 0) then applicable to the Issuer.

“**Event of Default**” has the meaning set forth under “—Events of default.”

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended.

“**Fair Market Value**” means, with respect to any Property, the price that could be negotiated in an arm’s-length free market transaction, for cash, between a willing seller and a willing buyer, neither of whom is under undue pressure or compulsion to complete the transaction. Fair Market Value shall be determined, except as otherwise provided,

- (a) if such Property has a Fair Market Value equal to or less than \$25.0 million, by any Officer of the Issuer, or
- (b) if such Property has a Fair Market Value in excess of \$25.0 million, by at least a majority of the Board of Directors and evidenced by a resolution of the Board of Directors dated within 30 days of the relevant transaction.

“**GAAP**” means generally accepted accounting principles consistently applied as in effect in the United States from time to time.

“**Guarantee**” means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Debt of any other Person and any obligation, direct or indirect, contingent or otherwise, of such Person to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt of such other Person (whether arising by virtue of partnership arrangements, or by agreements to keep-well, to purchase assets, goods, securities or services, to take-or-pay or to maintain financial statement conditions or otherwise), *provided, however*, that the term “Guarantee” shall not include:

- (1) endorsements for collection or deposit in the ordinary course of business; or

- (2) a contractual commitment by one Person to invest in another Person for so long as such Investment is reasonably expected to constitute a Permitted Investment under clause (a), (b) or (c) of the definition of “Permitted Investment.”

The term “Guarantee” used as a verb has a corresponding meaning. The term “Guarantor” shall mean any Person guaranteeing any obligation.

“**Hedging Obligation**” of any Person means any obligation of such Person pursuant to any Interest Rate Agreement, Currency Exchange Protection Agreement or any other similar agreement or arrangement.

“**holder**” means a Person in whose name a note is registered in the note register.

“**Incur**” means, with respect to any Debt or other obligation of any Person, to create, issue, incur (by merger, conversion, exchange or otherwise), extend, assume, guarantee or become liable in respect of such Debt or other obligation or the recording, as required pursuant to GAAP or otherwise, of any such Debt or obligation on the balance sheet of such Person (and “**Incurrence**” and “**Incurred**” shall have meanings correlative to the foregoing); *provided, however*, that a change in GAAP that results in an obligation of such Person that exists at such time, and is not theretofore classified as Debt, becoming Debt shall not be deemed an Incurrence of such Debt; *provided further*, however, that any Debt or other obligations of a Person existing at the time such Person becomes a Subsidiary (whether by merger, consolidation, acquisition or otherwise) shall be deemed to be Incurred by such Subsidiary at the time it becomes a Subsidiary; and *provided further, however*, that solely for purposes of determining compliance with “—Certain covenants—Limitation on debt,” amortization of debt discount shall not be deemed to be the Incurrence of Debt, provided that in the case of Debt sold at a discount, the amount of such Debt Incurred shall at all times be the aggregate principal amount at Stated Maturity.

“**Independent Financial Advisor**” means an investment banking firm of national standing or any third-party appraiser of national standing in the United States, *provided* that such firm or appraiser is not an Affiliate of the Issuer or Parent.

“**Interest Rate Agreement**” means, for any Person, any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement or other similar agreement designed to protect against fluctuations in interest rates.

“**Investment**” by any Person means any direct or indirect loan (other than advances to customers in the ordinary course of business that are recorded as accounts receivable on the balance sheet of such Person), advance or other extension of credit or capital contribution (by means of transfers of cash or other Property to others or payments for Property or services for the account or use of others, or otherwise) to, or Incurrence of a Guarantee of any obligation of, or purchase or acquisition of Capital Stock, bonds, notes, debentures or other securities or evidence of Debt issued by, any other Person. For purposes of the covenants described under “—Certain covenants—Limitation on restricted payments” and “—Designation of restricted and unrestricted subsidiaries” and the definition of “Restricted Payment,” the term “Investment” shall include (a) upon the issuance, sale or other disposition of Capital Stock of any Restricted Subsidiary to a Person other than the Issuer or another Restricted Subsidiary as a result of which such Restricted Subsidiary ceases to be a Restricted Subsidiary, the Fair Market Value of the remaining interest, if any, in such former Restricted Subsidiary held by the Issuer or such other Restricted Subsidiary, and (b) at the time that a Subsidiary of the Issuer is designated an Unrestricted Subsidiary, the portion (proportionate to the Issuer’s equity interest in such Subsidiary) of the Fair Market Value of the net assets of such Subsidiary; *provided, however*, that upon a redesignation of any Unrestricted Subsidiary as a Restricted Subsidiary, the Issuer shall be deemed to continue to have a permanent “Investment” in an Unrestricted Subsidiary of an amount (if positive) equal to:

- (a) the Issuer’s “Investment” in such Subsidiary at the time of such redesignation, less

- (b) the portion of the Fair Market Value of the net assets of such Subsidiary at the time of such redesignation (proportionate to the Issuer's equity interest in such Subsidiary).

In determining the amount of any Investment made by transfer of any Property other than cash, such Property shall be valued at its Fair Market Value at the time of such Investment.

"Investment Grade Rating" means a rating equal to or higher than Baa3 (or the equivalent) by Moody's and BBB- (or the equivalent) by S&P (or the equivalent ratings from any other relevant Rating Agency).

"Issue Date" means November 9, 2010.

"Lien" means, with respect to any Property of any Person, any mortgage or deed of trust, pledge, hypothecation, assignment, deposit arrangement, security interest, lien, charge, easement (other than any easement not materially impairing usefulness or marketability), encumbrance, preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever on or with respect to such Property (including any Capital Lease Obligation, conditional sale or other title retention agreement having substantially the same economic effect as any of the foregoing or any Sale and Leaseback Transaction).

"Moody's" means Moody's Investors Service, Inc. or any successor to the rating agency business thereof.

"Net Available Cash" from any Asset Sale means cash payments received therefrom (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or otherwise, but only as and when received, but excluding any other consideration received in the form of assumption by the acquiring Person of Debt or other obligations relating to the Property that is the subject of such Asset Sale or received in any other non-cash form), in each case net of:

- (a) all legal, title and recording tax expenses, commissions and other fees and expenses incurred, and all Federal, state, provincial, foreign and local taxes required to be accrued as a liability under GAAP, as a consequence of such Asset Sale;
- (b) all payments made on or in respect of any Debt that is secured by any Property subject to such Asset Sale, in accordance with the terms of any Lien upon such Property, or which must by its terms, or in order to obtain a necessary consent to such Asset Sale, or by applicable law, be repaid out of the proceeds from such Asset Sale;
- (c) all distributions and other payments required to be made to minority interest holders in Subsidiaries or joint ventures as a result of such Asset Sale; and
- (d) the deduction of appropriate amounts provided by the seller as a reserve, in accordance with GAAP, against any liabilities associated with the Property disposed of in such Asset Sale and retained by the Issuer or any Restricted Subsidiary after such Asset Sale;

provided, however, that (a) in the event that any consideration for an Asset Sale (which would otherwise constitute Net Available Cash) is required or is otherwise subject to any purchase price or similar adjustment by contract to be held in escrow pending determination of whether a purchase price adjustment will be made, such consideration (or any portion thereof) shall become Net Available Cash only at such time as it is released to such Person from escrow or the amount of such adjustment is otherwise finally determined and (b) any non-cash consideration received in connection with any transaction, which is subsequently converted to cash, shall become Net Available Cash only at such time as it is so converted.

"Non-Recourse Debt" means Debt:

- (a) as to which neither the Issuer nor any Restricted Subsidiary provides any guarantee or credit support of any kind (including any undertaking, guarantee, indemnity, agreement or instrument that would

constitute Debt) or is directly or indirectly liable (as a guarantor or otherwise) or as to which there is any recourse to the assets of the Issuer; and

- (b) no default with respect to which (including any rights that the holders thereof may have to take enforcement action against an Unrestricted Subsidiary) would permit (upon notice, lapse of time or both) any holder of other Debt of the Issuer or any Restricted Subsidiary to declare a default under such other Debt or cause the payment therefor to be accelerated or payable prior to its stated maturity.

“**Officer**” means the Chief Executive Officer, the President, the Chief Financial Officer, any Executive Vice President or Senior Vice President of the Issuer.

“**Officer’s Certificate**” means a certificate signed by an Officer of the Issuer, and delivered to the Trustee.

“**Opinion of Counsel**” means a written opinion from legal counsel who is reasonably acceptable to the Trustee. The counsel may be an employee of or counsel to the Issuer or the Trustee.

“**Permitted Investment**” means any Investment by the Issuer or a Restricted Subsidiary in existence on the Issue Date or in:

- (a) the Issuer or any Restricted Subsidiary;
- (b) any Person that will, upon the making of such Investment, become a Restricted Subsidiary;
- (c) any Person if as a result of such Investment such Person is merged or consolidated with or into, or transfers or conveys all or substantially all its Property to, the Issuer or a Restricted Subsidiary;
- (d) Cash Equivalents;
- (e) receivables owing to the Issuer or a Restricted Subsidiary, if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms; *provided, however*, that such trade terms may include such concessionary trade terms as the Issuer or such Restricted Subsidiary deems reasonable under the circumstances;
- (f) payroll, travel and similar advances to cover matters that are expected at the time of such advances ultimately to be treated as expenses for accounting purposes and that are made in the ordinary course of business;
- (g) loans and advances to employees made in the ordinary course of business consistent with past practices of the Issuer or a Restricted Subsidiary, as the case may be; *provided* that such loans and advances do not exceed \$5.0 million in the aggregate at any one time outstanding;
- (h) stock, obligations or other securities received in settlement of debts created in the ordinary course of business and owing to the Issuer or a Restricted Subsidiary or in satisfaction of judgments;
- (i) any Person to the extent such Investment represents the non-cash portion of the consideration received in connection with an Asset Sale consummated in compliance with the covenant described under “—Certain covenants—Limitation on asset sales;”
- (j) Investments in Permitted Joint Ventures that do not exceed 15% of Total Assets in the aggregate outstanding at any one time;
- (k) any acquisition of assets or Capital Stock solely in exchange for the issuance of Capital Stock (other than Disqualified Stock) of the Issuer;
- (l) Investments represented by Hedging Obligations if such Hedging Obligation has been Incurred pursuant to clause (f) or (g) of the second paragraph of the covenant described under “—Certain covenants—Limitation on debt”; and
- (m) other Investments (other than Investments in Parent or Intermediate Holdco) made for Fair Market Value that do not exceed \$50.0 million in the aggregate outstanding at any one time.

“**Permitted Joint Venture**” means any Person which is, directly or indirectly, engaged principally in a Related Business, and the Capital Stock, or securities convertible into Capital Stock, of which is owned by the Issuer or a Restricted Subsidiary and one or more Persons other than the Issuer or any of its Affiliates.

“**Permitted Liens**” means:

- (a) Liens securing the notes or the Note Guarantees;
- (b) Liens to secure Debt permitted to be Incurred under clause (b) of the second paragraph under “—Certain covenants—Limitation on debt;”
- (c) Liens to secure Debt permitted to be Incurred under clause (c) of the second paragraph under “—Certain covenants—Limitation on debt;” *provided* that any such Lien may not extend to any Property of the Issuer, other than the Property acquired, constructed or leased with the proceeds of any such Debt and any improvements or accessions to such Property;
- (d) Liens for taxes, assessments or governmental charges or levies on the Property of the Issuer if the same shall not at the time be delinquent or thereafter can be paid without penalty, or are being contested in good faith and by appropriate proceedings promptly instituted and diligently concluded; *provided* that any reserve or other appropriate provision that shall be required in conformity with GAAP shall have been made therefor;
- (e) Liens imposed by law, such as carriers’, landlords’, warehousemen’s and mechanics’ Liens and other similar Liens, on the Property of the Issuer arising in the ordinary course of business and securing payment of obligations that are not more than 60 days past due or are being contested in good faith and by appropriate proceedings;
- (f) Liens on the Property of the Issuer Incurred in the ordinary course of business to secure performance of obligations with respect to statutory or regulatory requirements, performance or return-of-money bonds, surety bonds or other obligations of a like nature and Incurred in a manner consistent with industry practice, in each case which are not Incurred in connection with the borrowing of money, the obtaining of advances or credit or the payment of the deferred purchase price of Property and which do not in the aggregate impair in any material respect the use of Property in the operation of the business of the Issuer and the Restricted Subsidiaries taken as a whole;
- (g) Liens on Property at the time the Issuer acquired such Property, including any acquisition by means of a merger or consolidation with or into the Issuer; *provided, however*, that any such Lien may not extend to any other Property of the Issuer; *provided further, however*, that such Liens shall not have been Incurred in anticipation of or in connection with the transaction or series of transactions pursuant to which such Property was acquired by the Issuer;
- (h) pledges or deposits by the Issuer under workers’ compensation laws, unemployment insurance laws or similar legislation, or good faith deposits in connection with bids, tenders, contracts (other than for the payment of Debt) or leases to which the Issuer is party, or deposits to secure public or statutory obligations of the Issuer, surety or appeal bonds, performance bonds or deposits for the payment of rent or margin deposits, in each case Incurred in the ordinary course of business;
- (i) utility easements, building restrictions and such other encumbrances or charges against real Property as are of a nature generally existing with respect to properties of a similar character;
- (j) Liens securing Debt permitted to be Incurred with respect to any Hedging Obligations pursuant to the covenant described under “—Certain covenants—Limitation on debt” or collateral for such Debt to which the Hedging Obligations relate;
- (k) Liens on the Capital Stock of any Unrestricted Subsidiary to secure Debt of that Unrestricted Subsidiary;
- (l) Liens in favor of the Issuer or a Restricted Subsidiary;

- (m) Liens existing on the Issue Date not otherwise described in clauses (a) through (l) above;
- (n) Liens on the Property of the Issuer to secure any Refinancing, in whole or in part, of any Debt secured by Liens referred to in clause (c), (g) or (m) above; *provided, however*, that any such Lien shall be limited to all or part of the same Property that secured the original Lien (together with any improvements and accessions to such Property) and the aggregate principal amount of Debt that is secured by such Lien shall not be increased to an amount greater than the sum of:
 - (1) the outstanding principal amount, or, if greater, the committed amount, of the Debt secured by Liens described under clause (c), (g) or (m) above, as the case may be, at the time the original Lien became a Permitted Lien under the Indenture; and
 - (2) an amount necessary to pay any fees and expenses, including premiums and defeasance costs, incurred by the Issuer in connection with such Refinancing; and
- (o) Liens on assets of a Restricted Subsidiary securing Debt of such Restricted Subsidiary permitted by the covenant described under “Certain covenants—Limitation on debt”; and
- (p) other Liens to secure Debt, so long as the aggregate principal amount of Debt secured thereby at the time such Lien is created does not exceed \$50.0 million.

“**Permitted Refinancing Debt**” means any Debt that Refinances any other Debt, including any successive Refinancings, so long as:

- (a) such Debt is in an aggregate principal amount (or if Incurred with original issue discount, an aggregate issue price) not in excess of the sum of:
 - (1) the aggregate principal amount (or if Incurred with original issue discount, the aggregate accreted value) then outstanding of the Debt being Refinanced; and
 - (2) an amount necessary to pay any fees and expenses, including premiums and defeasance costs, related to such Refinancing;
- (b) the Average Life of such Debt is equal to or greater than the Average Life of the Debt being Refinanced;
- (c) the Stated Maturity of such Debt is no earlier than the Stated Maturity of the Debt being Refinanced; and
- (d) the new Debt shall not be senior in right of payment to the Debt that is being Refinanced; *provided, however*, that Permitted Refinancing Debt shall not include:
 - (x) Debt of a Subsidiary of the Issuer that Refinances Debt of the Issuer or a Guarantor; or
 - (y) Debt of the Issuer or a Restricted Subsidiary that Refinances Debt of an Unrestricted Subsidiary.

“**Person**” means any individual, corporation, company (including any limited liability company), association, partnership, joint venture, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

“**Preferred Stock**” means any Capital Stock of a Person, however designated, which entitles the holder thereof to a preference with respect to the payment of dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over shares of any other class of Capital Stock issued by such Person.

“**Preferred Stock Dividends**” means all dividends with respect to Preferred Stock of Restricted Subsidiaries held by Persons other than the Issuer or a Restricted Subsidiary. The amount of any such dividend shall be equal to the quotient of such dividend divided by the difference between one and the maximum statutory

federal income rate (expressed as a decimal number between 1 and 0) then applicable to the issuer of such Preferred Stock.

“**pro forma**” means, with respect to any calculation made or required to be made pursuant to the terms hereof, a calculation performed in accordance with Article 11 of Regulation S-X promulgated under the Securities Act.

“**Property**” means, with respect to any Person, any interest of such Person in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, including Capital Stock in, and other securities of, any other Person. For purposes of any calculation required pursuant to the Indenture, the value of any Property shall be its Fair Market Value.

“**Purchase Money Debt**” means Debt:

- (a) consisting of the deferred purchase price of Property, conditional sale obligations, obligations under any title retention agreement, other purchase money obligations and obligations in respect of industrial revenue bonds, in each case where the maturity of such Debt does not exceed the anticipated useful life of the Property being financed; and
- (b) Incurred to finance the acquisition, construction or lease by the Issuer or a Restricted Subsidiary of such Property, including additions and improvements thereto;

provided, however, that such Debt is Incurred within 180 days after the acquisition, construction or lease of such Property by the Issuer or such Restricted Subsidiary.

“**Qualified Equity Offering**” means any public or private offering for cash of Capital Stock (other than Disqualified Stock) of Parent (the net proceeds of which are contributed to the Issuer as common equity) other than (i) public offerings of Capital Stock registered on Form S-8 or (ii) other issuances upon the exercise of options of employees of Parent or any of its Subsidiaries.

“**Rating Agencies**” means Moody’s and S&P (or, if either such entity ceases to rate the notes for reasons outside of the control of the Issuer, any other “nationally recognized statistical rating organization” within the meaning of Rule 15c3-1(c)(2)(vi)(F) under the Exchange Act selected by the Issuer as a replacement agency).

“**Refinance**” means, in respect of any Debt, to refinance, extend, renew, refund or Repay, or to issue other Debt, in exchange or replacement for, such Debt. “Refinanced” and “Refinancing” shall have correlative meanings.

“**Registration Rights Agreement**” means the registration rights agreement among Parent, the Guarantors and the initial purchasers entered into in connection with the notes.

“**Related Business**” means any business that is related, ancillary or complementary to the businesses of the Issuer and the Restricted Subsidiaries on the Issue Date and any reasonable extension thereof.

“**Repay**” means, in respect of any Debt, to repay, prepay, repurchase, redeem, legally defease or otherwise retire such Debt. “Repayment” and “Repaid” shall have correlative meanings. For purposes of the covenant described under “—Certain covenants—Limitation on asset sales” and the definition of “Consolidated Fixed Charge Coverage Ratio,” Debt shall be considered to have been Repaid only to the extent the related loan commitment, if any, shall have been permanently reduced in connection therewith.

“**Restricted Payment**” means:

- (a) any dividend or distribution (whether made in cash, securities or other Property) declared or paid on or with respect to any shares of Capital Stock of the Issuer or any Restricted Subsidiary (including any

payment in connection with any merger or consolidation with or into the Issuer or any Restricted Subsidiary), except for any dividend or distribution that is made solely to the Issuer or a Restricted Subsidiary (and, if such Restricted Subsidiary is not a Wholly Owned Restricted Subsidiary, to the other shareholders of such Restricted Subsidiary on a pro rata basis or on a basis that results in the receipt by the Issuer or a Restricted Subsidiary of dividends or distributions of greater value than it would receive on a pro rata basis) or any dividend or distribution payable solely in shares of Capital Stock (other than Disqualified Stock) of the Issuer;

- (b) the purchase, repurchase, redemption, acquisition or retirement for value of any Capital Stock of the Issuer or any Restricted Subsidiary (other than from the Issuer or a Restricted Subsidiary and other than for Capital Stock of the Issuer that is not Disqualified Stock);
- (c) the purchase, repurchase, redemption, acquisition or retirement for value, prior to the date for any scheduled maturity, sinking fund or amortization or other installment payment, of any Subordinated Obligation (other than the purchase, repurchase or other acquisition of any Subordinated Obligation purchased in anticipation of satisfying a scheduled maturity, sinking fund or amortization or other installment obligation, in each case due within one year of the date of acquisition); and
- (d) any Investment (other than Permitted Investments) in any Person.

“Restricted Subsidiary” means any Subsidiary of the Issuer other than an Unrestricted Subsidiary.

“S&P” means Standard & Poor’s Ratings Services, a division of the McGraw-Hill Companies, Inc., or any successor to the rating agency business thereof.

“Sale and Leaseback Transaction” means any direct or indirect arrangement relating to Property now owned or hereafter acquired whereby the Issuer or a Restricted Subsidiary transfers such Property to another Person and the Issuer or a Restricted Subsidiary leases it from such Person.

“Securities Act” means the Securities Act of 1933, as amended.

“Significant Subsidiary” means any Subsidiary that would be a “significant subsidiary” of Parent within the meaning of Rule 1-02(w) under Regulation S-X promulgated by the Commission.

“Stated Maturity” means, with respect to any Debt or security, the date specified in such security or the instrument governing such Debt as the fixed date on which the payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision (but excluding any provision providing for the repurchase of such security at the option of the holder thereof upon the happening of any contingency beyond the control of the issuer unless such contingency has occurred).

“Subordinated Obligation” means any Debt of the Issuer or a Guarantor (whether outstanding on the Issue Date or thereafter Incurred) that is subordinate or junior in right of payment to the notes or such Guarantor’s Note Guarantee, as applicable, pursuant to a written agreement to that effect.

“Subsidiary” means, in respect of any Person, any corporation, company (including any limited liability company), association, partnership, joint venture or other business entity of which at least a majority of the total voting power of the Voting Stock is at the time owned or controlled, directly or indirectly, by:

- (a) such Person;
- (b) such Person and one or more Subsidiaries of such Person; or
- (c) one or more Subsidiaries of such Person.

“Surviving Person” means the surviving Person formed by a merger or consolidation and, for purposes of the covenant described under “—Merger, consolidation and sale of property,” a Person to whom all or

substantially all of the Property of the Issuer is sold, transferred, assigned, leased, conveyed or otherwise disposed.

“**Total Assets**” means, with respect to any date of determination, the Issuer’s and its Consolidated Restricted Subsidiaries’ total consolidated assets shown on its consolidated balance sheet in accordance with GAAP on the last day of the fiscal quarter prior to the date of determination, after deducting therefrom, to the extent otherwise included, the amounts of (without duplication):

- (a) minority interests in consolidated Subsidiaries held by Persons other than the Issuer or any Restricted Subsidiary; and
- (b) Investments in and assets of Unrestricted Subsidiaries.

“**Treasury Rate**” means, as of any redemption date, the yield to maturity as of such redemption date of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available at least two business days prior to the redemption date (or, if such statistical release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from the redemption date to November 15, 2013; *provided, however* that if the period from the redemption date to November 15, 2013 is not equal to the constant maturity of the United States Treasury security for which a weekly average yield is given, the Treasury Rate shall be obtained by linear interpolation (calculated to one-twelfth of a year) from the weekly average yields of United States Treasury securities for which such yields are given, except that if the period from the redemption date to November 15, 2013 is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year shall be used.

“**Unrestricted Subsidiary**” means:

- (a) any Subsidiary of the Issuer that is designated after the Issue Date as an Unrestricted Subsidiary as permitted or required pursuant to the covenant described under “—Certain covenants—Designation of restricted and unrestricted subsidiaries”; and in any case so long as the respective Unrestricted Subsidiary is not thereafter redesignated as a Restricted Subsidiary as permitted pursuant to the covenant described under “—Certain covenants—Designation of restricted and unrestricted subsidiaries”; and
- (b) any Subsidiary of an Unrestricted Subsidiary.

“**U.S. Government Obligations**” means direct obligations (or certificates representing an ownership interest in such obligations) of the United States of America (including any agency or instrumentality thereof) for the payment of which the full faith and credit of the United States of America is pledged and which are not callable or redeemable at the issuer’s option.

“**Voting Stock**” of any Person means all classes of Capital Stock or other interests (including partnership interests) of such Person then outstanding and normally entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof.

“**Wholly Owned Restricted Subsidiary**” means, at any time, a Restricted Subsidiary all the Voting Stock of which (except directors’ qualifying shares) is at such time owned, directly or indirectly, by the Issuer and its other Wholly Owned Restricted Subsidiaries.

EXCHANGE OFFER; REGISTRATION RIGHTS

We and the guarantors will enter into a registration rights agreement with the initial purchasers on the closing of this offering, pursuant to which we and the guarantors will agree, for the benefit of the holders of the notes, that we will, at our own expense, (i) file an exchange offer registration statement with the SEC with respect to an offer to exchange the notes offered hereby for notes, or the exchange notes, having identical terms in all material respects to the notes offered hereby and which will evidence the same continuing indebtedness of the Issuer and the guarantors (except that the exchange notes will not contain terms with respect to transfer restrictions or interest rate increases as described herein), (ii) use our commercially reasonable efforts to cause the exchange offer registration statement to be declared effective by the SEC under the Securities Act, (iii) keep the exchange offer registration statement effective until the closing of the exchange offer and (iv) use our commercially reasonable efforts to consummate the exchange offer within 270 calendar days after the closing of this offering.

When the SEC declares the exchange offer registration statement effective, we will offer the exchange notes in return for the notes. The exchange offer will remain open for at least 20 business days after the date we mail notice of the exchange offer to noteholders. For each note surrendered to us under the exchange offer, the noteholder will receive an exchange note of equal principal amount. Interest on each exchange note will accrue from the last interest payment date on which interest was paid on the notes or, if no interest has been paid on the notes, from the closing date.

Under existing interpretations of the SEC contained in several no-action letters to third parties, the exchange notes will be freely transferable by the holders thereof (other than our affiliates) after the applicable exchange offer without further registration under the Securities Act; provided that each holder that wishes to exchange its notes for exchange notes will be required to represent (i) that any exchange notes to be received by it will be acquired in the ordinary course of business, (ii) that it does not have an arrangement or understanding with any person to participate in the distribution (within the meaning of the Securities Act) of the applicable exchange notes, (iii) it is not an “affiliate” (as defined in Rule 405 promulgated under the Securities Act) of ours, (iv) if such holder is not a broker-dealer, that it is not engaged in, and does not intend to engage in, the distribution of applicable exchange notes and (v) if such holder is a broker-dealer, or a participating broker-dealer, that will receive exchange notes for its own account in exchange for notes that were acquired as the result of market-making or other trading activities, that it will deliver a prospectus in connection with any resale of such exchange notes.

If applicable interpretations of the staff of the SEC do not permit us to effect the exchange offer, we will use our reasonable best efforts to cause to become effective a shelf registration statement relating to resales of the notes and to keep that shelf registration statement effective until the second anniversary of the issue date of the notes or such shorter period that will terminate when all notes covered by the shelf registration statement have been sold. We will, in the event of such a shelf registration, provide to each noteholder copies of a prospectus, notify each noteholder when the shelf registration statement has become effective and take certain other actions to permit resales of the notes. A noteholder that sells notes under the shelf registration statement generally will be required to be named as a selling security holder in the related prospectus and to deliver a prospectus to purchasers, will be subject to certain of the civil liability provisions under the Securities Act in connection with those sales and will be bound by the provisions of the registration rights agreement that are applicable to such a noteholder (including certain indemnification obligations).

Although we intend to file the registration statements described above as required, we cannot assure you that we will file such registration statements, or, if filed, that they will become effective. In the event that (i) the exchange offer is not consummated and no shelf registration statement is declared effective within 270 days of the closing of this offering or (ii) the shelf registration statement is declared effective but shall thereafter become unusable for a period in excess of 60 days, the interest rate borne by the notes will be increased by 0.25% per annum for the first 90 days, beginning the day after the date specified in clause (i) or (ii) above, as applicable,

and 0.50% per annum thereafter. Upon (y) the consummation of the exchange offer or the effectiveness of a shelf registration statement, as the case may be (in the case of clause (i) above), or (z) the shelf registration statement, together with any amendment or supplement thereto, becomes usable (in the case of clause (ii) above), the interest rate borne by the notes will be reduced to the original interest rate if we are otherwise in compliance with this paragraph; provided, however, that if, after any such reduction in interest rate, a different event specified in clause (i) or (ii) above occurs, the interest rate may again be increased pursuant to the foregoing provisions.

If we effect the exchange offer, we will be entitled to close the exchange offer 20 business days after its commencement, provided that we have accepted all notes validly surrendered in accordance with the terms of the exchange offer. Notes not tendered in the exchange offer shall bear interest at the rate set forth on the cover page of this offering memorandum and be subject to all the terms and conditions specified in the indenture, including transfer restrictions.

This summary of the provisions of the registration rights agreement does not purport to be complete and is subject to, and is qualified in its entirety by reference to, all the provisions of the registration rights agreement, a copy of which is available from us upon request.

BOOK-ENTRY SETTLEMENT AND CLEARANCE

The Global Notes

The notes will be issued in the form of several registered notes in global form, without interest coupons (the “global notes”), as follows:

- notes sold to qualified institutional buyers under Rule 144A will be represented by the Rule 144A global note; and
- notes sold in offshore transactions to non-U.S. persons in reliance on Regulation S will be represented by the Regulation S global note;

Upon issuance, each of the global notes will be deposited with the Trustee as custodian for The Depository Trust company (“DTC”) and registered in the name of Cede & Co., as nominee of DTC.

Ownership of beneficial interests in each global note will be limited to persons who have accounts with DTC (“DTC participants”) or persons who hold interests through DTC participants. We expect that under procedures established by DTC:

- upon deposit of each global note with DTC’s custodian, DTC will credit portions of the principal amount of the global note to the accounts of the DTC participants designated by the initial purchasers; and
- ownership of beneficial interests in each global note will be shown on, and transfer of ownership of those interests will be effected only through, records maintained by DTC (with respect to interests of DTC participants) and the records of DTC participants (with respect to other owners of beneficial interests in the global note).

Beneficial interests in the Regulation S global note will initially be credited within DTC to Euroclear Bank S.A./N.V. and Clearstream Banking, société anonyme, on behalf of the owners of such interests.

Investors may hold their interests in the Regulation S global note directly through Euroclear or Clearstream, if they are participants in those systems, or indirectly through organizations that are participants in those systems. Investors may also hold their interests in the Regulation S global note through organizations other than Euroclear or Clearstream that are DTC participants. Each of Euroclear and Clearstream will appoint a DTC participant to act as its depository for the interests in the Regulation S global note that are held within DTC for the account of each settlement system on behalf of its participants.

Beneficial interests in the global notes may not be exchanged for notes in physical, certificated form except in the limited circumstances described below.

Each global note and beneficial interests in each global note will be subject to restrictions on transfer as described under “Transfer Restrictions.”

Exchange Among the Global Notes

Beneficial interests in one global note may generally be exchanged for interests in another global note. Depending on to which global note the transfer is being made, the Trustee may require the seller to provide certain written certifications in the form provided in the indenture.

A beneficial interest in a global notes that is transferred to a person who takes delivery through another global note will, upon transfer, become subject to any transfer restrictions and other procedures applicable to beneficial interests in the other global notes.

Book-Entry Procedures For the Global Notes

All interests in the global notes will be subject to the operations and procedures of DTC, Euroclear and Clearstream. We provide the following summaries of those operations and procedures solely for the convenience of investors. The operations and procedures of each settlement system are controlled by that settlement system and may be changed at any time. Neither we nor the initial purchasers are responsible for those operations or procedures.

DTC has advised us that it is:

- a limited purpose trust company organized under the laws of the State of New York;
- a “banking organization” within the meaning of the New York Banking Law;
- a member of the Federal Reserve System;
- a “clearing corporation” within the meaning of the New York Uniform Commercial Code; and
- a “clearing agency” registered under Section 17A of the Exchange Act.

DTC was created to hold securities for its participants and to facilitate the clearance and settlement of securities transactions between its participants through electronic book-entry changes to the accounts of its participants. DTC’s participants include securities brokers and dealers, including initial purchasers; banks and trust companies; clearing corporations and other organizations. Indirect access to DTC’s system is also available to others such as banks, brokers, dealers and trust companies; these indirect participants clear through or maintain a custodial relationship with a DTC participant, either directly or indirectly. Investors who are not DTC participants may beneficially own securities held by or on behalf of DTC only through DTC participants or indirect participants in DTC.

So long as DTC’s nominee is the registered owner of a global note, that nominee will be considered the sole owner or holder of the notes represented by that global note for all purposes under the indenture. Except as provided below, owners of beneficial interests in a global note:

- will not be entitled to have notes represented by the global note registered in their names;
- will not receive or be entitled to receive physical, certificated notes; and
- will not be considered the owners or holders of the notes under the indenture for any purpose, including with respect to the giving of any direction, instruction or approval to the Trustee under the indenture.

As a result, each investor who owns a beneficial interest in a global note must rely on the procedures of DTC to exercise any rights of a holder of notes under the indenture (and, if the investor is not a participant or an indirect participant in DTC, on the procedures of the DTC participant through which the investor owns its interest).

Payments of principal, premium (if any) and interest with respect to the notes represented by a global note will be made by the Trustee to DTC’s nominee as the registered holder of the global note. Neither we nor the Trustee will have any responsibility or liability for the payment of amounts to owners of beneficial interests in a global note, for any aspect of the records relating to or payments made on account of those interests by DTC, or for maintaining, supervising or reviewing any records of DTC relating to those interests.

Payments by participants and indirect participants in DTC to the owners of beneficial interests in a global note will be governed by standing instructions and customary industry practice and will be the responsibility of those participants or indirect participants and DTC.

Transfers between participants in DTC will be effected under DTC's procedures and will be settled in same-day funds. Transfers between participants in Euroclear or Clearstream will be effected in the ordinary way under the rules and operating procedures of those systems.

Cross-market transfers between DTC participants, on the one hand, and Euroclear or Clearstream participants, on the other hand, will be effected within DTC through the DTC participants that are acting as depositaries for Euroclear and Clearstream. To deliver or receive an interest in a global note held in a Euroclear or Clearstream account, an investor must send transfer instructions to Euroclear or Clearstream, as the case may be, under the rules and procedures of that system and within the established deadlines of that system. If the transaction meets its settlement requirements, Euroclear or Clearstream, as the case may be, will send instructions to its DTC depository to take action to effect final settlement by delivering or receiving interests in the relevant global notes in DTC, and making or receiving payment under normal procedures for same-day funds settlement applicable to DTC. Euroclear or Clearstream participants may not deliver instructions directly to the DTC depositaries that are acting for Euroclear or Clearstream.

Because of time zone differences, the securities of a Euroclear or Clearstream participant that purchases an interest in a global note from a DTC participant will be credited on the business day for Euroclear or Clearstream immediately following the DTC settlement date. Cash received in Euroclear or Clearstream from the sale of an interest in a global note to a DTC participant will be received with value on the DTC settlement date but will be available in the relevant Euroclear or Clearstream cash account as of the business day for Euroclear or Clearstream following the DTC settlement date.

DTC, Euroclear and Clearstream have agreed to the above procedures to facilitate transfers of interests in the global notes among participants in those settlement systems. However, the settlement systems are not obligated to perform these procedures and may discontinue or change these procedures at any time. Neither we nor the Trustee will have any responsibility for the performance by DTC, Euroclear or Clearstream or their participants or indirect participants of their obligations under the rules and procedures governing their operations.

Certificated Notes

Notes in physical, certified form will be issued and delivered to each person that DTC identifies as a beneficial owner of the related notes only if:

- DTC notifies us at any time that it is unwilling or unable to continue as depository for the global notes and a successor depository is not appointed within 90 days;
- DTC ceases to be registered as a clearing agency under the Exchange Act and a successor depository is not appointed within 90 days;
- we, at our opinion, notify the Trustee that we elect to cause the issuance of certificated notes;
- or certain other events provided in the indenture should occur.

NOTICE TO INVESTORS

We are offering the notes in reliance on exemptions from registration under the Securities Act, for offers and sales of securities that do not involve a public offering. The initial purchasers are relying on exemptions from the provisions of Section 5 of the Securities Act provided by Rule 144A and Regulation S in connection with the initial resale of the notes. The notes offered by this offering memorandum have not been registered under the Securities Act or under the securities laws of any other jurisdiction. Unless they are registered, the notes may be offered only in transactions that are exempt from these securities laws. By purchasing notes, you will be deemed to have made the acknowledgements, representations, warranties and agreements described below and under the heading "Transfer Restrictions" in this offering memorandum. You should understand that you may be required to bear the financial risks of your investment for an indefinite period of time.

This offering memorandum is based on information provided by us and by other sources that we believe are reliable. We cannot assure you that this information is accurate or complete. This offering memorandum contains summaries believed to be accurate with respect to certain documents, but reference is made to the actual documents for complete information. All such summaries are qualified in their entirety by such reference. Copies of documents referred to herein will be made available to prospective investors upon request to us or the initial purchasers. You should not assume that the information contained in this offering memorandum is accurate as of any date other than the date on the front of this offering memorandum or the date of such document, as the case may be.

In making an investment decision, you must rely on your own examination of our company and the terms of the offering and the notes, including the merits and risks involved. You acknowledge that (i) you have not relied on any of the initial purchasers or any person affiliated with any of the initial purchasers in connection with your investigation of the accuracy of such information or your investment decision, (ii) you have reviewed this offering memorandum and have been afforded an opportunity to request from us and to review all additional information considered by you to be necessary to verify the accuracy of, or to supplement, the information contained in this offering memorandum, and (iii) no person has been authorized to give any information or to make any representation concerning us or the notes other than as contained in this offering memorandum and information given by our duly authorized officers and employees in connection with your examination of our company and the terms of the offering, and, if given or made, such other information or representations should not be relied upon as having been authorized by us or any of the initial purchasers.

We are not making any representation to any purchaser of the notes regarding the legality of an investment in the notes by such purchaser under any legal investment or similar laws or regulations. You should not construe any information in this offering memorandum as legal, business or tax advice. You should consult your own attorney, business advisor or tax advisor for legal, business and tax advice regarding an investment in the notes.

The offering memorandum is a confidential document that has been prepared by us solely for use in connection with the proposed offering of the notes described herein. This offering memorandum does not constitute an offer of, or an invitation to purchase, any of the notes in any jurisdiction in which such offer or invitation would be unlawful. This offering memorandum is personal to each offeree and does not constitute an offer to any other person or to the public generally to subscribe for or otherwise acquire securities. We and the initial purchasers reserve the right to withdraw this offering at any time before closing, to reject any offer to purchase, in whole or in part, for any reason or to sell less than the amount of notes offered by this offering memorandum. Distribution of this offering memorandum to any person other than the offeree and any person retained to advise such offeree with respect to its purchase is unauthorized, and any disclosure of any of its contents without our prior written consent is prohibited. Each prospective investor, by accepting delivery of this offering memorandum, agrees to the foregoing and to make no photocopies of this offering memorandum or any non-public documents referred to herein.

Notwithstanding anything herein to the contrary, except as reasonably necessary to comply with applicable securities laws, you (and each of your employees, representatives or other agents) may disclose to any and all persons, without limitation of any kind, the United States federal income tax treatment and the tax structure of the offering and all materials of any kind (including opinions and other tax analyses) that are provided to you relating to such tax treatment and tax structure. For this purpose, “tax structure” is limited to facts relevant to the United States federal income tax treatment of the offering and does not include information relating to our identity.

Neither the SEC, any state securities commission nor any other United States regulatory authority has approved or disapproved the securities nor have any of the foregoing authorities passed upon or endorsed the merits of this offering or the accuracy or adequacy of this offering memorandum. Any representation to the contrary is a criminal offense.

TRANSFER RESTRICTIONS

The notes are subject to restrictions on transfer as summarized below. By purchasing notes, you will be deemed to have made the following acknowledgements, representations to and agreements with us and the initial purchasers:

1. You acknowledge that:

- the notes have not been registered under the Securities Act or any other securities laws and are being offered for resale in transactions that do not require registration under the Securities Act or any other securities laws; and
- unless so registered, the notes may not be offered, sold or otherwise transferred except under an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act or any other applicable securities laws, and in each case in compliance with the conditions for transfer set forth in paragraph 4 below.

2. You represent that either:

- you are a qualified institutional buyer (as defined in Rule 144A under the Securities Act) and are purchasing notes for your own account or for the account of another qualified institutional buyer, and you are aware that the initial purchasers are selling the notes to you in reliance on Rule 144A; or
- you are not a U.S. person (as defined in Regulation S under the Securities Act) or purchasing for the account or benefit of a U.S. person, other than a distributor, and you are purchasing notes in an offshore transaction in accordance with Regulation S.

