

Spansion Inc.
Form 10-K
February 12, 2010
Table of Contents

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934.
For the fiscal year ended December 27, 2009

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934.
For the transition period from to

Commission File Number 000-51666

SPANSION INC.

(DEBTOR-IN-POSSESSION)

(Exact name of registrant as specified in its charter)

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Delaware
(State or other jurisdiction of
incorporation or organization)

20-3898239
(I.R.S. Employer

Identification No.)

915 DeGuigne Drive

P.O. Box 3453

Sunnyvale, CA 94088

(408) 962-2500

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Securities registered pursuant to Section 12(b) of the Act:

None

Securities registered pursuant to Section 12(g) of the Act:

Title of each class

Class A Common Stock, \$0.001 Par Value Per Share

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (section 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See definition of "accelerated filer," "large accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company

(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined by Rule 12b-2 of the Exchange Act). Yes No

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The aggregate market value of Class A Common Stock (Common Stock) held by non-affiliates of the registrant based upon the closing sale price as reported on The Pink Sheets on June 26, 2009 was approximately \$10.3 million. Shares held by each executive officer, director and by each person who owns 10 percent or more of the outstanding Common Stock have been excluded in that such persons may be deemed to be affiliates. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

Indicate by check mark whether the registrant has filed all documents and reports required to be filed by Section 12, 13, or 15(d) of the Securities Exchange Act of 1934 subsequent to the distribution of securities under a plan confirmed by a court. Yes " No "

The number of shares outstanding of each of the registrant's classes of common stock as of the close of business on February 11, 2010:

Class	Number of Shares
Class A Common Stock, \$0.001 par value	162,441,984

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the Proxy Statement for the Annual Meeting of Stockholders, which we expect will be held on or about May 28, 2010, or 2010 Proxy Statement, are incorporated by reference into Part III hereof.

Table of Contents

Spansion Inc.

(Debtor-in-Possession)

FORM 10-K

For The Fiscal Year Ended December 27, 2009

INDEX

	Page
<u>PART I</u>	
ITEM 1. <u>BUSINESS</u>	4
ITEM 1A. <u>RISK FACTORS</u>	15
ITEM 1B. <u>UNRESOLVED STAFF COMMENTS</u>	34
ITEM 2. <u>PROPERTIES</u>	34
ITEM 3. <u>LEGAL PROCEEDINGS</u>	34
ITEM 4. <u>SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS</u>	40
<u>PART II</u>	
ITEM 5. <u>MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES</u>	41
ITEM 6. <u>SELECTED FINANCIAL DATA</u>	43
ITEM 7. <u>MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS</u>	45
ITEM 7A. <u>QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK</u>	66
ITEM 8. <u>FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA</u>	68
ITEM 9. <u>CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE</u>	133
ITEM 9A. <u>CONTROLS AND PROCEDURES</u>	133
ITEM 9B. <u>OTHER INFORMATION</u>	133
<u>PART III</u>	
ITEM 10. <u>DIRECTORS AND EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE</u>	134
ITEM 11. <u>EXECUTIVE COMPENSATION</u>	134
ITEM 12. <u>SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS</u>	134
ITEM 13. <u>CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE</u>	134
ITEM 14. <u>PRINCIPAL ACCOUNTANT FEES AND SERVICES</u>	134
<u>PART IV</u>	
ITEM 15. <u>EXHIBITS AND FINANCIAL STATEMENT SCHEDULES</u>	135
<u>SIGNATURES</u>	147

Table of Contents**PART I****Cautionary Statement Regarding Forward-Looking Statements**