3. You acknowledge that neither we nor the initial purchasers nor any person representing us or the initial purchasers has made any representation to you with respect to us or the offering of the notes, other than the information contained in this offering memorandum. You represent that you are relying only on this offering memorandum in making your investment decision with respect to the notes. You agree that you have had access to such financial and other information concerning us and the notes as you have deemed necessary in connection with your decision to purchase notes, including an opportunity to ask questions of and request information from us.

4. You represent that you are purchasing notes for your own account, or for one or more investor accounts for which you are acting as a fiduciary or agent, in each case not with a view to, or for offer or sale in connection with, any distribution of the notes in violation of the Securities Act, subject to any requirement of law that the disposition of your property or the property of that investor account or accounts be at all times within your or their control and subject to your or their ability to resell the notes pursuant to Rule 144A or any other available exemption from registration under the Securities Act. You agree on your own behalf and on behalf of any investor account for which you are purchasing notes, and each subsequent holder of the notes by its acceptance of the notes will agree, that until the end of the Resale Restriction Period (as defined below), the notes may be offered, sold or otherwise transferred only:

- (a) to us;
- (b) under a registration statement that has been declared effective under the Securities Act;
- (c) for so long as the notes are eligible for resale under Rule 144A, to a person the seller reasonably believes is a qualified institutional buyer that is purchasing for its own account or for the account of another qualified institutional buyer and to whom notice is given that the transfer is being made in reliance on Rule 144A;
- (d) through offers and sales that occur outside the United States within the meaning of Regulation S under the Securities Act; or

(e) under any other available exemption from the registration requirements of the Securities Act,

subject in each on the above cases to any requirement of law that the disposition of the seller's property or the property of an investor account or accounts be at all times within the seller or account's control.

5. You also acknowledge that:

- the above restrictions on resale will apply from the closing date until the date that is one year (in the case of Rule 144A notes) or 40 days (in the case of Regulation S notes) after the later of the closing date and the last date that we or any of our affiliates was the owner of the notes or any predecessor of the notes (the "Resale Restriction Period"), and will not apply after the applicable Resale Restriction Period ends;
- we and the Trustee reserve the right to require in connection with any offer, sale or other transfer of notes under clauses (d) and (e) above the delivery of an opinion of counsel, certifications and/or other information satisfactory to us and the Trustee; and
- each note will contain a legend substantially to the following effect:

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, SUCH REGISTRATION. THE HOLDER OF THIS SECURITY, BY ITS ACCEPTANCE HEREOF, AGREES ON ITS OWN BEHALF AND ON BEHALF OF ANY INVESTOR ACCOUNT FOR WHICH IT HAS PURCHASED SECURITIES, TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY, PRIOR TO THE DATE (THE "RESALE RESTRICTION TERMINATION DATE") THAT IS *[IN THE CASE OF RULE 144A NOTES: ONE YEAR] [IN THE CASE OF REGULATION S NOTES: 40 DAYS]* AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF AND THE LAST DATE ON WHICH THE ISSUERS OR ANY AFFILIATE OF THE ISSUERS WERE THE OWNER OF THIS SECURITY (OR ANY PREDECESSOR OF SUCH SECURITY), ONLY (A) TO THE ISSUERS, (B) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, (C) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT, TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (D) PURSUANT TO OFFERS AND SALES THAT OCCUR OUTSIDE THE UNITED STATES WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT, OR (E) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE ISSUER'S AND THE TRUSTEE'S RIGHT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSES (D) OR (E) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM. THIS LEGEND WILL BE REMOVED UPON THE REQUEST OF THE HOLDER AFTER THE RESALE RESTRICTION TERMINATION DATE.

[IN THE CASE OF REGULATION S NOTES: BY ITS ACQUISITION HEREOF, THE HOLDER HEREOF REPRESENTS THAT IT IS NOT A U.S. PERSON NOR IS IT PURCHASING FOR THE ACCOUNT OF A U.S. PERSON AND IS ACQUIRING THIS SECURITY IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH REGULATION S UNDER THE SECURITIES ACT.]

6. You represent that either (i) no portion of your assets used by you to acquire or hold the notes (or the exchange notes) constitutes assets of any employee benefit plan subject to Title I of the U.S. Employee Retirement Income Security Act of 1974, as amended (“ERISA”), any plan, account or other arrangement subject to Section 4975 of the U.S. Internal Revenue Code of 1986, as amended (the “Code”), or provisions under any federal, state, local, non-U.S. or other laws or regulations that are similar to such provisions of ERISA or the Code (collectively, “Similar Laws”) or (ii) the acquisition and holding of the notes and the exchange notes (and the exchange of notes for exchange notes) by you will not constitute a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code or a similar violation under any applicable Similar Law.

7. You acknowledge that we, the initial purchasers and others will rely upon the truth and accuracy of the above acknowledgments, representations and agreements. You agree that if any of the acknowledgments, representations or agreements you are deemed to have made by your purchase of notes is no longer accurate, you will promptly notify us and the initial purchasers. If you are purchasing any notes as a fiduciary or agent for one or more investor accounts, you represent that you have sole investment discretion with respect to each of those accounts and that you have full power to make the above acknowledgments, representations and agreements on behalf of each account.

CERTAIN U.S. FEDERAL INCOME TAX CONSIDERATIONS

TO COMPLY WITH TREASURY DEPARTMENT CIRCULAR 230, PROSPECTIVE INVESTORS ARE HEREBY NOTIFIED THAT: (A) ANY DISCUSSION OF UNITED STATES FEDERAL TAX ISSUES CONTAINED OR REFERRED TO IN THIS OFFERING MEMORANDUM IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED BY PROSPECTIVE INVESTORS, FOR THE PURPOSES OF AVOIDING PENALTIES THAT MAY BE IMPOSED ON THEM UNDER THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE “CODE”); (B) SUCH DISCUSSION IS BEING USED IN CONNECTION WITH THE PROMOTION OR MARKETING BY THE COMPANY OF THE TRANSACTIONS OR MATTERS ADDRESSED HEREIN; AND (C) PROSPECTIVE INVESTORS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

The following discussion is a summary of certain United States federal income tax consequences relevant to the purchase, ownership and disposition of the notes, but does not purport to be a complete analysis of all potential tax effects. The discussion is based upon the Code, United States Treasury Regulations issued thereunder, Internal Revenue Service (“IRS”) rulings and pronouncements, and judicial decisions, all as of the date hereof and all of which are subject to change at any time. Any such change may be applied retroactively in a manner that could adversely affect a holder of the notes. We have not sought any ruling from the IRS with respect to the statements made and the conclusions reached in the following discussion, and there can be no assurance that the IRS will agree with such statements and conclusions.

This discussion does not address all of the United States federal income tax consequences that may be relevant to a holder in light of such holder’s particular circumstances or to holders subject to special rules, including, without limitation:

- banks, insurance companies and other financial institutions;
- United States expatriates and certain former citizens or long-term residents of the United States;
- holders subject to the alternative minimum tax;
- dealers in securities or currencies;
- traders in securities;
- partnerships, S corporations or other pass-through entities;
- U.S. Holders (as defined below) whose functional currency is not the United States dollar;
- tax-exempt organizations;
- persons holding the notes as part of a “straddle,” “conversion transaction” or other risk reduction transaction; and
- persons deemed to sell the notes under the constructive sale provisions of the Code.

In addition, this discussion is limited to persons who hold the notes as “capital assets” within the meaning of Section 1221 of the Code (generally, for investment) and who purchase the notes for cash at original issue and at their original “issue price” (as defined below under “U.S. Holders—Original Issue Discount”). Moreover, the effects of other United States federal tax laws (such as estate and gift tax laws) and any applicable state, local or foreign tax laws are not discussed.

If a partnership or other entity taxable as a partnership holds the notes, the tax treatment of the partners in the partnership generally will depend on the status of the particular partner in question and the activities of the partnership. Such partners should consult their tax advisors as to the specific tax consequences to them of holding the notes indirectly through ownership of their partnership interests.

THIS SUMMARY OF CERTAIN MATERIAL UNITED STATES FEDERAL INCOME TAX CONSEQUENCES IS FOR GENERAL INFORMATION ONLY AND IS NOT TAX ADVICE. YOU ARE URGED TO CONSULT YOUR TAX ADVISOR WITH RESPECT TO THE APPLICATION OF THE UNITED STATES FEDERAL INCOME TAX LAWS TO YOUR PARTICULAR SITUATION AS WELL AS ANY TAX CONSEQUENCES OF THE PURCHASE, OWNERSHIP AND DISPOSITION OF THE NOTES ARISING UNDER THE FEDERAL ESTATE OR GIFT TAX LAWS OR UNDER THE LAWS OF ANY STATE, LOCAL, FOREIGN OR OTHER TAXING JURISDICTION OR UNDER ANY APPLICABLE TAX TREATY.

U.S. Holders

The following is a summary of the material United States federal income tax consequences that will apply to you if you are a “U.S. Holder” of the notes. As used herein, “U.S. Holder” means a beneficial owner of the notes who is for United States federal income tax purposes:

- an individual who is a citizen or resident of the United States, including an alien individual who is a lawful permanent resident of the United States or meets the “substantial presence” test under Section 7701(b) of the Code;
- a corporation or other entity taxable as a corporation created or organized in or under the laws of the United States, any state thereof, or the District of Columbia;
- an estate, the income of which is subject to United States federal income tax regardless of its source; or
- a trust that (1) is subject to the primary supervision of a United States court and the control of one or more United States persons, or (2) has a valid election in effect under applicable Treasury Regulations to be treated as a United States person.

Payments of Interest

Subject to an election described below to include stated interest on a note in gross income on a constant yield basis, stated interest on the notes generally will be taxable to a U.S. Holder as ordinary income at the time that such interest is received or accrued, in accordance with such U.S. Holder’s method of tax accounting for United States federal income tax purposes.

Original Issue Discount

The notes will be issued with original issue discount (“OID”) for United States federal income tax purposes if their “issue price” is less than their stated principal amount by more than a *de minimis* amount. The amount of OID on the notes will be *de minimis* if it is less than 0.0025 multiplied by the product of the principal amount and the number of complete years to maturity. If the notes are issued with more than a *de minimis* amount of OID, U.S. Holders of notes will be subject to special rules relating to the accrual of income for tax purposes, as described below. U.S. Holders of notes generally must include any OID in gross income (as ordinary income) for United States federal income tax purposes as it accrues under a constant yield accrual method regardless of their regular method of tax accounting. As a result, U.S. Holders must include any OID in income in advance of the receipt of cash attributable to such income.

The amount of any OID will equal the excess of the notes’ stated principal amount over their “issue price.” The issue price of the notes will be the first price at which a substantial amount of the notes is sold for cash (excluding sales to bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters, placement agents, or wholesalers). The amount of any OID includible in income by a U.S. Holder of a note will be the sum of the “daily portions” of OID with respect to the note for each day during the taxable year or portion thereof in which such U.S. Holder holds such note. A daily portion is determined by allocating to each day in any “accrual period” a pro rata portion of any OID that accrued in such period. The “accrual period”

of a note may be of any length and may vary in length over the term of the note, provided that each accrual period is no longer than one year and each scheduled payment of principal or interest occurs either on the first or last day of an accrual period.

The amount of any OID that accrues with respect to any accrual period is the excess of (i) the product of the note's "adjusted issue price" at the beginning of such accrual period and its yield to maturity, determined on the basis of compounding at the close of each accrual period and properly adjusted for the length of such period, over (ii) the amount of stated interest allocable to such accrual period. The adjusted issue price of a note at the start of any accrual period is equal to its issue price, increased by any previously accrued OID for each prior accrual period.

A U.S. Holder may elect to include in gross income all interest that accrues on a note using the constant yield method described above. For purposes of this election, interest will include stated interest and any OID. Generally, this election will apply only to the note for which a U.S. Holder makes such election. A U.S. Holder may not revoke any election to apply the constant yield method to all interest on a note without the consent of the IRS.

Additional Payments

In certain circumstances (see, for example, "Description of the Notes—Optional redemption," "Description of the Notes—Repurchase at the option of holders upon a change of control" and "Exchange Offer; Registration Rights"), we may be obligated to make payments in excess of stated interest and adjusted issue price of the notes. We intend to take the position that the notes should not be treated as contingent payment debt instruments because of the possibility of these additional payments. This position is based in part on our assumptions regarding the likelihood, as of the date of issuance of the notes, that such additional payments will have to be paid. Assuming such position is respected, any amounts paid to a U.S. Holder pursuant to any such redemption or repurchase, as applicable, would be taxable as described below in "—U.S. Holders—Sale or Other Taxable Disposition of Notes" and any payments of additional interest in the event we do not comply with our obligations under the registration rights agreement should be taxable as additional ordinary income when received or accrued, in accordance with such holder's method of accounting for United States federal income tax purposes. In all such instances, our position is binding on a U.S. Holder unless such holder discloses its contrary position in the manner required by applicable Treasury Regulations. The IRS, however, may take a position contrary to our position, which could affect the timing and character of a U.S. Holder's income and the timing of our deductions with respect to the notes. U.S. Holders are urged to consult their tax advisors regarding the potential application of the contingent payment debt instrument rules to the notes and the consequences thereof. The remainder of this discussion assumes that the notes are not treated as contingent payment debt instruments.

Sale or Other Taxable Disposition of Notes

A U.S. Holder will recognize gain or loss on the sale, exchange (other than for an exchange note pursuant to an exchange offer), redemption, retirement or other taxable disposition of a note equal to the difference between the amount realized upon the disposition (less a portion allocable to any accrued and unpaid interest, which will be taxable as interest) and the U.S. Holder's adjusted tax basis in the note. A U.S. Holder's adjusted tax basis in a note generally will be the U.S. Holder's cost therefor increased by any previously accrued OID. Any gain or loss will be a capital gain or loss, and will be a long-term capital gain or loss if the U.S. Holder has held the note for more than one year. Otherwise, such gain or loss will be a short-term capital gain or loss. Long-term capital gains recognized by certain non-corporate U.S. Holders, including individuals, generally will be subject to a reduced rate. The deductibility of capital losses is subject to limitations.

Exchange Offer

Any exchange of the notes for exchange notes (see "Exchange Offer; Registration Rights") will not constitute a taxable exchange for United States federal income tax purposes for a U.S. Holder. As a result, (a) a U.S. Holder will not recognize taxable gain or loss as a result of exchanging such holder's notes; (b) the

holding period of the exchange notes will include the holding period of the notes exchanged therefor; and (c) the adjusted tax basis of the exchange notes received will be the same as the adjusted tax basis of the notes exchanged therefor immediately before such exchange.

Information Reporting and Backup Withholding

A U.S. Holder may be subject to information reporting and backup withholding when such holder receives interest (including any OID) on or proceeds from the sale or other disposition of the notes (including a redemption or retirement of the notes). Certain holders are generally not subject to information reporting or backup withholding. A U.S. Holder will be subject to backup withholding if such holder is not otherwise exempt and:

- such holder fails to furnish the holder's taxpayer identification number ("TIN"), which, for an individual, is ordinarily his or her social security number;
- such holder furnishes an incorrect TIN;
- such holder is notified by the IRS that the holder has failed properly to report payments of interest (including any OID) or dividends; or
- such holder fails to certify, under penalties of perjury, that the holder has furnished a correct TIN and that the IRS has not notified the holder that the holder is subject to backup withholding.

U.S. Holders should consult their tax advisors regarding their qualification for an exemption from backup withholding and the procedures for obtaining such an exemption, if applicable. Backup withholding is not an additional tax, and taxpayers may use amounts withheld as a credit against their United States federal income tax liability or may claim a refund if they timely provide certain information to the IRS.

Non-U.S. Holders

The following is a summary of the material United States federal income tax consequences that will apply to you if you are a "Non-U.S. Holder" of the notes. A "Non-U.S. Holder" is a beneficial owner of the notes who is not a U.S. Holder or a partnership. Special rules may apply to Non-U.S. Holders that are subject to special treatment under the Code, including controlled foreign corporations, passive foreign investment companies, United States expatriates, and foreign persons eligible for benefits under an applicable income tax treaty with the United States. Such Non-U.S. Holders should consult their tax advisors to determine the United States federal, state, local and other tax consequences that may be relevant to them.

Payments of Interest

Interest (including any OID) paid on a note to a Non-U.S. Holder that is not effectively connected with the Non-U.S. Holder's conduct of a United States trade or business generally will not be subject to United States federal withholding tax of 30% (or, if applicable, a lower treaty rate) provided that:

- such holder does not directly or indirectly, actually or constructively, own 10% or more of the total combined voting power of all classes of our voting stock;
- such holder is not a controlled foreign corporation that is related to us through actual or constructive stock ownership and is not a bank that received such interest on an extension of credit made pursuant to a loan agreement entered into in the ordinary course of its trade or business; and
- either (1) the Non-U.S. Holder certifies in a statement provided to us or the paying agent, under penalties of perjury, that it is not a "United States person" within the meaning of the Code and provides its name and address, (2) a securities clearing organization, bank or other financial institution that holds customers' securities in the ordinary course of its trade or business and holds the note on behalf of the Non-U.S. Holder certifies to us or the paying agent under penalties of perjury that it, or the financial

institution between it and the Non-U.S. Holder, has received from the Non-U.S. Holder a statement, under penalties of perjury, that such holder is not a United States person and provides us or the paying agent with a copy of such statement or (3) the Non-U.S. Holder holds its note directly through a “qualified intermediary” and certain conditions are satisfied.

Even if the above conditions are not met, a Non-U.S. Holder generally will be entitled to a reduction in or an exemption from withholding tax on interest (including any OID) if the Non-U.S. Holder provides us or our agent with a properly executed (1) IRS Form W-8BEN claiming an exemption from or reduction of the withholding tax under the benefit of a tax treaty between the United States and the Non-U.S. Holder’s country of residence, or (2) IRS Form W-8ECI stating that interest paid on a note is not subject to withholding tax because it is effectively connected with the conduct by the Non-U.S. Holder of a trade or business in the United States.

If interest (including any OID) paid to a Non-U.S. Holder is effectively connected with the Non-U.S. Holder’s conduct of a United States trade or business (and, if required by an applicable income tax treaty, the Non-U.S. Holder maintains a United States permanent establishment to which such interest is attributable), then, although exempt from United States federal withholding tax (provided the Non-U.S. Holder provides appropriate certification), the Non-U.S. Holder generally will be subject to United States federal income tax on such interest (including any OID) in the same manner as if such Non-U.S. Holder were a U.S. Holder. In addition, if the Non-U.S. Holder is a foreign corporation, such interest (including any OID) may be subject to a branch profits tax at a rate of 30% or lower applicable treaty rate.

Additional Amounts

As more fully described under, for example, “Description of the Notes—Optional redemption,” “Description of the Notes—Repurchase at the option of holders upon a change of control” and “Exchange Offer; Registration Rights,” upon the occurrence of certain events, we may be required to make certain payments in excess of stated interest and the adjusted issue price of the notes. Such payments may be treated as interest, subject to the rules described under “—Non-U.S. Holders—Payments of Interest,” or additional amounts paid for the notes, subject to the rules described under “—Non-U.S. Holders—Sale or Other Taxable Disposition of Notes,” as applicable, or as other income subject to the United States federal withholding tax. A Non-U.S. Holder that is subject to the United States federal withholding tax should consult its tax advisors as to whether it can obtain a refund for all or a portion of any amounts withheld.

Sale or Other Taxable Disposition of Notes

Any gain realized by a Non-U.S. Holder on the sale, exchange, retirement, redemption or other disposition of a note generally will not be subject to United States federal income tax unless:

- the gain is effectively connected with the Non-U.S. Holder’s conduct of a trade or business in the United States (and, if required by an applicable income tax treaty, the Non-U.S. Holder maintains a United States permanent establishment to which such gain is attributable); or
- the Non-U.S. Holder is an individual who is present in the United States for 183 days or more in the taxable year of sale, exchange or other disposition, and certain conditions are met.

A Non-U.S. Holder described in the first bullet point above will be required to pay United States federal income tax on the net gain derived from the sale generally in the same manner as if such Non-U.S. Holder were a U.S. Holder, and if such Non-U.S. Holder is a foreign corporation, it may also be required to pay an additional branch profits tax at a 30% rate (or a lower rate if so specified by an applicable income tax treaty). A Non-U.S. Holder described in the second bullet point above will be subject to United States federal income tax at a rate of 30% (or, if applicable, a lower treaty rate) on the gain derived from the sale, which may be offset by certain United States source capital losses, even though the Non-U.S. Holder is not considered a resident of the United States.

Exchange Offer

Any exchange of the notes for exchange notes will not constitute a taxable exchange for United States federal income tax purposes for a Non-U.S. Holder.

Information Reporting and Backup Withholding

A Non-U.S. Holder generally will not be subject to backup withholding and information reporting with respect to payments made on the notes to the Non-U.S. Holder, provided that the payor does not have actual knowledge or reason to know that such holder is a “United States person,” within the meaning of the Code, and the holder has provided the statement described above under “Non-U.S. Holders—Payments of Interest.” In addition, a Non-U.S. Holder will not be subject to backup withholding or information reporting with respect to the proceeds of the sale or other disposition of a note (including a retirement or redemption of a note) within the United States or conducted through certain United States-related brokers, if the payor receives the statement described above and does not have actual knowledge or reason to know that such holder is a United States person or the holder otherwise establishes an exemption. However, we may be required to report annually to the IRS and to the Non-U.S. Holder the amount of, and the tax withheld with respect to, any interest paid to the Non-U.S. Holder, regardless of whether any tax was actually withheld. Copies of these information returns may also be made available under the provisions of a specific treaty or agreement to the tax authorities of the country in which the Non-U.S. Holder resides.

A Non-U.S. Holder generally will be entitled to credit any amounts withheld under the backup withholding rules against the holder’s United States federal income tax liability or may claim a refund provided that the required information is furnished to the IRS in a timely manner.

PLAN OF DISTRIBUTION

Subject to the terms and conditions set forth in a purchase agreement dated the date of the offering memorandum among us, the guarantors and Barclays Capital Inc. and Morgan Stanley & Co. Incorporated, as representatives of the several initial purchasers named below, we have agreed to sell to the initial purchasers, and each of the initial purchasers has agreed, severally and not jointly, to purchase from us, the principal amount of notes set forth opposite its name below.

<u>Initial Purchaser</u>	<u>Principal Amount of Notes</u>
Barclays Capital Inc.	\$ 70,000,000
Morgan Stanley & Co. Incorporated	70,000,000
Merrill Lynch, Pierce, Fenner & Smith Incorporated	18,000,000
Citigroup Global Markets Inc.	18,000,000
Gleacher & Company Securities, Inc.	6,000,000
Needham & Company, LLC	6,000,000
Pacific Crest Securities LLC	6,000,000
ThinkEquity LLC	6,000,000
 Total	 \$200,000,000

Subject to the terms and conditions set forth in the purchase agreement, the initial purchasers have agreed, severally and not jointly, to purchase all of the notes sold under the purchase agreement if any of these notes are purchased. If an initial purchaser defaults, the purchase agreement provides that the purchase commitments of the non-defaulting initial purchasers may be increased or the purchase agreement may be terminated.

We and the guarantors have agreed, in certain circumstances, to file an exchange offer registration statement or, under some circumstances, a shelf registration statement with respect to the notes pursuant to a registration rights agreement. In the event we fail to comply with some of our obligations under the registration rights agreement, we will pay additional interest on the notes.

We and the guarantors have agreed to indemnify the several initial purchasers against certain liabilities, including liabilities under the Securities Act, or to contribute to payments the initial purchasers may be required to make in respect of those liabilities.

The initial purchasers propose initially to offer the notes at the offering price set forth on the cover page of this offering memorandum. After the initial offering, the offering price or any other term of the offering may be changed. The offering of the notes by the initial purchasers is subject to receipt and acceptance and subject to the initial purchasers' right to reject any order in whole or in part.

Rule 144A and Regulation S

The notes have not been registered under the Securities Act or any state securities laws. The notes are a new issue of securities with no established trading market. We do not intend to apply for listing of the notes on any national securities exchange or for inclusion of the notes on any automated dealer quotation system. We have been advised by certain of the initial purchasers that they presently intend to make a market in the notes after completion of the offering. However, they are under no obligation to do so and may discontinue any market-making activities at any time without any notice. We cannot assure the liquidity of the trading market for the notes. In addition, any market-making activity will be subject to the limits imposed by the Securities Act and the Exchange Act and may be limited during the exchange offer and the pendency of any shelf-registration statement.

We have been advised by the initial purchasers that the initial purchasers propose to resell these notes to (a) qualified institutional buyers in reliance on Rule 144A under the U.S. Securities Act and (b) outside the U.S., certain non-U.S. persons in reliance on Regulation S. See “Notice to Investors.” Any offer or sale of the notes in reliance on Rule 144A will be made by broker dealers who are registered as such under the Exchange Act.

The initial purchasers have acknowledged and agreed that, except as permitted by the purchase agreement, in connection with sales outside the United States, they will not offer, sell or deliver the notes to, or for the account or benefit of U.S. persons (a) as part of their distribution at any time or (b) otherwise until 40 days after the later of the commencement of the offering or the date the notes were originally issued. Each initial purchaser will send to each dealer to whom it sells the notes in reliance on Regulation S during the 40-day distribution compliance period a confirmation or other notice setting forth the restrictions on offers and sales of the notes within the United States or to, or for the account or benefit of, U.S. persons. Terms used in this paragraph have the meanings assigned to them in Regulation S.

In addition, until the expiration of the 40-day distribution compliance period referred to above, an offer or sale of the notes within the United States by a dealer (whether or not participating in this offering) may violate the registration requirements of the U.S. Securities Act if such offer or sale is made otherwise than in accordance with Rule 144A under the U.S. Securities Act or pursuant to another exemption from registration under the U.S. Securities Act.

Stabilization and Short Positions

In connection with this offering, the initial purchasers may engage in certain transactions that stabilize, maintain or otherwise affect the price of the notes. Specifically, the initial purchasers may over-allot in connection with the offering of the notes, creating a syndicate short position. In addition, the initial purchasers may bid for and purchase notes in the open market to cover syndicate short positions or to stabilize the price of the notes. Any of these activities may stabilize or maintain the market price of the notes above what it would be in the absence of such activities. The initial purchasers are not required to engage in any of these activities, and may end any of them at any time. We and the initial purchasers make no representation as to the direction or magnitude of any effect that the transactions described above may have on the price of the notes. In addition, we and the initial purchasers make no representation that anyone will engage in such transactions or that such transactions, once commenced, will not be discontinued without notice.

Other Matters

Certain of the initial purchasers and their affiliates from time to time have provided or in the future may provide various investment and commercial banking, financial advisory and other services to us and our affiliates and subsidiaries in the ordinary course of their business, for which they have received customary fees and commissions, and they expect to provide these services to us and others in the future, for which they expect to receive customary fees and commissions. In addition, affiliates of the initial purchasers from time to time have acted or in the future may continue to act as agents and lenders to us and our affiliates and subsidiaries under our or their respective credit facilities, for which services they have received or expect to receive customary compensation.

Affiliates of Barclays Capital Inc. and Morgan Stanley & Co. Incorporated are arrangers of our Term Loan and Revolving Credit Facility.

In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive (each, a Relevant Member State), each initial purchaser has represented and agreed that with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State (the Relevant Implementation Date) it has not made and will not make an offer of notes to the public in that

Relevant Member State prior to the publication of a prospectus in relation to the notes which has been approved by the competent authority in that Relevant Member State or, where appropriate, approved in another Relevant Member State and notified to the competent authority in that Relevant Member State, all in accordance with the Prospectus Directive, except that it may, with effect from and including the Relevant Implementation Date, make an offer of notes to the public in that Relevant Member State at any time:

(a) to legal entities which are authorized or regulated to operate in the financial markets or, if not so authorized or regulated, whose corporate purpose is solely to invest in securities;

(b) to any legal entity which has two or more of (1) an average of at least 250 employees during the last financial year; (2) a total balance sheet of more than €43,000,000 and (3) an annual net turnover of more than €50,000,000, as shown in its last annual or consolidated accounts; or

(c) in any other circumstances which do not require the publication by the Issuer of a prospectus pursuant to Article 3 of the Prospectus Directive.

For the purposes of this provision, the expression an “offer of notes to the public” in relation to any notes in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the notes to be offered so as to enable an investor to decide to purchase or subscribe the notes, as the same may be varied in that Member State by any measure implementing the Prospectus Directive in that Member State and the expression Prospectus Directive means Directive 2003/71/EC and includes any relevant implementing measure in each Relevant Member State.

Each of the initial purchasers has represented and agreed that:

- it has only communicated or caused to be communicated and will only communicate or cause to be communicated any invitation or inducement to engage in investment activity (within the meaning of section 21 of the Financial Services and Markets Act 2000 (the “FSMA”)) received by it in connection with the issue or sale of the notes in circumstances in which section 21(1) of the FSMA does not apply to us and the guarantors;
- it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to the notes in, from or otherwise involving the United Kingdom; and
- the offering of the notes has not been cleared by CONSOB (the Italian Securities Exchange Commission) pursuant to Italian securities legislation, and accordingly, no notes will be offered, sold or delivered, nor will copies of this offering memorandum or of any other document relating to the notes be distributed, in the Republic of Italy, except to professional investors (*operatori qualificati*), as defined in Article 31, second paragraph, of CONSOB Regulation No. 11522 of July 1, 1998, as amended.

LEGAL MATTERS

Certain legal matters with respect to the legality of the issuance of the notes offered by us by this offering memorandum will be passed upon for us by Latham & Watkins LLP, Menlo Park, California. The Initial purchasers are being represented by Davis Polk & Wardwell LLP, Menlo Park, California, in connection with the offering.

INDEPENDENT AUDITORS

The consolidated financial statements of Spansion Inc. at December 27, 2009 and December 28, 2008 and for each of the three years in the period ended December 27, 2009, included in this offering memorandum have been audited by Ernst & Young LLP, independent auditors, as stated in their report (which contains an explanatory paragraph describing conditions that raise substantial doubt about the Company's ability to continue as a going concern as described in Note 3 to the consolidated financial statements) appearing herein.

AVAILABLE INFORMATION

We are subject to the information requirements of the Securities Exchange Act of 1934, as amended. Accordingly, we file annual, quarterly and periodic reports, proxy statements and other information with the SEC relating to our business, financial statements and other matters (File No. 001-34747). You may read and copy any documents we have filed with the SEC at prescribed rates at the SEC's Public Reference Room at Room 1024 Judiciary Plaza, 450 Fifth Street, N.W., Washington, DC 20549. You may also obtain copies of these materials at prescribed rates by mail by writing to the SEC's Public Reference Section at the address set forth above, or by calling (800) SEC-0330. Our SEC filings are also available to you free of charge at the SEC's web site at <http://www.sec.gov>. Information contained in our web site is not part of this offering memorandum.

INCORPORATION BY REFERENCE

We have elected to “incorporate by reference” certain information into this offering memorandum. By incorporating by reference, we can disclose important information to you by referring you to another document we have filed with the SEC. The information incorporated by reference is deemed to be part of this offering memorandum, except for information incorporated by reference that is superseded by information contained in this offering memorandum. This offering memorandum incorporates by reference the document set forth below that we have previously filed with the SEC:

<u>Spancion Inc. SEC Filings (File No. 001-34747)</u>	<u>Period Ended</u>
Quarterly Report on Form 10-Q	September 26, 2010

All documents that we file with the SEC from the date of this offering memorandum and prior to the termination of the offering of the notes under this offering memorandum shall also be deemed to be incorporated in this offering memorandum by reference (except that, unless otherwise expressly indicated, we are not incorporating any information furnished under Item 2.02 or Item 7.01 of any Current Report on Form 8-K).

You may obtain copies of this document from us without charge (other than exhibits to such document, unless such exhibits are specifically incorporated by reference into such document) by writing to us at Spancion Inc., 915 DeGuigne Drive, P.O. Box 3453, Sunnyvale, California 94088, or calling us at (408) 962-2500.

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SPANSION INC.

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Report of Ernst & Young LLP, Independent Registered Public Accounting Firm

The Board of Directors and Stockholders of
Spansion Inc.

We have audited the accompanying consolidated balance sheets of Spansion Inc. as of December 27, 2009 and December 28, 2008, and the related consolidated statements of operations, stockholders' equity (deficit), and cash flows for each of the three fiscal years in the period ended December 27, 2009. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Spansion Inc. as of December 27, 2009 and December 28, 2008, and the consolidated results of its operations and its cash flows for each of the three fiscal years in the period ended December 27, 2009, in conformity with U.S. generally accepted accounting principles.

The accompanying consolidated financial statements have been prepared assuming that Spansion Inc. will continue as a going concern. As more fully described in Note 3 to the consolidated financial statements, on March 1, 2009, Spansion Inc. filed a voluntary petition for reorganization under Chapter 11 of the United States Bankruptcy Code. Uncertainties inherent in the bankruptcy process raise substantial doubt about Spansion Inc.'s ability to continue as a going concern. Management's plans in regard to these matters also are described in Note 3. The accompanying consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

As discussed in Note 4 to the consolidated financial statements, the Company changed its method of accounting for its Exchangeable Senior Subordinated Debentures with the retrospective adoption of new guidance on accounting for convertible debt instruments that may be settled in cash upon conversion, effective December 29, 2008.

/s/ Ernst & Young LLP

San Jose, California
February 12, 2010

Spansion Inc.
(Debtor-in-Possession)

Consolidated Statements of Operations
(in thousands, except per share amounts)

	<u>Year Ended December 27, 2009</u>	<u>Year Ended December 28, 2008⁽¹⁾</u>	<u>Year Ended December 30, 2007⁽¹⁾</u>
Net sales	\$1,059,408	\$ 1,630,573	\$1,627,253
Net sales to related parties	351,245	651,230	873,560
Total net sales	<u>1,410,653</u>	<u>2,281,803</u>	<u>2,500,813</u>
Cost of sales (<i>Note 10</i>)	1,103,757	2,193,345	2,065,143
Research and development (<i>Note 10</i>)	136,449	431,808	436,785
Sales, general and administrative (<i>Note 10</i>)	216,298	253,878	239,317
In-process research and development	—	10,800	—
Restructuring charges (<i>Note 20</i>)	46,852	11,161	—
Asset impairment charges	<u>12,538</u>	<u>1,652,622</u>	<u>—</u>
Operating loss before reorganization items	(105,241)	(2,271,811)	(240,432)
Other income (expense):			
Interest and other income, net	4,038	5,200	32,595
Interest expense ⁽²⁾	(50,976)	(105,536)	(87,460)
Gain on deconsolidation of subsidiary	<u>30,100</u>	<u>—</u>	<u>—</u>
Loss before reorganization items and income taxes	(122,079)	(2,372,147)	(295,297)
Reorganization items	<u>(391,383)</u>	<u>—</u>	<u>—</u>
Loss before income taxes	(513,462)	(2,372,147)	(295,297)
(Provision) benefit for income taxes	<u>(597)</u>	<u>(62,865)</u>	<u>25,144</u>
Net loss	<u>\$ (514,059)</u>	<u>\$ (2,435,012)</u>	<u>\$ (270,153)</u>
Net loss per share:			
Basic and diluted	<u>\$ (3.18)</u>	<u>\$ (15.69)</u>	<u>\$ (2.00)</u>
Shares used in per share calculation:			
Basic and diluted	<u>161,847</u>	<u>155,162</u>	<u>134,924</u>

(1) The statements of operations for these periods have been adjusted to reflect the change in accounting for the Company's Exchangeable Senior Subordinated Debentures as described in Note 4.

(2) Contractual interest expense for the year ended December 27, 2009 was \$89,380.

See accompanying notes

Spansion Inc.
(Debtor-in-Possession)
Consolidated Balance Sheets
(in thousands, except par value and share amounts)

	<u>December 27, 2009</u>	<u>December 28, 2008⁽¹⁾</u>
Assets		
Current assets:		
Cash and cash equivalents	\$ 324,903	\$ 116,387
Auction rate securities	100,335	—
Trade accounts receivable	129,174	134,347
Trade accounts receivable from related parties <i>(Note 10)</i>	366,602	111,448
Allowance for doubtful accounts	(56,408)	(10,354)
Trade accounts receivable, net	439,368	235,441
Other receivables	—	7,789
Other receivables from related parties <i>(Note 10)</i>	—	6,127
Inventories:		
Raw materials	14,202	16,305
Work-in-process	112,469	264,393
Finished goods	15,052	98,459
Total inventories	141,723	379,157
Deferred income taxes	13,332	3,213
Prepaid expenses and other current assets	49,533	35,225
Total current assets	<u>1,069,194</u>	<u>783,339</u>
Property, plant and equipment:		
Land	20,107	37,355
Buildings and leasehold improvements	117,553	181,843
Equipment	318,592	551,567
Construction in progress	14,345	24,265
Total property, plant and equipment	470,597	795,030
Accumulated depreciation and amortization	(147,887)	—
Property, plant and equipment, net	322,710	795,030
Auction rate securities	—	94,014
Other assets	46,073	101,489
Total assets	<u>\$1,437,977</u>	<u>\$1,773,872</u>
Liabilities and Stockholders' Deficit		
Current liabilities:		
Notes payable to banks under revolving loans	\$ —	\$ 105,687
Short-term note	64,150	—
Accounts payable	33,463	465,844
Accounts payable to related parties <i>(Note 10)</i>	221,211	74,592
Accrued compensation and benefits	21,630	60,412
Accrued liabilities to related parties <i>(Note 10)</i>	—	5,092
Other accrued liabilities	112,676	88,943
Income taxes payable	83	3,972
Deferred income	50,929	34,921
Deferred income to related parties <i>(Note 10)</i>	12,029	364
Current portion of long-term debt and obligations under capital leases	—	1,126,849
Total current liabilities	<u>516,171</u>	<u>1,966,676</u>

See accompanying notes

Spansion Inc.
(Debtor-in-Possession)

Consolidated Balance Sheets—(Continued)
(in thousands, except par value and share amounts)

	<u>December 27, 2009</u>	<u>December 28, 2008⁽¹⁾</u>
Deferred income taxes	\$ 13,405	\$ 3,267
Long-term debt and capital lease obligations, less current portion	—	210,246
Other long-term liabilities	9,825	44,330
Total long-term liabilities	23,230	257,843
Liabilities subject to compromise	1,756,269	—
Total liabilities	2,295,670	2,224,519
Commitments and contingencies		
Stockholders' deficit:		
Preferred stock, \$0.001 par value, 50,000,000 shares authorized, 0 shares issued and outstanding	—	—
Class A common stock, \$0.001 par value, 714,999,998 shares authorized, 162,291,633 and 161,102,495 shares issued and outstanding as of December 27, 2009 and December 28, 2008 (<i>Note 23</i>)	162	161
Class B common stock, \$0.001 par value, 1 share authorized, 0 share issued and outstanding (<i>Note 23</i>)	—	—
Class C common stock, \$0.001 par value, 1 share authorized, 0 share issued and outstanding (<i>Note 23</i>)	—	—
Additional paid-in capital	2,484,320	2,471,902
Accumulated deficit	(3,342,370)	(2,997,589)
Accumulated other comprehensive income	195	74,879
Total stockholders' deficit	(857,693)	(450,647)
Total liabilities and stockholders' deficit	<u>\$ 1,437,977</u>	<u>\$ 1,773,872</u>

(1) The balance sheet as of December 28, 2008 has been adjusted to reflect the change in accounting for the Company's Exchangeable Senior Subordinated Debentures as described in Note 4.

See accompanying notes

Spansion Inc.
(Debtor-in-Possession)

Consolidated Statements of Cash Flows
(in thousands)

	Year Ended December 27, 2009	Year Ended December 28, 2008⁽¹⁾	Year Ended December 30, 2007⁽¹⁾
Cash Flows from Operating Activities:			
Net loss	\$(514,059)	\$(2,435,012)	\$(270,153)
Adjustments to reconcile net loss to net cash provided by operating activities:			
Depreciation and amortization, and in-process research and development write-off	168,368	644,492	517,281
Asset impairment charges	14,045	1,652,622	—
Loss on pension curtailment	—	—	2,010
Loss on early extinguishment of debt	—	—	3,435
Provision for doubtful accounts	19,832	1,799	1,559
Provision (benefit) for deferred income taxes	18	49,887	(41,401)
Net loss (gain) on sale and disposal of property, plant, and equipment	76	(28,238)	(30,172)
Other than temporary impairment on marketable securities	—	3,270	—
Other than temporary impairment on investments	—	2,648	—
Gain on sale of marketable securities	—	(621)	—
Compensation recognized under employee stock plans	12,419	21,578	16,138
Gain on deconsolidation of subsidiary	(30,100)	—	—
Gain on sale of Suzhou plant	(4,669)	—	—
Loss from write-off of rejected capital leases and various licenses	3,090	—	—
Amortization of debt premium and discount, net	1,540	9,950	8,966
Changes in operating assets and liabilities, net of effects of deconsolidation of subsidiary and acquisition of Saifun:			
(Increase) decrease in accounts receivable and other receivables	(248,352)	141,202	14,382
Decrease (increase) in inventories	180,569	204,713	(128,489)
(Increase) decrease in prepaid expenses and other current assets	(10,448)	14,799	(11,606)
Increase in other assets	(5,165)	(1,183)	(15,769)
Increase (decrease) in accounts payable, accrued liabilities, and accrued compensation	629,396	(4,720)	133,263
(Decrease) increase in income taxes payable	(2,708)	(9,846)	9,435
Increase (decrease) in deferred income to a related party	11,665	(218)	353
Increase (decrease) in deferred income	11,032	(4,570)	7,107
Net cash provided by operating activities	236,549	262,552	216,339

See accompanying notes

Spansion Inc.
(Debtor-in-Possession)

Consolidated Statements of Cash Flows—(Continued)
(in thousands)

	<u>Year Ended December 27, 2009</u>	<u>Year Ended December 28, 2008⁽¹⁾</u>	<u>Year Ended December 30, 2007⁽¹⁾</u>
Cash Flows from Investing Activities:			
Proceeds from sale of property, plant and equipment	4,352	6,743	190,532
Purchases of property, plant and equipment	(29,713)	(430,831)	(1,115,598)
Business acquisition, net of cash acquired	—	733	—
Proceeds from maturity and sale of marketable securities	—	133,695	891,250
Purchases of marketable securities	—	(36,950)	(981,925)
Loan made to an investee	(5,263)	(5,136)	—
Cash proceeds from PTI due to sale of Suzhou plant	15,539	—	—
Proceeds from redemption of ARS	14,775	—	—
Cash decrease due to deconsolidation of subsidiary	(52,092)	—	—
Cash decreases due to the sale of Suzhou plant	(10,431)	—	—
Net cash used by investing activities	<u>(62,833)</u>	<u>(331,746)</u>	<u>(1,015,741)</u>
Cash Flows from Financing Activities:			
Proceeds from borrowings, net of issuance costs	117,758	250,558	854,120
Payments on debt and capital lease obligations	(79,863)	(241,806)	(603,819)
Proceeds from issuance of common stock, net of offering costs	—	—	76
Net cash provided by financing activities	<u>37,895</u>	<u>8,752</u>	<u>250,377</u>
Effect of exchange rate changes on cash and cash equivalents	<u>(3,095)</u>	<u>(22,263)</u>	<u>(11,677)</u>
Net increase (decrease) in cash and cash equivalents	208,516	(82,705)	(560,702)
Cash and cash equivalents at the beginning of period	116,387	199,092	759,794
Cash and cash equivalents at end of period	<u>\$324,903</u>	<u>\$ 116,387</u>	<u>\$ 199,092</u>
Supplemental Cash Flows Disclosures:			
Interest paid (including \$0, \$0, \$11,306 of interest related to obligations to related parties)	\$ 38,638	\$ 94,593	\$ 95,392
Income taxes paid (refunded)	\$ 2,845	\$ (15,155)	\$ 9,650
Non-cash investing and financing activities:			
Equipment capital leases	\$ —	\$ 56,611	\$ —
Issuance of common stock and stock options to acquire Saifun	\$ —	\$ 108,898	\$ —

(1) The statements of cashflows for these periods have been adjusted to reflect the change in accounting for the Company's Exchangeable Senior Subordinated Debentures as described in Note 4.

See accompanying notes

Spancion Inc.
(Debtor-in-Possession)

Consolidated Statements of Stockholders' Equity (Deficit)
(in thousands)

	Shares	Amount	Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Income (Loss)	Total Stockholders' Equity (Deficit)
Balance at December 31, 2006	134,219	\$134	\$2,204,513	\$ (279,181)	\$ (79,706)	\$ 1,845,760
Effect of change in accounting for convertible debt (Note 4)			115,273	(3,253)	—	112,020
Adjusted balance at December 31, 2006	<u>134,219</u>	<u>134</u>	<u>2,319,786</u>	<u>(282,434)</u>	<u>(79,706)</u>	<u>1,957,780</u>
Comprehensive loss:						
Net loss ⁽¹⁾	—	—	—	(270,153)	—	(270,153)
Other comprehensive income:						
Change in pension plan and post-retirement benefit, net of taxes of \$0	—	—	—	—	2,269	2,269
Net change in cumulative translation adjustment	—	—	—	—	41,242	41,242
Total other comprehensive income	—	—	—	—	—	43,511
Total comprehensive loss	—	—	—	—	—	(226,642)
Effect of change in accounting for sabbatical leave ...	—	—	—	(10,150)	—	(10,150)
Effect of change in accounting for tax uncertainties	—	—	—	160	—	160
Adjustment to common stock issuance costs	—	—	466	—	—	466
Issuance of shares:						
Vesting of RSUs	1,148	1	(1)	—	—	—
Exercise of options	5	—	60	—	—	60
Compensation recognized under employee stock plans	—	—	16,137	—	—	16,137
Balance at December 30, 2007	<u>135,372</u>	<u>135</u>	<u>2,336,448</u>	<u>(562,577)</u>	<u>(36,195)</u>	<u>1,737,811</u>
Comprehensive loss:						
Net loss ⁽¹⁾	—	—	—	(2,435,012)	—	(2,435,012)
Other comprehensive income:						
Net unrealized gain on investment	—	—	—	—	662	662
Change in pension plan and post-retirement benefit, net of taxes of \$0	—	—	—	—	(34,985)	(34,985)
Net change in cumulative translation adjustment	—	—	—	—	145,397	145,397
Total other comprehensive income	—	—	—	—	—	111,074
Total comprehensive loss	—	—	—	—	—	(2,323,938)
Issuance of shares:						
Vesting of RSUs	1,368	1	(1)	—	—	—
Exercise of options	26	—	1	—	—	1
Issuance of common stock to acquire Saifun ...	22,729	23	108,876	—	—	108,899
Issuance of common stock to purchase asset ...	1,608	2	4,998	—	—	5,000
Compensation recognized under employee stock plans	—	—	21,580	—	—	21,580
Balance at December 28, 2008	<u>161,103</u>	<u>161</u>	<u>2,471,902</u>	<u>(2,997,589)</u>	<u>74,879</u>	<u>(450,647)</u>

See accompanying notes

Spansion Inc.
(Debtor-in-Possession)

Consolidated Statements of Stockholders' Equity (Deficit)—(Continued)
(in thousands)

	<u>Shares</u>	<u>Amount</u>	<u>Additional Paid-in Capital</u>	<u>Accumulated Deficit</u>	<u>Accumulated Other Comprehensive Income (Loss)</u>	<u>Total Stockholders' Equity (Deficit)</u>
Comprehensive loss:						
Net loss	—	—	—	(514,059)	—	(514,059)
Other comprehensive income:						
Net unrealized gain on investment	—	—	—	—	(465)	(465)
Change in pension plan and post-retirement benefit, net of taxes of \$0	—	—	—	—	123	123
Net change in cumulative translation adjustment	—	—	—	—	(25,073)	(25,073)
Total other comprehensive loss						<u>(25,415)</u>
Total comprehensive loss						(539,474)
Effect of Spansion Japan deconsolidation	—	—	—	169,278	(49,269)	120,009
Issuance of shares:						
Vesting of RSUs	1,027	1	—	—	—	1
Exercise of options	162	—	—	—	—	—
Compensation recognized under employee stock plans	—	—	12,418	—	—	12,418
Balance at December 27, 2009	<u>162,292</u>	<u>\$162</u>	<u>\$2,484,320</u>	<u>\$(3,342,370)</u>	<u>\$ 195</u>	<u>\$(857,693)</u>

- (1) Net losses for these periods have been adjusted to reflect the change in accounting for the Company's Exchangeable Senior Subordinated Debentures as described in Note 4.

See accompanying notes

Spansion Inc.
(Debtor-in-Possession)

Notes to Consolidated Financial Statements

1. Nature of Operations

The Company

Spansion Inc. (the Company) is a semiconductor manufacturer headquartered in Sunnyvale, California, with research and development, manufacturing and assembly operations in the United States, Middle East, Europe and Asia. The Company designs, develops, manufactures, markets and sells Flash memory technology and solutions.

The Company's Flash memory devices are used primarily to store microprocessor instructions (code), or code and data in embedded applications, and are incorporated into a broad range of electronic products, including mobile phones, consumer electronics, automotive electronics, networking and telecommunications equipment, data center servers, personal computers and PC peripheral applications.

History of the Company

In 1993, Advanced Micro Devices, Inc. (AMD) and Fujitsu Limited (Fujitsu) formed a manufacturing venture, Fujitsu AMD Semiconductor Limited (FASL).

FASL produced wafers containing Flash memory circuits. These wafers were then sold to AMD and Fujitsu, who separated the circuits on each wafer into individual die, processed the die into finished goods and sold the finished Flash memory devices to their customers. AMD and Fujitsu performed all research and development activities for the design and development of Flash memory devices and developed the manufacturing processes that were to be used in the operation of the fabs to manufacture Flash memory devices. Through June 30, 2003, FASL contracted with AMD and Fujitsu for the receipt of certain support and administrative services.

As of June 30, 2003, in order to expand their existing manufacturing venture, AMD and Fujitsu formed a limited liability company called FASL LLC and later renamed Spansion LLC. In addition to its 49.992 percent ownership in FASL, AMD contributed to Spansion LLC its Flash memory inventory, its wafer manufacturing facility located in Austin Texas, its Flash memory research and development facility (the Submicron Development Center (SDC)) located in Sunnyvale, California, and its Flash memory assembly and test facilities located in Thailand, Malaysia and China. Fujitsu contributed to Spansion LLC its 50.008 percent ownership interest in FASL, its Flash memory inventory and its Flash memory assembly and test facilities located in Malaysia. Both AMD and Fujitsu transferred employees to Spansion LLC to perform various research and development, marketing and administration functions. AMD and Fujitsu also provided working capital to Spansion LLC in the form of cash contributions and loans. As a result, Spansion LLC began manufacturing finished Flash memory devices which through the first fiscal quarter of fiscal 2006 were exclusively sold to AMD and Fujitsu. In the second quarter of fiscal 2006, the Company began selling its products directly to customers previously served by AMD (see Note 10).

On December 21, 2005, Spansion LLC was reorganized into Spansion Inc. and completed its underwritten initial public offering (IPO) of its Class A common stock.

2. Creditor Protection Proceedings

On February 10, 2009, Spansion Japan Limited, a wholly-owned subsidiary of Spansion LLC (Spansion Japan), filed a proceeding under the Corporate Reorganization Law (*Kaisha Kosei Ho*) of Japan to obtain protection from Spansion Japan's creditors (the Spansion Japan Proceeding), and the Tokyo District Court approved the filing of the Spansion Japan Proceeding on March 3, 2009 (the Commencement Date), and appointed the incumbent representative director of Spansion Japan as trustee.

Spansion Inc.
(Debtor-in-Possession)

Notes to Consolidated Financial Statements—(Continued)

On March 1, 2009 (the Petition Date), Spansion Inc., Spansion Technology LLC, Spansion LLC, Spansion International, Inc., and Cerium Laboratories LLC (the Debtors) each filed a voluntary petition for relief under Chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court for the District of Delaware (the Chapter 11 Cases). The Chapter 11 Cases are being jointly administered under Case No: 09-10690 (KJC). The Chapter 11 Cases, together with the Spansion Japan Proceeding are referred to collectively as the Creditor Protection Proceedings.

As required under the U.S. Bankruptcy Code, the United States Trustee for the District of Delaware (the Trustee) appointed an official committee of unsecured creditors on March 12, 2009 (the U.S. Creditors' Committee). In addition, a group purporting to hold substantial amounts of the Company's publicly traded Senior Secured Floating Rate Notes due 2013 has organized (the Floating Rate Noteholders). The role of the U.S. Creditors' Committee and the Floating Rate Noteholders in the Chapter 11 Cases may develop and change while the Chapter 11 Cases are pending, and there can be no assurance that either constituent will support the Company's positions on matters to be presented to the U.S. Bankruptcy Court or on any comprehensive plan of reorganization.

The Debtors continue to operate their businesses as "debtors-in-possession" under jurisdiction of the U.S. Bankruptcy Court and in accordance with the applicable provisions of the U.S. Bankruptcy Code and orders of the U.S. Bankruptcy Court. Non-U.S. subsidiaries that are not included in the Creditor Protection Proceedings (Non-Debtor Affiliates) continue to operate without the supervision of the U.S. Bankruptcy Court.

Plan of Reorganization

On October 26, 2009, the Company filed with the U.S. Bankruptcy Court a proposed Plan of Reorganization, together with an accompanying Disclosure Statement. On each of November 25, 2009 and December 9, 2009, the Company filed an amended proposed Plan of Reorganization together with an accompanying amended Disclosure Statement. On December 17, 2009, the Company filed a Second Amended Joint Plan of Reorganization Dated December 16, 2009 (as the same may be amended from time to time, the "Plan of Reorganization") and accompanying amended Disclosure Statement. The Plan of Reorganization provides for an equitable distribution to holders of allowed claims in certain classes of creditors, preserves the value of the Debtors' businesses as going concerns and preserves employment. The Plan of Reorganization, if accepted by the requisite majorities of one or more of the affected class of creditors and approved by the U.S. Bankruptcy Court (and any applicable appellate courts if the order of the U.S. Bankruptcy Court approving the Plan of Reorganization is approved), would be binding on all creditors within each affected class, including those that did not vote to accept the proposal. The ultimate recovery to creditors will not be determined until the Plan of Reorganization has been effectuated and all claims have been fully adjudicated or resolved.

Under the Plan of Reorganization, the Debtors will be reorganized (Reorganized Debtors) through the consummation of several transactions in which new securities of the Reorganized Debtors will be issued and distributed in accordance with the Plan of Reorganization. These transactions will include:

- the distribution of cash, new senior notes or cash raised through a rights offering and/or debt issuance, providing that such cash is raised no later than the confirmation date for the Plan of Reorganization, to holders of the Company's existing Floating Rate Notes;
- the distribution of new Spansion common stock to holders of general unsecured claims;
- the cancellation of Spansion Inc.'s existing equity securities, including all shares of Common Stock and existing options to purchase shares of Common Stock; and
- the retention of the assets of the Debtors in the reorganized Debtors.

Spansion Inc.
(Debtor-in-Possession)

Notes to Consolidated Financial Statements—(Continued)

The Plan of Reorganization provides for the treatment of claims of creditors on a “waterfall” basis that allocates value to the Debtors’ creditors and stockholders in accordance with the priorities of the Bankruptcy Code. Pursuant to the Plan of Reorganization, allowed administrative claims and priority tax claims would be paid in full in cash or cash equivalents. Other allowed secured claims would be reinstated, paid in full in cash, or have the collateral securing such claims returned to the secured creditor. Allowed unsecured convenience claims (in amount equal to, less than or reduced to \$2,000) would be paid in full in cash. Any remaining value would be distributed on a pro rata basis, subject to any applicable subordination agreements, to holders of allowed unsecured claims (other than certain claims, including claims based on non-compensatory damages and penalties and intercompany claims) in the form of new Spansion common stock. Under the Plan of Reorganization, the Company’s current stockholders will not be entitled to any recovery, making such shares of common stock valueless.

As set forth in the Second Amended Disclosure Statement, the Debtors have assumed that allowed claims will range from approximately \$1.6 billion to approximately \$2.1 billion after completion of the claims objection, reconciliation and resolution process. In addition to the range specified above, Spansion Japan has asserted that it has been damaged as a result of the foundry agreement rejection in the amount of \$761.2 million. As of December 27, 2009, the Company accrued expected allowed claims totaling approximately \$1.8 billion classified as liabilities subject to compromise in the consolidated balance sheet. If the expected amount of allowed claims increases over the amount currently accrued, the Company will record additional reorganization expense in the period of such determination. Because disputed claims have not yet been finally adjudicated, and the Debtors’ total enterprise value upon emergence has not yet been finally determined, no assurances can be given that actual recoveries to creditors and interest holders will not be materially higher or lower than proposed in the Plan of Reorganization.

On December 18, 2009, the U.S. Bankruptcy Court approved the adequacy of the Disclosure Statement, the solicitation and notice procedures with respect to confirmation of the Plan of Reorganization and the form of various ballots and notices in connection therewith. The U.S. Bankruptcy Court established December 14, 2009, as the record date for determining eligibility to vote on the Plan of Reorganization. Nothing contained in this Report is intended to be, nor should it be construed as, a solicitation for a vote on the Plan of Reorganization.

The Plan of Reorganization will become effective only if it is confirmed by the U.S. Bankruptcy Court. The objection deadline with respect to the Plan of Reorganization occurred January 26, 2010, subject to extensions agreed to by the Debtors for certain parties. The voting deadline with respect to the Plan of Reorganization was February 8, 2010. The confirmation hearing in the U.S. Bankruptcy Court is scheduled to begin on February 24, 2010. If the U.S. Bankruptcy Court confirms the Plan of Reorganization, the Debtors expect to emerge from Chapter 11 shortly thereafter. However, there can be no assurance that the Debtors will be successful in obtaining the necessary votes to approve the Plan of Reorganization, that the U.S. Bankruptcy Court will confirm the Plan of Reorganization or that it will be implemented successfully.

Business Relationship with Spansion Japan and Foundry Agreement

Spansion Japan is now managed by a trustee appointed by the Tokyo District Court and is subject to the general supervision of the Tokyo District Court and a court-appointed supervisory attorney. As a result, the financial results of Spansion Japan are no longer included in the Company’s consolidated financial results for periods beginning March 3, 2009.

Spansion Japan facilitates distribution of the Company’s products in Japan and also manufactures and supplies sorted and unsorted silicon wafers to the Company. The wafers purchased from Spansion Japan are a

Spansion Inc.
(Debtor-in-Possession)

Notes to Consolidated Financial Statements—(Continued)

material component of the Company's "cost of goods sold," and historically the wafer prices were governed by a foundry agreement. Management believes that the prices under the foundry agreement greatly exceeded the amounts that the U.S. Bankruptcy Court would have required the Company to pay for wafers purchased during the period from February 9, 2009 (20 days prior to the Petition Date) through October 27, 2009 (the Disputed Period). The Company and Spansion Japan mutually agreed to pricing terms for purchases following October 27, 2009.

After the Company's efforts to renegotiate the prices for the Disputed Period proved unsuccessful, the Company filed a motion with the U.S. Bankruptcy Court in October 2009 to reject the foundry agreement because the foundry agreement was no longer consistent with the Company's business plan. An order rejecting the foundry agreement was issued by the U.S. Bankruptcy Court on November 19, 2009. As a result, there was no valid contract establishing pricing for the wafers the Company received from Spansion Japan from February 9, 2009 through October 27, 2009.

On January 8, 2010, the Company reached an agreement in principle (the Settlement) with Spansion Japan to (i) acquire Spansion Japan's distribution business; (ii) obtain foundry services, including wafer and sort services, from Spansion Japan; and (iii) resolve the Company's dispute with Spansion Japan relating to pricing of wafers purchased during the Disputed Period. The Settlement remains subject to the completion of definitive agreements. On January 29, 2010, the U.S. Bankruptcy Court and on February 1, 2010, the Tokyo District Court approved the Settlement. The Company expects the definitive agreements implementing the Settlement to be executed in February 2010 and to provide for, among other things, the following material terms:

- Payment to Spansion Japan of approximately \$45 million during the four quarters of fiscal 2010
- Agreement to purchase from Spansion Japan (i) a minimum of 10 billion yen (equivalent to \$109.5 million as of December 27, 2009) of wafers over the next six quarters, and (ii) sort services during the six-quarter period with both sort services and wafer production to be subject to normal and customary foundry performance conditions;
- The purchase of Spansion Japan's distribution and research and development business located in Kawasaki, Japan for approximately \$12.5 million;
- The claims of the Debtors against Spansion Japan arising prior to February 9, 2009 will be deemed allowed unsecured non-priority claims in the Spansion Japan's corporate reorganization proceeding, but the Debtors will not be entitled to receive any distribution on account of such claims;
- Spansion Japan shall retain its rejection damage claims against the Debtors in respect of the rejection of the Foundry Agreement, subject to the Company's various defenses described in further detail below; and
- All other claims of Spansion Japan and the Debtors against each other shall be expunged, released and satisfied.

On January 15, 2010, Spansion Japan filed a general unsecured proof of claim in the U.S. Bankruptcy Court asserting that it has been damaged in the amount of approximately \$761 million as a result of the November 19, 2009 foundry agreement rejection order. The Company believes that it has strong defenses to the amount of Spansion Japan's proof of claim, and intends to vigorously contest this matter. An award of damages resulting from the rejection of the foundry agreement could impact our future earnings. However, under the Company's proposed Plan of Reorganization, Spansion Japan would not be entitled to any recovery on such proof of claim. Nonetheless, if the U.S. Bankruptcy Court found that such claim were more appropriately classified as a general unsecured claim in Class 5B of the Company's Plan of Reorganization, Spansion Japan would be entitled, at most, to its pro-rata distribution of new Spansion common stock.

Spansion Inc.
(Debtor-in-Possession)

Notes to Consolidated Financial Statements—(Continued)

3. Basis of Presentation

Basis of Presentation and Going Concern

The consolidated financial statements have been prepared under U.S. GAAP and the rules and regulations of the U.S. Securities and Exchange Commission (SEC) for the Chapter 11 Companies and are presented on a going concern basis, which assumes the Company will be able to realize its assets and discharge its liabilities in the normal course of business for the foreseeable future. The Chapter 11 Cases have provided the Company with a period of time to stabilize its current operations and financial condition and develop the Plan of Reorganization, which incorporates the Company's current standalone business strategy focused on the market for embedded applications and licensing of its intellectual property portfolio. This Plan of Reorganization does not contemplate liquidation of Spansion. Accordingly, the Company believes these actions make the going concern basis of presentation appropriate. However, it is not possible to predict the outcome of Chapter 11 Cases; therefore, the realization of assets and discharge of liabilities are each subject to significant uncertainty. Further, it is not possible to predict whether the actions taken in the Plan of Reorganization or any other reorganization will result in improvements to the Company's financial condition sufficient to allow it to continue as a going concern. Accordingly, substantial doubt exists as to whether the Company will be able to continue as a going concern.

The consolidated financial statements do not purport to reflect or provide for the outcome of the Chapter 11 Cases. In particular, such consolidated financial statements do not purport to show: (a) as to assets, their realizable value on a liquidation basis or their availability to satisfy liabilities; (b) as to pre-petition liabilities, the amounts that will ultimately be allowed for claims or contingencies, or the status and priority thereof; (c) as to stockholders accounts, the effect of any changes that may be made in the Company's capitalization; or (d) as to operations, the effect of any changes that may be made in the Company's business.

The consolidated financial statements reflect the accounting, presentation, and disclosure requirements now codified in FASB Accounting Standards Codification Topic 852, *Reorganization*. Accordingly, liabilities and obligations whose treatment and satisfaction is dependent on the outcome of the Chapter 11 Cases have been segregated and classified as liabilities subject to compromise in the consolidated balance sheet. The ultimate amount of and settlement terms for the Company's pre-petition liabilities are dependent on the outcome of the Chapter 11 Cases and, accordingly, are not presently determinable. Professional fees associated with the Chapter 11 Cases and certain gains and losses resulting from reorganization of the Company's business have been reported separately as reorganization items in the consolidated statement of operations. In addition, interest expense has been reported only to the extent that it will be paid subsequent to the Petition Date or that it is probable that it will be an allowed priority, secured or unsecured claim under the Chapter 11 Cases and interest income earned subsequent to the Petition Date is reported as a reorganization item.

Furthermore, effective as of March 3, 2009, the Company no longer controls Spansion Japan due to the appointment of a trustee in the Spansion Japan Proceeding on March 3, 2009. Upon deconsolidation, the Company recorded a gain of \$30.1 million. The gain represents the difference between the carrying value of the Company's investment in and accounts receivable from Spansion Japan immediately before deconsolidation (100 percent of Spansion Japan's stockholder's deficit adjusted by the net receivables from Spansion Japan) and the estimated fair value of the Company's retained non-controlling interest in Spansion Japan (zero). Since March 3, 2009, the Company has accounted for its interest in Spansion Japan as a cost basis investment. The results of operations of Spansion Japan after March 3, 2009 are not included in the Company's consolidated statement of operations and the carrying value of the cost basis investment at December 27, 2009 was zero. Transactions between the Company and Spansion Japan after March 3, 2009 are not eliminated.

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Notes to Consolidated Financial Statements—(Continued)

Fiscal Year

The Company operates on a 52- to 53-week fiscal year ending on the last Sunday in December. The years ended December 27, 2009, December 28, 2008 and December 30, 2007 consisted of 52 weeks each.

4. Summary of Significant Accounting Policies

Principles of Consolidation

With the exception of Spansion Japan as described above, the consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries after elimination of intercompany accounts and transactions.

Use of Estimates

The preparation of consolidated financial statements and disclosures in conformity with U.S. generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of commitments and contingencies and the reported amounts of revenues and expenses during the reporting periods. Estimates are used to account for: the fair value of the retained non-controlling interest in Spansion Japan, the fair value of certain marketable securities, revenue, the allowance for doubtful accounts, inventory, including the value of inventory purchased from Spansion Japan, valuation of acquired intangible assets, impairment of long-lived assets, income taxes, stock-based compensation expenses, liabilities subject to compromise, the fair value of the debt and liability components of the Company's Exchangeable Senior Subordinated Debentures, product warranties, pension and postretirement benefits, and liability for wafer purchases from Spansion Japan. Actual results may differ from those estimates, and such differences may be material to the consolidated financial statements.

Cash Equivalents

Cash equivalents consist of financial instruments that are readily convertible into cash and have original maturities of three months or less at the time of purchase.

Auction Rate Securities

The Company has investments in auction rate securities (ARS), for which the underlying assets are student loans. Prior to November 2008, the investments in ARS were designated as available-for-sale and reported at fair value with the related unrealized gains and losses included in accumulated other comprehensive income (loss), net of tax, a component of stockholders equity (deficit). In November 2008, the Company reclassified its investments in ARS from available-for-sale to trading securities and the investments are now adjusted to market through earnings each reporting period. The Company recognizes an impairment charge on available-for-sale securities in earnings when the declines in the fair values of its investments below the cost basis are judged to be other-than-temporary. The Company considers various factors in determining whether to recognize a decline in value, including the length of time and extent to which the fair value has been less than the Company's cost basis, the financial condition and near-term prospects of the issuer or investee, and the Company's intent and ability to hold the investment for a period of time sufficient to allow for any anticipated recovery in market value.

The cost of securities sold is based on the specific identification method. The Company classified its investment in ARS as long-term on the consolidated balance sheet as of December 28, 2008, based on the

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Notes to Consolidated Financial Statements—(Continued)

contractual maturities of those investments. The Company reclassified its investment in ARS as short-term on the consolidated balance sheet as of December 27, 2009, due to its participation in an auction rate settlement with its broker, which enables the Company to put the ARS to its broker for cash commencing June 30, 2010 (see Note 19).

Allowance for Doubtful Accounts

The Company maintains an allowance for doubtful accounts based on a variety of factors, including the length of time the receivable is past due, historical experience and the financial condition of customers.

The following describes activity in the accounts receivable allowance for doubtful accounts for the years ended December 27, 2009, December 28, 2008 and December 30, 2007.

<u>Year</u>	<u>Balance at Beginning of Period</u>	<u>Additions Charged to Costs and Expenses</u>	<u>Deductions</u>	<u>Balance at End of Period</u>
		(in thousands)		
2009	\$8,106	\$48,524	\$(222)	\$56,408
2008	\$6,156	\$ 2,276	\$(326)	\$ 8,106
2007	\$4,597	\$ 1,559	\$ —	\$ 6,156

Of the \$48.5 million charged to costs and expenses in fiscal 2009, approximately \$28.5 million related to accounts receivable due from Spansion Japan as of March 3, 2009, which is included in the gain on deconsolidation of subsidiary in the consolidated statement of operations.

Inventories

Inventories are stated at standard cost adjusted to approximate the lower of actual cost (first-in, first-out method) or market. The Company records provisions for excess and obsolete inventory based on its estimated forecast of product demand. Obsolete inventories are written off.

Revenue Recognition

The Company generally recognizes revenue when it has sold its products to its OEM customers and title and risk of loss for the products have transferred to the OEM. Estimates of product returns and sales allowances, related to reasons other than product quality, are based on actual historical experience and are recorded as a reduction in revenue at the time revenue is recognized.

The Company sells directly to distributors under terms that provide for rights of return, stock rotation and price protection guarantees. The Company defers the recognition of revenue and related product costs on these sales as deferred income until the product is resold by its distributors. The Company also sells some of its products to certain distributors under sales arrangements that do not allow for rights of return or price protection on unsold products. In these instances, the Company recognizes revenue when it ships the product directly to the distributors. In addition, the Company defers the recognition of revenues and related product costs on sales of Spansion Japan until the products are resold by Spansion Japan's distributors.

The Company recognizes revenue net of sales taxes, use taxes and value-added taxes directly imposed by governmental authorities on the Company's revenue producing transactions with its customers. The Company includes shipping costs related to products shipped to customers in cost of sales.

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Notes to Consolidated Financial Statements—(Continued)

Property, Plant and Equipment

Property, plant and equipment are stated at cost. Depreciation and amortization are provided on a straight-line basis over the estimated useful lives of the assets. Estimated useful lives of property, plant and equipment for financial reporting purposes are as follows: machinery and equipment, two to seven years; buildings and building improvements, from five to 26 years; and leasehold improvements, the shorter of the remaining terms of the leases or the estimated economic useful lives of the improvements.

The Company capitalized interest costs \$6.5 million and \$16.9 million related to construction activities of its manufacturing facility in Japan (SP1) during fiscal 2008 and fiscal 2007, respectively. The Company did not capitalize any interest costs during fiscal 2009.

Impairment of Long-Lived Assets including Acquisition-Related Intangible Assets

The Company evaluates whether an impairment loss has occurred for an asset (asset group) to be held and used when events and circumstances indicate that the carrying amount of an asset (asset group) might not be recoverable. For purposes of assessing recoverability and impairment of an asset (asset group) held and used, the Company groups assets at the lowest level for which there are identifiable independent cash flows. The Company assesses recoverability by determining whether the undiscounted cash flows estimated to be generated by an asset (asset group) are less than the carrying amount of the asset (asset group). If fair value of the asset (asset group) is less than the carrying value, the impairment loss is based on the excess of the carrying amount of the asset (asset group) over its fair value. The adjusted carrying value of the related asset (asset group) establishes the new cost basis and accumulated depreciation and amortization are reset to zero. For an asset (disposal group) held for sale, impairment losses are measured at the lower of the carrying amount of the asset (disposal group) or the fair value of the asset (disposal group). For an asset (asset group) to be disposed of other than by sale, impairment losses are measured based on the excess of the carrying amount of the asset (asset group) over its respective fair value. Fair value for purposes of measuring impairments is determined by discounted future cash flows, appraisals or other methods.

Goodwill

Goodwill represents the excess of the purchase price over the fair value of net tangible and identifiable intangible assets acquired. In fiscal 2008, the Company recorded goodwill in connection with its acquisition of Saifun (see Note 8). Goodwill amounts are not amortized, but rather are tested for impairment at least annually, or more frequently if there are indicators of impairment present, at a level within the Company referred to as the reporting unit. The Company performs its annual goodwill impairment analysis as of the last day of the fourth quarter of each fiscal year. Testing for goodwill impairment requires a two step approach. Under step one, the Company evaluates whether fair value of a reporting unit is less than the carrying value, including goodwill. The fair value of the reporting unit is determined by generally accepted valuation techniques and may consider both the income and market approach, adjusted by an estimated control premium. The income approach requires estimates of future operating results and cash flows of Spansion discounted using estimated discount rates. The market approach involves estimating enterprise value using guideline public company multiples. If step one of the analysis demonstrates that the fair value of the reporting unit is below the carrying value, the Company will proceed to step two. Under step two, the Company estimates the fair values of all identifiable assets and liabilities of the reporting unit using the income, market or replacement cost approaches as appropriate. The excess of the fair value of the reporting unit over the fair values of the identified assets and liabilities is the implied fair value of goodwill. If the implied fair value of goodwill is lower than the carrying value of the goodwill, an impairment charge is recorded to reduce the carrying value to fair value.

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Notes to Consolidated Financial Statements—(Continued)

Foreign Currency Translation/Transactions

The functional currency of the Company and its foreign subsidiaries, except for Spansion Japan (which was deconsolidated on March 3, 2009) is the U.S. dollar. Adjustments resulting from remeasuring the foreign currency denominated transactions and balances of these subsidiaries, other than Spansion Japan, into U.S. dollars are included in operations. Adjustments resulting from translating the foreign currency financial statements of Spansion Japan (up to March 3, 2009), for which the functional currency is the Japanese yen, into the U.S. dollar reporting currency were included as a separate component of accumulated other comprehensive income) through the date of deconsolidation. Gains or losses resulting from transactions denominated in currencies other than the functional currencies of the Company and its subsidiaries are recorded in cost of sales. The aggregate exchange gain included in determining net loss was \$0.5 million, \$1.6 million and \$6.2 million for the years ended December 27, 2009, December 28, 2008 and December 30, 2007, respectively.

Research and Development Expenses

The Company expenses research and development costs in the period in which such costs are incurred.

Advertising Expenses

Advertising costs are expensed as incurred. Advertising expenses for the years ended December 27, 2009, December 28, 2008, and December 30, 2007 were approximately \$1.0 million, \$3.4 million, and \$7.4 million, respectively.

Net Loss per Share

Basic and diluted net loss per share is computed based on the weighted-average number of common shares outstanding during the period.

For the years ended December 27, 2009, December 28, 2008 and December 30, 2007, the Company excluded from its diluted per share computation approximately 19.2 million, 24.8 million and 18.4 million potential common shares issuable upon exercise of outstanding stock options, upon vesting of outstanding restricted stock units and upon conversion of the Exchangeable Senior Subordinated Debentures, as their inclusion would be anti-dilutive.

Income Taxes

In determining taxable income for financial statement reporting purposes, the Company must make estimates and judgments. These estimates and judgments are applied in the calculation of specific tax liabilities and in the determination of the recoverability of deferred tax assets, which arise from temporary differences between the recognition of assets and liabilities for tax and financial statement reporting purposes.

The Company must assess the likelihood that it will be able to recover its deferred tax assets. Unless recovery of these deferred tax assets is considered more likely than not, the Company must increase its provision for taxes by recording a charge to income tax expense, in the form of a valuation allowance against those deferred tax assets for which it believes it is more likely than not they will be realized. The Company considers past performance, future expected taxable income and prudent and feasible tax planning strategies in determining the need for a valuation allowance.

In addition, the calculation of the Company's tax liabilities involves the application of complex tax rules and the potential for future adjustments by the relevant tax jurisdiction. If the Company's estimates of these taxes are greater or less than actual results, an additional tax benefit or charge will result.

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Notes to Consolidated Financial Statements—(Continued)

Accumulated Other Comprehensive Income

The following are the components of accumulated other comprehensive income:

	December 27, 2009	December 28, 2008
	(in thousands)	
Unrecognized pension expense, net of tax benefits of (\$6,337) in 2008	\$—	\$(33,012)
Cumulative translation adjustment	—	107,891
Unrealized gain on Saifun auction rate securities . . .	195	—
Total accumulated other comprehensive income	\$195	\$ 74,879

Stock-Based Compensation

The Company estimates the fair value of its stock-based awards to employees using Black-Scholes-Merton option pricing model. Stock-based compensation expense recognized during a period is based on the higher of the grant-date fair value of the portion of share-based payment awards that is ultimately expected to vest, or actually vests, during the period. Compensation expense for all share-based payment awards is recognized using the straight-line attribution method reduced for estimated forfeitures. Prior to the fourth quarter of 2007, the Company did not have sufficient historical forfeiture experience related to its own stock-based awards and, therefore, estimated its forfeitures based on the average of its own fiscal 2006 forfeiture rate and AMD's historical forfeiture rates, as the Company believed these forfeiture rates to be the most indicative of its own expected forfeiture rate. Beginning the fourth quarter of fiscal 2007, the Company estimated forfeitures based on a four year weighted average of its own forfeiture rates.

Fair Value

The Company measures its financial assets at fair value. Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. In measuring fair value, the Company uses a hierarchy that maximizes the use of observable inputs and minimizes the use of unobservable inputs by requiring that the most observable inputs be used when available. Observable inputs are inputs that market participants would use in pricing the asset or liability developed based on market data obtained from sources independent of the Company. Unobservable inputs are inputs that reflect the Company's best estimate of what market participants would use in pricing the asset or liability developed based on the best information available in the circumstances. The hierarchy is broken down into three levels based on the reliability of inputs as follows:

Level 1—Inputs are unadjusted, quoted prices in active markets for identical assets or liabilities at the measurement date. Examples of the assets carried at Level 1 fair value generally are equities listed in active markets and investments in publicly traded mutual funds with quoted market prices.

Level 2—Inputs (other than quoted prices included in Level 1) are either directly or indirectly observable for the asset or liability through correlation with market data at the measurement date and for the duration of the asset/liability's anticipated life.

Level 3—Inputs reflect management's best estimate of what market participants would use in pricing the asset or liability at the measurement date. Consideration is given to the risk inherent in the valuation technique and the risk inherent in the inputs to the model.

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Notes to Consolidated Financial Statements—(Continued)

The availability of observable inputs can vary and is affected by a wide variety of factors, including, for example, the type of a security, whether the security is new and not yet established in the marketplace, and other characteristics particular to a transaction. To the extent that valuation is based on models or inputs that are less observable or unobservable in the market, the determination of fair value requires more judgment. Accordingly, the degree of judgment exercised by the Company in determining fair value is greatest for instruments categorized in Level 3. When observable prices are not available, the Company either uses implied pricing from similar instruments or valuation models based on net present value of estimated future cash flows, adjusted as appropriate for liquidity, credit, market and/or other risk factors. Fair value is a market-based measure considered from the perspective of a market participant rather than an entity-specific measure. Therefore, even when market assumptions are not readily available, the Company's own assumptions are set to reflect those it believes market participants would use in pricing the asset or liability at the measurement date. Please see Note 19 for fair value disclosure related to the Company's marketable securities.

Adoption of New Accounting Pronouncements

Accounting for Convertible Debt Instruments

In May 2008, the FASB issued revised guidance on accounting for convertible debt instruments that may be settled in cash upon conversion. This revised guidance provides that issuers of such instruments should separately account for the liability and equity components of those instruments by allocating the proceeds at the date of issuance of the instrument between the liability component and the embedded conversion option (the equity component) by first determining the carrying amount of the liability. To calculate this amount, the Company must determine the fair value of the liability excluding the embedded conversion option and by giving effect to other substantive features, such as put and call options, and then allocating the excess of the initial proceeds to the embedded conversion options. The excess of the principal amount of the liability component over its carrying amount is reported as a debt discount and is amortized as interest expense over the expected life of the instrument.

The Company retrospectively adopted the new guidance, which impacted the Company's accounting for its Exchangeable Senior Subordinated Debentures, issued in June 2006. The Exchangeable Senior Subordinated Debentures bear interest at 2.25 percent per annum, payable on June 15 and December 15 of each year beginning December 15, 2006 until the maturity date of June 15, 2016. As a result of adopting the new guidance, the Company recorded an equity component of \$117.4 million, representing the fair value of the embedded conversion options, and a liability component of \$89.6 million, representing the fair value of the debentures as of the date issuance. The net carrying amount of the liability component of the Exchangeable Senior Subordinated Debentures was included in liabilities subject to compromise at December 27, 2009 and current portion of long-term debt and obligations under capital leases at December 28, 2008.

The table below shows the components of the net carrying amount of the liability portion of the Exchangeable Senior Subordinated Debentures at December 27, 2009 and at December 28, 2008:

	<u>December 27, 2009</u>	<u>December 28, 2008</u>
	(in thousands)	
Principal amount of liability component	\$207,000	\$207,000
Unamortized discount	(97,767)	(99,241)
Net carrying amount	<u>\$109,233</u>	<u>\$107,759</u>

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Notes to Consolidated Financial Statements—(Continued)

As a result of adopting the new guidance, the Company recorded additional non-cash interest expense resulting from recognizing the accretion of the discounted carrying value of the Exchangeable Senior Subordinated Debentures to their face amount as interest expense over the term of the debt, which matures on June 15, 2016. However, pursuant to the accounting guidance for entities in reorganization, interest expense recorded subsequent to March 1, 2009 only includes amounts expected to be actually paid during the Creditor Protection Proceedings, and as a result amortization of the discounted carrying value ceased.