This Annual Report on Form 10-K contains forward-looking statements. These statements relate to future events or our future financial performance. Forward-looking statements may include words such as may, will, should, expect, plan, intend, anticipate, believe, estimate, predict, potential, continue or other wording indicating future results or expectations. Forward-looking statements are subject to risks and uncertainties, and actual events or results may differ materially. Factors that could cause our actual results to differ materially include, but are not limited to, those discussed under Risk Factors in this report as well as risks and uncertainties relating to our Creditor Protection Proceedings including our ability to: generate cash from operations and maintain adequate cash on hand; continue to maintain cash management arrangements; attract and retain customers or avoid reduction in, or delay or suspension of, customer orders as a result of the uncertainty caused by the Creditor Protection Proceedings; maintain market share, as competitors move to capitalize on customer concerns; retain or replace major suppliers on acceptable terms and avoid disruptions in our supply chain; maintain relationships with reseller partners, joint venture partners and strategic alliance partners; retain and motivate key employees and attract new employees; actively and adequately communicate on and respond to events, media and rumors associated with the Creditor Protection Proceedings that could adversely affect our relationships with customers, suppliers, partners and employees; obtain court orders or approvals with respect to motions filed from time to time; prevent third parties from obtaining court orders or approvals that are contrary to our interests; resolve ongoing issues with creditors and other third parties whose interests may differ from ours; develop, obtain required approvals for and successfully implement a plan of reorganization; obtain sufficient exit financing to support a plan of reorganization; and realize full or fair value for any assets or business that may be divested as part of a reorganization. We also face risks and uncertainties associated with: limitations or actions against any Debtor during the Chapter 11 Cases; the values, if any, that will be prescribed pursuant to any plan of reorganization to outstanding Spansion securities; the uncertainty of the existence of a trading market in our shares of common stock; claims not discharged in the Chapter 11 Cases and their effect on our results of operations and profitability; our substantial indebtedness and its impact on our financial health and operations; fluctuations in foreign currency exchange rates; the sufficiency of workforce and cost reduction initiatives and risks and uncertainties relating to our business including our ability to: successfully focus on and pursue the embedded portion of the Flash memory market; maintain our improved gross margins and continue to implement successfully our cost reduction efforts; control our operating expenses, particularly our sales, general and administrative costs; obtain additional financing in the future; obtain materials in support of our business at terms favorable to us; retain and expand our customer base in our focus markets and retain and grow our share of business within our customer base; successfully introduce our next generation products to market in a timely manner; effectively and timely achieve volume production of our next generation products; increase market acceptance of our products based on our MirrorBit technology; penetrate further the Flash memory market with our high density products and expand the number of customers in emerging markets; successfully develop and transition to the latest technologies; develop our MirrorBit NAND architecture, introduce new products based on these architectures, and achieve customer acceptance of these products; develop systems-level solutions that provide value to customers of our products; enter new markets not traditionally served by Flash memory; negotiate successfully patent and other intellectual property licenses and patent cross-licenses and acquire additional patents; and effectively manage, operate and compete in the current sustained economic downturn and extraordinarily volatile market conditions effected in part by cautious capital spending by our customers as they face their own economic challenges. We undertake no obligation to revise or update any forward-looking statements to reflect any event or circumstance that arises after the date of this Report, or to conform such statements to actual results or changes in our expectations.

Table of Contents

ITEM 1. BUSINESS

Overview

We are a semiconductor device company that is principally dedicated to designing, developing, manufacturing, marketing and selling NOR Flash memory products and solutions. We sell our NOR Flash memory products to approximately 4,500 customers worldwide. Our products are used in a wide range of applications, 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. For fiscal 2009, our net sales were approximately \$1.4 billion and our net loss was approximately \$514.1 million compared to net sales of approximately \$2.3 billion and net loss of approximately \$2.4 billion for fiscal 2008.

We are headquartered in Sunnyvale, California, with research and development, manufacturing and assembly operations in the United States, Middle East, Europe, and Asia. We operate one Flash memory fabrication facility located in Austin, Texas and two assembly and test facilities in Bangkok, Thailand and Kuala Lumpur, Malaysia. We also operate a facility in Penang, Malaysia which is used for sort services. For financial information about geographic areas and for information with respect to our sales, refer to the information set forth in Part II, Item 7 Management's Discussion and Analysis of Financial Condition and Results of Operations, beginning on page 45, below.