The following represents the components of interest expense and effective interest rates relating to the Exchangeable Senior Subordinated Debentures:

	<u>Year Ended December 27, 2009</u>	<u>Year Ended December 28, 2008</u>	<u>Year Ended December 30, 2007</u>
		(in thousands)	
Contractual interest expense	\$ 806	\$ 4,539	\$ 4,709
Amortization of discount	1,475	7,903	6,867
Total interest expense	<u>\$2,281</u>	<u>\$12,442</u>	<u>\$11,576</u>
Effective interest rate	12.23%	12.23%	12.23%

For the years ended December 28, 2008 and December 30, 2007, the effect of retrospectively applying the new guidance was an increase in non-cash interest expense of \$7.7 million and \$6.7 million, respectively, which represents accretion of the unamortized debt discount associated with the Exchangeable Senior Subordinated Debentures, partially offset by lower amortization of capitalized issuance costs as a portion of these were allocated to equity.

The following tables show the financial statement line items affected by retrospective application of the new guidance on the affected financial statement line items for the periods indicated:

	Consolidated Statements of Operations (in thousands, except per share amounts) Years Ended					
	<u>December 28, 2008</u>			<u>December 30, 2007</u>		
	<u>As Adjusted</u>	<u>As reported</u>	<u>Effect of Change</u>	<u>As Adjusted</u>	<u>As reported</u>	<u>Effect of Change</u>
Interest expense	\$ (105,536)	\$ (97,843)	\$(7,693)	\$ (87,460)	\$ (80,803)	\$(6,657)
Other income (expense), net	(100,336)	(92,643)	(7,693)	(54,865)	(48,208)	(6,657)
Loss before income taxes	(2,372,147)	(2,364,454)	(7,693)	(295,297)	(288,640)	(6,657)
Net loss	(2,435,012)	(2,427,319)	(7,693)	(270,153)	(263,496)	(6,657)
Net loss per share:						
Basic and diluted	\$ (15.69)	\$ (15.64)	\$ (0.05)	\$ (2.00)	\$ (1.95)	\$ (0.05)
Shares used in per share calculation:						
Basic and diluted	155,162	155,162		134,924	134,924	

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Notes to Consolidated Financial Statements—(Continued)

Consolidated Balance Sheet (in thousands)			
December 28, 2008			
	As Adjusted	As Previously Reported	Effect of Change
Other assets ⁽¹⁾	\$ 101,489	\$ 103,061	\$ (1,572)
Total assets	1,773,872	1,775,444	(1,572)
Current portion of long-term debt ⁽²⁾	1,087,786	1,187,027	(99,241)
Stockholders' deficit:			
Additional paid-in capital ⁽³⁾	2,471,902	2,356,629	115,273
Accumulated deficit ⁽⁴⁾	(2,997,589)	(2,979,985)	(17,604)
Total stockholders' deficit	(450,647)	(548,316)	97,669
Total liabilities and stockholders' deficit	1,773,872	1,775,444	(1,572)

- (1) The effect of the change on other assets includes the allocation of a portion of the capitalized issuance costs to the equity component of \$2.1 million, offset by lower amortization of these costs from the issuance date of \$0.5 million.
- (2) The effect of the change on current portion of long-term debt includes the discount determined as of the original issuance date of the Exchangeable Senior Subordinated Debentures of \$117.4 million, less amortization of the discount from the issuance date of \$18.1 million.
- (3) The effect of the change on paid-in capital includes the discount determined as of the original issuance date of the Exchangeable Senior Subordinated Debentures of \$117.4 million, less the portion of the original debt issuance costs allocated to the equity component of \$2.1 million.
- (4) The effect of the change on accumulated deficit includes the amortization of the discount from the issuance date of \$18.1 million, less adjustment to the amortization of debt issuance costs of \$0.5 million.

5. Reorganization Items

Entities in reorganization are required to disclose separately items such as professional fees directly related to the process of reorganizing the Debtors under the Chapter 11 Cases, realized gains and losses, provisions for losses, and interest income resulting from the reorganization and restructuring of the business. The Debtors' reorganization items for the year ended December 27, 2009, consist of the following:

	Year Ended December 27, 2009 (in thousands)
Professional fees directly related to reorganization ⁽¹⁾	\$ 37,086
Provision for expected allowed claims ⁽²⁾	354,915
Interest income	(618)
Total reorganization items	\$391,383

- (1) Includes fees associated with the advisors to the Debtors.
- (2) Represents the Company's estimate of the expected allowed claims related primarily to rejection or repudiation of executory contracts, leases and the effects of approved settlements.

The U.S. Bankruptcy Court established September 4, 2009, as the bar date for filing proofs of claim against the U.S. Debtors' estates. Under certain limited circumstances, some creditors will be permitted to file claims

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Notes to Consolidated Financial Statements—(Continued)

after the applicable bar dates. Accordingly, it is possible that not all potential claims were filed as of the filing of this Form 10-K. The differences between amounts recorded by the Debtors and proofs of claim filed by the creditors are investigated and resolved through the claims reconciliation process. Because of the number of creditors and claims, the claims reconciliation process may take considerable time to complete and the Company expects it will continue to receive claims after its emergence from Chapter 11.

Notwithstanding the foregoing, the Company has recognized certain charges related to allowed claims or expected allowed claims. The U.S. Bankruptcy Court will ultimately determine liability amounts that will be allowed for claims. As claims are resolved, or where better information becomes available and is evaluated, the Company will make adjustments to the liabilities recorded on its interim or annual financial statements as appropriate. Any such adjustments could be material to the Company's financial position or results of operations in any given period.

Cash paid for professional fees was approximately \$33.5 million for the year ended December 27, 2009.

6. Liabilities Subject to Compromise

Liabilities subject to compromise refers to both secured and unsecured obligations that will be accounted for under a plan of reorganization. Generally, actions to enforce or otherwise effect payment of pre-petition liabilities are stayed. The U.S. Bankruptcy Court has, however, approved payment of certain of the Debtors pre-petition obligations, including among other things employee wages, salaries and benefits and certain business-related payments such as claims of transport companies and certain contractors in satisfaction of liens or other interests. The Debtors have been paying and continue to pay undisputed post-petition claims in the ordinary course of business.

Pre-petition liabilities that are subject to compromise are reported at the amounts expected to be allowed, even if they may be settled for lesser amounts. These liabilities represent the estimated amount expected to be allowed on known or potential claims to be resolved through the Chapter 11 Cases, and remain subject to future adjustments arising from negotiated settlements, actions of the U.S. Bankruptcy Court, rejection of executory contracts and unexpired leases, the determination as to the value of collateral securing the claims, proofs of claim, or other events. Liabilities subject to compromise also includes certain items that may be assumed under the plan of reorganization, and as such, may be subsequently reclassified to liabilities not subject to compromise. Ordinarily, secured debt is not considered to be a liability subject to compromise. However, the Company has included most of its secured debt as a liability subject to compromise as management believes that there remains uncertainty as to whether such debts are adequately secured.

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Notes to Consolidated Financial Statements—(Continued)

The Debtors may reject pre-petition executory contracts and unexpired leases with respect to the Debtors' operations, with the approval of the U.S. Bankruptcy Court. During the first and second quarter of 2009, the Company submitted various motions to the U.S. Bankruptcy Court for rejection of certain equipment leases with future principal and interest payments of approximately \$54.5 million through 2011, all of which has been approved by the U.S. Bankruptcy Court as of August 10, 2009. Damages resulting from rejection of executory contracts and unexpired leases are generally treated as general unsecured claims and are classified as liabilities subject to compromise. Holders of pre-petition claims were required to file proofs of claims by September 4, 2009. Differences between liability amounts estimated by the Debtors and claims filed by creditors have been investigated and, if necessary, the U.S. Bankruptcy Court will make a final determination of the allowable claim. The determination of how liabilities will ultimately be treated cannot be made until the U.S. Bankruptcy Court approves the Company's plan of reorganization. Accordingly, the ultimate amount or treatment of such liabilities is not determinable at this time. Liabilities subject to compromise consist of the following:

	December 27, 2009
	(in thousands)
Accounts payable and accrued liabilities	\$ 639,897
Accounts payable to related parties	109,941
Accrued compensation and benefits	16,138
Long-term debt	968,266
Capital lease obligations	18,861
Other long-term liabilities	3,166
Total liabilities subject to compromise	<u>\$1,756,269</u>

7. Impairment of Long-Lived Assets including Acquisition-Related Intangible Assets

The Company recorded an impairment charge of approximately \$12.5 million for the year ended December 27, 2009 primarily due to impairment on its equity investment and loan to an investee.

In 2008, a variety of external economic factors contributed to the decline in the Company's operating performance, such as persistent oversupply in the Flash memory industry compounded by the global economic recession. The 2008 global economic downturn caused a sharp decline in worldwide demand for consumer goods and, consequently, a sharp reduction in demand for the Company's products, which resulted in significant declines in the Company's manufacturing capacity utilization as the Company reduced production. In addition to these economic factors, the ramp-up of SP1 was delayed during the second and third quarters of 2008 due to slower than expected customer qualifications and the steep decline in the Japanese wireless market. These factors, among others, caused the Company's stock price to drop significantly throughout 2008, resulting in a sustained market capitalization well below book value.

Given these indicators of impairment, the Company believed its long-lived assets including its acquisition-related intangible assets, may not be recoverable at December 28, 2008. Because of the vertical nature of the Company's manufacturing operations and its multiple foundry, assembly and test facilities, the cash flows of the Company's assets and liabilities below the entity level are not largely independent of one another and, therefore, the Company evaluated recoverability using a single, entity-wide asset group that included all of the Company's long-lived assets and related operating assets and liabilities. The Company prepared an undiscounted cash flow analysis and determined that the carrying value of the asset group exceeded the undiscounted cash flows expected from the use and eventual disposition of the asset group and, therefore, the asset group was not recoverable. Accordingly, the Company estimated the fair value of the asset group based on a probability

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weighted cash flow forecast, discounted based on the Company's weighted-average cost of capital. The total carrying value of the asset group exceeded management's estimated fair value indicating an impairment loss. The excess carrying value of the asset group over its fair value was allocated on a pro rata basis to the individual assets in the asset group to adjust and reduce their carrying values. In this process, the adjusted carrying value of an individual asset was not reduced to below its individual fair value, if determinable. The adjusted carrying values of the assets established a new cost basis for the assets and depreciation and amortization was reset to zero.

As a result of this impairment analysis, the Company recorded a total long-lived asset impairment charge of \$1,578 million for the fourth quarter of fiscal 2008, reflecting the low demand for semiconductor equipment worldwide, coupled with excess supply.

8. Acquisition of Saifun Semiconductors Ltd. (Saifun)

On March 18, 2008, the Company completed the acquisition of all of the outstanding shares of Saifun Semiconductor Ltd., a publicly held company headquartered in Netanya, Israel (the Acquisition). The Company included the results of operations of Saifun beginning March 18, 2008 in its consolidated statements of operations.

Saifun is a provider of intellectual property (IP) solutions for the non-volatile memory (NVM) market and licenses its IP to semiconductor manufacturers that use this technology to develop and manufacture a variety of non-volatile Flash memory based products including products that integrate Flash memory with logic as well as dedicated standalone Flash memory devices.

The Company paid a consideration of approximately 22.7 million shares of the Company's Class A common stock for all outstanding Saifun common shares. In addition, the Company also assumed all of the outstanding Saifun stock options which were converted into options to purchase approximately 4.3 million shares of the Company's Class A common stock. The total purchase price for Saifun was \$119.3 million and is comprised of:

	<u>in millions</u>
22.7 million shares of Class A common stock	\$ 98.4
Fair value of vested options issued	10.5
Acquisition related transaction costs	10.4
Total purchase price	<u>\$119.3</u>

The fair value of the Company's common stock issued reflected the average of the closing prices on the NASDAQ for the two trading days prior to and following December 13, 2007, the date that the number of issuable shares became fixed. The fair value of the Company's options and restricted stock units was determined using Black-Scholes-Merton option pricing model. The vested portion of these options and restricted stock units was valued at approximately \$10.5 million. The unvested portion was valued at approximately \$6.3 million and is being amortized ratably over the future service periods.

The Company also reviewed its existing contracts with Saifun as of the date of the acquisition to determine if such contracts included terms that were favorable or unfavorable when compared to pricing for current market transactions for the same or similar terms which will result in a settlement gain or loss as of this date. A settlement gain or loss is measured as the lesser of (a) the amount by which the agreements were favorable or

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unfavorable to market terms or (b) the stated settlement provisions of the agreements available to the Company. The Company concluded that the terms in the pre-existing relationship were neither favorable nor unfavorable and, accordingly, the Company recognized no gain or loss relating to its existing contracts with Saifun as of the acquisition date.

Purchase Price Allocation

The total purchase price was allocated to Saifun's tangible and identifiable intangible assets and liabilities based on their estimated fair values as of March 18, 2008, as set forth below:

	in millions
Net tangible assets acquired	\$ 24.2
Existing technology	42.8
In process research and development	10.8
Non-competition agreement	1.3
Customer relationships	18.0
Trade name	1.4
Goodwill	20.8
Total purchase price	\$119.3

Management performed an analysis to determine the fair value of each tangible and identifiable intangible asset, including the portion of the purchase price attributable to acquired in-process research and development projects.

In-Process Research and Development

Of the total purchase price, approximately \$10.8 million was allocated to in-process research and development (IPR&D) and was expensed in the first quarter of fiscal 2008. Projects that qualify as IPR&D represent those that have not reached technological feasibility, which have no alternative future use at the time of the acquisition. These projects included development of top injection technology and Nitride-Read-Only-Memory (NROM) design projects.

The value assigned to IPR&D was determined using a discounted cash flow methodology, specifically an excess earnings approach, which estimates value based upon the discounted value of future cash flows expected to be generated by the in-process projects, net of all contributory asset returns. The approach includes consideration of the importance of each project to the overall development plan, estimating costs to develop the purchased IPR&D into commercially viable products.

The discount rates applied to individual projects were selected after consideration of the overall estimated weighted average cost of capital and the discount rates applied to the valuation of the other assets acquired. Such weighted average cost of capital was adjusted to reflect the difficulties and uncertainties in completing each project and thereby achieving technological feasibility, the percentage of completion of each project, anticipated market acceptance and penetration, market growth rates and risks related to the impact of potential changes in future target markets. In developing the estimated fair values, the Company used a discount rate of 20.8 percent.

Other Acquisition Related Intangible Assets

The Company determined the fair value of other acquisition related intangible assets using income approaches and based the rates on the most current financial forecast available as of March 18, 2008. The

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discount rates used to discount net cash flows to their present values was 17.8 percent. The Company determined these discount rates after consideration of the Company's estimated weighted average cost of capital. The Company recorded the excess of the purchase price over the net tangible and identifiable intangible assets as goodwill.

The estimated useful lives for the acquired intangible assets were based upon Saifun's historical experience with technology life cycles, product roadmaps and Spansion's intended future use of the intangible assets. The Company amortized acquisition related intangible assets using the straight-line method over their then estimated useful lives.

Existing technology represents Saifun's core technology, Nitride-Read-Only-Memory (NROM) intellectual property. NROM technology doubles the storage of a Flash memory cell by creating two distinct and independent charges in a single cell. This technology asset was estimated to have a useful life of six years. As a result of the impairment review during the fourth quarter of 2008, the Company recorded an impairment of \$35.6 million, reducing the carrying value of NROM intellectual property to \$1.6 million. At December 27, 2009, net carrying value of this intellectual property was approximately \$1.3 million, to be amortized ratably over the next three years.

Customer relationships represent Saifun's existing contractual relationships as of March 18, 2008, which were estimated to have an average useful life of seven years. As a result of the impairment review during the fourth quarter of 2008, the Company recorded an impairment of \$16.0 million, reducing the carrying value of Saifun customer relationships to zero.

Trade names were estimated to have an average useful life of four years. As a result of the impairment review during the fourth quarter of 2008, the Company recorded an impairment of \$1.1 million, reducing the carrying value of trade names to zero.

Non-competition agreements represent agreements with four key employees and were estimated to have a useful life of two years. As a result of the impairment review during the fourth quarter of 2008, the Company recorded an impairment of \$0.8 million, reducing the carrying value of the non-competition agreements to zero.

In the fourth quarter of 2008, pursuant to its accounting policy, the Company performed its annual analysis to determine whether its goodwill was impaired. To perform step 1 of the analysis, the Company used a combination of the income approach and the guideline public company market approach, equally weighted. The income approach utilized the same forecast and other assumptions used to assess recoverability and measure impairment of its long-lived assets other than goodwill. The step 1 analysis indicated the fair value of its single reporting unit to be significantly below its carrying value and the step 2 analysis indicated the implied fair value of its goodwill was zero. As a result, the Company recognized an impairment charge on its remaining goodwill of \$20.8 million, reducing its goodwill balance to zero.

Income Taxes

Deferred tax liabilities of \$8.6 million were recorded when the acquisition occurred. At the end of fiscal 2008, the remaining deferred tax liabilities of \$6.6 million were recorded as an income tax benefit because most of the acquisition related intangible assets were impaired.

Pro Forma Information

The following unaudited pro forma consolidated financial information gives effect to the Saifun acquisition as if it had occurred at the beginning of the fiscal periods presented. The pro forma consolidated financial

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information is presented for informational purposes only and is not indicative of the results of operations that would have been achieved if the acquisition had taken place at the beginning of each of the periods presented nor is it indicative of future financial performance.

	Year Ended	
	December 28, 2008	December 30, 2007
	(in thousands, except per share amounts)	
Total net sales	\$ 2,284,333	\$2,518,756
Net loss	\$(2,432,868)	\$ (294,158)
Basic and diluted net loss per share	\$ (15.21)	\$ (1.87)

9. Stock-Based Compensation

Spansion Stock-Based Incentive Compensation Plans

Plan Descriptions

2005 Equity Incentive Plan

In fiscal 2005, the Company's stockholders approved the Spansion Inc. 2005 Equity Incentive Plan (the 2005 Plan) under which 9,500,000 shares of Common Stock had been reserved and made available for issuance in the form of equity awards, including incentive and nonqualified stock options and restricted stock unit (RSU) awards.

Grants may be awarded to an officer or employee, a consultant or advisor, or a non-employee director of the Company or its subsidiaries; provided that, the incentive stock options granted under the 2005 Plan could be granted only to employees of the Company or its subsidiaries. The exercise price of each incentive stock option was required to be not less than 100 percent of the fair market value of the Company's Common Stock on the date of grant (not less than 110 percent if such stock option is granted to a person who has more than 10 percent of the total voting power of all classes of the Company's stock).

The maximum term of any stock option granted under the 2005 Plan is 10 years from the date of grant and the exercise price of each option is determined under the applicable terms and conditions as approved by the Compensation Committee.

On May 29, 2007, the Company's stockholders approved the Spansion Inc. 2007 Equity Incentive Plan (the 2007 Plan) (see below); at that time, the Company discontinued granting awards under the 2005 Plan.

2007 Equity Incentive Plan

On May 29, 2007, the Company's stockholders approved the Spansion Inc. 2007 Equity Incentive Plan (the 2007 Plan). Grants may be awarded to an officer or employee, a consultant or advisor, or a non-employee director of the Company or its subsidiaries. Stock options and RSU awards issued under the 2007 Plan generally vest 25 percent after one year, and the balance vest ratably on a quarterly basis over the following three years and expire if not exercised by the seventh anniversary of the grant date. RSU awards have no exercise price or expiration date. Shares that are subject to or underlie awards that expired or for any reason were cancelled, terminated or forfeited, or failed to vest after implementation of the 2007 Plan are again available for grant under the 2007 Plan.

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The maximum number of shares of the Company's Common Stock that may be issued or transferred pursuant to awards under the 2007 Plan equals the sum of: (1) 6,675,000 shares, plus (2) the number of shares that were available for award grant purposes under the 2005 Plan as of May 29, 2007, plus (3) the number of any shares subject to stock options and restricted stock or RSU awards granted under the 2005 Plan and outstanding as of May 29, 2007 which expire, or for any reason are cancelled or terminated, after that date without being exercised or paid. As of May 29, 2007, approximately 920,523 shares were available for award grant purposes under the 2005 Plan, and approximately 7,091,852 shares were subject to options and restricted stock or RSU awards then outstanding under the 2005 Plan.

Saifun Semiconductors Ltd. Employee Share Option Plans (Saifun Option Plans)

The Company assumed all outstanding option shares under the Saifun 1997, 2001 and 2003 plans (Saifun Option Plans), which were converted into options to purchase shares of the Company's Common Stock. Each option share assumed continues to have, and be subject to, the same terms and conditions of such options immediately prior to the acquisition date.

For options granted under the Saifun Option Plans, the exercise period may not exceed 10 years from the date of grant. Options are granted with an exercise price equal to the market price of the stock at the date of grant or at a lower price as may be determined by the compensation committee of the board of directors at the date of grant. Prior to the Acquisition, option awards vested over a period of up to five years; restricted stock unit and option awards granted after the Acquisition will vest over a period of up to four years. Awards granted under any of the Saifun Option Plans from the inception of the Saifun 2003 Plan through the Acquisition that are forfeited or cancelled revert to the Saifun 2003 Plan reserve. Future awards granted under the Saifun 2003 Plan that are forfeited or cancelled will also revert to that plan's reserve.

Shares Available to Grant

The numbers of shares of Common Stock available for grant under the 2007 Plan and the Saifun 2003 Plan are as follows:

Number of shares available for grant:	
Amount reserved for grant ⁽¹⁾	12,126,424
Shares available under the 2005 Plan ⁽²⁾	1,825,444
Stock options granted through December 27, 2009, net of cancelled stock options	(4,270,447)
RSU awards granted through December 27, 2009, net of cancelled RSU awards	<u>(1,170,649)</u>
Shares available for grant under the 2007 Plan and Saifun 2003 Plan	<u>8,510,772</u>

(1) The 12,126,424 shares reserved for grant under the 2007 Plan consisted of 6,675,000 shares approved for grant under the 2007 Plan and 920,523 shares transferred from the 2005 Plan and 4,530,901 shares from Saifun Option Plans.

(2) The shares available under the 2005 Plan were related to stock options or RSU awards, which were cancelled subsequent to the adoption of the 2007 Plan and thus available for grant under the 2007 Plan.

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Valuation and Expense Information

The following table sets forth the total recorded stock-based compensation expense for the Spansion Stock-Based Incentive Compensation Plans (Spansion Plans and Saifun Option Plans) by financial statement caption, resulting from the Company's stock options and RSU awards for the years ended December 27, 2009, December 28, 2008 and December 30, 2007:

	<u>Year Ended December 27, 2009</u>	<u>Year Ended December 28, 2008</u>	<u>Year Ended December 30, 2007</u>
		(in thousands)	
Cost of sales	\$ 2,718	\$ 5,340	\$ 4,539
Research and development	3,684	6,424	4,335
Sales, general and administrative	6,016	9,816	7,263
Stock-based compensation expense ⁽¹⁾	<u>\$12,418</u>	<u>\$21,580</u>	<u>\$16,137</u>

(1) There is no income tax benefit relating to stock option expenses because all of the Company's U.S. deferred tax assets, net of U.S. deferred tax liabilities, continue to be subjected to a full valuation allowance.

No stock options were granted in the year ended December 27, 2009 under the Spansion and Saifun Equity Plans. The weighted average fair value of the Company's stock options granted in the year ended December 28, 2008 under Spansion Plans and Saifun Option Plans was \$1.89 per share. The fair value of each stock option was estimated at the date of grant using a Black-Scholes-Merton option pricing model, with the following assumptions for grants:

	<u>Weighted Average for the Year Ended December 28, 2008</u>	<u>Weighted Average for the Year Ended December 30, 2007</u>
Expected volatility	48.66%	48.50%
Risk-free interest rate	2.67%	4.73%
Expected term (in years)	5.05	4.61
Dividend yield	0%	0%

The Company's dividend yield is zero because the Company has never paid dividends and does not have plans to do so over the expected life of the stock options. The expected volatility is based on the Company's historical volatility since its initial public offering in December 2005 and the volatilities of the Company's competitors who are in the same industry sector with similar characteristics (guideline companies) given the limited historical realized volatility data of the Company. The risk-free interest rate is based on the yield from U.S. Treasury zero-coupon bond with a remaining term equal to the expected stock option life. The expected term is based on the "simplified method" for developing the estimate of the expected life of a "plain vanilla" stock option except for options granted to Saifun on the date of acquisition for which expected term was based on historical option exercise activity. Under this approach, the expected term is presumed to be the mid-point between the average vesting date and the end of the contractual term. The Company estimates forfeitures based on its historical forfeiture rates and those estimates are revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates in order to derive the Company's best estimate of awards ultimately expected to vest.

As of December 27, 2009, the total unrecognized compensation cost related to unvested stock options and RSU awards was approximately \$13.0 million after reduction for estimated forfeitures, and such stock options and RSU awards will generally vest ratably through 2012.

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Notes to Consolidated Financial Statements—(Continued)

Stock Option and Restricted Stock Unit Activity

The following table summarizes stock option activities and related information under Spansion Plans and Saifun Option Plans for the period presented:

	<u>Number of Shares</u>	<u>Weighted- Average Exercise Price</u>	<u>Weighted- Average Remaining Contractual Life (in years)</u>	<u>Aggregate Intrinsic Value (in thousands)</u>
Options:				
Outstanding as of December 30, 2007	3,536,968	\$ 11.53		
Granted ⁽¹⁾	6,806,119	\$ 1.48		
Cancelled	(537,156)	\$ 6.32		
Exercised	<u>(26,534)</u>	\$ 0.08		
Outstanding as of December 28, 2008	9,779,397	\$ 4.85	6.42	\$675
Granted	—			
Cancelled	(3,084,126)	\$ 3.95		
Exercised	<u>(197,951)</u>	\$ 0.03		
Outstanding as of December 27, 2009 ⁽²⁾	<u>6,497,320</u>	\$ 5.42	4.77	\$137
Exercisable as of December 27, 2009 ⁽³⁾	<u>4,033,620</u>	\$ 7.03	3.86	\$ 57

- (1) The number of options granted in year ended December 28, 2008 includes 4,364,829 shares of options granted in March 2008 under Saifun Option Plans in accordance with the provisions of the Acquisition Agreement.
- (2) The number of options outstanding as of December 27, 2009 includes 349,090 shares of options held by Spansion Japan employees.
- (3) The number of options exercisable as of December 27, 2009 includes 284,473 shares of options held by Spansion Japan employees.

The aggregate intrinsic value in the preceding table represents the total pretax intrinsic value, based on the Company's closing stock price of \$0.10 as of December 24, 2009, which was the last trading day prior to December 27, 2009, which would have been received by the stock option holders had all stock option holders exercised their stock options as of that date.

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The following table summarizes RSU award activities and related information for the period presented:

	<u>Number of Shares</u>	<u>Weighted- Average Grant-date Fair Value</u>
Restricted Stock Units:		
Unvested as of December 30, 2007	3,153,426	\$11.33
Granted	1,916,180	\$ 2.93
Cancelled	(400,909)	\$ 8.74
Vested	<u>(1,368,132)</u>	\$11.51
Unvested as of December 28, 2008	3,300,565	\$ 6.69
Granted	—	\$ —
Cancelled	(1,316,748)	\$ 6.33
Vested	<u>(1,026,884)</u>	\$ 8.35
Unvested as of December 27, 2009 ⁽¹⁾	<u>956,933</u>	\$ 5.41

(1) The number of RSUs unvested as of December 27, 2009 includes 73,358 shares held by Spancion Japan employees.

10. Related Party Transactions

Spancion Japan

As discussed in Note 3, in the section entitled, “Basis of Presentation and Going Concern,” the Company does not include Spancion Japan in its consolidated financial statements after March 3, 2009, and since that date, has accounted for its interest in Spancion Japan as a cost basis investment. Due to its 100 percent non-controlling ownership interest in Spancion Japan, the Company is treating Spancion Japan as a related party for financial reporting purposes. The significant arrangements between the Company and Spancion Japan historically have been as follows:

- A foundry agreement whereby Spancion Japan manufactured wafers for the Company based on a five-quarter rolling production forecast. In exchange, the Company reimbursed Spancion Japan for its manufacturing cost, plus a surcharge of six percent. Upon a motion by the Company, this foundry agreement was rejected by the U.S. Bankruptcy Court on November 19, 2009. For the period following October 27, 2009, the Company has continued to purchase wafers and sort services from Spancion Japan pursuant to purchase orders. For more information on this foundry agreement and related matters, see Note 2.
- A supply agreement whereby the Company purchases foundry products from Spancion Japan that Spancion Japan purchases from Fujitsu.
- A distribution agreement whereby Spancion Japan sells products that it purchases from the Company to Fujitsu. The transfer price between the companies is set such that Spancion Japan earns an approximately five percent gross profit margin on such sales.
- A loan agreement whereby Spancion Japan has borrowed \$67.5 million from the Company. Interest accrues at a rate of TIBOR plus one percent and is payable annually. The Spancion Japan Proceedings constituted an event of default, which has resulted in the outstanding balance becoming immediately due and payable.

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- A research and development agreement whereby Spansion Japan provides research, design and development services to the Company related to the design of the Company's products. In exchange the Company reimburses Spansion Japan for costs that Spansion Japan incurs in providing such services, plus a surcharge of six percent.

At March 3, 2009, the Company's receivables from Spansion Japan on account of sales under the distribution agreement, miscellaneous intercompany charges, loan and interest thereon exceeded its payable to Spansion Japan. Upon deconsolidation, and based on its expectations regarding the potential resolution of the Spansion Japan Proceedings and the Chapter 11 Cases, the Company reserved the amounts due from Spansion Japan, including the entire \$67.5 million due pursuant to the loan agreement, to an amount equal to the amount due to Spansion Japan at March 3, 2009. The associated charge for that reserve is included in the gain on deconsolidation.

See Note 2 for a description of the current business relationship with Spansion Japan and the status of negotiations relating to the foundry agreement.

The following tables present the significant related party transactions and account balances between the Company and Spansion Japan for the year ended December 27, 2009.

	March 3, 2009 to December 27, 2009
	(in thousands)
Sales to Spansion Japan	\$ 301,037
Wafer purchases from Spansion Japan	\$ 257,404
Payment to Spansion Japan for services (R&D)	\$ 15,933
	December 27, 2009
	(in thousands)
Trade accounts receivable from Spansion Japan	\$ 366,602
Trade accounts payable to Spansion Japan	\$(331,151)
Deferred income on shipments to Spansion Japan	\$ (12,029)

Fujitsu

Fujitsu Limited (Fujitsu) is a holder of greater than 10 percent of the Company's voting securities as of December 27, 2009. Prior to the fourth quarter of fiscal 2008, the Company relied on Fujitsu as a sole distributor of its products and, historically, has entered into significant arrangements and transactions with Fujitsu through Spansion Japan. As a result of the deconsolidation of Spansion Japan discussed above, the Company did not have significant transactions with Fujitsu for the period from March 3, 2009 to December 27, 2009.

Spansion Japan received certain administrative services from Fujitsu. The charges for these services were negotiated annually between Spansion Japan and Fujitsu based on expected requirements and the estimated future costs of the services to be provided. Fujitsu provided foundry services to Spansion Japan since consummation of the sale of two Spansion Japan's wafer fabrication facilities located in Aizu-Wakamatsu, Japan (the JV1/JV2 Transaction) on April 2, 2007. Spansion LLC purchases non-Flash memory die from Fujitsu, for inclusion in some of the Company's multichip package (MCP) Flash memory solutions.

The Company entered into a five-year License Settlement Agreement with Fujitsu on September 11, 2008, which resulted in the payment to Fujitsu by the Company of quarterly royalties based on certain percentage

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thresholds of actual sales of the Company's Flash memory products (minus sales by Fujitsu to Spansion Japan for wafers which are incorporated into Spansion's Flash memory products and to be sold by Spansion Japan to Fujitsu under the existing Distribution Agreement), subject to a maximum amount of \$10 million over the five-year term. These royalty payments are recognized in cost of sales in the Company's statements of operations.

The following tables present the significant related party transactions and account balances between the Company and Fujitsu:

	Year Ended December 27, 2009	Year Ended December 28, 2008	Year Ended December 30, 2007
		(in thousands)	
Net sales to Fujitsu	\$50,208	\$651,230	\$873,560
Inventory and cost of sales:			
Royalties to Fujitsu	\$ —	\$ 3,184	\$ 3,184
Other purchases of goods and services from Fujitsu and rental expense to Fujitsu	11,617	79,138	75,515
Subcontract manufacturing and commercial die purchases from Fujitsu	569	8,771	22,110
Wafer purchases, processing and sort services from Fujitsu ⁽¹⁾	6,096	244,317	188,133
Net gain recognized on sale of assets to Fujitsu on April 2, 2007 ⁽¹⁾	(3,075)	(34,543)	(30,191)
Reimbursement on costs of employees seconded to Fujitsu ⁽¹⁾	(2,633)	(29,057)	(21,040)
Pension curtailment loss ⁽¹⁾	—	—	2,010
Equipment rental income from Fujitsu ⁽¹⁾	(186)	(3,692)	(5,848)
Administrative services income from Fujitsu ⁽¹⁾	(68)	(1,311)	(1,138)
Inventory and costs of sales	<u>\$12,320</u>	<u>\$266,807</u>	<u>\$232,735</u>
Service fees to Fujitsu:			
Cost of sales	\$ —	\$ 28	\$ 739
Research and development	—	10	950
Sales, general and administrative	110	610	1,079
Service fees to Fujitsu	<u>\$ 110</u>	<u>\$ 648</u>	<u>\$ 2,768</u>

(1) These amounts relate to the JV1/JV2 Transaction.

The account balances between the Company and Fujitsu as of December 27, 2009 were not material. The following table presents the account balances between the Company and Fujitsu as of December 28, 2008:

	December 28, 2008
	(in thousands)
Trade accounts receivable from Fujitsu	\$111,448
Other receivables from Fujitsu	6,127
Accounts payable to Fujitsu	74,592
Royalties payable to Fujitsu	1,617
Accrued liabilities to Fujitsu	3,475

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Notes to Consolidated Financial Statements—(Continued)

AMD

On March 18, 2008, as a result of issuance of the Company's Class A common stock to complete the acquisition of Saifun, AMD's voting interest in the Company declined below 10 percent. As of that date, AMD was no longer deemed to be a related party as its percentage of voting interest in the Company fell below 10 percent and it does not have representation on the Company's board of directors.

The Company incurred royalty expenses under certain licenses to AMD until November 2008. The Company also received some administrative services from AMD. The following table presents the related party transactions between the Company and AMD:

	December 30, 2007
	(in thousands)
Cost of sales:	
Royalties to AMD	\$ 3,184
Service fees to AMD ⁽¹⁾ :	
Cost of sales	\$(1,395)
Research and development	205
Sales, general and administrative	476
Total service fees to AMD	\$ (714)

(1) Service fees to AMD were net of reimbursements from AMD, primarily for facility related charges.

The transactions with AMD for the period from December 31, 2007 to March 18, 2008, the closing date of the Saifun acquisition were not material.

11. Concentration of Credit Risk

Financial instruments that potentially subject the Company to concentrations of credit risk consist primarily of auction rate securities and trade receivables. Pursuant to the Creditor Protection Proceedings, the Company has placed all its cash in demand deposit accounts at U.S. banks. The Company also holds its investments in auction rate securities with high quality credit financial institutions and, by policy, has limited the amount of credit exposure with any one financial institution.

Concentration of credit risk with respect to trade receivables exists because the Company sells a significant portion of its products directly to Spansion Japan who in turn resells to Fujitsu. Prior to the deconsolidation of Spansion Japan, the Company sold a significant portion of its products directly to Fujitsu. Trade accounts receivable from Spansion Japan comprised approximately 83 percent of the total consolidated trade accounts receivable balance as of December 27, 2009. However, the Company does not believe the receivable balances from Spansion Japan subject the Company to significant additional credit risk due to the Company's full provision for its net receivable amount from Spansion Japan. The Company does not require collateral or other security from its customers.

12. Financial Instruments

Available-for-sale securities held by the Company consisted of investments in money market funds of \$20 thousand and \$74.1 million as of December 27, 2009 and December 28, 2008, respectively. Amortized cost of these investments approximated fair value. The money market funds are available on demand.

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As of December 27, 2009 and December 28, 2008, the Company had approximately \$100.3 million and \$94.0 million, respectively, of investments in ARS classified as trading securities. Substantially all of these ARS are backed by pools of student loans guaranteed by the FFELP, and all were rated AAA/Aaa. The Company recorded approximately \$21.1 million of gain arising from the valuation of ARS during fiscal 2009 and approximately \$27.9 million of other than temporary impairment on such securities during fiscal 2008 (prior to their being reclassified from available-for-sale to trading securities), which were largely offset by the change in fair value and recording of the put option (see Note 19). The ARS investments are collateral for the UBS loan and have varying maturities typically ranging from 24 to 39 years.

Fair Value of Other Financial Instruments not Carried at Fair Value

Substantially all of the Company's long-term debt is traded in the market and the fair value in the table below is based on the quoted market price as of December 27, 2009 and December 28, 2008. The fair value of the Company's long-term debt that is not traded in the market is estimated by considering the Company's credit rating, the interest rates and the terms of the debt. The carrying amounts and estimated fair values of the Company's debt instruments are as follows:

	December 27, 2009		December 28, 2008	
	Carrying Amount	Estimated Fair Value	Carrying Amount	Estimated Fair Value
	(in thousands)			
Total debt obligations	\$1,051,276	\$1,065,109	\$1,459,429	\$414,830

The fair value of the Company's accounts receivable and accounts payable not subject to compromise approximates their carrying value. The Company is not able to estimate the fair value of its accounts payable subject to compromise as a result of the Chapter 11 proceedings.

13. Warranties and Indemnities

The Company generally offers a one-year limited warranty for its Flash memory products.

Changes in the Company's liability for product warranty during the years ended December 27, 2009, December 28, 2008, and December 30, 2007 are as follows:

	December 27, 2009	December 28, 2008	December 30, 2007
		(in thousands)	
Balance, beginning of fiscal year	\$ 1,489	\$ 1,305	\$ 1,350
Provision for warranties issued	4,243	12,552	4,593
Settlements	(881)	(12,258)	(2,065)
Changes in liability for pre-existing warranties during the period, including expirations	(1,010)	(110)	(2,573)
Balance, end of fiscal year	\$ 3,841	\$ 1,489	\$ 1,305

In addition to product warranties, the Company, from time to time in its normal course of business, indemnifies other parties with whom it enters into contractual relationships, including customers, directors, lessors and parties to other transactions with the Company, with respect to certain matters. The Company agrees

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to hold the other party harmless against specified losses, such as those arising from a breach of representations or covenants, third-party infringement claims or other claims made against certain parties. It is not possible to determine the maximum potential amount of liability under these indemnification obligations due to the limited history of indemnification claims and the unique facts and circumstances that are likely to be involved in each particular claim and indemnification provision.

14. Debt and Capital Lease Obligations

The Company's debt and capital lease obligations consist of:

	<u>December 27, 2009</u>	<u>December 28, 2008</u>
	(in thousands)	
Debt obligations:		
Senior Notes	\$ 233,440	\$ 233,025
Spancion Penang Loan	—	138
Exchangeable Senior Subordinated Debentures	109,233	107,759
Spancion Japan 2007 Credit Facility	—	287,963
Senior Secured Floating Rate Notes	625,593	625,617
Senior Secured Revolving Credit Facility	—	34,000
Spancion Japan 2007 Revolving Credit Facility	—	71,687
UBS Loan Secured by Auction Rate Securities	64,150	—
Obligations under capital leases	<u>18,861</u>	<u>82,593</u>
Total debt and capital lease obligations	1,051,277	1,442,782
Less: amount subject to compromise	<u>987,127</u>	<u>—</u>
Total debt and capital lease obligations not subject to compromise	<u>64,150</u>	<u>1,442,782</u>
Less: current portion	<u>64,150</u>	<u>1,232,536</u>
Long-term debt and capital lease obligations	<u>\$ —</u>	<u>\$ 210,246</u>

Under terms of the Senior Notes, Exchangeable Senior Subordinated Debentures and Senior Secured Floating Rate Notes, the Chapter 11 Cases constituted an event of default and all amounts outstanding under these facilities were accelerated and became immediately due and payable.

Spancion Japan Obligations

As discussed in Note 3, effective March 3, 2009, the Company no longer consolidates Spancion Japan. Accordingly, the obligations related to the Spancion Japan 2007 Credit Facility and the Spancion Japan 2007 Revolving Credit Facility are not included in the Company's consolidated balance sheet at December 27, 2009.

Impact of Chapter 11 Cases

As discussed in Note 3, the accounting guidance for entities in reorganization provides that interest should be reported only to the extent that it will be paid during the proceeding or that it is probable that it will be an allowed priority, secured, or unsecured claim. On that basis, the Company ceased accruing interest as of the Petition Date on its Senior Notes and Exchangeable Senior Subordinated Debentures. In addition, accretion of the

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discounted carrying value of the Exchangeable Senior Subordinated Debenture ceased on March 1, 2009. For the year ended December 27, 2009, the Company's reported interest expense was approximately \$51.0 million while contractual interest was approximately \$89.4 million.

Senior Notes

On December 21, 2005, the Company completed an offering of \$250 million aggregate principal amount of 11.25% Senior Notes due 2016. The Senior Notes were issued at 90.302 percent of face value, resulting in net proceeds to the Company of approximately \$218.1 million after deducting the initial purchasers' discount and estimated offering expenses. The Senior Notes are general unsecured senior obligations of Spansion LLC and will rank equal in right of payment with any of the Company's existing and future senior debt. Interest is payable on January 15 and July 15 of each year beginning July 15, 2006 until the maturity date of January 15, 2016.

Certain events may result in the accelerated maturity of the Senior Notes, including a default in any interest, principal or premium amount payment; a merger, consolidation or sale of all or substantially all of the Company's property; a breach of covenants in the Senior Notes or the Senior Note indenture; a default in certain debts; or if a court enters certain orders or decrees under any bankruptcy law. Upon occurrence of one of these events, the principal of and accrued interest on all of the Senior Notes, as the case may be, may become immediately due and payable. If the Company incurs any judgment for the payment of money in an aggregate amount in excess of \$50 million or takes certain voluntary actions in connection to insolvency, all amounts on the Senior Notes shall become due and payable immediately.

On January 16, 2009, the Company delayed making the interest payment on the Senior Notes, which was due January 15, 2009. Under the Senior Note indenture, a failure to make an interest payment is subject to a 30-day cure period. The Company did not make this interest payment within the 30-day cure period, which expired on February 14, 2009. The failure to make the interest payment within the cure period is an event of default under the Senior Notes Indenture, which resulted in all obligations under the Senior Notes Indenture (approximately \$266 million as of the date of the event of default) automatically becoming due and payable.

Exchangeable Senior Subordinated Debentures

In June 2006, Spansion LLC, the wholly owned operating subsidiary of the Company, issued \$207.0 million of aggregate principal amount of 2.25% Exchangeable Senior Subordinated Debentures due 2016. The Debentures are general unsecured senior subordinated obligations and rank subordinate in right of payment to all of the Company's senior indebtedness, including the Senior Notes, and senior in right of payment to all of the Company's subordinated indebtedness. The Debentures bear interest at 2.25 percent per annum. Interest is payable on June 15 and December 15 of each year beginning December 15, 2006 until the maturity date of June 15, 2016.

The Debentures were not exchangeable prior to January 6, 2007. On January 6, 2007, the Debentures became exchangeable for shares of the Company's Common Stock, cash or a combination of cash and shares of such Class A common stock, at the Company's option. Full conversion of the Debentures into shares would result in an initial exchange rate of 56.7621 shares of Class A common stock per debenture representing an initial exchange price of approximately \$17.6174 per share of Spansion Inc. Common Stock. The debentures have not been exchanged for Class A common stock as of December 27, 2009.

The Company, at any time prior to maturity may make an irrevocable election to satisfy the exchange obligation in cash up to 100 percent of the principal amount of the debentures exchanged, with any remaining

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amount to be satisfied in shares of Common Stock or a combination of cash and shares of Common Stock at the above exchange ratio. In the event that the Company makes this irrevocable election, debenture holders may exchange their debentures only under the following circumstances:

- during any fiscal quarter after our fiscal quarter ending April 1, 2007 (and only during such fiscal quarter) if the sale price of Spansion Inc. Common Stock, for at least 20 trading days during the period of 30 consecutive trading days ending on the last trading day of the previous fiscal quarter, is greater than or equal to 120 percent of the conversion price per share of the Spansion Inc. Common Stock;
- subject to certain exceptions, during the five business day period following any five consecutive trading day period in which the trading price of the debentures for each day of such period was less than 98 percent of the product of the sale price of the Spansion Inc. Common Stock and the number of shares issuable upon exchange of \$1,000 principal amount of the debentures; or
- Upon the occurrence of specified corporate events that constitute a fundamental change of the Company under certain circumstances. The holders of the Debentures will have the ability to require the Company to repurchase the Debentures in whole or in part for cash in the event of a fundamental change of the Company. In such case, the repurchase price would be 100 percent of the principal amount of the Debentures plus any accrued and unpaid interest.

Spansion Japan 2007 Credit Facility

On March 30, 2007, Spansion Japan entered into a committed senior facility agreement with certain Japanese financial institutions that provided Spansion Japan with a 48.4 billion yen senior secured term loan facility. Amounts borrowed under this facility accrued interest at a rate equal to the three-month Tokyo Interbank Offered Rate (TIBOR), at the time of the drawdown, which would reset quarterly, plus a margin of two percent per annum.

In March 2008, Spansion Japan borrowed an additional amount of 5.6 billion yen (approximately \$61.8 million as of December 28, 2008) under this facility. The Company began to make quarterly principal installments in the second quarter of fiscal 2008. The facility bore interest at approximately 2.9 percent.

The Spansion Japan Proceedings constituted an event of default, causing acceleration of the outstanding obligations under the Spansion Japan 2007 Credit Facility. As the acceleration of the outstanding obligations was caused by the Spansion Japan Proceedings, which accord Spansion Japan protection from its creditors while it continues its restructuring efforts, payments under the Spansion Japan 2007 Credit Facility were stayed.

As discussed in Note 3, effective March 3, 2009, the Company no longer consolidates Spansion Japan. Accordingly, the obligations related to the Spansion Japan 2007 Credit Facility are not included in the Company's consolidated balance sheet at December 27, 2009.

Senior Secured Floating Rate Notes

In May 2007, Spansion LLC, the wholly owned operating company subsidiary of the Company, issued \$625.0 million aggregate principal amount of the Senior Secured Floating Rate Notes due 2013. Interest on the Notes accrues at a rate per annum, reset quarterly, equal to the 3-month LIBOR plus 3.125 percent. Interest is payable on March 1, June 1, September 1 and December 1 of each year beginning September 1, 2007 until the maturity date of June 1, 2013. As of December 27, 2009, the Notes bear interest at approximately 3.38 percent.

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In connection with the issuance of the Notes, the Company, Spansion LLC and Spansion Technology Inc. executed a pledge and security agreement pursuant to which and subject to exceptions specified therein, the Notes are secured by a first priority lien on all of Spansion LLC's inventory (excluding returned inventory), equipment and real property and proceeds thereof (excluding receivables or proceeds arising from sales of inventory in the ordinary course of business), presently owned or acquired in the future by Spansion LLC and by each of the current and any future guarantors. The Notes are also secured by a second-priority lien that is junior to the liens securing Spansion LLC's Senior Secured Revolving Credit Facility agreement, as amended, on substantially all other real and personal property and proceeds thereof, including receivables or proceeds arising from sales of inventory in the ordinary course of business presently owned or acquired in the future by the Company and by each of the current and any future guarantors. The Notes are further secured by certain deeds of trust related to real property owned by Spansion LLC in California and Texas. As of December 27, 2009, the Notes are collateralized by a first priority lien on the Company's inventory and property, plant and equipment with a total net book value of approximately \$375.6 million, and by a second priority lien on its accounts receivables with a net book value of approximately \$130.6 million.

Upon the occurrence of a change of control of Spansion LLC, holders of the Notes may require Spansion LLC to repurchase the Notes for cash equal to 101 percent of the aggregate principal amount to be repurchased plus accrued and unpaid interest. Beginning June 1, 2008, Spansion LLC may redeem all or any portion of the Notes, at any time or from time to time at redemption prices specified therein.

The Spansion Japan Proceedings constituted an event of default, causing acceleration of the outstanding obligations under the Notes.

Senior Secured Revolving Credit Facility

As of December 28, 2008, the total outstanding balance under this credit facility was \$34 million. This amount accrued interest at approximately 5.7 percent as of December 28, 2008. The Spansion Japan Proceedings constituted an event of default, causing acceleration of the outstanding obligations under the Senior Secured Revolving Credit Facility. On February 20, 2009, the Company repaid the balance outstanding under this credit facility in full.

Spansion Japan 2007 Revolving Credit Facility

On December 28, 2007, Spansion Japan entered into the Spansion Japan 2007 Revolving Credit Facility agreement with the several financial institutions that provided for a revolving credit facility in the aggregate principal amount of up to 14.0 billion yen. Amounts borrowed under this credit facility accrued interest at a rate equal to TIBOR, at the specified date preceding or at the time of the borrowing in accordance with the terms of this credit facility, plus a margin of 0.50 percent per annum (or approximately \$124.7 million using the exchange rate at December 29, 2007).

As of December 28, 2008, the outstanding balance under this facility was 6.5 billion yen (approximately \$71.7 million). This amount accrued interest using the exchange rate at approximately 1.0 percent as of December 28, 2008. The Spansion Japan Proceedings constituted an event of default, causing the automatic acceleration of the outstanding obligations under the Spansion Japan 2007 Revolving Credit Facility.

As discussed in Note 3, effective March 3, 2009, the Company no longer consolidates Spansion Japan. Accordingly, the obligations related to the Spansion Japan 2007 Revolving Credit Facility are not included in the Company's consolidated balance sheet at December 27, 2009.

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Union Bank of Switzerland (UBS AG) Loan Secured by Auction Rate Securities

On December 29, 2008, the Company entered into a Credit Line Agreement (the UBS Credit Line) with UBS that provides up to an aggregate amount of up to \$85.0 million in the form of an uncommitted revolving line of credit, which is secured by the auction rate securities currently held by the Company. Variable rate advances under the UBS Credit Line will bear interest at a variable rate equal to the lesser of: (a) LIBOR, plus a percentage rate between 1.250 percent to 2.750 percent, depending on the amount of the advance, and (b) the then applicable weighted average rate of interest or dividend rate paid to the Company by the issuer of the auction rate securities, and in each case, such interest rate is subject to adjustment at any time and from time to time to reflect changes in the composition of the auction rate securities.

The UBS Credit Line also provides, among other things, that:

- UBS may demand full or partial payment of the credit line at its sole discretion and without cause at any time; and
- UBS may at any time in its sole discretion terminate and cancel the credit line;

provided, however, that UBS is required to provide to the Company alternative financing on substantially similar terms, unless the demand right was exercised as a result of certain specified events (including the Chapter 11 Cases) or the customer relationship between UBS and the Company is terminated for cause by UBS.

As of December 27, 2009, the amount outstanding under the UBS Loan was approximately \$64.1 million. This amount bears interest at approximately 1.2 percent as of December 27, 2009.

Obligations under Capital Leases

As of December 27, 2009 and December 28, 2008, the Company had aggregate outstanding capital lease obligations, net of imputed interest, of approximately \$18.9 million and \$82.6 million, respectively. The aggregate weighted average interest rate for the capital lease obligations was 10.6 percent as of December 27, 2009. Obligations under these lease agreements are collateralized by the assets leased and are payable through 2011. Leased assets consist principally of machinery and equipment.

As of December 27, 2009, the gross amount of assets recorded under capital leases and accumulated amortization thereon was approximately \$67.4 million and \$63.5 million, respectively. As of December 28, 2008, the gross amount of assets recorded under capital leases and accumulated amortization thereon was approximately \$180.0 million and \$78.0 million, respectively. In addition the Company recognized an impairment loss of approximately \$61.9 million on the leased assets in the fourth quarter of fiscal 2008 as a result of the impairment review of the long-lived assets. These leased assets are included in the related property, plant and equipment category. Amortization of assets recorded under capital leases is included in depreciation expense.

During the first and second quarter of 2009, the Company submitted various motions to the U.S. Bankruptcy Court seeking rejection of certain equipment leases with future principal and interest payments of approximately \$54.5 million through 2011, all of which have been approved by the Court as of August 10, 2009. Accordingly, such amount was written off and recorded in reorganization items.

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Debt and Future Minimum Capital Lease Payments

For each of the next five years and beyond, the scheduled maturities of the Company's debt and capital lease obligations outstanding as of December 27, 2009, as impacted by the Creditor Protection Proceedings, are as follows:

	<u>Other Debt</u>	<u>Capital Leases</u>
	(in thousands)	
Fiscal 2010	\$1,146,150	\$13,115
Fiscal 2011	—	6,947
Fiscal 2012	—	—
Fiscal 2013	—	—
Fiscal 2014	—	—
Fiscal 2015 and beyond	—	—
	<u>1,146,150</u>	<u>20,062</u>
Less amount representing interest	—	(1,202)
Less amount representing discount, net of premium	(113,734)	—
Total	<u>\$1,032,416</u>	<u>\$18,860</u>

15. Commitments

Certain equipment and facilities are leased under various operating leases expiring at various dates through the year 2013. Certain of these leases contain renewal options. Rental expense was approximately \$11.9 million, \$23.8 million, and \$33.3 million for the years ended December 27, 2009, December 28, 2008 and December 30, 2007, respectively.

In connection with the Chapter 11 Cases, the Company has filed motions with the U.S. Bankruptcy Court to reject substantially all of its pre-petition contractual obligations, including executory contracts and unexpired leases. As of the end of fiscal 2009, the U.S. Bankruptcy Court had approved all such motions. For certain of the rejected contracts, the Company has renegotiated or it is in the process of renegotiating the terms of the arrangements with the counterparties. The table below summarizes our future minimum lease payments under operating leases as of the end of fiscal 2009, as impacted by the Chapter 11 Cases and subject to change based on ongoing negotiations with counterparties.

	<u>Operating Leases</u>
	(in thousands)
Fiscal 2010	\$4,344
Fiscal 2011	2,004
Fiscal 2012	205
Fiscal 2013	—
Fiscal 2014	—
2015 & beyond	—
	<u>\$6,553</u>

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16. Interest Income and Other Income, Net

	<u>Year Ended December 27, 2009</u>	<u>Year Ended December 28, 2008</u>	<u>Year Ended December 30, 2007</u>
		(in thousands)	
Other than temporary impairment on marketable securities, net of gain on put	\$ —	\$(3,270)	\$ —
Loss on early extinguishment of debt	—	—	(3,435)
Interest income	4,016	8,162	28,410
Gain on sale of land	—	—	7,477
Other income, net	22	308	143
	<u>\$4,038</u>	<u>\$ 5,200</u>	<u>\$32,595</u>

17. Income Taxes

The provision (benefit) for income taxes consists of:

	<u>Year Ended December 27, 2009</u>	<u>Year Ended December 28, 2008</u>	<u>Year Ended December 30, 2007</u>
		(in thousands)	
Current:			
U.S. federal	\$(118)	\$ (350)	\$ —
U.S. state and local	14	57	237
Foreign national and local	701	6,992	(3,179)
	<u>597</u>	<u>6,699</u>	<u>(2,942)</u>
Deferred:			
U.S. federal	—	—	—
U.S. state and local	—	—	—
Foreign national and local	—	56,166	(22,202)
	<u>—</u>	<u>56,166</u>	<u>(22,202)</u>
Expense/(benefit) for income taxes	<u>\$ 597</u>	<u>\$62,865</u>	<u>\$(25,144)</u>

Pre-tax profit (loss) from foreign operations was \$4.5 million, (\$1.2) billion and \$27 million, for the fiscal years ended December 27, 2009, December 28, 2008, and December 30, 2007, respectively.

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Deferred income taxes reflect the net tax effects of tax carryovers and temporary differences between the carrying amounts of assets and liabilities for financial reporting and the balances for income tax purposes. Significant components of the Company's deferred tax assets and liabilities as of December 27, 2009 and December 28, 2008 are as follows:

	<u>December 27, 2009</u>	<u>December 28, 2008</u>
Deferred tax assets:		
Net operating loss carryovers	\$ 411,811	\$ 241,648
Deferred distributor income	34,296	9,260
Inventory valuation	43,225	143,668
Accrued expenses not currently deductible	1,936	8,118
Pension benefits	—	16,721
Property, plant and equipment	258,733	685,882
Capital leases	—	10,875
Federal and state tax credit carryovers	19,021	11,736
Stock-based compensation	4,392	4,579
Intangible	—	607
Unrealized loss on investment	105,115	—
Other	<u>2,696</u>	<u>1,082</u>
Total deferred tax assets	881,225	1,134,176
Less: valuation allowance	<u>(761,786)</u>	<u>(1,071,790)</u>
	<u>119,439</u>	<u>62,386</u>
Deferred tax liabilities:		
Inventory valuation	(3,623)	(7,538)
Property, plant and equipment	(95,127)	(34,654)
Deduction not charged against book	—	(3,086)
Unrealized gain on investments—Japan & Suzhou	(16,755)	—
Capitalized interest	(2,122)	(14,205)
Unrealized gain on investments	(1,801)	(2,901)
Unrealized gain on balance sheet translation	(11)	—
Other	<u>—</u>	<u>(2)</u>
Total deferred tax liabilities	<u>(119,439)</u>	<u>(62,386)</u>
Net deferred tax assets	<u>\$ —</u>	<u>\$ —</u>

In 2009, the net valuation allowance decreased by \$310.0 million over that of 2008 primarily due to losses and tax credits of \$185.5 million generated in the U.S. and a decrease of \$457.9 million in the valuation allowance associated with the deferred tax assets of Spansion Japan. The \$457.9 million decrease was due to the deconsolidation of Spansion Japan from the Company's financial statements. In 2008, the net valuation allowance increased by \$798.1 million over that of 2007 primarily due to losses and tax credits of \$299.6 million generated in the U.S. and an increase of \$457.9 million in the valuation allowance associated with the deferred tax assets of Spansion Japan. The \$457.9 million increase was due to the Company's change in judgment about the realizability of Spansion Japan's deferred tax assets. In 2007, the net valuation allowance increased by \$116 million over that of 2006 primarily due to losses and tax credits generated in the U.S. There was also a decrease of \$21.0 million in the valuation allowance associated with the deferred tax assets of Spansion Japan due to the Company's change in judgment about the realizability of the Company's Japanese deferred tax assets. In all

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periods discussed above, management concluded that valuation allowances were necessary in certain jurisdictions due to the Company's historic net operating losses in those jurisdictions.

As of December 27, 2009, the Company had U.S. federal and state net operating loss carryforwards of approximately \$1.1 billion and \$155.6 million, respectively. These net operating losses, if not utilized, expire from 2017 to 2029. The Company also had U.S. federal and state tax credit carryovers of \$26.9 million which expire from 2019 to 2029. Included in this amount are California state tax credits of \$15.0 million which can be carried forward indefinitely.

If the Company conducts an offering of its common stock, it may experience an "ownership change" as defined in the Internal Revenue Code such that its ability to utilize its federal net operating loss carryforwards of approximately \$1.1 billion as of December 27, 2009 may be limited under certain provisions of the Internal Revenue Code. As a result, the Company may incur greater tax liabilities than it would in the absence of such a limitation and any incurred liabilities could materially adversely affect it.

The table below displays the reconciliation between statutory federal income taxes and the total provision (benefit) for income taxes.

	<u>Tax</u>	<u>Rate</u>
	<u>(in thousands, except for percentages)</u>	
Year ended December 27, 2009		
Statutory federal income tax expense	\$(179,712)	35.0%
State and federal taxes	(104)	0.0%
Foreign income at other than U.S. rates	(879)	0.2%
Valuation allowance	181,292	(35.3)%
Provision for income taxes	<u>\$ 597</u>	<u>(0.1)%</u>
Year ended December 28, 2008		
Statutory federal income tax expense	\$(827,559)	35.0%
State and federal taxes	(292)	0.1%
Foreign income at other than U.S. rates	(8,879)	0.4%
Valuation allowance	899,595	(38.1)%
Provision for income taxes	<u>\$ 62,865</u>	<u>(2.7)%</u>
Year ended December 30, 2007		
Statutory federal income tax expense	\$(101,024)	35.0%
State taxes	237	(0.1)%
Foreign income at other than U.S. rates	(13,594)	4.7%
Valuation allowance	89,237	(30.9)%
Benefit for income taxes	<u>\$ (25,144)</u>	<u>8.7%</u>

The Company's operations in China and Malaysia operated under tax holidays for the past three years. Certain of the tax holidays may be extended if specific conditions are met. The net impact of these tax holidays was to decrease the Company's net loss by approximately \$3.3 million in fiscal year 2009 (less than \$0.02 per share diluted), \$7.3 million in fiscal year 2008 (less than \$0.05 per share diluted), and \$4.1 million in fiscal year 2007 (less than \$0.03 per share, diluted).

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The Company has made no provision for U.S. income taxes on approximately \$210 million of cumulative undistributed earnings of certain foreign subsidiaries at December 27, 2009 because it is the Company's intention to reinvest such earnings permanently. If such earnings were distributed, the Company would incur additional income taxes of approximately \$12 million (subject to an adjustment for foreign tax credits and after utilizing NOL tax attributes). These additional income taxes may not result in income tax expense or a cash payment to the Internal Revenue Service, but may result in the utilization of deferred tax assets that are currently subject to a valuation allowance.

A reconciliation of the beginning and ending amount of unrecognized tax benefits is as follows:

	<u>Gross Unrecognized Tax Benefit</u> <u>(in thousands)</u>
Balance at January 1, 2007	\$2,688
Additions based on tax positions related to the current year ...	566
Additions for tax positions of prior years	122
Reductions for tax positions of prior years	(617)
Settlements	<u>(185)</u>
Balance at December 30, 2007	<u>\$2,574</u>
Additions based on tax positions related to the current year ...	\$1,132
Additions for tax positions of prior years	19
Reductions for tax positions of prior years	(763)
Settlements	<u>(149)</u>
Balance at December 28, 2008	<u>\$2,813</u>
Additions based on tax positions related to the current year ...	\$ 895
Additions for tax positions of prior years	344
Reductions for tax positions of prior years	(2)
Settlements	<u>—</u>
Balance at December 27, 2009	<u>\$4,050</u>

The Company recognizes interest and penalties related to unrecognized tax benefits in income tax expenses and such amounts were immaterial in fiscal 2009.

The Company is subject to taxation in the United States and various states and foreign jurisdictions. The Company's tax years 2005 through 2009 are subject to examination by the tax authorities. With few exceptions, the Company is not subject to U.S. federal, state, local or foreign examinations by tax authorities for years before 2005.

The Company does not believe that it is reasonably possible that the total amounts of unrecognized tax benefits will significantly increase or decrease within the next twelve months.

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18. Employee Benefit Plans

Spansion Japan Pension Plan

The Company ceased to recognize the Spansion Japan Pension Plan in its financial statements beginning March 3, 2009 (refer to Note 3 for further details relating to the deconsolidation of Spansion Japan).

The below tables summarizes the funded status of the plan and the related amounts recognized in the statement of financial position as of December 28, 2008:

	<u>December 28,</u> <u>2008</u> <u>(in thousands)</u>
Change in Projected Benefit Obligation	
Benefit obligation, beginning of year	\$ (88,047)
Service cost	(5,365)
Interest cost	(1,905)
Fujitsu contributions	(1,170)
Actuarial gain	1,181
Benefits paid	4,747
Curtailments	0
Foreign currency exchange rate changes	(21,391)
Benefit obligation, end of year	<u><u>\$(111,950)</u></u>
	<u>December 28,</u> <u>2008</u> <u>(in thousands)</u>
Change in Fair Value of Plan Assets	
Fair value of plan assets, beginning of year	\$ 90,073
Actual return on plan assets	(31,422)
Employer contribution	8,517
Fujitsu contributions	1,170
Benefits paid	(4,747)
Foreign currency exchange rate changes	22,663
Fair value of plan assets at end of year	<u><u>\$ 86,254</u></u>
	<u>December 28,</u> <u>2008</u> <u>(in thousands)</u>
Funded status	
Fair value of plan assets	\$ 86,254
Projected benefit obligation	(111,950)
Funded status of plan	<u><u>\$ (25,696)</u></u>
Amount recognized in the statement of financial position consist of:	
Noncurrent asset	\$ —
Noncurrent liability	25,696
	<u><u>\$ 25,696</u></u>

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	<u>December 28, 2008</u> (in thousands)
Amount recognized in accumulated other comprehensive income consist of:	
Net actuarial loss	\$35,003
Prior service cost	<u>7,553</u>
	<u>\$42,556</u>

The Spansion Japan Pension Plan accumulated benefit obligation was \$111.2 million as of December 28, 2008.

The projected benefit obligation, accumulated benefit obligation and fair value of plan assets for pension plans with a accumulated benefit obligation in excess of plan assets as of December 28, 2008 was as follows:

	<u>December 28, 2008</u> (in thousands)
Accumulated benefit obligation, end of year	
Projected benefit obligation, end of year	\$111,950
Accumulated benefit obligation, end of year	111,209
Fair value of plan assets, end of year	86,254

The below table summarizes the weighted average assumptions used for purposes of calculating the benefit obligations as of December 28, 2008:

	<u>December 28, 2008</u>
Discount rate	2.00%
Average rate of compensation increase	2.70%
Cash balance interest crediting rate	2.00%

The Company uses Japanese government bonds for setting the discount rate. The discount rate is determined by currently looking to Japanese government bond yields of approximately the same duration as plan obligations. Given that the plan covers substantially all active employees and the historically low turnover experience of covered participants, the Company currently looks to 20-year Japanese government bonds when setting the discount rate.

The below table summarizes the components of the net periodic pension expense:

	<u>December 28, 2008</u>	<u>December 30, 2007</u>
	<u>(in thousands)</u>	
Service cost	\$ 5,365	\$ 4,548
Interest cost	1,905	1,625
Expected return on plan assets	(4,643)	(3,610)
Amortization of prior service cost	620	601
Curtailment loss	—	2,010
Total net periodic pension expense	<u>\$ 3,247</u>	<u>\$ 5,174</u>

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Notes to Consolidated Financial Statements—(Continued)

	<u>December 28,</u> <u>2008</u> (in thousands)
Other Changes in Plan Assets and Benefit Obligations	
Recognized in Other Comprehensive Income:	
Curtailment effects	\$ —
Current year actuarial loss	34,693
Amortization of prior service credit/(cost)	(620)
	<u>\$34,073</u>
Total recognized in net periodic benefit cost and other comprehensive income	<u>\$37,320</u>

On April 2, 2007, the Company recorded a curtailment loss of approximately \$2.0 million relating to the Spansion Japan Pension Plan as a result of entering into the Employer Secondment and Transfer Agreement with Fujitsu under the JV1/JV2 transaction (see Note 10).

The below table summarizes the weighted average assumptions used for purposes of calculating the net periodic pension expense for the year ended:

	<u>December 28,</u> <u>2008</u>	<u>December 30,</u> <u>2007</u>
Discount rate	2.00%	2.00%
Expected long-term return on plan assets	4.40%	4.40%
Average rate of compensation increase	2.70%	2.70%
Cash balance interest crediting rate	2.00%	2.00%

The weighted-average asset allocations by asset category at December 28, 2008 is as follows:

<u>Asset Category</u>	<u>December 28,</u> <u>2008</u>
Equity securities	68%
Debt securities	29%
Cash	3%
Total	<u>100%</u>

Retirement Savings Plan

Effective June 30, 2003 and through January 11, 2007, the Company elected to participate in AMD's retirement saving program, commonly known as a 401(k) plan. Effective January 12, 2007, the Company adopted its own retirement savings plan, also known as a 401(k) plan. Under these plans, the Company's U.S. employees were able to contribute up to 89 percent of their pre-tax salary subject to Internal Revenue Service limits. The Company matched employee contributions at a rate of 50 cents on each dollar of the first six percent of participants' contributions, to a maximum of three percent of eligible compensation. Effective pay periods beginning February 23, 2009, the Company suspended matches to employee contributions as part of its cost reduction efforts. The Company's total matching contributions to these 401(k) plans, collectively, were approximately \$0.7 million, \$7.0 million, and \$6.3 million for the years ended December 27, 2009, December 28, 2008 and December 30, 2007, respectively.

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Notes to Consolidated Financial Statements—(Continued)

19. Fair Value

As of December 27, 2009, the fair value measurements of the Company's financial assets consisted of the following and which are categorized in the table below based upon the fair value hierarchy:

	December 27, 2009				December 28, 2008			
	Level 1	Level 2	Level 3	Total	Level 1	Level 2	Level 3	Total
	(in thousands)							
Money market funds	\$ 20	\$—	\$ —	\$ 20	\$74,118	\$—	\$ —	\$ 74,118
Auction rate securities	—	—	100,335	100,335	—	—	94,014	94,014
Put option	—	—	6,790	6,790	—	—	27,465	27,465
Total financial assets	\$ 20	\$—	\$107,125	\$107,145	\$74,118	\$—	\$121,479	\$195,597

The tables below present reconciliations for the Company's Level 3 financial assets measured at fair value on a recurring basis using significant unobservable inputs (Level 3) for the year ended December 27, 2009 and December 28, 2008, respectively.

	Year Ended December 27, 2009		Year Ended December 28, 2008	
	Auction rate securities	Put option	Auction rate securities	Put option
	(in thousands)			
Balance, beginning of period	\$ 94,014	\$ 27,465	\$ —	\$ —
Transfer in	—	—	121,900	27,465
Other than temporary impairment	—	—	(27,886)	—
Redemptions at par	(14,775)	—	—	—
Change in fair value	21,096	(20,675)	—	—
Balance, end of period	\$100,335	\$ 6,790	\$ 94,014	\$27,465

The changes in the fair values of the ARS and the put option are reflected as components of interest and other income (expense), net.

Auction Rate Securities and Put Option

At December 27, 2009, the Company held \$100.3 million of auction rate securities (ARS) valued at fair value (\$107.1 million at par). At December 27, 2009, the ARS are collateral for the loan from UBS AG (see Note 14). The ARS, for which the underlying assets are student loans, have credit ratings of AAA and Aaa (see Note 4). These ARS are classified within Level 3, given the failures in the auction markets subsequent to February 2008 and the lack of any correlation of these instruments to other observable market data. As a result, the Company's valuation of these ARS requires substantial judgment and estimation of factors that are not currently observable in the market due to the lack of trading in the securities.

In November 2008, the Company accepted an offer to participate in an auction rate securities settlement from UBS, its broker, providing the Company the right, but not the obligation, to sell to UBS up to 100 percent of its ARS at par. The Company's right to sell the ARS to UBS commencing June 30, 2010 through July 2, 2012 represents a put option for a payment equal to the par value of the ARS.

At December 27, 2009, there was insufficient observable ARS market information available to determine the fair value of the Company's ARS investments. As a result, the Company determined the fair value of its ARS

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investments at December 27, 2009 using a discounted cash flow (DCF) methodology. Significant inputs used in the DCF models included the credit quality of the instruments, the percentage and the types of guarantees, the probability of the auction succeeding or the security being called prior to final maturity, and an illiquidity discount factor. The key assumptions used in the DCF analysis to determine the fair values as of December 27, 2009 were the discount factor to be applied and the period over which the cash flows would be expected to occur. The discount factor used was based on the three-month LIBOR (0.25 percent as of December 27, 2009) adjusted by 85 basis points (bps) to reflect the current market conditions for instruments with similar credit quality at the date of the valuation. In addition, the discount factor was incrementally adjusted for an illiquidity discount of 125 bps to reflect the lack of an active market. The Company applied this discount factor over the expected life of the estimated cash flows of its ARS with projected interest income of 1.36 percent per annum. The projected interest income is based on a trailing 12-month average 91-day U.S. Treasury Bill Rate at 0.16 percent as of December 27, 2009 plus 120 bps, which is the average annual yield of the Company's ARS assuming auctions continue to fail.

As of December 28, 2008, the discount factor used was based on the three-month LIBOR (1.47% as of December 28, 2008) adjusted by 125 basis points (bps) to reflect the current market conditions for instruments with similar credit quality at the date of the valuation. In addition, the discount factor was incrementally adjusted for a liquidity discount of 125 bps to reflect the risk in the marketplace for these investments that has arisen due to the lack of an active market. The Company applied this discount factor over the expected life of the estimated cash flows of its ARS with projected interest income of 2.69 percent per annum. The projected interest income is based on a trailing 12-month average 91-day T-bill rate at 1.49 percent as of December 28, 2008 plus 120 bps, which is the average annual yield of the Company's ARS assuming auctions continue to fail.

The Company used a DCF model to estimate the fair value of its put option as of December 27, 2009. The valuation model is based on the following key assumptions:

- A discount rate based on the 6-month U.S. Treasury Bill Rate (0.17 percent as of December 27, 2009), adjusted by 50 bps to reflect the credit risk associated with the put option; and
- An expected life of 6 months.

The 2008 valuation model is based on the following key assumptions:

- A discount rate based on the two-year LIBOR (0.65%), adjusted by 209 basis points (bps) to reflect the credit risk associated with the UBS put option.
- An expected life of 18 months

The fair value of the put option of \$6.8 million and \$27.5 million at December 27, 2009 and December 28, 2008, respectively, is reflected as a component of prepaid and other current assets and other assets at the respective dates. The put option will continue to be measured at fair value utilizing Level 3 inputs until the earlier of its maturity or exercise.

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Notes to Consolidated Financial Statements—(Continued)

20. Restructuring Charges

During fiscal 2008 and 2009, as part of its ongoing strategic effort to reduce cost and conserve cash, the Company eliminated regular and contract positions globally, through planned consolidations, attrition, and a reduction in regular, contract and temporary workers in manufacturing, engineering, management and administrative support functions.

Restructuring charges for the year ended December 27, 2009 and December 28, 2008, were as follows:

	<u>Year Ended December 27, 2009</u>	<u>Year Ended December 28, 2008</u>
	(in thousands)	
Employee severance pay and benefits	\$28,880	\$10,986
Professional fees	4,999	—
Relocation of property, plant and equipment	3,705	132
Others	4,946	43
Cash settled restructuring charges	42,530	11,161
Depreciation and write-off of fixed assets	6,681	—
Gain recognized on sale of Suzhou plant	(4,669)	—
Others	2,310	—
Total restructuring charges	<u>\$46,852</u>	<u>\$11,161</u>

The following table summarizes the restructuring activity for the year ended December 27, 2009 and December 28, 2008, respectively:

	<u>Year Ended December 27, 2009</u>	<u>Year Ended December 28, 2008</u>
	(in thousands)	
Accrued restructuring balance, beginning of period	\$ 333	\$ —
Additional accruals for cash settled restructuring charges . . .	42,530	11,161
Adjustments	292	(29)
Cash payments	(31,201)	(10,799)
Accrued restructuring balance, end of period	<u>\$ 11,954</u>	<u>\$ 333</u>

The accrued restructuring balance was included in accrued compensation and benefits in the Company's condensed consolidated balance sheet as of December 27, 2009.

21. Debtor's Condensed Combined Financial Statements

Basis of Presentation

Condensed Combined Debtor-in-Possession Financial Statements

The financial statements contained within this note represent the condensed combined financial statements for the Debtors under Chapter 11 of the U.S. Bankruptcy Code only. The Company's other subsidiaries are treated as non-consolidated subsidiaries in these financial statements and as such their net income is included as "Equity income from non-Debtor subsidiaries" in the statement of operations and their net assets are included as

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Notes to Consolidated Financial Statements—(Continued)

“Investments in non-Debtor subsidiaries” in the balance sheet. The financial statements do not include the operating results and net assets of Spansion Japan subsequent to March 3, 2009, the date when the Company deconsolidated Spansion Japan (see Note 3). Amounts presented in the statement of operations and the statement of cash flows are for the period from the Petition Date (March 1, 2009) to December 27, 2009.

Intercompany Transactions

Intercompany transactions between Debtors have been eliminated in the financial statements contained in this note. Intercompany transactions between the Debtors and non-Debtor subsidiaries have not been eliminated in the Debtors’ financial statements. Therefore, reorganization items, net included in the statement of operations, liabilities subject to compromise included in the balance sheet, and reorganization items and payments for reorganization items, net included in the statement of cash flows are different than those presented in the Company’s condensed consolidated financial statements.

	December 27, 2009
	(in thousands)
Accounts payable and accrued liabilities	\$ 639,897
Accounts payable to related parties	109,941
Accounts payable to non debtor subsidiaries	123,913
Accrued compensation and benefits	16,137
Long term debt	968,267
Capital lease obligations	18,861
Other long term liabilities	3,166
Liabilities subject to compromise	\$1,880,182

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Notes to Consolidated Financial Statements—(Continued)

Condensed Combined Debtor-in-Possession Statement of Operations
(Non-filed entities excluded from combined Debtors group)
(in thousands)

	<u>Year Ended December 27, 2009</u>
Net sales	\$ 881,074
Net sales to related parties (Spansion Japan)	<u>278,982</u>
Total net sales	1,160,056
Cost of sales	886,384
Research and development	96,323
Sales, general and administrative	168,689
Restructuring charges	30,740
Asset impairment charges	<u>12,538</u>
Operating loss	(34,618)
Interest and other income, net	3,258
Interest expense	<u>(33,884)</u>
Loss before reorganization items, equity income and income taxes	(65,244)
Reorganization items	(388,932)
Gain on deconsolidation of subsidiary	30,100
Equity loss from non-Debtor subsidiaries	<u>(23,342)</u>
Loss before income taxes	(447,418)
Benefit for income taxes	<u>668</u>
Net loss	<u><u>\$ (446,750)</u></u>

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Notes to Consolidated Financial Statements—(Continued)

Condensed Combined Debtor-in-Possession Balance Sheet
(Non-filed entities excluded from combined Debtors group)
(in thousands)

	<u>December 27,</u> <u>2009</u>
Assets	
Current assets:	
Cash and cash equivalents	\$ 324,341
Auction rate securities	100,335
Trade accounts receivable	119,110
Trade accounts receivable from related parties	366,602
Trade accounts receivable from non-Debtor subsidiaries	36,670
Allowance for doubtful accounts	(54,908)
Inventories	121,722
Deferred income taxes	13,332
Prepaid expenses and other current assets	45,966
Total current assets	1,073,170
Property, plant and equipment, net	256,694
Loan to non-Debtor subsidiary (includes accrued interest of \$7,214)	50,164
Investment in non-Debtor subsidiaries	133,327
Other assets	35,118
Total assets	<u>\$1,548,473</u>
Liabilities and Stockholders' Deficit	
Liabilities not subject to compromise	
Current liabilities:	
Short term note	\$ 64,149
Accounts payable	34,285
Accounts payable to related parties	221,211
Accounts payable to non-Debtor subsidiaries	18,010
Accrued compensation and benefits	18,321
Other accrued liabilities	108,183
Income taxes payable	327
Deferred income on shipments	49,122
Total current liabilities	513,608
Deferred income taxes	13,405
Other long-term liabilities	4,682
Total liabilities not subject to compromise	531,695
Liabilities subject to compromise	<u>1,880,182</u>
Total liabilities	2,411,877
Stockholders' deficit	<u>(863,404)</u>
Total liabilities and stockholders' deficit	<u>\$1,548,473</u>

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Notes to Consolidated Financial Statements—(Continued)

Condensed Combined Debtor-in-Possession Statement of Cash Flows
(Non-filed entities excluded from combined Debtors group)
(in thousands)

	Year Ended December 29, 2009
Cash Flows from Operating Activities:	
Net cash provided by operating activities	\$292,474
Cash Flows from Investing Activities:	
Net cash provided by investing activities	8,285
Cash Flows from Financing Activities:	
Net cash used in financing activities	(27,283)
Net increase in cash and cash equivalents	273,476
Cash and cash equivalents at the beginning of period	50,865
Cash and cash equivalents at end of period	\$324,341

22. Segment Reporting

Prior to the acquisition of Saifun on March 18, 2008, the Company had historically operated and measured its results in one reportable segment which primarily related to the design, development, manufacture, marketing and sale of Flash memory products for the wireless and embedded applications in the integrated category of the Flash memory market. The acquisition (See Note 8 for further details) of Saifun, whose primary activity related to the licensing of intellectual property to semiconductor manufacturers, resulted in the Company operating and tracking Saifun's results as a separate operating segment. However, the Saifun operating segment is not considered to be a reportable segment as it has not exceeded the quantitative thresholds necessitating separate disclosure.

The Company's Chief Operating Decision Maker, the Chief Executive Officer, evaluates performance of the Company and makes decisions regarding allocation of resources based on total Company results. The Company therefore continues to disclose its results in one reportable segment only.