Our mailing address and executive offices are located at 915 DeGuigne Drive, Sunnyvale, California 94088, and our telephone number is (408) 962-2500. References in this report to Spansion, we, us, our, or the Company shall mean Spansion Inc. and our consolidated subsidiaries unless the context indicates otherwise. We are subject to the information and periodic reporting requirements of the Securities Exchange Act of 1934, or Exchange Act, and, in accordance therewith, file periodic reports, proxy statements and other information with the Securities and Exchange Commission, or SEC. Such periodic reports, proxy statements and other information is available for inspection and copying at the SEC's Public Reference Room at 100 F Street, NE., Washington, DC 20549 or may be obtained by calling the SEC at 1-800-SEC-0330. In addition, the SEC maintains a Web site at <http://www.sec.gov> that contains reports, proxy statements and other information regarding issuers that file electronically with the SEC. We also post on the Investor Relations page of our Web site, www.spansion.com, a link to our filings with the SEC, our Code of Ethics for our Chief Executive Officer, Chief Financial Officer, Corporate Controller and other Senior Finance Executives, our Code of Business Conduct, which applies to all directors and all our employees, and the charters of our Audit, Compensation, Finance and Nominating and Corporate Governance committees. Our filings with the SEC are posted as soon as reasonably practical after they are filed electronically with the SEC. Please note that information contained on our Web site is not incorporated by reference in, or considered to be a part of, this document. You can also obtain copies of these documents free of charge by writing to us at: Corporate Secretary, Spansion Inc., 915 DeGuigne Drive, Sunnyvale, California 94088, or emailing us at: Corporate.Secretary@spansion.com.

Our Industry

During the last ten years, Flash memory has become a broadly familiar solution for common applications such as Flash memory cards for digital cameras, memory sticks for computer file storage and music storage in portable MP3 music players. Moreover, during the past twenty years, Flash memory has also become a critical embedded component in other applications, such as automotive, computing, consumer, gaming, telecommunication, networking, industrial and mobile phone electronic equipment. It is this type of embedded Flash memory that we primarily manufacture and sell to our customers, which include original equipment manufacturers, or OEMs, and original design manufacturers, or ODMs.

There are two primary types of Flash memory, NOR and NAND. The terms NOR and NAND refer to the architecture of the connections between the memory cells of the device which produce the different characteristics of the two memory types. According to iSuppli, as of December 2009, products classified as

Table of Contents

NAND Flash memory are the largest and fastest growing category of the Flash memory market, with estimated 2009 revenues of approximately \$13.7 billion and a projected 12 percent compound annual growth rate (CAGR) from 2009 to 2012.

NAND Flash memory offers a number of desirable attributes: it is relatively inexpensive, a small device can hold a large amount of information, and its performance characteristics are particularly well suited for data storage such as music, pictures and video. The market for NAND Flash memory has grown rapidly in recent years as a result of the increasing popularity of devices that consumers can use to access their personal media in a portable, battery-powered format.

In contrast, NOR Flash memory supports the operation or execution of software code directly from the device as its read times are very fast and its architecture can better support software execution, enabling a more efficient and cost effective design in some applications. According to iSuppli, as of December 2009, products classified as NOR Flash memory had estimated 2009 revenues of approximately \$4.4 billion and a negative one percent (-1%) projected CAGR from 2009 to 2012. Although NOR Flash memory is generally more expensive than NAND Flash memory at comparable densities, it is also available in much lower densities with lower prices than NAND Flash memory and primarily for this reason it is preferred in many applications that do not require the greater storage capacity that NAND Flash memory provides. At higher densities, we believe that the high reliability and ease of use of NOR Flash memory, in addition to its ability to support a more efficient and cost effective memory sub-system in certain applications such as consumer, arcade gaming, telecommunications, networking and industrial control electronics, drive NOR Flash memory use in embedded applications. For example, automobiles use NOR Flash memory for engine control, transmission control, anti-lock brake systems, anti-roll systems and other operations in the vehicle. NOR Flash memory is also used in many other applications, including mobile phone, computing, arcade gaming, telecommunications, networking, consumer and industrial electronic equipment.

The total market for memory systems and devices used in electronic systems is quite large, typically \$50 billion or greater per year. Large, well-entrenched suppliers compete vigorously within a number of segments and across segments. Technology advances rapidly and suppliers have active development programs to enhance the features and capabilities of their respective product offerings. Thus, characteristics that traditionally divide market segments can change over time. In the case of Flash memory, system designers have devised systems where NAND Flash memory can replace traditional NOR Flash memory, which in certain applications yields acceptable reliability and performance at a lower overall cost. This example illustrates a general characteristic of technology-centric industries and the memory industry in particular: advancing technology creates market share dislocations. Thus, while NOR Flash has traditionally held well-established positions in certain applications, it may be possible in the future to expand its use into other applications, and, conversely, there is no guarantee that existing positions will not be reduced. The challenge participants face in competing in this industry is to leverage existing capabilities in creative ways to create value for customers.