The following table presents a summary of net sales by geographic areas for the periods presented:

	Year ended		
	December 27, 2009	December 28, 2008	December 30, 2007
	(in thousands)		
Geographical sales ⁽¹⁾ :			
Net sales to end customers:			
United States of America	\$ 218,291	\$ 307,039	\$ 295,632
China	369,581	669,231	658,205
Korea	109,008	238,370	260,854
EMEA	214,981	351,052	333,430
Others	144,380	63,972	79,132
Net sales to related parties:			
Japan ⁽²⁾	354,412	652,139	873,560
Total	\$1,410,653	\$2,281,803	\$2,500,813

(1) Geographical sales are based on the customer's bill-to location.

(2) Net sales to Japan is comprised of net sales to Fujitsu of \$50,208 during January and February 2009 and net sales to Spansion Japan of \$304,204 from March through December 2009.

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Notes to Consolidated Financial Statements—(Continued)

None of the end customers accounted for more than 10 percent of the Company's net sales in fiscal 2009, whereas one customer accounted for approximately 18 percent and 10 percent of the Company's net sales in fiscal 2008 and 2007, respectively.

Long-lived assets information is based on the physical location of the assets at the end of each fiscal year. The following table presents a summary of long-lived assets by geography:

	December 27, 2009	December 28, 2008
	(in thousands)	
Geographical long-lived assets:		
Net property, plant and equipment		
United States	\$254,566	\$381,097
Japan	—	299,789
Other countries	68,144	114,143
Total	\$322,710	\$795,029

23. Capital Structure

Common Stock

In September 2008, the Company repurchased the one share of Class C common stock from Fujitsu. As of December 27, 2009, the common stock outstanding consists of 162,291,633 shares of Class A common stock issued and outstanding.

Except as described below or as required by law, the holders of the Company's common stock are entitled to one vote per share on all matters to be voted on by stockholders. Stockholders are not entitled to cumulative voting rights, and, accordingly, the holders of a majority of the shares voting for the election of directors can elect the entire board if they choose to do so and, in that event, the holders of the remaining shares will not be able to elect any person to the board of directors. Amendments to the Company's certificate of incorporation that would alter or change the powers, preferences or special rights of any class of the Company's common stock, so as to affect the holders of such class adversely, must be proposed in a resolution adopted by the Company's board of directors, declaring its advisability, and must be approved by a majority of the votes entitled to be cast by the holders of the shares affected by the amendment, voting as a separate class.

The terms of the Company's current credit arrangements and the indenture governing the Senior Notes restrict the Company's ability to declare or pay dividends on its common stock. Holders of the common stock are entitled to receive such dividends, if any, as may be declared from time to time by the board of directors, in its discretion, from funds legally available therefore and subject to prior dividend rights of holders of any shares of preferred stock which may be outstanding. The Company does not anticipate paying dividends on the common stock in the foreseeable future. Upon liquidation or dissolution of the Company, subject to prior liquidation rights of the holders of any shares of preferred stock which may be outstanding, the holders of common stock are entitled to receive on a pro rata basis the Company's remaining assets available for distribution. Holders of the Class A common stock have no preemptive or other subscription rights, and there are no redemption or sinking fund provisions with respect to such shares.

There are no conversion rights with respect to the Company's Class A common stock.

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Notes to Consolidated Financial Statements—(Continued)

In the event of the Company's merger or consolidation with or into another company in connection with which shares of common stock are converted into or exchangeable for shares of stock, other securities or property (including cash), all holders of common stock will be entitled to receive the same kind and amount of shares of stock, other securities or property (including cash).

Preferred Stock

The Company's board of directors has the authority, without action by the stockholders, to designate and issue preferred stock in one or more series and to designate the rights, preferences and privileges of each series, such as dividend rates, dividend rights, liquidation preferences, voting rights and the number of shares constituting any series and designation of such series, which may be greater than the rights of the common stock. It is not possible to state the actual effect of the issuance of any shares of preferred stock upon the rights of holders of the common stock until the board of directors determines the specific rights of the holders of such preferred stock. However, the effects might include, among other things:

- restricting dividends on the common stock;
- diluting the voting power of the common stock;
- impairing the liquidation rights of the common stock; or
- delaying or preventing a change of control of Spansion Inc. without further action by the stockholders.

24. Sale of Assembly, Mark and Pack Facility in Suzhou, China

On August 21, 2009, Spansion LLC, a wholly owned subsidiary of the Company entered into an Asset and Share Purchase Agreement (the Purchase Agreement) with Powertech Technology Inc., a company organized under the laws of the Republic of China (Taiwan) (PTI), pursuant to which Spansion LLC sold its assembly, mark, test and pack facility located in Suzhou, China (the Suzhou Facility) and other related assets owned by Spansion LLC. Pursuant to the Purchase Agreement, Spansion LLC sold (i) all of the issued and outstanding ordinary shares (the Shares) of its wholly owned subsidiary, Spansion Holdings (Singapore) Pte. Ltd., a company organized under the laws of the Republic of Singapore (Singapore Subsidiary), which in turn owns all the registered capital of Spansion (China) Limited, a wholly foreign-owned enterprise organized under the laws of the People's Republic of China and the entity that owns the Suzhou Facility (Suzhou Subsidiary), and (ii) certain assembly, mark and pack equipment and tooling equipment and other assets related to the Suzhou Facility that is owned directly by Spansion LLC (together, the Purchased Assets). On September 4, 2009, the U.S. Bankruptcy Court approved the sale of the purchased assets and the sale was closed on September 8, 2009 (the Closing Date).

In consideration for the Purchased Assets, PTI paid Spansion LLC cash in the amount of \$6.2 million, delivered to Spansion LLC a promissory note for approximately \$28.0 million, which requires three scheduled installment payments of approximately \$9.3 million to be made by PTI to Spansion LLC on each of the 60th, 120th and 180th days following the Closing Date, and will pay up to an additional \$6.0 million which was placed into an escrow account for a one-year period. At the expiration of the one-year escrow period, cash remaining in the escrow account not previously distributed, or reserved for distribution, to PTI pursuant to the terms of the Purchase Agreement will be delivered to Spansion LLC. The Shares are also held in escrow and one-third of the Shares will be distributed to PTI upon Spansion LLC's receipt of each installment payment made pursuant to the Promissory Note. As of the filing date of this Report, PTI has made the two scheduled installment payments of \$9.3 million each and one-third of the Shares have been distributed to PTI from the escrow account.

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Notes to Consolidated Financial Statements—(Continued)

In connection with the sale of the Purchased Assets, Spansion LLC and PTI entered into a Supply Agreement, effective the Closing Date, pursuant to which PTI will use the Suzhou Facility to perform assembly, mark, pack, and test services for Spansion products for a term of twelve months. During the first six months, Spansion LLC's loading commitment under the Supply Agreement will be approximately 8 million units per month. Spansion LLC will consign commercial and flash memory die and direct materials to PTI for processing by PTI. To the extent that PTI has manufacturing losses based on the agreed-upon pricing terms under the Supply Agreement during the first year, Spansion will reimburse certain of the manufacturing costs up to five percent of the agreed-upon pricing terms. During the second six months of the term, Spansion LLC will purchase services that will result in at least seventy-five percent of the revenue paid to PTI for the services during the initial six months.

Spansion LLC and PTI also entered into a Transition Services Agreement, effective the Closing Date, pursuant to which Spansion LLC will provide specified general administrative and information technology services to support PTI in connection with its obligations under the Supply Agreement.

25. Legal Proceedings

Tessera ITC Action

On March 31, 2009, the United States International Trade Commission (ITC) issued an order requesting additional briefing on certain remedy issues and resetting the target date for completion of the ITC Investigation to May 20, 2009. On May 20, 2009, the ITC issued a Final Determination reversing the Initial Determination issued by the administrative law judge ruling that the accused small-format BGA packages of Spansion Inc. and Spansion LLC and the other respondents did not infringe the asserted claims of the asserted patents by finding that there was a violation of 19 U.S.C. § 1337 by Spansion Inc. and Spansion LLC, Qualcomm, Inc., ATI Technologies, Motorola, Inc. STMicroelectronics N.V., and Freescale Semiconductor, Inc., and determined that the appropriate form of relief is (1) a limited exclusion order under 19 U.S.C. § 1337(d)(1) prohibiting the unlicensed entry of semiconductor chips with minimized chip package size and products incorporating these chips that infringe one or more of claims 1, 2, 6, 12, 16-19, 21, 24-26, and 29 of the '326 patent and claims 1-11, 14, 15, 19, and 22-24 of the '419 patent, and are manufactured abroad by or on behalf of, or imported by or on behalf of, Spansion, Qualcomm, ATI, Motorola, STMicroelectronics N.V. and Freescale; and (2) cease and desist orders directed to Motorola, Qualcomm, Freescale and Spansion. The ITC further determined that the bond for temporary importation during the period of Presidential review, which expires 60 days after May 20, 2009, shall be in the amount of 3.5 percent of the value of the imported articles that are subject to the order. On June 2, 2009, Spansion and the other respondents to the investigation jointly filed with the ITC a motion to stay the effect of the ITC decision pending appeal to the U.S. Court of Appeals for the Federal Circuit (the "Federal Circuit"). On July 17, 2009, the ITC denied the motion. On July 20, 2009, Spansion appealed the ITC decision to the Federal Circuit and filed an emergency motion for stay pending appeal and immediate temporary stay. The Federal Circuit denied the stay motions on September 8, 2009. The principal brief in the Federal Circuit appeal was filed on October 30, 2009.

The Company believes that a significant amount of its future U.S. sales may be affected by the ITC orders, which are currently in effect until the asserted patents expire on September 24, 2010. However, the Company has mitigated the potential adverse effect of the ITC orders by, among other things, shifting production of the products affected by the ITC orders to subcontractors that are licensed under Tessera's patents while the Company appeals the ITC orders. If the Company's actions are unsuccessful or if the costs the Company incurs are substantial, the Company's business will be materially adversely affected.

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Notes to Consolidated Financial Statements—(Continued)

Fast Memory Erase LLC v. Spansion Inc., et al.

The case was stayed against Spansion as a result of the Chapter 11 Cases until May 18, 2009. The U.S. Bankruptcy Court preliminarily lifted the stay and set June 23, 2009 as the date for a final determination on the stay. The parties subsequently agreed to lift the stay so that the U.S. District Court could proceed with a Markman hearing to determine the meaning of certain claim terms, which was held on September 16, 2009. No ruling has yet been issued as a result of the Markman hearing.

LSI, Agere ITC Investigation

On February 3, 2009, the ITC issued an opinion affirming the ITC determination that the complainant is not precluded from re-litigating the validity of the patent at issue in the case. A hearing was held July 20, 2009 through July 27, 2009. The initial determination based on that hearing was issued on September 21, 2009 and held that the patent asserted by LSI and Agere is invalid and that Spansion is not a proper party to the action. The initial determination currently is under review by the ITC.

Samsung Litigation

Patent Litigation Settlement Agreement with Samsung Electronics Co., Ltd. (Samsung)

On April 7, 2009, the Company announced that it had settled its patent litigation lawsuits with Samsung. As part of the settlement, Samsung agreed to pay the Company \$70 million and both parties agreed to exchange rights in their patent portfolios in the form of licenses and covenants subject to a settlement agreement. On June 2, 2009, the U.S. Bankruptcy Court entered an order denying the Company's motion seeking approval of the settlement agreement. By its terms, the settlement agreement has been terminated automatically as a result of the failure of the U.S. Bankruptcy Court to approve the settlement agreement. In addition, as a result of the U.S. Bankruptcy Court to approve the settlement agreement, the lawsuit by Samsung against Spansion Japan is no longer stayed, and the cases in the U.S. District Court and the ITC have resumed.

Samsung ITC Investigation

On March 12, 2009, the Samsung ITC investigation was stayed pending U.S. Bankruptcy Court approval of a settlement agreement between Spansion and Samsung. On June 2, 2009, the U.S. Bankruptcy Court entered an order denying the Company's motion seeking approval of the settlement agreement. As a result of the failure of the U.S. Bankruptcy Court to approve the settlement agreement, Spansion's case against Samsung in the ITC has resumed. On June 30, 2009, the judge in the ITC investigation entered an order extending to January 18, 2011 the target date for completion of the investigation, setting the trial date for April 19, 2010, and issuing a new procedural schedule. On October 16, 2009 the judge in the ITC investigation entered an order modifying the procedural schedule setting the trial date for May 3, 2010. Discovery in this case is ongoing. A Markman hearing was held on November 10, 2009. No ruling has yet been issued as a result of the Markman hearing.

Spansion v. Samsung District Court Action

On March 31, 2009, this action was stayed pending U.S. Bankruptcy Court approval of a settlement agreement between Spansion and Samsung. On June 2, 2009, the U.S. Bankruptcy Court entered an order denying the Company's motion seeking approval of the settlement agreement. As a result of the failure of the U.S. Bankruptcy Court to approve the settlement agreement, Spansion's case against Samsung in the U.S. District Court for District of Delaware has resumed. On August 3, 2009, Samsung amended its counterclaims to remove Patent Nos. 6,930,050

Spansion Inc.
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Notes to Consolidated Financial Statements—(Continued)

and 5,740,065, from the action. On August 13, 2009, Spansion responded to Samsung's counterclaims as to the remaining patents asserted by Samsung (i.e., United States Patent Nos. 5,748,531, 5,567,987 and 5,173,442). The action is presently scheduled for trial in May 2011 and discovery is underway.

Samsung v. Spansion Japan Ltd.

On January 28, 2009, Samsung filed two patent infringement actions in the Tokyo District Court in Japan against Spansion Japan alleging that certain flash memory chips manufactured or sold by Spansion Japan infringe certain Japanese patents allegedly owned by Samsung. The actions allege infringement of Japanese patents JP 3834189 and JP 3505324, respectively. The two actions have been consolidated for trial. The complaints seek both injunctive relief and damages. On March 31, 2009, this action was stayed pending U.S. Bankruptcy Court consideration of the proposed settlement with Samsung, but that stay was lifted after the U.S. Bankruptcy Court denied the Company's motion seeking approval of the proposed settlement with Samsung. A technical hearing was held on December 18, 2009, and a subsequent hearing occurred on January 28, 2010. Additional briefing has been requested by the court, the next of which is due March 1, 2010.

Samsung v. Spansion ITC Investigation

On July 31, 2009, Samsung filed a patent infringement complaint with the ITC against Spansion Inc. and Spansion LLC (collectively the "Company" or "Spansion"), Spansion Japan Limited, and the following downstream respondents: Alpine Electronics, Inc., Alpine Electronics of America, Inc., D-Link Corporation, D-Link Systems, inc., Slacker, Inc., Synology, Inc., Synology North America Corp., Shenzhen Egreat Co., Ltd., EGreat USA, and Appro International, Inc. The ITC commissioned its investigation of Samsung's complaint on August 27, 2009. Subsequently, certain of Spansion's creditors sought an order from the U.S. Bankruptcy Court seeking a stay of Samsung's ITC action. On October 1, 2009, the U.S. Bankruptcy Court issued an order granting the motion to stay Samsung's ITC action against Spansion. Both Samsung and the ITC have appealed this order.

Samsung v. Spansion International, Inc.

On July 31, 2009, Samsung Electronics Co., Ltd. commenced an action in the Fourth Civil Division of the Federal Court in Dusseldorf, Germany against Spansion International, Inc. and other third parties alleging patent infringement since March 2, 2009 of German patent DE 693 27 499 T2 (EP 0 591 009 B1). The action seeks damages in the amount of € 500,000 (approximately \$733,570 as of September 27, 2009). An initial hearing to establish the schedule for the case was set for October 20, 2009. On September 4, 2009, Spansion filed a motion seeking to enforce the automatic stay as to this action, and on November 4, 2009, the U.S. Bankruptcy Court issued an order granting Spansion's motion to stay this action.

Cabreros, et al. v. Spansion LLC, et al.

On March 6, 2009, Wesley Cabreros and David Refuerzo, individually and on behalf of other persons similarly situated, filed a complaint in the U.S. Bankruptcy Court, Adversary Proceeding No. 09-50409, for alleged violations of both the California WARN Act and Federal WARN Act against Spansion LLC and Spansion Inc. In addition to seeking class certification, the complaint seeks damages, costs and attorneys' fees. The complaint also seeks payment of 11 U.S.C. § 503 priority claims in favor of the plaintiffs and other similarly situated former employees for their unpaid wages, salary, commissions, bonuses, accrued holiday pay, accrued vacation pay, pension and 401(K) contributions and other ERISA benefits, or a determination that the first \$10,950 of the WARN Act claims are entitled to priority status under 11 U.S.C. 507(a) (4) and the remainder are unsecured claims. The plaintiffs also seek to recover attorneys' fees and costs as allowed priority claims under 11 U.S.C. § 503. On July 22, 2009, the

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Notes to Consolidated Financial Statements—(Continued)

U.S. Bankruptcy Court certified the class. On October 6, 2009, the parties engaged in a mediation and reached an agreement in principle to settle the litigation conditioned upon U.S. Bankruptcy Court approval. As of December 27, 2009 the Company had accrued the settlement amount of \$8.6 million, which was included in liabilities subject to comprise.

Creditor Proceedings

Many creditors initiated proceedings against one or more of the Debtors referred to in the voluntary petitions under Chapter 11 of the U.S. Bankruptcy Code to collect amounts allegedly due those creditors. After the filing date of the petition, all actions to enforce or otherwise effect payment or repayment of liabilities of any Debtor preceding the Petition Date, as well as pending litigation against any Debtor, are stayed as of the Petition Date. Absent further order of the applicable courts and subject to certain exceptions, no party may take any action to recover on pre-petition claims against any Debtor.

26. Subsequent Events

Rights Offering

Pursuant to the Plan of Reorganization the holders of certain allowed claims were offered the right to purchase a total of 12,974,496 shares of the Company's Common Stock upon emergence from bankruptcy (or approximately 19% of the total number of new Spansion common stock expected to be outstanding upon emergence from bankruptcy under the Plan of Reorganization) at a price of \$8.43 per share (Rights Offering). The number of shares available to each eligible claimant is based on each claimant's proportionate deemed allowed claim. On January 25, 2010, the Company entered into a Backstop Rights Purchase Agreement with SLS Spansion Holdings, LLC, a Delaware limited liability company and Silver Lake Sumeru Fund, L.P., a Delaware limited partnership (collectively, the Backstop Party) whereby SLS Spansion Holdings, LLC agreed to purchase all Rights Offered Shares offered pursuant to the Rights Offering but not otherwise subscribed for by the Rights Offering participants.

As of February 11, 2010, approximately \$80.1 million has been received from Rights Offering participants in a segregated bank account or an escrow account and will be released to the Company upon emergence from bankruptcy assuming all conditions precedent to closing, mostly customary to such transaction, are met.

Senior Secured Term Loan

The Company has engaged Barclays Capital and Morgan Stanley Senior Funding, Inc. to arrange a \$450 million Senior Secured Term Loan facility (Term Loan Facility). This facility will be secured by the assets of the Company including, among other items, a first priority lien on property, plant and equipment and inventory, and a second priority lien on account receivables and cash.

The proceeds of the Term Loan Facility, together with cash proceeds from the rights offering and other sources of cash available to the Company, will be used as follows: (i) payment of approximately \$633,000,000 to fully discharge the claims of holders of the Senior Secured Floating Rate Notes, (ii) payment of Administrative Expense Claims and Priority Claims (each as defined in the Plan of Reorganization) and (iii) payment of fees and expenses related to the Term Loan Facility.

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Notes to Consolidated Financial Statements—(Continued)

The Term Loan Facility will, based on certain agreed upon thresholds, require net cash proceeds from asset sales or other dispositions of property, extraordinary cash receipts, and other future cash flows to be used to prepay the outstanding balance of the Term Loan. Voluntary prepayments of borrowings will be permitted in whole or in part, in minimum principal amounts to be agreed upon, at any time on or prior to the first anniversary of the Closing Date at a price equal to 101% of the principal amount of such borrowings being prepaid plus all accrued and unpaid interest plus breakage costs, if any, and thereafter at any time without premium or penalty.

Under the terms of the Term Loan Facility, the Company will be subject to a number of covenants, including a minimum interest coverage ratio, a maximum leverage ratio and maximum permitted capital expenditures.

The Term Loan Facility closed on February 9, 2010 and funds are held in escrow until the conditions to account release are met, which include, among other things, the U.S. Bankruptcy Court's final Confirmation and Approval Orders, a Consolidated Funded Indebtedness to Consolidated pro forma EBITDA ratio of no greater than 2.10 to 1.00, certain minimum liquidity requirements, credit rating by an accredited agency and the receipt of at least \$105 million from the Rights Offering.

Senior Revolving Credit Facility

In order to fund fees and expenses associated with the Bankruptcy Case as well as ongoing working capital needs upon emergence, the Company has engaged Bank of America and other financial institutions for a post-confirmation senior revolving credit facility (the Proposed Facility) in an aggregate amount of up to \$65 million.

Available amounts for borrowing under this credit facility are limited to 85 percent of eligible accounts receivable, plus the lesser of (i) \$10 million and (ii) 25 percent of eligible foreign accounts receivable, net of reserves.

Funding is subject to a number of conditions, including a minimum liquidity level of \$100 million and confirmation of the Company's Plan of Reorganization by the U.S. Bankruptcy court on or before March 31, 2010.

This Proposed Facility would require the Company to maintain a minimum quarterly fixed charge coverage ratio exceeding 1.00 to 1.00 on a trailing 12-month basis if the Company's domestic cash balance falls below \$40 million.

Spancion Inc.
Condensed Consolidated Statements of Operations
(in thousands, except per share amounts)
(Unaudited)

	Three Months Ended June 27, 2010			Six Months Ended June 27, 2010		
	Successor ⁽¹⁾	Predecessor ⁽¹⁾	Predecessor ⁽¹⁾	Successor ⁽¹⁾	Predecessor ⁽¹⁾	Predecessor ⁽¹⁾
	Period from May 11, 2010 to June 27, 2010	Period from March 29, 2010 to May 10, 2010	Three Months ended June 28, 2009	Period from May 11, 2010 to June 27, 2010	Period from December 28, 2009 to May 10, 2010	Six Months ended June 28, 2009
Net sales	\$124,569	\$101,786	\$272,117	\$124,569	\$324,914	\$ 630,000
Net sales to related parties	4,801	24,496	104,184	4,801	78,705	145,929
Total net sales	129,370	126,282	376,301	129,370	403,619	775,929
Cost of sales (Note 8)	111,413	85,697	280,266	111,413	274,817	663,301
Research and development (Note 8)	13,420	12,115	37,889	13,420	35,068	82,635
Sales, general and administrative	18,259	20,497	33,788	18,259	68,105	137,817
Restructuring charges (credits)	—	(2,785)	14,212	—	(2,772)	38,154
Operating income (loss) before reorganization items	(13,722)	10,758	10,146	(13,722)	28,401	(145,978)
Interest and other income (expense), net	364	(3,190)	1,916	364	(2,904)	2,396
Interest expense ⁽²⁾	(4,877)	(11,237)	(9,212)	(4,877)	(30,573)	(33,678)
Gain on deconsolidation of subsidiary	—	—	—	—	—	30,100
Gain (loss) before reorganization items and income taxes	(18,235)	(3,669)	2,850	(18,235)	(5,076)	(147,160)
Reorganization items	—	364,876	(9,842)	—	370,340	(372,299)
Income (loss) before income taxes	(18,235)	361,207	(6,992)	(18,235)	365,264	(519,459)
Provision for (benefit from) income taxes	(21)	1,235	261	(21)	1,640	429
Net income (loss)	<u>\$ (18,214)</u>	<u>\$359,972</u>	<u>\$ (7,253)</u>	<u>\$ (18,214)</u>	<u>\$363,624</u>	<u>\$(519,888)</u>
Net income (loss) per share						
Basic	<u>\$ (0.31)</u>	<u>\$ 2.22</u>	<u>\$ (0.04)</u>	<u>\$ (0.31)</u>	<u>\$ 2.24</u>	<u>\$ (3.22)</u>
Diluted	<u>\$ (0.31)</u>	<u>\$ 2.21</u>	<u>\$ (0.04)</u>	<u>\$ (0.31)</u>	<u>\$ 2.24</u>	<u>\$ (3.22)</u>
Shares used in per share calculation						
Basic	<u>59,271</u>	<u>162,513</u>	<u>161,778</u>	<u>59,271</u>	<u>162,439</u>	<u>161,530</u>
Diluted	<u>59,271</u>	<u>162,518</u>	<u>161,778</u>	<u>59,271</u>	<u>162,610</u>	<u>161,530</u>

- (1) Please refer to Notes 2 and 3 for explanation on basis of 'Successor' and 'Predecessor' presentation.
(2) Contractual interest expense for the three and six months ended June 28, 2009 was approximately and \$21.0 million and \$48.0 million, respectively.

See accompanying notes

Spansion Inc.
Condensed Consolidated Balance Sheets
(in thousands)
(Unaudited)

	<u>Successor</u>	<u>Predecessor</u>
	<u>June 27,</u>	<u>December 27,</u>
	<u>2010</u>	<u>2009</u>
Assets		
Current assets:		
Cash and cash equivalents	\$ 254,145	\$ 324,903
Auction rate securities	25,885	100,335
Accounts receivable	139,912	129,174
Accounts receivable from related parties	13,201	366,602
Allowance for doubtful accounts	(305)	(56,408)
Accounts receivables, net	152,808	439,368
Inventories	244,536	141,723
Deferred income taxes	1,141	13,332
Prepaid expenses and other current assets	44,930	49,533
Total current assets	723,445	1,069,194
Property, plant and equipment, net	329,601	322,710
Intangible assets, net	207,276	1,330
Goodwill	165,553	—
Other assets	41,394	44,743
Total assets	<u>\$1,467,269</u>	<u>\$ 1,437,977</u>
Liabilities and Stockholders' Equity (Deficit)		
Current liabilities:		
Short term note	\$ —	\$ 64,150
Accounts payable	30,870	16,979
Accounts payable to related parties (Note 8)	24,402	221,211
Accrued compensation and benefits	32,216	21,630
Other accrued liabilities	218,219	129,160
Deferred income	8,043	62,958
Current portion of long-term debt	13,798	—
Income taxes payable	54	83
Deferred income taxes	11,578	—
Total current liabilities	339,180	516,171
Deferred income taxes	12,073	13,405
Long-term debt, less current portion	447,733	—
Other long-term liabilities	10,327	9,825
Total long-term liabilities	470,133	23,230
Liabilities subject to compromise	—	1,756,269
Total liabilities	809,313	2,295,670
Stockholders' equity (deficit)		
Old Class A common stock, \$0.001 par value, 714,999,998 shares authorized, 162,291,633 shares issued and outstanding	—	162
New Class A common stock, \$0.001 par value, 150,000,000 shares authorized, 59,270,916 shares issued and outstanding	59	—
New Class B common stock, \$0.001 par value, 1 share authorized, 1 share issued and outstanding	—	—
New preferred stock, \$0.001 par value, 50,000,000 shares authorized, 0 shares issued and outstanding	—	—
Additional paid-in capital	675,886	2,484,320
Accumulated deficit	(18,214)	(3,342,370)
Accumulated other comprehensive income	225	195
Total stockholders' equity (deficit)	657,956	(857,693)
Total liabilities and stockholders' equity (deficit)	<u>\$1,467,269</u>	<u>\$ 1,437,977</u>

See accompanying notes

Spancion Inc.
Condensed Consolidated Statements of Cash Flows
(in thousands)
(Unaudited)

	Six Months Ended June 27, 2010		
	Successor	Predecessor	Predecessor
	Period from May 11, 2010 to June 27, 2010	Period from December 28, 2009 to May 10, 2010	Six Months Ended June 28, 2009
Cash Flows from Operating Activities:			
Net income (loss)	\$ (18,214)	\$ 363,624	\$(519,888)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation and amortization	26,146	43,788	106,976
Provision for doubtful accounts	310	7,229	18,438
Provision (benefit) for deferred income taxes	(3)	7,000	8
Gain on sale and disposal of property, plant and equipment, net	(266)	(2,107)	(1,902)
Compensation recognized under equity incentive plans	1,945	7,052	7,568
Gain from approved settlement of rejected capital leases and various licenses	—	(22,517)	—
Gain on sale of Suzhou plant	(1,342)	(5,224)	—
Gain on deconsolidation of subsidiary	—	—	(30,100)
Gain on discharge of pre-petition obligations	—	(434,046)	—
Impairment of investments	—	3,011	—
Write-off of financing costs for old debts	—	13,022	—
Amortization of inventory fresh-start markup	18,597	—	—
Changes in operating assets and liabilities, net of effects of deconsolidation of subsidiary and acquisition:			
Decrease (increase) in accounts receivable	(14,077)	10,156	(102,007)
(Increase) decrease in inventories	27,770	(7,242)	189,213
(Increase) in prepaid expenses and other current assets	(6,271)	(3,894)	(16,707)
Decrease (increase) in other assets	177	1,534	(6,510)
(Decrease) increase in accounts payable, accrued liabilities and accrued compensation and benefits	(29,734)	23,213	436,492
(Decrease) increase in deferred income	(6,468)	(3,240)	28,972
Net cash provided (used) by operating activities	(1,430)	1,359	110,553
Cash Flows from Investing Activities:			
Proceeds from sale of property, plant and equipment	4,278	9,620	60
Purchases of property, plant and equipment	(4,561)	(14,046)	(5,201)
Proceeds from redemption of auction rate securities	16,750	62,425	—
Loan made to an investee	—	—	(5,263)
Cash decrease due to deconsolidation of subsidiary	—	—	(52,092)
Purchase of Kawasaki business	(13,125)	—	—
Cash proceeds from sale of Suzhou plant	—	18,687	—
Net cash provided (used) by investing activities	3,342	76,686	(62,496)
Cash Flows from Financing Activities:			
Proceeds from borrowings, net of issuance costs	—	438,082	117,758
Payments on debt and capital lease obligations	(2,715)	(691,176)	(58,639)
Proceeds from rights offering	—	104,875	—
Net cash provided (used) by financing activities	(2,715)	(148,219)	59,119
Effect of exchange rate changes on cash and cash equivalents	219	—	(3,095)
Net increase (decrease) in cash and cash equivalents	(584)	(70,174)	104,081
Cash and cash equivalents at the beginning of period	254,729	324,903	116,387
Cash and cash equivalents at end of period	<u>\$254,145</u>	<u>\$ 254,729</u>	<u>\$ 220,468</u>
Supplementary disclosure of non-cash investing and financing activities:			
Settlement of liabilities subject to compromise through issuance of reorganized Spancion Inc. common stock	\$ —	\$ 486,064	\$ —
Netting of receivable/payable balances due from/to Spancion Japan	\$283,191	\$ —	\$ —

See accompanying notes

Spancion Inc.
Condensed Consolidated Statements of Stockholders' Equity (Deficit)
(in thousands)
(Unaudited)

	Common Stock	Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Income (Loss)	Total Stockholders' Equity (Deficit)
Balance at December 27, 2009 (Predecessor)	\$ 162	\$ 2,484,320	\$(3,342,370)	\$ 195	\$ (857,693)
Comprehensive income:					
Net income from December 27, 2009 to May 10, 2010	—	—	363,624	—	363,624
Other comprehensive income					
Net change in cumulative translation adjustment	—	—	—	—	—
Total other comprehensive income					—
Total comprehensive income	—	—	—	—	363,624
Issuance of shares under old employee stock plans:	—	—	—	—	—
Vesting of RSUs	—	—	—	—	—
Exercise of options	—	—	—	—	—
Equity settlement for liabilities subject to compromise	486	485,578	—	—	486,064
Compensation recognized under old employee stock plans	—	1,595	—	—	1,595
Cancellation of old employee stock plans	—	5,457	—	—	5,457
Balance at May 10, 2010 (Predecessor) (Unaudited)	<u>648</u>	<u>2,976,950</u>	<u>(2,978,746)</u>	<u>195</u>	<u>(953)</u>
Fresh start adjustments:					
Cancellation of Predecessor common stock . . .	(648)	(2,976,950)	—	—	(2,977,598)
Elimination of Predecessor accumulated deficit and accumulated other comprehensive loss	—	—	2,978,746	(195)	2,978,551
Balance at May 11, 2010 (Successor) (Unaudited)	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>
Comprehensive income:	—	—	—	—	—
Net loss from May 11 to June 27, 2010	—	—	(18,214)	—	(18,214)
Other comprehensive income:					
Net change in cumulative translation adjustment	—	—	—	225	225
Total other comprehensive income					225
Total comprehensive income					(17,989)
Issuance of Successor common stock (\$0.001 per share)	46	569,066	—	—	569,112
Rights offering settlement	13	104,875	—	—	104,888
Compensation recognized under new employee stock plans	—	1,945	—	—	1,945
Balance at June 27, 2010 (Successor) (Unaudited)	<u>\$ 59</u>	<u>\$ 675,886</u>	<u>\$ (18,214)</u>	<u>\$ 225</u>	<u>\$ 657,956</u>

See accompanying notes

Spansion Inc.

Notes to Condensed Consolidated Financial Statements (Unaudited)

1. Description of Business

Spansion Inc. (the Company) is a semiconductor manufacturer headquartered in Sunnyvale, California, with research and development, manufacturing and assembly operations in the United States, the Middle East, Europe and Asia. The Company designs, develops, manufactures, markets, sells and licenses Flash memory technology and solutions.

The Company's Flash memory devices are used primarily to store microprocessor instructions (code), or code and data in embedded applications, and are incorporated into a broad range of electronic products, including automotive electronics such as navigation systems and engine control, PC and peripheral computing equipment such as printers, consumer equipment such as set top boxes and home networking, communication equipment such as enterprise networking and cellular infrastructure, arcade gaming equipment, industrial control equipment and mobile phones.

2. Emergence from Chapter 11

General Information

On March 1, 2009, Spansion Inc., Spansion LLC, Spansion Technology LLC, Spansion International, Inc., and Cerium Laboratories LLC (the Debtors) each filed a voluntary petition for relief under Chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court for the District of Delaware (the Chapter 11 Cases). The Chapter 11 Cases were being jointly administered under Case No: 09-10690 (KJC). On May 10, 2010, the Debtors emerged from the Chapter 11 Cases, following the confirmation of the Plan of Reorganization (the Plan) by the U.S. Bankruptcy Court on April 16, 2010.

Prior to the Debtors' filing of the Chapter 11 Cases, on February 10, 2009, Spansion Japan Limited, a wholly-owned subsidiary of Spansion LLC (Spansion Japan) filed a proceeding under the Corporate Reorganization Law of Japan to obtain protection from Spansion Japan's creditors (the Spansion Japan Proceeding). On March 3, 2009 the Tokyo District Court approved the filing of the Spansion Japan Proceeding and appointed the incumbent representative director of Spansion Japan as trustee. As a result, the Company no longer controls Spansion Japan despite its 100 percent equity ownership interest and, effective March 3, 2009, the Company deconsolidated Spansion Japan and has accounted for its interest in Spansion Japan as a cost basis investment.

Upon emergence from the Chapter 11 on May 10, 2010 (Emergence Date), the Company adopted fresh start accounting in accordance with the Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) 852 "Reorganizations". The adoption of fresh start accounting results in the Company becoming a new entity for financial reporting purposes. Accordingly, the Condensed Consolidated Financial Statements on or after May 10, 2010 are not comparable to the Condensed Consolidated Financial Statements prior to that date.

The Company qualified for fresh start accounting, in accordance with ASC 852, due to:

- the reorganization value of the Debtors' assets immediately before the date of confirmation being less than the total of all their post-petition liabilities and allowed claims; and
- holders of existing voting shares of the Company immediately before confirmation receiving less than 50 percent of the voting shares of the post-emerged Company.

Reorganization value is the value attributed to the reorganized entity, in addition to the expected net realizable value of those assets that will be disposed of before reorganization occurs. This reorganization value is

Spansion Inc.

Notes to Condensed Consolidated Financial Statements—(Continued) (Unaudited)

viewed as the fair value of the entity before considering liabilities and approximates the amount a willing buyer would pay for the assets of the entity immediately after the reorganization. Reorganization value is generally determined by discounting future cash flows. Immediately prior to the Emergence Date, the Debtors' reorganization value of \$1.2 billion was less than the sum of post-petition liabilities of \$617 million and allowed claims of \$938 million.

Also, holders of Class A common stock outstanding prior to the Emergence Date (Old Common Stock) did not receive any consideration for their shares or any pre-determined allocation of Class A common stock of the reorganized Company (New Common Stock). Holders of New Common Stock issued by the reorganized Company after the Emergence Date primarily include unsecured creditors who have received or will receive shares of New Common Stock in settlement of their allowed claims, and participants in a rights offering that the Company conducted in February 2010, as described below under "Effectiveness of the Plan and Exit Financing".

Fresh start accounting requires resetting the historical net book values of assets and liabilities of the Company as of Emergence Date to the related fair values by allocating the Company's reorganization value to its assets and liabilities pursuant to ASC 805 "Business Combinations" and ASC 852-10 "Reorganizations". The excess reorganization value over the fair value of tangible and identifiable intangible assets has been recorded as goodwill on the Company's Condensed Consolidated Balance Sheet. Deferred taxes have been determined in conformity with ASC 740 "Income Taxes". For additional information regarding the impact of fresh start accounting on the Company's Condensed Consolidated Balance Sheet as of the Emergence Date, see "Fresh Start Consolidated Balance Sheet" below.

References in these financial statements to "Successor" refer to Spansion and its consolidated subsidiaries after May 10, 2010, after giving effect to: (i) the cancellation of Old Common Stock issued prior to May 10, 2010; (ii) the issuance of New Common Stock and settlement of existing debt and other adjustments in accordance with the Plan; and (iii) the application of fresh start accounting. References to "Predecessor" refer to Spansion and its consolidated subsidiaries up to May 10, 2010.

Effectiveness of the Plan and Exit Financing

Under the Plan, most holders of allowed general, unsecured claims against the Predecessor received or will receive New Common Stock in satisfaction of their claims. Holders of allowed general, unsecured claims subject to a low payout threshold received cash in satisfaction of their claims. Holders of Senior Secured Floating Rate Notes (FRN) received cash of approximately \$638 million to fully discharge their claims. The \$638 million was primarily provided by the exit financing (Exit Financing) discussed below.

Pursuant to the Plan, the holders of allowed claims were offered the right to purchase a total of 12,974,496 shares of the New Common Stock upon emergence from the Chapter 11 Cases at a price of \$8.43 per share (Rights Offering). The number of shares available to each eligible claimant was based on each claimant's proportionate allowed claim. In connection with the Rights Offering, the Company entered into a Backstop Rights Purchase Agreement with Silver Lake Sumeru Fund, L.P. (Silver Lake) whereby Silver Lake committed to purchase the remaining balance of Rights Offering shares that are not otherwise subscribed for by the Rights Offering participants. Based on the agreement, Silver Lake purchased 3,402,704 shares of the New Common Stock that had not been subscribed for by the Rights Offering participants. As of May 10, 2010, the Company received net proceeds of approximately \$104.9 million through the Rights Offering that was used in full to partially discharge the FRN claims.

On February 9, 2010, the Company closed a five-year Senior Secured Term Loan agreement (Term Loan) of \$450 million with a group of lenders. The proceeds of the Term Loan, together with cash proceeds from other

Spansion Inc.

Notes to Condensed Consolidated Financial Statements—(Continued) (Unaudited)

sources of cash available to the Company, were used in full to partially discharge the remaining balance of the FRN claims. See Note 11 for further details.

On May 10, 2010, the Company finalized an agreement with Bank of America and other financial institutions for a senior revolving credit facility (Revolving Credit Facility) in an aggregate amount of up to \$65 million to fund bankruptcy related expenses and ongoing working capital. As of June 27, 2010, the Company has not drawn under this facility which was entered into as a pre-condition to obtaining the Term Loan facility. See Note 11 for further details.

The Plan contemplates the distribution of 65.8 million shares of New Common Stock, consisting of: (i) 46,247,760 shares to holders of allowed general, unsecured claims; (ii) 12,974,496 shares to subscribers of the Rights Offering; and (iii) 6,580,240 shares reserved for issuance to eligible employees in connection with grants of stock options and restricted stock units (RSUs) under the Company's new 2010 Equity Incentive Award Plan. The New Common Stock was listed on the NYSE Amex LLC Exchange on May, 18, 2010 and was re-listed on the New York Stock Exchange on June 23, 2010, in both cases under the trading ticker symbol "CODE".

In accordance with the Plan, holders of Old Common Stock, or stock options exercisable for Old Common Stock and RSUs which convert into Old Common Stock, outstanding as of May 10, 2010 did not receive any distributions, and their equity interests were cancelled on May 10, 2010.

Business Relationship with Spansion Japan and Foundry Agreement

Spansion Japan manufactures and supplies silicon wafers to the Company, and provides sort services to the Company. It also functioned as the sole distributor of the Company's products in Japan whereby it purchased products from the Company and sold them to customers in Japan, primarily through a subsidiary of Fujitsu Limited. The wafers purchased from Spansion Japan are a material component of the Company's cost of goods sold, and historically the wafer prices were governed by a foundry agreement. Management believes that the prices under the foundry agreement greatly exceeded the amounts that the U.S. Bankruptcy Court would have required the Company to pay for wafers purchased during the period from February 9, 2009 through October 27, 2009 (the date when the Company and Spansion Japan mutually agreed to pricing terms through executed purchase orders).

After unsuccessful efforts by the Company and Spansion Japan to renegotiate the prices under the foundry agreement, the Company filed a motion with the U.S. Bankruptcy Court in October 2009 to reject the foundry agreement. An order rejecting the foundry agreement was issued by the U.S. Bankruptcy Court on November 19, 2009. As a result, there was no valid contract establishing pricing for the wafers the Company received from Spansion Japan from February 9, 2009 through October 27, 2009 (Disputed Period).

On January 8, 2010, the Company reached an agreement in principle (the Settlement) with Spansion Japan, subject to the completion of definitive agreements and the Company's emergence from the Chapter 11 Cases, to: (i) acquire Spansion Japan's distribution business; (ii) obtain foundry services, including wafer and sort services, from Spansion Japan; and (iii) resolve the Company's dispute with Spansion Japan relating to pricing of wafers purchased during the Disputed Period. The U.S. Bankruptcy Court and the Tokyo District Court approved the Settlement on January 29, 2010 and February 1, 2010, respectively.

On February 2, 2010, the Company and Spansion Japan entered into a foundry agreement whereby the Company agreed to purchase from Spansion Japan: (i) a minimum of 10 billion yen (equivalent to \$111.8 million

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**Notes to Condensed Consolidated Financial Statements—(Continued)
(Unaudited)**

at June 27, 2010) worth of wafers over six quarters, beginning with the first quarter of 2010 and ending with the second quarter of 2011; and (ii) minimum sort services of \$7.7 million for the first quarter of 2010 and \$8.9 million for each quarter from the second quarter of 2010 to the second quarter of 2011, with both sort services and wafer production to be subject to normal and customary foundry performance conditions. On March 29, 2010, the Company and Spansion Japan executed various agreements implementing the Settlement including the purchase of Spansion Japan's distribution business located at Kawasaki, Japan, which was consummated on May 24, 2010 for a total cash purchase price of \$13.1 million. With the acquisition of Spansion Japan's distribution business, all material conditions of the Settlement were fulfilled and the Company set off the receivable and payable balances due from/to Spansion Japan as of October 27, 2009 (the date when the Company and Spansion Japan mutually agreed to pricing terms through executed purchase orders). All transactions with Spansion Japan are now being settled on a regular basis on mutually agreed upon terms.

The purchase price was allocated to the acquired business based on its estimated fair values as of May 24, 2010, as set forth below:

	<u>In millions</u>
Tangible assets	\$ 1.5
Customer relationships	10.1
Goodwill	3.3
Liabilities	<u>(1.8)</u>
Total purchase price	<u>\$13.1</u>

Refer to Note 9 for disclosures relating to the above intangible assets.

Until May 24, 2010, Spansion Japan continued in its historical role as the sole distributor of the Company's products in Japan. After the purchase of the distribution business from Spansion Japan, the Company distributes its products in Japan through its newly formed, wholly owned subsidiary, Nihon Spansion Limited.

Effective June 27, 2010, Spansion Japan's Plan of Reorganization (POR) was confirmed by the Tokyo District Court. The POR provides for Spansion Japan to redeem shares held by the Company, its shareholders, without consideration, cancel such shares and issue new shares to unsecured creditors. According to the POR, the redemption, cancellation and new issuance is scheduled to take place at the end of September 2010. Until that time, the Company will continue to be the 100 percent equity owner of Spansion Japan. However, since the Company has not controlled Spansion Japan despite its equity ownership interest since March 3, 2009, the Company continues to account for its interest in Spansion Japan as a cost basis investment.

Ongoing Chapter 11 Matters

Resolution of Outstanding Claims

Pursuant to the Plan, a claims agent has been appointed to analyze and, at the claims agent's discretion, contest outstanding disputed claims amounting to \$1.5 billion, which includes the \$936 million general unsecured proof of claim filed by Spansion Japan as a result of the November 19, 2009 foundry agreement rejection order. The Company accrued its best estimate of the liability which is included in the \$938 million of liabilities subject to compromise as of Emergence Date. Since these claims are being handled by the claims agent and are under the jurisdiction of the U.S. Bankruptcy Court, their sole recourse is to receive shares reserved under the plan and, therefore, any outcome of the claims adjudication process will have no direct impact on the Successor.

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**Notes to Condensed Consolidated Financial Statements—(Continued)
(Unaudited)**

Liabilities Subject to Compromise

At June 27, 2010, the Company had a zero balance for liabilities subject to compromise (LSTC) due to its emergence from the Chapter 11 Cases on May 10, 2010. For information regarding the discharge of LSTC, see “Fresh-Start Consolidated Balance Sheet” below.

The following table summarizes the components of LSTC included in the Consolidated Balance Sheet at December 27, 2009:

	Predecessor December 27, 2009
	(in thousands)
Accounts payable and accrued liabilities	\$ 639,897
Accounts payable to related parties	109,941
Accrued compensation and benefits	16,138
Long-term debt	968,266
Capital lease obligations	18,861
Other long-term liabilities	3,166
Total liabilities subject to compromise	\$1,756,269

LSTC refers to pre-petition obligations that were impacted by the Chapter 11 Cases. These liabilities represented the then estimated amounts expected to be allowed on known or potential claims to be resolved through the Chapter 11 Cases and included certain items that could be assumed under the Plan.

Reorganization Items

Entities in reorganization are required to disclose separately items such as professional fees directly related to the process of reorganizing the Predecessor under the Chapter 11 Cases, realized gains and losses, provisions for losses, and interest income resulting from the reorganization and restructuring of the business. These reorganization items are not applicable post Emergence Date of May 10, 2010.

The following table summarizes the components of reorganization items for the periods from March 29, 2010 to May 10, 2010 and from December 28, 2009 to May 10, 2010 and for the three and six months ended June 28, 2009, respectively:

	Predecessor			
	Period from March 29, 2010 to May 10, 2010	Three Months Ended June 28, 2009	Period from December 28, 2009 to May 10, 2010	Six Months ended June 28, 2009
	(in thousands)			
Professional and service fees directly related to reorganization ⁽¹⁾	\$ 41,184	\$9,963	\$ 58,336	\$ 17,114
Provision for allowed claims ⁽²⁾	28,172	—	5,655	355,333
Gain on discharge of pre-petition obligations	(434,046)	—	(434,046)	—
Interest income	(186)	(121)	(285)	(148)
Total reorganization items	\$(364,876)	\$9,842	\$(370,340)	\$372,299

- (1) Includes fees associated with the advisors and service providers to the Debtors.
(2) Represents the Company’s estimate of allowed claims related primarily to rejection or repudiation of executory contracts and leases and the effects of approved settlements.

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Notes to Condensed Consolidated Financial Statements—(Continued) (Unaudited)

Cash paid for professional fees for the periods from March 29, 2010 to May 10, 2010 and from December 28, 2009 to May 10, 2010 was approximately \$3.0 million and \$10.6 million, respectively. Cash paid for professional fees for the three and six months ended June 28, 2009 was approximately \$7.3 million and \$15.3 million, respectively.

Fresh Start Condensed Consolidated Balance Sheet

Upon emergence from the Chapter 11 Cases, the Company adopted fresh start accounting as prescribed under ASC 852 “Reorganizations”, which requires the Company to revalue its assets and liabilities to their related fair values. As such, the Company adjusted its stockholders’ deficit to equal the reorganization value at the Emergence Date. Items such as accumulated depreciation, accumulated deficit, accumulated other comprehensive income (loss) and allowances for doubtful debt (AFDA) were reset to zero. The Company allocated the reorganization value to its individual assets and liabilities based on their estimated fair values. Items such as, accounts receivable, auction rate securities and cash (whose fair values approximated their book values) reflected values similar to those reported prior to emergence. Items such as prepaid and other current assets, inventory, property, plant and equipment, deferred income tax asset and liability, accounts payable, income tax payable, and deferred income were significantly adjusted from amounts previously reported. Because fresh start accounting was adopted at emergence and because of the significance of LSTC that were relieved upon emergence, the historical financial statements of the Predecessor and the financial statements of the Successor are not comparable.

To facilitate the calculation of the enterprise value of the Successor, management developed a set of financial projections for the Successor using a number of estimates and assumptions. With the assistance of financial advisors, management determined the enterprise value and corresponding equity value of the Successor based on the financial projections using various valuation methods, including: (i) a comparison of the Company’s projected performance to the market values of comparable companies; and (ii) a calculation of the present value of future cash flows based on management projections, both of which were submitted to the Bankruptcy Court for confirmation. Utilizing these methodologies, the equity value of the Successor was estimated by the Bankruptcy Court to be in the range of \$872 million and \$944 million with an additional increase to the enterprise value by approximately \$496 million for Bankruptcy Court-approved distributable value as well as the settlement of administrative claims. Based on the Bankruptcy Court-approved enterprise value ranges and guidance, the Company estimated the enterprise value of the Successor to be approximately \$1.5 billion. The enterprise value and corresponding equity value are dependent upon achieving the future financial results set forth in management’s projections, as well as the realization of certain other assumptions. We cannot provide any assurance that the projections will be achieved or that the assumptions will be realized. The excess equity value (using the midpoint of the range) over the fair value of tangible and identifiable intangible assets has been reflected as goodwill on the Consolidated Fresh Start Balance Sheet. All estimates, assumptions, valuations, appraisals and financial projections, including the fair value adjustments, the financial projections, the enterprise value and equity value projections, are inherently subject to significant uncertainties and the resolution of contingencies beyond the Company’s control. Accordingly, there can be no assurance that the estimates, assumptions, valuations, appraisals and the financial projections will be realized, and actual results could vary materially.

The adjustments set forth in the following Fresh Start Consolidated Balance Sheet in the columns captioned “Plan Adjustments” and “Fresh Start Adjustments” reflect the effect of the consummation of the transactions contemplated by the Plan, including the settlement of various liabilities, issuance of securities, incurrence of new indebtedness and cash payments as well as fair value adjustments as a result of the adoption of fresh start accounting.

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Notes to Condensed Consolidated Financial Statements—(Continued)
(Unaudited)

The effects of the Plan and fresh start accounting on our Condensed Consolidated Balance Sheet at May 10, 2010 are as follows:

	<u>Predecessor Balance Sheet</u>	<u>Plan Adjustments</u>	<u>Fresh Start Adjustments</u>	<u>Successor Balance Sheet</u>
	(in thousands)			
Assets				
Current assets:				
Cash and cash equivalents	\$ 358,643	\$ (103,914) ^(a)	\$ —	\$ 254,729
Auction rate securities	41,854	—	—	41,854
Accounts receivable	112,849	(7,133) ^(g)	(15,332) ^{(q)(r)}	90,384
Accounts receivable from related parties	374,417	—	(51,289) ^(q)	323,128 ^(t)
Allowance for doubtful accounts	(62,473)	3,814 ^(h)	58,659 ^(q)	—
Accounts receivables, net	424,793	(3,319)	(7,962)	413,512
Inventories	148,966	—	141,937 ⁽ⁱ⁾	290,903
Deferred income taxes	14,324	—	(13,183) ⁽ⁱ⁾	1,141
Restricted cash	531,313	(525,515) ^(a)	—	5,798
Prepaid expenses and other current assets	27,476	(300)	(14,656) ^(s)	12,520
Total current assets	1,547,369	(633,048)	106,136	1,020,457
Property, plant and equipment, net	287,100	—	85,593 ^(k)	372,693
Intangible assets, net	1,212	—	198,288 ^(l)	199,500
Goodwill	—	—	162,253 ^(m)	162,253
Deferred income taxes	—	—	20,893 ⁽ⁱ⁾	20,893
Other assets	36,180	(13,315) ^(c)	49	22,914
Total assets	<u>\$1,871,861</u>	<u>\$ (646,363)</u>	<u>\$ 573,212</u>	<u>\$1,798,710^(t)</u>
Liabilities and Stockholders' Deficit				
Current liabilities:				
Short term note	\$ 1,380	\$ —	\$ —	\$ 1,380
Senior secured term loan	450,000	(445,500) ^(d)	—	4,500
Accounts payable	117,048	(24,411) ^(b,2)	25,483 ⁽ⁿ⁾	118,120
Accounts payable to related parties	319,564	—	—	319,564 ^(t)
Accrued compensation and benefits	33,046	1,750 ^(f)	232	35,028
Other accrued liabilities	118,905	1,631 ^(b,1)	19,772 ⁽ⁿ⁾	140,308
Income taxes payable	176	—	—	176
Deferred income taxes	—	—	13,816 ^(g)	13,816
Rights offering deposits	75,783	29,092 ^(b)	(104,875) ^(b)	—
Current portion of long-term debt and obligations under capital lease	638,108	(628,637) ^{(b)(a)}	(146)	9,325
Deferred income	59,718	—	(47,458) ^{(o)(r)}	12,260
Total current liabilities	1,813,728	(1,066,075)	(93,176)	654,477
Deferred income taxes	21,397	—	(9,324) ⁽ⁱ⁾	12,073
Long-term debt and obligations and capital lease obligations, less current portion	—	3,044 ^(b)	496	3,540
Senior secured term loan	—	445,500 ^(d)	—	445,500
Other long-term liabilities	8,861	—	259	9,120
Commitments and contingencies				
Total long-term liabilities	30,258	448,544	(8,569)	470,233
Liabilities subject to compromise	938,522	(938,522)	—	—
Total liabilities	2,782,508	(1,556,053)	(101,745)	1,124,710
New Common Stock	—	—	674,000 ^(p)	674,000
Stockholders' deficit	(910,647)	909,690 ^(e)	957 ^(e)	—
Total liabilities and stockholders' deficit	<u>\$1,871,861</u>	<u>\$ (646,363)</u>	<u>\$ 573,212</u>	<u>\$1,798,710^(t)</u>

Spansion Inc.

Notes to Condensed Consolidated Financial Statements—(Continued) (Unaudited)

Plan Adjustments.

The primary Plan adjustment is the elimination of LSTC which is based on all claims received by the Company and accruals made from these claims of estimated final settlements. LSTC amounted to \$938.5 million on our Consolidated Balance Sheet immediately prior to May 10, 2010, which were discharged in the Chapter 11 Cases or settled by issuance of the Company's New Common Stock. In accordance with the Plan, the Company set aside, from total LSTC, those final settlements which were to be settled in cash (approximately \$18.4 million) and stock (approximately \$486.1 million) and recorded a reorganization gain of approximately \$434.0 million in full settlement of the LSTC.

Other Plan adjustments include:

- (a) *repayment of Predecessor debt* relating to (b) below;
- (b) *repayment of FRN*. This was recorded in LSTC prior to May 10, 2010. Total principal amount owed to FRNs prior to the Emergence Date amounted to approximately \$625.6 million (of the \$628.6 million net plan adjustment as noted in (b) in the above table, approximately \$3 million related to the reclassification of capital lease obligations from short term liability to long term liability).

In addition, accumulated interest owed to FRNs prior to Emergence Date was approximately \$13 million (\$1.6 million net plan adjustment noted in (b.1) in the table above comprised of \$17.6 million of LSTC, offset by the aforementioned \$13 million of accumulated interest paid to FRNs and \$3 million of accounts payable).

The Company also incurred approximately \$19.6 million in professional fees and financing costs relating the settlement of amounts due to FRNs. (the \$24.4 million net plan adjustment to accounts payable noted in (b.2) in the table above comprised of the aforementioned \$19.6 million of professional fees as well as \$4.8 million of accounts payable)

In accordance with the Plan, the Company settled the FRN principal, accumulated interest, professional fees and financing costs (as described above) fully in cash on the Emergence Date. Proceeds from the \$450 million senior secured term loan, net proceeds of \$104.9 million from the Rights Offering and the Company's cash balances were utilized to effect the above settlements;

- (c) *extinguishment of debt financing costs*. In connection with the extinguishment of old debts (Senior Notes, Exchangeable Senior Subordinated Debentures and FRNs) in accordance with the Plan, the Company originally had capitalized and amortized all financing costs relating to such old debt. In accordance with the provisions of ASC 470, "Early Extinguishment of Debt", the remaining unamortized costs of approximately \$13 million was expensed as reorganization expense;
- (d) *reclassification of the Term Loan between short-term and long-term obligations*. During the first quarter of 2010, prior to emergence and as part of its exit financing strategy, the Company closed a \$450 million senior secured five-year term loan facility, the receipt of the proceeds which were contingent upon emergence from the Chapter 11 Cases. The Company had recorded the receipts as restricted cash and short term liability as of March 28, 2010 pending the remaining outcome of the Chapter 11 Cases during the second quarter of 2010. Upon emergence, the Company received the loan proceeds and reclassified the long term portion of the loan to long term liability;
- (e) *elimination of old equity*. Upon the effective date of the Plan, all existing Spansion equity plans (2005 & 2007 Equity Incentive Plans and Saifun Option Plans) and all equity awards thereunder were cancelled. In accordance with ASC 718, "Compensation-Stock Compensation", the Company recorded, as an adjustment to stockholder's deficit, the remaining unamortized stock compensation expense of

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Notes to Condensed Consolidated Financial Statements—(Continued) (Unaudited)

approximately \$5.5 million as a reorganization expense in the Income Statement of the Predecessor during the second quarter of 2010. Total adjustments to stockholders' deficit, net of all adjustments in the "Plan Adjustments" column in the above table, amounted to approximately \$909.7 million;

- (f) *Chapter 11 emergence bonus payable to the Chief Executive Officer of the Company.* In accordance with our employment agreement with our Chief Executive Officer, Mr. Kispert was entitled to a \$1.7 million bonus upon the consummation of the Plan, which was consummated on May 10, 2010. Because this bonus was payable only upon the effectiveness of the Plan and was not contingent upon any other performance requirement in the post-emergence period, the Company accounted for the bonus as a Plan adjustment and a reorganization expense in accordance with ASC 805, "Compensation payments for post-combination services";
- (g) *set-off of accounts payable and accounts receivable balances and reorganization gains realized from accounts receivable reserve balances.* Of the \$7.1 million net plan adjustment noted in (g) in the above table, \$11.4 million of accounts receivable relating to a customer was set-off against amounts owed to the same customer as these balances were rendered ineffective upon the confirmation of the Plan, and which was offset by a net \$4.3 million reorganization gain, of which \$3.9 million related to a credit note issued to a customer which was rendered ineffective as no unsecured claim was received from the customer during the Bankruptcy Court claims process period which closed during the first quarter of fiscal year 2010. Similarly, an additional \$0.5 million gain was recorded for a accounts receivable reserve for a customer which was rendered ineffective upon plan confirmation; and
- (h) *set-off of allowance for doubtful accounts balance against a gross accounts receivable balance .* A \$3.8 million allowance for doubtful debt balance relating to a customer was set-off against the gross accounts receivable of \$11.4 million ((as noted in (g) above)) as these balances were rendered ineffective upon the confirmation of the Plan.

Fresh Start Adjustments.

Significant adjustments reflected in the Fresh Start Consolidated Balance Sheet based on the revaluation of assets and liabilities are summarized as follows:

- (i) *Inventories, net.* An adjustment of \$ 141.9 million was recorded to increase the net book value of inventories to their estimated fair value. The fair value of finished goods was estimated based on the average selling price less the sum of disposal costs and a reasonable profit allowance for the selling effort. The fair value of work-in-process was estimated based on the average selling price less the sum of cost to complete, disposal costs, and a reasonable profit allowance. Raw materials were carried on the Predecessor's and Successor's books at replacement costs and therefore no fair value adjustment was required.
- (j) *Deferred Income Tax.* Due to various adjustments and revaluations arising from fresh start accounting, both on foreign and domestic entities, deferred tax assets and liabilities associated with certain tangible and intangible assets were revaluated and/or recomputed. Similarly, certain tax attributes such as tax credits, tax allowances and net operating losses were revaluated and/or recomputed, resulting in a net deferred tax adjustment of \$3.2 million;
- (k) *Land, Property and Equipment, net.* A net adjustment of \$ 85.6 million was recorded to increase the net book value of tangible fixed assets to their estimated fair value. In valuing its long-lived tangible assets, the Company applied the fair value definition as set forth in ASC 820, "Fair Value Measurement" which states that fair value is the amount at which an asset (or liability) could be bought (or incurred) or sold (or settled) in a current transaction between willing parties, that is, other than in a

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Notes to Condensed Consolidated Financial Statements—(Continued) (Unaudited)

forced or liquidation sale. The Company identified its long-lived assets as either in use or to be disposed off (either by sale or by scrap). Assets in use were valued under the continued use premise. This premise assumes that the assets will remain “as-is, where is,” and continue to be used at their present location for the continuation of business operations. This value includes all direct and indirect costs necessary to acquire, install, and make the asset operational. Assets to be disposed of were valued on an in-exchange value premise. This premise represents the highest and best use of the asset is an in-exchange if the asset would provide maximum value to market participants principally on a standalone basis;

- (l) *Intangible Assets.* An adjustment of \$198.3 million was recorded (for developed technology, customer relationships, trade name and in-process research and development (IPR&D) based on fair values determined by the Company. As part of its application of fresh start accounting, the Company allocated the reorganization value to its assets and liabilities, including intangible assets using: i) discounted cash flow methodology applied to its financial forecasts and also taking into consideration the enterprise value of the Successor based on the Bankruptcy Court approved enterprise value ranges and methodologies (refer to “Fresh Start Consolidated Balance Sheet” section of this footnote for discussion of the enterprise value), and ii) Guideline Public Company (GPC) methodology, considering data from public companies deemed to be comparable to the Company to develop relevant market multiples which were then applied to the Company’s forecasts provided by Management to calculate its fair value. See Note 9 for details;
- (m) *Goodwill.* An adjustment of \$162.3 million was recorded to reflect the allocation of the reorganized enterprise value of the Successor in excess of the fair value of tangible and identified intangible net assets. See Note 9 for details;
- (n) *Accounts Payable and Other Accrued Liabilities.* The increase of \$25.4 million in Accounts Payable primarily related to the recording of a \$25.2 million legal liability arising from the implementation of a new accounting policy upon the adoption of fresh start accounting. See Note 3 for further details. The increase of \$19.8 million in other accrued liabilities was primarily due \$16.4 million of liabilities reclassified from deferred income, a \$1.3 million increase to an existing liability which was previously discounted to its net present value (when the liability was deemed to be long term in previous accounting periods and which was deemed to be short term as of the Emergence Date) and a \$1.4 million accrual for committed purchase orders to vendors;
- (o) *Deferred income.* An adjustment of \$39.5 million was recorded to reduce deferred income to the fair value of the Company’s related future performance obligations. Of the net fresh start adjustment of \$47.5 million noted in (o) in the above table, \$39.5 million related to deferred income as discussed above and \$8.0 million related to other deferred revenue balances set-off against accounts receivable balances (see (r) below for details);
- (p) *New Common Stock.* All Old Common Stock of the Predecessor was cancelled and the Successor issued New Common Stock in accordance with the Plan. See Note 4 for details;
- (q) *Elimination of allowance for doubtful accounts (AFDA).* Upon the adoption of fresh start accounting, all of the Predecessor’s reserves including AFDA are eliminated as the Successor commences operations as a new entity. Therefore, the remaining AFDA balance of \$58.7 million prior to the adoption of fresh start accounting was eliminated by setting off the reserves against their original accounts receivable balances;
- (r) *Deferred revenue set-off against accounts receivable.* In prior accounting periods, the Company had previously recorded deferred revenue from two customers amounting to approximately \$8.0 million for

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Notes to Condensed Consolidated Financial Statements—(Continued) (Unaudited)

invoice collection uncertainties (i.e. collectability of sales proceeds was not reasonably assured). The accounts receivable balances relating to these customers were fully reserved for in prior accounting periods. Therefore, as part of fresh start accounting, the fair values of the deferred revenue and accounts receivable balances in the balance sheet amounted to zero as there were no additional performance obligations to be rendered by the Company. Hence, these two balances were set-off against each other. There was no impact to retained earnings as a result of the above;

- (s) *New debt financing costs write off.* During the first quarter of 2010, prior to emergence and as part of its' exit financing strategy, the Company closed a \$450 million five-year senior secured term loan facility resulting in debt financing costs of approximately \$13.5 million which were capitalized in the predecessor's financial statements just prior to the Emergence Date. These were paid upon emergence. However, the Company concluded the fair value of the deferred financing costs to be zero as the fair value of the debt was deemed to be at par value. Similarly, the Company also recorded a fresh start adjustment of \$0.6 million of financing costs relating to its new unutilized revolving credit facility for which there was no future performance obligations. This resulted in a zero fair value; and
- (t) *Net adjustment to enterprise value.* Included in accounts receivable/payable to related parties is approximately \$283 million receivable/payable to Spansion Japan, representing balances related to transactions between the two companies prior to October 27, 2009 (the date when the Company and Spansion Japan mutually agreed to pricing terms through executed purchase orders). These balances were deemed expunged, released and satisfied on consummation of definitive agreements laid out in the January 8, 2010 Settlement as described above in Note 2. In accordance with the provisions of ASC 450, *Contingencies*, the Company had previously reserved the accounts receivable in excess of the accounts payable balance to ensure the loss contingency was adequately reserved so that there will be no income statement impact upon the consummation of the distribution of business. With the acquisition of Spansion Japan's distribution business on May 24, 2010, all material conditions of the Settlement were fulfilled. As a result, the receivable and payable balances due from/to Spansion Japan as of October 27, 2009 were set-off subsequent to May 24, 2010, and prior to the end of the second quarter ended June 27, 2010. Therefore, the enterprise value as of the Emergence Date is the total assets of the Company (approximately \$1.8 billion) less \$283 million (which was grossed up in accounts receivable and payable in the opening balance sheet as of the Emergence Date). Thus, the enterprise value was approximately \$1.5 billion.

3. Summary of Significant Accounting Policies

Basis of Presentation

The accompanying condensed consolidated financial statements of the Company have been prepared in accordance with U.S. generally accepted accounting principles (U.S. GAAP) for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. The condensed consolidated financial statements and notes thereto are unaudited. In the opinion of the Company's management, these financial statements contain all adjustments (consisting of normal recurring adjustments) that are necessary for a fair statement of the Company's operating results, financial position and cash flows. Operating results for the interim periods presented are not necessarily indicative of the results to be expected for any subsequent interim period or for the full fiscal year ending December 26, 2010.

In preparing the Condensed Consolidated Financial Statements for the Predecessor, the Company applied ASC 852 "Reorganizations", which requires that the financial statements, for periods subsequent to the Chapter 11 filing, distinguish transactions and events that were directly associated with the reorganization from the

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Notes to Condensed Consolidated Financial Statements—(Continued) (Unaudited)

ongoing operations of the business. Accordingly, professional fees associated with the Chapter 11 Cases and certain gains and losses resulting from reorganization of the Company's business have been reported separately as reorganization items. In addition, interest expense for the Predecessor company has been reported only to the extent that it was paid during the Chapter 11 Cases or that it was probable that it would be an allowed priority, secured, or unsecured claim under the Chapter 11 Cases. Interest income earned during the Chapter 11 Cases is reported as a reorganization item.

Upon emergence from Chapter 11, the Company adopted fresh start accounting in accordance with ASC 852 "Reorganizations". The adoption of fresh start accounting results in the Company becoming a new entity for financial reporting purposes. Accordingly, the Condensed Consolidated Financial Statements on or after May 10, 2010 are not comparable to the Condensed Consolidated Financial Statements prior to that date. The Company's Consolidated Statements of Operations for fiscal quarter ended June 27, 2010 and for subsequent periods through fiscal year 2013 will be split into Predecessor and Successor financial statements for as long as any Predecessor financial statements are disclosed.

Fresh start accounting requires resetting the historical net book value of assets and liabilities to fair value by allocating the entity's reorganization value to its assets and liabilities pursuant to ASC 805 "Business Combinations" and ASC 820 "Fair Value Measurements and Disclosures". The excess reorganization value over the fair value of tangible and identifiable intangible assets is recorded as goodwill on the Condensed Consolidated Balance Sheet. Deferred taxes are determined in conformity with ASC 740 "Income Taxes". For additional information regarding the impact of fresh start accounting on our Condensed Consolidated Balance Sheet as of June 27, 2010, see "Fresh Start Consolidated Balance Sheet".

Furthermore, effective March 3, 2009, the Company deconsolidated Spansion Japan because, despite its 100 percent equity ownership interest, the Company no longer controlled Spansion Japan due to the appointment of a trustee in the Spansion Japan Proceeding. Since March 3, 2009, the Company has accounted for its interest in Spansion Japan as a cost basis investment. Transactions between the Company and Spansion Japan after March 3, 2009, have been reflected as transactions with a third party.

With the exception of Spansion Japan as described above, the condensed consolidated financial statements include all the accounts of the Company and those of its wholly owned subsidiaries, and all intercompany accounts and transactions have been eliminated.

The condensed consolidated financial statements do not include certain financial statement footnotes and disclosures required under U.S. GAAP for audited financial statements. Therefore, the condensed consolidated financial statements should be read in conjunction with the Company's audited consolidated financial statements and footnotes thereto for the year ended December 27, 2009, included in the Company's Annual Report on Form 10-K, filed with the SEC on February 11, 2010.

Use of Estimates

The preparation of the Company's condensed consolidated financial statements and disclosures in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, disclosure of commitments and contingencies and the reported amounts of revenues and expenses during the reporting periods. Estimates are used to account for the fair value of fresh start adjustments, the fair value of certain marketable securities, revenue, the allowance for doubtful accounts, inventory, including valuation of acquired intangible assets, impairment of long-lived assets, legal contingencies,

Spansion Inc.

**Notes to Condensed Consolidated Financial Statements—(Continued)
(Unaudited)**

income taxes, stock-based compensation expenses, liabilities subject to compromise, the fair value of the debt and liability components of the Company's Exchangeable Senior Subordinated Debentures and product warranties. Actual results may differ from those estimates, and such differences may be material to the Company's condensed consolidated financial statements.

Inventories

Inventories are stated at standard cost adjusted to approximate the lower of cost (first-in, first-out method) or market. The Company writes down inventories based on forecasted demand and technological obsolescence. These factors are impacted by market and economic conditions, technology changes, new product introductions and changes in strategic direction and require estimates that may include uncertain elements. Actual demand may differ from forecasted demand, and such differences may have a material effect on recorded inventory values.

In connection with fresh start accounting, net inventories were adjusted to increase the carrying value of inventories to estimated fair value on May 11, 2010.

	Successor June 27, 2010	Successor May 11, 2010	Predecessor December 27, 2009
		(in thousands)	
Raw materials	\$ 12,273	\$ 15,675	\$ 14,202
Work-in-process	209,138	236,510	112,469
Finished goods	23,125	41,625	15,052
Inventories	<u>\$244,536</u>	<u>\$293,810</u>	<u>\$141,723</u>

Property, Plant and Equipment

Property, plant and equipment are stated at cost for the Predecessor and revalued at fair value on May 11, 2010 in accordance with fresh start accounting. Depreciation and amortization are provided on a straight-line basis over the existing useful lives of the assets. Pre-emergence fully depreciated assets will be deemed to have useful lives of 12 months post-emergence.

	Successor June 27, 2010	Successor May 11, 2010	Predecessor December 27, 2009
		(in thousands)	
Land	\$ 51,778	\$ 51,778	\$ 20,107
Buildings and leasehold improvements	70,789	70,210	117,553
Equipment	214,460	235,463	318,592
Construction in progress	16,378	15,242	14,345
Accumulated depreciation and amortization	(23,804)	—	(147,887)
Property, plant and equipment, net . . .	<u>\$329,601</u>	<u>\$372,693</u>	<u>\$ 322,710</u>

Intangible Assets

Intangible assets other than intellectual property include developed technology, customer relationships, trade name and IPR&D which are amortized on a straight-line basis over periods ranging from seven to ten years. See Note 9 for further details.

Spansion Inc.

Notes to Condensed Consolidated Financial Statements—(Continued) (Unaudited)

Goodwill

Goodwill represents the allocated enterprise value in connection with fresh start accounting under ASC 852 and the excess of the purchase price over the fair value of net tangible and identifiable intangible assets acquired in connection with the acquisition of the Spansion Japan Kawasaki distribution business (see Note 9). Goodwill amounts are not amortized, but rather are tested for impairment at least annually or more frequently if there are indicators of impairment present, at a level within the Company referred to as the reporting unit. The Company has historically performed its goodwill impairment analysis as of the last day of the fourth quarter of the fiscal year. With fresh start accounting, the Company plans to assess goodwill for impairment during the fourth quarter of each fiscal year.

Fair Value

The Company re-measured each major category of assets and liabilities at fair value in connection with fresh start accounting with guidance from ASC 820. Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. In measuring fair value, the Company uses a hierarchy that maximizes the use of observable inputs and minimizes the use of unobservable inputs by requiring that the most observable inputs be used when available. Observable inputs are inputs that market participants would use in pricing the asset or liability developed based on market data obtained from sources independent of the Company. Unobservable inputs are inputs that reflect the Company's best estimate of what market participants would use in pricing the asset or liability developed based on the best information available in the circumstances. The hierarchy is broken down into three levels based on the reliability of inputs as follows:

Level 1—Inputs are unadjusted, quoted prices in active markets for identical assets or liabilities at the measurement date.

Level 2—Inputs (other than quoted prices included in Level 1) are either directly or indirectly observable for the asset or liability through correlation with market data at the measurement date and for the duration of the asset/liability's anticipated life.

Level 3—Inputs reflect management's best estimate of what market participants would use in pricing the asset or liability at the measurement date. Consideration is given to the risk inherent in the valuation technique and the risk inherent in the inputs to the model.

The availability of observable inputs can vary and is affected by a wide variety of factors. To the extent that valuation is based on models or inputs that are less observable or unobservable in the market, the determination of fair value requires more judgment. Accordingly, the degree of judgment exercised by the Company in determining fair value is greatest for assets and liabilities categorized in Level 3. When observable prices are not available, the Company either uses implied pricing from comparables or valuation models based on net present value of estimated future cash flows, adjusted as appropriate for liquidity, credit, market and/or other risk factors. Fair value is a market-based measure considered from the perspective of a market participant rather than an entity-specific measure. Therefore, even when market assumptions are not readily available, the Company's own assumptions are set to reflect those it believes market participants would use in pricing the asset or liability at the measurement date. Please see Note 13 for fair value measurement.

Estimates relating to Litigation Reserve

Upon emergence and as part of fresh start accounting, the Company implemented its litigation reserve policy whereby it would record, on a rolling four quarter basis, the estimated litigation costs that it expects to incur in defending itself in connection with ongoing lawsuits in accordance with the provisions of ASC 450,

Spansion Inc.

Notes to Condensed Consolidated Financial Statements—(Continued) (Unaudited)

“Contingencies”. Judgment is necessary to estimate these costs and an accrual is made when it is probable that a liability has been incurred and the amount of loss can be reasonably estimated.

New Accounting Pronouncement

In April 2010, the FASB issued revised guidance to clarify that an employee share-based payment award with an exercise price denominated in the currency of a market in which a substantial portion of the entity’s equity securities trades should not be considered to contain a condition that is not a market, performance or service condition. Therefore, an entity would not classify such an award as a liability if it otherwise qualifies as equity. The amendments in this guidance are effective for fiscal years, and interim periods within those fiscal years, beginning on or after December 15, 2010. The revised guidance should be implemented by recording a cumulative-effect adjustment to the opening balance of retained earnings. The cumulative-effect adjustment should be calculated for all awards outstanding as of the beginning of the fiscal year in which the amendments are initially applied, as if the amendments had been applied consistently since the inception of the award. The cumulative-effect adjustment should be presented separately. Earlier application is permitted. The Company believes the adoption of this guidance will not have a material impact on its consolidated financial statements.

In January 2010, the FASB issued amended guidance on fair value measurements and disclosures. The new guidance requires additional disclosures regarding fair value measurements, amends disclosures about postretirement benefit plan assets, and provides clarification regarding the level of disaggregation of fair value disclosures by investment class. This guidance is effective for interim and annual reporting periods beginning after December 15, 2009, except for certain Level 3 activity disclosure requirements that will be effective for reporting periods beginning after December 15, 2010. Accordingly, we adopted this amendment on January 1, 2010, except for the additional Level 3 requirements which will be adopted in 2011. The adoption of this guidance has not had, and the Company believes the adoption will not have a material impact on its consolidated financial statements.

In October 2009, the FASB amended the accounting standards for revenue recognition to remove tangible products containing software components and non-software components that function together to deliver the product’s essential functionality from the scope of industry-specific software revenue recognition guidance. In October 2009, the FASB also amended the accounting standards for multiple deliverable revenue arrangements to:

- provide updated guidance on whether multiple deliverables exist, how the deliverables in an arrangement should be separated, and how the consideration should be allocated;
- require an entity to allocate revenue in an arrangement using estimated selling prices of deliverables if a vendor does not have vendor-specific objective evidence of selling price or third-party evidence of selling price; and
- eliminate the use of the residual method and require an entity to allocate revenue using the relative selling price method.

The accounting changes summarized in this guidance are effective for fiscal years beginning on or after June 15, 2010, with early adoption permitted. Adoption may either be on a prospective basis or by retrospective application. The Company believes the adoption of this guidance will not have a material impact on its consolidated financial statements.

Financial Statements Reclassifications

Certain prior period amounts in the condensed consolidated statements of operations have been revised to conform to the current period presentation. This is related to the revision of sales to Spansion Japan. There is no material impact to the Company’s results from operations due to these revisions.

Spansion Inc.

Notes to Condensed Consolidated Financial Statements—(Continued) (Unaudited)

4. Capital Stock

Successor

Upon emergence, the total number of shares of capital stock that the Company is authorized to issue under its Amended and Restated Certificate of Incorporation is 200,000,001 shares, consisting of: (i) 150,000,000 shares of New Common Stock, par value \$0.001 per share; (ii) one share of Class B Common Stock, par value \$0.001 per share; and (iii) 50,000,000 shares of Preferred Stock, par value \$0.001 per share, issuable in one or more series. As of June 27, 2010, there are 59,270,916 shares of Class A Common Stock and one share of Class B Common Stock issued and outstanding.

Common Stock

Except as described below or as required by law, the holders of the Company's common stock are entitled to one vote per share on all matters to be voted on by stockholders and shall vote together as a single class. The holder of Class B Common Stock, which is Silver Lake, shall be entitled to vote for up to two directors to the Board. The holders of Class A Common Stock shall be entitled to vote for all other directors to the Board. The outstanding share of Class B Common Stock shall convert into shares of Class A Common Stock on a share-for-share basis: (i) upon the written consent of the holder of the outstanding Class B Common Stock; (ii) in the event that any person other than SLS Spansion Holdings, Silver Lake or their respective Affiliates and managed accounts becomes the holder of the share of Class B Common Stock; or (iii) after August 2010, Silver Lake's aggregate ownership interest in the Company ceases to be at least five percent.

Preferred Stock

The Company's board of directors has the authority, without action by the stockholders, to designate and issue preferred stock in one or more series and to designate the rights, preferences and privileges of each series, such as dividend rates, dividend rights, liquidation preferences, voting rights and the number of shares constituting any series and designation of such series which may be greater than the rights of the common stock. It is not possible to state the actual effect of the issuance of any shares of preferred stock upon the rights of holders of the common stock until the board of directors determines the specific rights of the holders of such preferred stock. However, the effects might include, among other things:

- restricting dividends on the common stock;
- diluting the voting power of the common stock;
- impairing the liquidation rights of the common stock; or
- delaying or preventing a change of control of Spansion without further action by the stockholders.

5. Equity Incentive Plan and Stock-Based Compensation

Plan Description

2010 Equity Incentive Award Plan

On May 10, 2010, upon emergence from the Chapter 11 Cases, the Company's Board of Directors approved the Spansion Inc. 2010 Equity Incentive Award Plan (the 2010 Plan), under which 6,580,240 shares of New Common Stock have been reserved and made available for issuance in the form of equity awards, including incentive and nonqualified stock options and restricted stock unit (RSU) awards. The 2010 Plan is administered by the Compensation Committee of the Company's Board of Directors, and that committee has the authority to, among other things, grant awards, delegate certain of its powers, accelerate or extend the vesting or exercisability

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Notes to Condensed Consolidated Financial Statements—(Continued)
(Unaudited)

of awards and determine the date of grant of an award. The maximum term of any stock option granted under the 2010 Plan is seven years from the date of grant and the exercise price of each option is determined under the applicable terms and conditions as approved by the Compensation Committee.

The 2010 Plan provides that grants may be awarded to an officer or employee, a consultant or advisor, or a non-employee director of the Company or its subsidiaries. Incentive stock options may only be granted to employees of the Company or its subsidiaries. The exercise price of each stock option shall not be less than 100 percent of the fair market value of the New Common Stock on the date of grant (not less than 110 percent if such stock option is granted to a person who has more than 10 percent of the total combined voting power of all classes of stock of the Company or any subsidiary).

Under the 2010 Plan, one third of the stock options vest on January 31, 2011, and then 1/36 per month for the next two years, and expire if not exercised by the seventh anniversary of the grant date. Ten percent of the RSU awards for U.S.-based employees granted on May 10, 2010 will vest immediately, up to a maximum of 100 shares per employee. The remainder will vest in four substantially equal installments on the last trading day in January of each year from 2011 through 2014. Shares that are subject to or underlie awards that expire or for any reason are cancelled, terminated or forfeited, or fail to vest will again be available for grant under the 2010 Plan.

Valuation and Expense Information

The following table sets forth the total recorded stock-based compensation expense by financial statement caption for the Successor (2010 Plan) and the Predecessor (2005 Plan, 2007 Plan, Saifun 2003 Plan, Saifun Semiconductor Ltd. 2001 Share Option Plan and Saifun Semiconductor Ltd. 1997 Share Option Plan), resulting from the Company's stock options and RSU awards for the three and six months ended June 27, 2010, respectively.

	<u>Successor</u>	<u>Predecessor</u>	<u>Predecessor</u>	<u>Successor</u>	<u>Predecessor</u>	<u>Predecessor</u>
	<u>Period from May 11, 2010⁽¹⁾ to June 27, 2010</u>	<u>Period from March 29, 2010 to May 10, 2010⁽¹⁾</u>	<u>Three Months Ended June 28, 2009</u>	<u>Period from May 11, 2010⁽¹⁾ to June 27, 2010</u>	<u>Period from December 28, 2009 to May 10, 2010⁽¹⁾</u>	<u>Six Months ended June 28, 2009</u>
	(in thousands)					
Cost of sales	\$ 722	\$ 73	\$ 419	\$ 722	\$ 346	\$1,802
Research and development	398	172	817	398	683	2,386
Sales, general and administrative	825	55	902	825	566	3,380
Expense on cancellation of old equity incentive plans	—	5,457	—	—	5,457	—
Stock-based compensation expense before income taxes . . .	<u>1,945</u>	<u>5,757</u>	<u>2,138</u>	<u>1,945</u>	<u>7,052</u>	<u>7,568</u>
Income tax benefit	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>
Stock-based compensation expense after income taxes	<u>\$1,945</u>	<u>\$5,757</u>	<u>\$2,138</u>	<u>\$1,945</u>	<u>\$7,052</u>	<u>\$7,568</u>

(1) May 10, 2010 is the date on which all old equity incentive plans were cancelled and the 2010 Plan took effect.

Spansion Inc.

**Notes to Condensed Consolidated Financial Statements—(Continued)
(Unaudited)**

The fair value of the Company’s stock options granted on May 10, 2010 under the 2010 Plan was \$5.04 per share. The fair value of each stock option was estimated at the date of grant using a Black-Scholes option pricing model, with the following assumptions for grants:

	Weighted Average for the period from May 10, 2010 to June 27, 2010
Expected volatility	58.00%
Risk-free interest rate	1.88%
Expected term (in years)	4.30
Dividend yield	0.00%

The Company’s dividend yield is zero because the Company has never paid dividends and does not have plans to do so over the expected life of the stock options. As the Company emerged as a new public company for which historical information is not relevant, it considered historical and implied volatilities from peer companies who are in the same industry sector with similar characteristics to estimate the expected volatility over the option term. The risk-free interest rate is based on the yield from U.S. Treasury zero-coupon bond with a remaining term equal to the expected stock option life. The expected term is based on the “simplified method” for developing the estimate of the expected life of a “plain vanilla” stock. Under this approach, the expected term is presumed to be the mid-point between the average vesting date and the end of the contractual term.

The Company estimated forfeitures based on its historical forfeiture rates. ASC 718 requires forfeitures to be estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates in order to derive the Company’s best estimate of awards ultimately expected to vest. The forfeiture rate for stock options and RSUs granted on May 10, 2010 is estimated to be 16.8 percent and the Company will update the forfeiture rate on a periodic basis thereafter.

As of June 27, 2010, the total unrecognized compensation cost related to unvested stock options and RSU awards was approximately \$31.7 million after reduction for estimated forfeitures, and such stock options and RSU awards will generally vest ratably through 2014.

Successor

Authorized Shares; Limits on Awards

The aggregate number of shares of New Common Stock which may be issued or transferred pursuant to Awards under the 2010 Plan is the sum of (i) 6,580,240 (provided, that the aggregate number of shares of New Common Stock which may be issued or transferred pursuant to full value Awards is 3,290,120) and (ii) an annual increase on the first day of each year beginning in 2011 and ending in 2015, equal to the least of (A) seven million (7,000,000) shares; (B) a percentage of the shares of New Common Stock outstanding (on an as converted basis) on the last day of the immediately preceding fiscal year as follows: 7% for the increase made January 1, 2011, 6% for the increase made January 1, 2012, 4.5% for the increase made January 1, 2013 and 3.5% for the increases made thereafter; and (C) such smaller number as may be determined by the Board prior to the first day of such year. No more than 6,580,240 shares of New Common Stock may be issued upon the exercise of incentive stock options.

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**Notes to Condensed Consolidated Financial Statements—(Continued)
(Unaudited)**

Shares Available to Grant

The numbers of shares of New Common Stock available for grant at June 27, 2010 under the 2010 Plan are shown in the following table:

Number of shares available for grant:	
Shares reserved for grant under the 2010 Plan ⁽¹⁾	6,580,240
Stock options granted through June 27, 2010, net of cancelled stock options	(3,031,436)
RSU awards granted through June 27, 2010, net of cancelled RSU awards	<u>(3,018,481)</u>
Shares available for grant under the 2010 Plan	<u>530,323</u>

(1) The 6,580,240 shares reserved for grant are in accordance with the Company's 2010 Equity Incentive Plan.

Stock Option and Restricted Stock Unit Activity

The following table summarizes stock option activity and related information under the 2010 Plan for the periods presented:

	<u>Number of Shares</u>	<u>Weighted- Average Exercise Price</u>	<u>Average Remaining Contractual Life (in years)</u>	<u>Aggregate Intrinsic Value (in thousands)</u>
Options:				
Outstanding as of May 10, 2010	—	\$ —	—	\$ —
Granted	3,031,436	\$10.51		
Cancelled	—	\$ —		
Exercised	<u>—</u>	<u>\$ —</u>		
Outstanding as of June 27, 2010	<u>3,031,436</u>	\$10.51	6.87	\$20,583
Exercisable as of June 27, 2010	<u>—</u>	<u>\$ —</u>	—	\$ —

The aggregate intrinsic value in the preceding table represents the total pretax intrinsic value, based on the New Common Stock's closing sales price of \$17.30 as of June 25, 2010, which would have been received by the stock option holders had all stock option holders exercised their in-the-money stock options as of that date.

The following table summarizes RSU award activities and related information for the periods presented:

	<u>Number of Shares</u>	<u>Weighted-Average Grant-date Fair Value</u>
Restricted Stock Units:		
Unvested as of May 10, 2010	—	\$ —
Granted	3,033,686	\$10.51
Cancelled	(15,205)	\$10.51
Vested	<u>(48,660)</u>	\$10.51
Unvested as of June 27, 2010	<u>2,969,821</u>	\$10.51

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Notes to Condensed Consolidated Financial Statements—(Continued)
(Unaudited)

Predecessor

Under the Plan and upon the Company's emergence from the Chapter 11 Cases on the Emergence Date, the Predecessor's outstanding equity securities, including all shares of Old Common Stock and options to purchase shares of Old Common Stock, were cancelled. The Company accelerated approximately \$5.5 million of unrecognized compensation cost as of May 10, 2010, related to unvested stock options and RSU awards under the Predecessor equity plans. The charge was recorded as a reorganization item during the second quarter of fiscal 2010.

No stock options were granted in the three and six months ended June 27, 2010 and June 28, 2009 respectively, under the Predecessor equity plans.

6. Net Income (Loss) Per Share

The following table presents the calculation of basic and diluted net income (loss) per share:

	<u>Successor</u>	<u>Predecessor</u>		<u>Successor</u>	<u>Predecessor</u>	
	<u>Period from May 11, 2010 to June 27, 2010</u>	<u>Period from March 29, 2010 to May 10, 2010</u>	<u>Three Months Ended June 28, 2009</u>	<u>Period from May 11, 2010 to June 27, 2010</u>	<u>Period from December 28, 2009 to May 10, 2010</u>	<u>Six Months ended June 28, 2009</u>
		(in thousands except for per-share amounts)				
Net income (loss)	\$(18,214)	\$359,972	\$ (7,253)	\$(18,214)	\$363,624	\$(519,888)
Weighted-average shares— basic	59,271	162,513	161,778	59,271	162,439	161,530
Effect of dilutive potential common	—	5	—	—	171	—
Weighted-average shares— diluted	59,271	162,518	161,778	59,271	162,610	161,530
Net income (loss) per share—basic	\$ (0.31)	\$ 2.22	\$ (0.04)	\$ (0.31)	\$ 2.24	\$ (3.22)
Net income (loss) per share—diluted	\$ (0.31)	\$ 2.21	\$ (0.04)	\$ (0.31)	\$ 2.24	\$ (3.22)

Employee stock options, unvested RSUs and similar equity instruments granted by the Company are treated as potential common shares outstanding in computing diluted earnings per share. Diluted shares outstanding include the dilutive effect of in-the-money options and unvested RSUs which are calculated based on the average share price for each fiscal period using the treasury stock method. Under the treasury stock method, the amount the employee must pay for exercising stock options, the amount of compensation cost for future service that the Company has not yet recognized and the amount of tax benefits that would be recorded in additional paid-in capital when the award becomes deductible are assumed to be used to repurchase shares.

For the three and six months ended June 28, 2009, the Company excluded from its diluted per share computation approximately 20.7 million potential shares of Old Common Stock issuable upon exercise of outstanding stock options, upon vesting of outstanding RSUs and upon exchange of Spansion LLC's Exchangeable Senior Subordinated Debentures because they had an anti-dilutive effect due to the net loss recorded in the period.

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Notes to Condensed Consolidated Financial Statements—(Continued)
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7. Comprehensive Income (Loss)

The following are the components of comprehensive income (loss):

	<u>Successor</u>	<u>Predecessor</u>		<u>Successor</u>	<u>Predecessor</u>	
	<u>Period from May 11, 2010 to June 27, 2010</u>	<u>Period from March 29, 2010 to May 10, 2010</u>	<u>Three Months Ended June 28, 2009</u>	<u>Period from May 11, 2010 to June 27, 2010</u>	<u>Period from December 28, 2009 to May 10, 2010</u>	<u>Six Months ended June 28, 2009</u>
			(in thousands)			
Net income (loss)	\$(18,214)	\$359,972	\$(7,253)	\$(18,214)	\$363,624	\$(519,888)
Net change in pension plan, net of taxes	—	—	—	—	—	123
Net change in cumulative translation adjustment . . .	225	—	—	225	—	(25,073)
Net change in unrealized losses on marketable securities, net of \$0 taxes	—	—	(176)	—	—	(449)
Total comprehensive income (loss)	<u>\$(17,989)</u>	<u>\$359,972</u>	<u>\$(7,429)</u>	<u>\$(17,989)</u>	<u>\$363,624</u>	<u>\$(545,287)</u>

For the period from March 29, 2010 to May 10, 2010, the net income of \$360.0 million was primarily attributable to the recognition of reorganization gain of \$364.9 million as a result of discharge of prepetition obligations upon Emergence from Chapter 11 Cases, partially offset by various operating expenses.

8. Related Party Transactions

Spansion Japan

As discussed in Note 3, in the section entitled, “Basis of Presentation,” despite its 100 percent equity ownership interest in Spansion Japan, the Company has not included Spansion Japan in its consolidated financial statements since March 3, 2009 as it no longer controls Spansion Japan due to the appointment of a trustee in the Spansion Japan Proceeding. Since that date, the Company has accounted for its interest in Spansion Japan as a cost basis investment and treats Spansion Japan as a related party for financial reporting purposes.

Effective June 27, 2010, Spansion Japan’s POR was confirmed by the Tokyo District Court. The POR provides for Spansion Japan to redeem shares held by its shareholders without consideration, cancel such shares and issue new shares to unsecured creditors. According to the POR, the redemption, cancellation and new issuance is scheduled to take place at the end of September 2010. Until that time, the Company will continue to be the 100 percent equity owner of Spansion Japan.

On February 2, 2010, the Company and Spansion Japan entered into a foundry agreement whereby the Company will purchase from Spansion Japan: (i) a minimum of 10 billion yen (equivalent to \$111.8 million at June 27, 2010) worth of wafers over six quarters beginning with the first quarter of 2010 and ending with the second quarter of 2011; and (ii) minimum sort services of \$7.7 million for the first quarter of 2010 and \$8.9 million for each quarter from the second quarter of 2010 to the second quarter of 2011, with both sort services and wafer production subject to normal and customary foundry performance conditions. This agreement replaced an earlier foundry agreement whereby Spansion Japan manufactured wafers for the Company based on a five-quarter rolling

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Notes to Condensed Consolidated Financial Statements—(Continued)
(Unaudited)

production forecast and in exchange, the Company reimbursed Spansion Japan for its manufacturing cost, plus a surcharge of 6 percent. The Company's motion to reject the earlier foundry agreement was approved by the U.S. Bankruptcy Court on November 19, 2009.

Spansion Japan continued in its historical role as the sole distributor of the Company's products in Japan, whereby it purchased products from the Company and sold them to customers in Japan, primarily through a subsidiary of Fujitsu Limited, until May 24, 2010. On May 24, 2010, the Company acquired the distribution business from Spansion Japan and subsequently has been distributing its products in Japan through a wholly owned subsidiary, Nihon Spansion Limited. With the acquisition of Spansion Japan's distribution business, all material conditions of the January 8, 2010 Settlement were fulfilled and the Company set off the receivable and payable balances due from/to Spansion Japan as of October 27, 2009 (the date when the Company and Spansion Japan mutually agreed to pricing terms through executed purchase orders). All transactions with Spansion Japan are now being settled on a regular basis on mutually agreed upon terms.

The following tables present the significant related party transactions between the Company and Spansion Japan:

	<u>Successor</u>	<u>Predecessor</u>		<u>Successor</u>	<u>Predecessor</u>	
	<u>Period from May 11, 2010 to June 27, 2010</u>	<u>Period from March 29, 2010 to May 10, 2010</u>	<u>Three Months Ended June 28, 2009</u>	<u>Period from May 11, 2010 to June 27, 2010</u>	<u>Period from December 28, 2009 to May 10, 2010</u>	<u>Period from March 3, 2009 to June 28, 2009</u>
			(in thousands)			
Sales to Spansion						
Japan	\$4,801	\$24,496	\$104,184	\$4,801	\$78,705	\$145,929
Wafer purchases from						
Spansion Japan	\$4,357	\$25,432	\$ 58,856	\$4,357	\$80,160	\$ 95,839
Payment to Spansion						
Japan for R&D services	\$ 143	\$ 655	\$ 5,838	\$ 143	\$ 2,686	\$ 7,815

The following table presents the account balances between the two companies as of June 27, 2010 and December 27, 2009, respectively:

	<u>Successor</u>	<u>Predecessor</u>
	<u>June 27, 2010</u>	<u>December 27, 2009</u>
	(in thousands)	
Trade accounts receivable from Spansion		
Japan	\$ 13,201	\$ 366,602
Trade accounts payable to Spansion Japan	\$(24,402)	\$(331,151)
Deferred income on shipments to Spansion		
Japan	\$ (397)	\$ (12,029)

Fujitsu

Fujitsu Limited (Fujitsu) was a holder of greater than 10 percent of the Company's voting securities prior to its emergence from the Chapter 11 Cases on May 10, 2010. On emergence from the Chapter 11 Cases, the Company's common stock issued prior to May 10, 2010 was cancelled and New Common Stock issued in accordance with the Plan. As a result, Fujitsu no longer holds greater than 10 percent of the Company's voting securities and has ceased to be a related party since that date.

Spansion Inc.

**Notes to Condensed Consolidated Financial Statements—(Continued)
(Unaudited)**

The Company did not have significant transactions and account balances directly with Fujitsu following the deconsolidation of Spansion Japan effective March 3, 2009. The following table presents the significant related party transactions between the Company and Fujitsu for the six months ended June 28, 2009.

	Predecessor
	Six Months Ended June 28, 2009
	(in thousands)
Net sales to Fujitsu	\$50,208
Inventory and cost of sales:	
Other purchases of goods and services from Fujitsu and rental expense to Fujitsu	11,617
Subcontract manufacturing and commercial die purchases from Fujitsu	569
Wafer purchases, processing and sort services from Fujitsu	6,096
Net gain recognized on sale of assets to Fujitsu on April 2, 2007	(3,075)
Reimbursement on costs of employees seconded to Fujitsu	(2,633)
Equipment rental income from Fujitsu	(186)
Administrative services income from Fujitsu . . .	(68)
	\$12,320
Service fees to Fujitsu:	
Sales, general and administrative	\$ 110

9. Intangible assets and Goodwill

As part of its application of fresh start accounting, the Company allocated the reorganization value to its assets and liabilities, including intangible assets using: i) discounted cash flow methodology applied to its financial forecasts and also taking into consideration the enterprise value of the Successor based on the Bankruptcy Court approved enterprise value ranges and methodologies (refer to Note 2 for discussion of the enterprise value), and ii) GPC methodology, considering data from public companies deemed to be comparable to the Company to develop relevant market multiples which were then applied to the Company's forecasts provided by Management to calculate its fair value. Amortizable intangible assets included developed technology, customer relationships, trade name and trademarks and their estimated useful lives are between seven to ten years. Indefinite-lived assets included IPR&D and goodwill.

Spansion Inc.

**Notes to Condensed Consolidated Financial Statements—(Continued)
(Unaudited)**

Intangible assets at June 27, 2010 and December 27, 2009 are as follows:

	Successor	Predecessor
	June 27, 2010	December 27, 2009
	(in thousands)	
Developed technology	\$ 65,900	\$1,646
Customer relationships	92,524	—
Trade name	8,200	—
	166,624	1,646
Total amortizable intangible assets	166,624	1,646
Less: accumulated amortization	(2,348)	(316)
	164,276	1,330
Intangible assets, net	164,276	1,330
IPR&D	43,000	—
Goodwill	165,553	—
	\$372,829	\$1,330
Intangible assets and goodwill, net	\$372,829	\$1,330

Customer relationships (which is amortized over a useful life of ten years) and goodwill included \$10.1 million and \$3.3 million, respectively, of intangibles assets arising from the acquisition of the Spansion Japan distribution business at Kawasaki, Japan (refer to Note 2) as of May 24, 2010.

The Company reviews Goodwill for impairment at least annually in the fourth quarter of each year or more frequently if events or changes in circumstances indicate that the asset might be impaired.

In-Process Research and Development

As part of the application of fresh start accounting, approximately \$43 million was allocated to IPR&D which includes projects that have not reached technological feasibility and have no alternative future use at the time of the valuation. These projects related to the development of process technologies to manufacture Flash memory products based on 65 nanometer process technology. The values assigned to IPR&D was determined using a discounted cash flow methodology, specifically an excess earnings approach, which estimates value based upon the discounted value of future cash flow expected to be generated by the in-process projects, net of all contributory asset returns. The approach includes consideration of the importance of each project to the overall development plan, estimating costs to develop the purchased IPR&D into commercially viable products.

The discount rates applied to individual projects were selected after consideration of the overall estimated weighted average cost of capital and the discount rates applied to the valuation of the other assets acquired. Such weighted average cost of capital was adjusted to reflect the difficulties and uncertainties in completing each project and thereby achieving technological feasibility, the percentage of completion of each project, anticipated market acceptance and penetration, market growth rates and risks related to the impact of potential changes in future target markets. In developing the estimated fair values, the Company used a discount rate of 17.5 percent.

If an IPR&D project is completed, the carrying value of the related intangible asset is amortized over the remaining estimated life of the asset beginning in the period in which the project is completed and sales of related product commenced. If an IPR&D project becomes impaired or is abandoned, the carrying value of the related intangible asset would be written down to its fair value and an impairment charge would be recorded in the period in which the impairment occurs.

Spansion Inc.

Notes to Condensed Consolidated Financial Statements—(Continued)
(Unaudited)

10. Warranties and Indemnities

The Company generally offers a one-year limited warranty for its Flash memory products. Changes in the Company's liability for product warranty during the three and six months ended June 27, 2010 are as follows:

	Three Months Ended June 27, 2010	Six Months Ended June 27, 2010
(in thousands)		
Balance at beginning of period		
(Predecessor)	\$3,619	\$ 3,841
Provision for warranties issued	761	1,694
Settlements	(727)	(852)
Changes in liability for pre-existing warranties during the period	(484)	(1,514)
Balance at May 10, 2010 (Predecessor)	\$3,169	\$ 3,169
Provision for warranties issued	594	594
Settlements	(158)	(158)
Changes in liability for pre-existing warranties during the period	(187)	(187)
Balance at June 27, 2010 (Successor)	\$3,418	\$ 3,418

Changes in the Company's liability for product warranty during the three and six months ended June 28, 2009 are as follows:

	Predecessor	
	Three Months Ended June 28, 2009	Six Months Ended June 28, 2009
(in thousands)		
Balance at beginning of period	\$1,478	\$1,489
Provision for warranties issued	948	1,871
Settlements	(332)	(504)
Changes in liability for pre-existing warranties during the period	811	49
Balance at end of period	\$2,905	\$2,905

In addition to product warranties, the Company, from time to time in its normal course of business, indemnifies other parties, with whom it enters into contractual relationships, including customers, directors and officers, lessors and other parties, with respect to certain matters, including specified losses arising from a breach of representations or covenants, third-party infringement claims or other claims. It is not possible to determine the maximum potential amount of liability under these indemnification obligations due to the limited history of indemnification claims and the unique facts and circumstances that are likely to be involved in each particular claim and indemnification provision.

Spansion Inc.

**Notes to Condensed Consolidated Financial Statements—(Continued)
(Unaudited)**

11. Debt and Capital Lease Obligations

The following table summarizes the Company's debt and capital lease obligations at June 27, 2010 and December 27, 2009:

	<u>Successor</u> <u>June 27, 2010</u>	<u>Predecessor</u> <u>December 27, 2009</u>
(in thousands)		
Debt obligations:		
Senior Notes	\$ —	\$ 233,440
Exchangeable Senior Subordinated Debentures	—	109,233
Senior Secured Floating Rate Notes	—	625,593
UBS Loan Secured by Auction Rate Securities	—	64,150
Senior Secured Term Loan	450,000	—
Obligations under capital leases	<u>11,531</u>	<u>18,861</u>
Total debt and capital lease obligations	461,531	1,051,277
Less: amount subject to compromise	<u>—</u>	<u>987,127</u>
Total debt and capital lease obligations not subject to compromise	<u>461,531</u>	<u>64,150</u>
Less: current portion	<u>13,798</u>	<u>64,150</u>
Long-term debt and capital lease obligations not subject to compromise	<u>\$447,733</u>	<u>\$ —</u>

New Debt and Capital Lease Obligations and Activities for the six months ended June 27, 2010

Exit Financing

Pursuant to the Plan, the holders of allowed claims were offered the right to purchase a total of 12,974,496 shares of the New Common Stock upon emergence from the Chapter 11 Cases at a price of \$8.43 per share (the Rights Offering). The number of shares available to each eligible claimant was based on each claimant's proportionate allowed claim. On January 25, 2010, the Company entered into a Backstop Rights Purchase Agreement with Silver Lake whereby Silver Lake committed to purchase the balance of Rights Offering shares not otherwise subscribed for by the Rights Offering participants. The Company received net proceeds of approximately \$104.9 million through the Rights Offering on February 9, 2010. In addition, the Company closed a \$450 million five-year Senior Secured Term Loan Agreement (Term Loan). Upon the Company's emergence on May 10, 2010, the proceeds from the Rights Offering and the Term Loan, together with other sources of cash available to the Company, were used to fully discharge the balance of the FRN claims of approximately \$638 million.

Union Bank of Switzerland (UBS AG) Loan Secured by Auction Rate Securities (ARS)

In June 2010, the Company repaid the remaining balance outstanding under the UBS AG loan from proceeds from a partial redemption of the Company's ARS.

Spansion Inc.

Notes to Condensed Consolidated Financial Statements—(Continued) (Unaudited)

Senior Secured Term Loan

On February 9, 2010, Spansion LLC, the wholly owned operating subsidiary of the Company, borrowed \$450 million under the Term Loan. In connection with the Term Loan, the Predecessor incurred financing points, fees to the arrangers and legal costs of approximately \$11.1 million, of which approximately \$3.3 million and \$7.8 million were recorded as interest expense during the three months ended June 27, 2010 and March 28, 2010, respectively. In addition, the Company paid the lenders approximately \$10 million of financing fees upon the release of Term Loan funds from escrow.

Interest on the Term Loan accrues at a rate per annum, reset quarterly, equal to the prime lending rate or the Federal Funds rate plus 0.50%, whichever is higher but not less than 3.00%, plus 4.50%. Alternatively, the Company has the option to choose 1-month, 3-month, and 6-month LIBOR rate, or choose 9-month and 12-month LIBOR with the consent of all the lenders and the interest on the Term loan accrues at a rate per annum equal to the LIBOR or 2.00%, whichever is higher, plus 5.50%. Interest is payable quarterly in arrears. As of June 27, 2010, the Term Loan carried interest at 7.5%.

The Term Loan is secured by the assets of the Company including, among other items, a first priority lien on property, plant and equipment and inventory, and a second priority lien on account receivables and cash. Based on certain agreed upon thresholds, the Term Loan will require net cash proceeds from asset sales or other dispositions of property, extraordinary cash receipts, and other future cash flows to be used to prepay the outstanding balance of the loan. Voluntary prepayments of borrowings will be permitted in whole or in part, in minimum principal amounts to be agreed upon, at any time on or prior to February 9, 2011 at a price equal to 101% of the principal amount of such borrowings being prepaid plus all accrued and unpaid interest plus breakage costs, if any, and thereafter at any time without premium or penalty. The Company is subject to a number of financial covenants beginning June 27, 2010, including a minimum consolidated interest coverage ratio of 3.75 to 1.0, a maximum leverage ratio of 2.50 to 1.0 until September 25, 2011 and a maximum leverage ratio of 2.0 to 1.0 thereafter, and maximum permitted capital expenditures of \$75 million in 2010, \$100 million in 2011 and \$125 million in 2012 and each fiscal year thereafter. Any capital expenditure amount not expended in the fiscal year for which the Company is permitted may be carried over for expenditure in the succeeding fiscal year in an amount not to exceed \$25 million in any fiscal year. As of June 27, 2010, the Company is in compliance with all of the financial covenants under the Term Loan.

The Company has entered into a hedging arrangement with a financial institution subsequent to June 27, 2010 to hedge the variability of interest payments attributable to fluctuations in the LIBOR benchmark interest rate.

Revolving Credit Facility

On May 10, 2010, the Company finalized an agreement with Bank of America and other financial institutions for the Revolving Credit Facility in an aggregate amount of up to \$65 million to supplement its working capital. Available amounts for borrowing under the Revolving Credit Facility, net of reserves, are limited to 85 percent of eligible accounts receivable and 25% of ineligible receivables subject to a cap of \$10 million. The Revolving Credit Facility is subject to a number of covenants including fixed charge ratio coverage of 1.00 to 1.00 when unrestricted cash and availability under the facility is below \$40 million. As of June 27, 2010, the Company has not made any draw downs against this facility and is in compliance with all of the financial covenants under the Revolving Credit Facility which was entered into as a pre-condition to obtaining the Term Loan.

Spancion Inc.

**Notes to Condensed Consolidated Financial Statements—(Continued)
(Unaudited)**

Impact of Emergence from Chapter 11 Cases

Upon the Company's emergence from Chapter 11, the Senior Notes and Exchangeable Senior Subordinated Debentures are being settled by distribution from the 46,247,760 shares of the Company's New Common Stock reserved to holders of allowed general, unsecured claims. On May 10, 2010, the unamortized portion of the capitalized financing costs related to these two debts were fully written off as a result of the Company's Plan adjustments.

Impact of Chapter 11 Cases

As discussed in Note 3, the accounting guidance for entities in Chapter 11 reorganization provides that interest expense should be reported only to the extent that it will be paid during the Chapter 11 Cases proceeding or that it is probable that it will be an allowed priority, secured or unsecured claim. On that basis, the Company ceased accruing interest as of the Petition Date (March 1, 2009) on its Senior Notes and Exchangeable Senior Subordinated Debentures. In addition, accretion of the discounted carrying value of the Exchangeable Senior Subordinated Debentures ceased on March 1, 2009. The Company continued to accrue interest on the FRN through the Emergence Date and the UBS loan secured by ARS. For the period from March 29, 2010 to May 10, 2010, reported interest expense was \$11.2 million while the contractual interest obligation was \$16.1 million. For the period from December 28, 2009 to May 10, 2010, reported interest expense was \$30.6 million while the contractual interest obligation was \$46.2 million.

12. Income Taxes

The following table presents the provision for (benefit from) income taxes of the Company:

	<u>Successor</u>	<u>Predecessor</u>	<u>Predecessor</u>	<u>Successor</u>	<u>Predecessor</u>	<u>Predecessor</u>
	<u>Period from May 11, 2010 to June 27, 2010</u>	<u>Period from March 29, 2010 to May 10, 2010</u>	<u>Three Months ended June 28, 2009</u>	<u>Period from May 11, 2010 to June 27, 2010</u>	<u>Period from December 28, 2009 to May 10, 2010</u>	<u>Six Months ended June 28, 2009</u>
	(in thousands)					
(Benefit from) provision for income taxes	\$(21)	\$1,235	\$261	\$(21)	\$1,640	\$429

The Company recorded immaterial income tax benefits from May 11, 2010 to June 27, 2010 and \$1.2 million income tax expenses from March 29, 2010 to May 10, 2010, as compared to an income tax expense of approximately \$0.3 million in the three months ended June 28, 2009. The income tax expense recorded from March 29, 2010 to May 10, 2010 was primarily related to tax provisions in profitable foreign locations of \$1.2 million. The income tax expense recorded in the three months ended June 28, 2009 was primarily related to tax provisions in profitable foreign locations of \$0.3 million.

The Company recorded an income tax expense of approximately \$1.6 million in the six months ended June 27, 2010, as compared to an income tax expense of approximately \$0.4 million in the six months ended June 28, 2009. The income tax expense recorded in the six months ended June 27, 2010 was primarily related to tax provisions in profitable foreign locations of \$1.6 million. The income tax expense recorded in the six months ended June 28, 2009 was primarily related to tax provisions in profitable foreign locations of \$0.4 million.

Due to emergence from bankruptcy, in the six months ended June 27, 2010, the Company also recorded an increase of \$12.0 million in deferred tax liabilities, consisting of previously unrecognized tax benefits of \$10.0 million and interest and penalties of \$2.0 million in connection with certain intercompany arrangements.

Spansion Inc.

**Notes to Condensed Consolidated Financial Statements—(Continued)
(Unaudited)**

As of June 27, 2010, all of the Company’s U.S. deferred tax assets, net of deferred tax liabilities, continue to be subject to a full valuation allowance. The valuation allowance is based on the Company’s assessment that it is more likely than not that the deferred tax assets will not be realizable in the foreseeable future.

13. Fair Value Measurements

ASC 820 defines fair value, establishes a consistent framework for measuring fair value and expands disclosure requirements about fair value measurements. ASC 820 requires, among other things, the Company’s valuation techniques used to measure fair value to maximize the use of observable inputs and minimize the use of unobservable inputs. This guidance was applied to the valuation of assets and liabilities in connection with the Company’s fresh start accounting and as recorded by the Predecessor at May 10, 2010.

There are three general valuation techniques that may be used to measure fair value, as described below:

- (A) Market approach—Uses prices and other relevant information generated by market transactions involving identical or comparable assets or liabilities;
- (B) Cost approach—Based on the amount that currently would be required to reproduce or replace the service capacity of an asset (reproduction cost or replacement cost); and
- (C) Income approach—Uses valuation techniques to convert future amounts to a single present amount based on current market expectations about the future amounts (includes present value techniques, option-pricing models, the excess earnings method, and the royalty savings method).
 - I. Net present value method is an income approach where a stream of expected cash flows is discounted at an appropriate discount rate.
 - II. The excess earnings method is a variation of the income approach where the value of a specific asset is isolated from its contributory assets.

Fair value information for each major category of assets and liabilities measured on a nonrecurring basis as part of fresh start accounting during the period is included in Note 2. The Company remeasured its assets and liabilities at fair value on May 10, 2010 as required by ASC 852 using the guidance for measurement found in ASC 805. The gains and losses related to these fair value adjustments were recorded by the Successor as adjustments to accumulated deficit.

As of June 27, 2010 and December 27, 2009, the fair value measurements of the Company’s financial assets consisted of the following and which are categorized in the table below based upon the fair value hierarchy:

	Successor				Predecessor			
	Level 1	Level 2	Level 3	Total	Level 1	Level 2	Level 3	Total
	June 27, 2010				December 27, 2009			
	(in thousands)							
Money market funds	\$—	\$—	\$ —	\$ —	\$20.0	\$—	\$ —	\$ 20
Auction rate securities	—	—	25,886	25,886	—	—	100,335	100,335
Put option	—	—	—	—	—	—	6,790	6,790
Total financial assets	<u>\$—</u>	<u>\$—</u>	<u>\$25,886</u>	<u>\$25,886</u>	<u>\$ 20</u>	<u>\$—</u>	<u>\$107,125</u>	<u>\$107,145</u>

Spansion Inc.

Notes to Condensed Consolidated Financial Statements—(Continued)
(Unaudited)

The tables below present reconciliations for the ARS and put option, the Company's Level 3 financial assets, measured at fair value on a recurring basis using significant unobservable inputs (Level 3) for the three and six months ended June 27, 2010 and June 28, 2009, respectively:

	Three Months Ended June 27, 2010		Six Months Ended June 27, 2010	
	Auction rate securities	Put option	Auction rate securities	Put option
	(in thousands)			
Balance at beginning of period (Predecessor)	\$ 75,155	\$ 4,645	\$100,335	\$ 6,790
Redemptions at par	(35,100)	—	(62,425)	—
Change in fair value	1,800	(1,800)	3,945	(3,945)
Balance at May 10, 2010 (Predecessor)	<u>\$ 41,855</u>	<u>\$ 2,845</u>	<u>\$ 41,855</u>	<u>\$ 2,845</u>
Redemptions at par	(16,750)	—	(16,750)	—
Change in fair value	781	(781)	781	(781)
Balance at June 27, 2010 (Successor)	<u>\$ 25,886</u>	<u>\$ 2,064</u>	<u>\$ 25,886</u>	<u>\$ 2,064</u>

	Predecessor			
	Three Months Ended June 28, 2009		Six Months Ended June 28, 2009	
	Auction rate securities	Put option	Auction rate securities	Put option
	(in thousands)			
Balance at beginning of period	\$104,848	\$16,314	\$ 94,014	\$ 27,465
Redemptions at par	(250)	—	(250)	—
Change in fair value	6,241	(5,503)	17,075	(16,654)
Balance at end of period	<u>\$110,839</u>	<u>\$10,811</u>	<u>\$110,839</u>	<u>\$ 10,811</u>

The changes in the fair values of the ARS and put option are reflected as components of interest and other income (expense), net.

Auction Rate Securities and Put Option

At June 27, 2010, the Company held \$25.9 million of ARS which are backed by student loans and substantially all of which are guaranteed by the U.S. government Federal Family Education Loan Program (FFELP) and which had credit ratings of AAA and Aaa. These ARS are classified within Level 3, given the failures in the auction markets subsequent to February 2008 and the lack of any correlation of these instruments to other observable market data. Therefore their valuation requires substantial judgment and estimation of factors that are not currently observable in the market due to the lack of trading in the securities.

In November 2008, the Company accepted an offer to participate in an ARS settlement from UBS, its broker, providing the Company the right, but not the obligation, to sell to UBS up to 100 percent of its ARS at par. The Company's right to sell the ARS to UBS commencing June 30, 2010 through July 2, 2012 represented a put option for a payment equal to the par value of the ARS.

At June 27, 2010, there was insufficient observable ARS market information available to determine the fair value of the Company's ARS investments. Therefore, the Company estimated the fair values of its ARS investments at June 27, 2010 using a discounted cash flow (DCF) methodology. Significant inputs used in the

Spansion Inc.

Notes to Condensed Consolidated Financial Statements—(Continued)
(Unaudited)

DCF models were the credit quality of the instruments, the percentage and the types of guarantees, the probability of the auction succeeding or the security being called prior to final maturity, and an illiquidity discount factor. The key assumptions used in the DCF analysis to determine the fair values as of June 27, 2010 were the discount factor to be applied and the period over which the cash flows would be expected to occur. The discount factor used was based on the three-month LIBOR (0.53 percent as of June 27, 2010) adjusted by 70 basis points (bps) to reflect the current market conditions for instruments with similar credit quality at the date of the valuation. In addition, the discount factor was incrementally adjusted for a liquidity discount of 125 bps to reflect the lack of an active market. The Company applied this discount factor over the expected life of the estimated cash flows of its ARS with projected interest income of 1.32 percent per annum. The projected interest income is based on a trailing 12-month average 91-day U.S. Treasury Bill Rate at 0.12 percent as of June 27, 2010 plus 120 bps, which is the average annual yield of the Company's ARS assuming auctions continue to fail.

The ARS are classified as current assets because the put option was exercisable on June 30, 2010.

The Company has sold its entire ARS at par between June 27, 2010 and July 28, 2010.

14. Restructuring Charges

In the three and six months ended June 27, 2010, as part of its ongoing strategic effort to reduce costs and conserve cash, the Company eliminated regular and contract positions globally, through consolidations, attrition, and a reduction in regular, contract and temporary workers in manufacturing, engineering, management and administrative support functions.

Restructuring charges for the periods from March 29, 2010 to May 10, 2010 and from December 28, 2009 to May 10, 2010 were as follows:

	Predecessor			
	Period from March 29, 2010 to May 10, 2010	Three Months ended June 28, 2009	Period from December 28, 2009 to May 10, 2010	Six Months ended June 28, 2009
	(in thousands)			
Employee severance pay and benefits	\$ 437	\$ 6,427	\$ 1,397	\$27,640
Professional fees	99	1,465	300	4,091
Relocation of property, plant and equipment	78	2,321	156	2,424
Utilities, deinstallation and tax expenses for Sub-micron Development Center (SDC) building	564	—	1,404	—
Others	166	—	(142)	—
Cash settled restructuring charges	1,344	10,213	3,115	34,155
Depreciation and write-off fixed assets	759	3,999	4,963	3,999
Gain recognized on sale of Suzhou plant	(1,548)	—	(5,224)	—
Gain from sale of fixed assets	(3,340)	—	(5,542)	—
Other	—	—	(84)	—
Total restructuring charges (credits)	<u>\$(2,785)</u>	<u>\$14,212</u>	<u>\$(2,772)</u>	<u>\$38,154</u>

Spansion Inc.

Notes to Condensed Consolidated Financial Statements—(Continued)
(Unaudited)

The following table summarizes the restructuring accrual activity for the periods from March 29, 2010 to May 10, 2010 and from December 28, 2009 to May 10, 2010:

	Predecessor	
	Period from March 29 to May 10, 2010	Period from December 28 to May 10, 2010
	(in thousands)	
Accrued restructuring balance at beginning of period (Predecessor)	\$11,729	\$11,954
Additional accruals for cash settled restructuring charges	1,344	3,115
Adjustments	(9,304)	(9,283)
Cash payments	(979)	(2,996)
Accrued restructuring balance at May 10, 2010 (Predecessor)	\$ 2,790	\$ 2,790

The accrued restructuring balance was included in accrued compensation and benefits in the Company's condensed consolidated balance sheet as of June 27, 2010 and December 27, 2009.

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Joint Bookrunning Managers

Barclays Capital
Morgan Stanley
BofA Merrill Lynch
Citi

Co-Managers

Gleacher & Company
Needham & Company, LLC
Pacific Crest Securities
ThinkEquity LLC