Our Business

Historically, we derived 50 percent or more of our net sales from cell phone manufacturers, or the wireless market. During the last decade, the dynamics of that market changed as a result of increasing feature sets that drove demand for data storage favoring implementation of NAND over NOR architecture, and a consolidation of cell phone manufacturers. At the same time, in order to meet the demands of the wireless market, we were required to increase investment in research and development and leading edge wafer manufacturing capability in the face of rapidly declining prices. These changes eroded our profitability to unsustainable levels. As a result of this and other factors, we filed for bankruptcy protection in March 2009 as described in more detail below under the heading, *Creditor Protection Proceedings*.

Shortly after commencing bankruptcy proceedings, we began exiting a large portion of the wireless market. While this significantly reduced our net sales, it allowed us to dramatically reduce our research and development expenses without impairing our ability to compete in other markets. Our exit from a large portion of the wireless

Table of Contents

market, related reductions in research and development expenses and capital expenditures, combined with other cost reductions including disposal of manufacturing facilities, enabled us to begin generating positive cash flow. We achieved modest profitability in the second half of fiscal 2009 even as our net sales contracted approximately 40 percent from historical run-rates.

We are now pursuing a business model that requires significantly less capital expenditures as we rely on a combination of internal and external manufacturing capacity (fab lite strategy). We believe this transition to utilization of outsourced manufacturing capacity will enable us to maintain a long-term, stable supply of new and existing products for customers. In addition, we have further streamlined our business by (i) reducing headcount globally, (ii) exiting certain less profitable markets, and (iii) focusing primarily on the embedded portion of the Flash memory market. We continue to have leading market share and remain dedicated to, and focused on, the embedded market, i.e., the market for NOR Flash memory used for code storage in industrial, consumer, communications, gaming, and automotive applications. We intend to continue to selectively engage in portions of the wireless market where we can do so advantageously. We believe that though the embedded market is mature and will grow more slowly than some other sectors of the semiconductor industry, we can compete successfully with our continued focus on providing best in class customer service, quality and reliability, and solutions engineering. We believe we can mitigate the historical and anticipated trend of rapid selling price reductions by serving applications with growing unit demand, migrating customers to higher density and more feature-rich devices, capturing market share, and expanding our product offerings.

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.

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, together with the Spansion Japan Proceeding are referred to collectively as the Creditor Protection Proceedings.

We continue to operate our 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 continue to operate without the supervision of the U.S. Bankruptcy Court.

Plan of Reorganization

On October 26, 2009, we 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, we filed an amended proposed Plan of Reorganization together with an accompanying amended Disclosure Statement. On December 17, 2009, we 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 appealed), 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.

Table of Contents

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.

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 an 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, our 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 up to \$761.2 million. As of December 27, 2009, we accrued expected allowed claims totaling \$1.8 billion classified as liabilities subject to compromise in the accompanying balance sheet. If the expected amount of allowed claims increases over the amount currently accrued, we 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.

Table of Contents

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 our consolidated financial results for periods beginning March 3, 2009. Because Spansion Japan's results are still consolidated for periods prior to March 3, 2009, we do not believe that a comparison of financial results spanning this date is meaningful. The effect of the deconsolidation at March 3, 2009 was a \$30.1 million gain representing the difference between the carrying value of our investment in and net accounts receivable from Spansion Japan and the fair value of our retained non-controlling interest in Spansion Japan, which was valued at zero.

Spansion Japan facilitates distribution of our products in Japan and also manufactures and supplies sorted and unsorted silicon wafers to us. The wafers purchased from Spansion Japan are a material component of our cost of goods sold, and historically the wafer prices were governed by a foundry agreement. We believe that the prices under the foundry agreement greatly exceeded the amounts that the U.S. Bankruptcy Court would have required us 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). We and Spansion Japan mutually agreed to pricing terms for purchases following October 27, 2009.

After our efforts to renegotiate the prices for the Disputed Period proved unsuccessful, we 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 our 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 we received from Spansion Japan from February 9, 2009 through October 27, 2009.

On January 8, 2010, we 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 our 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. We expect 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 our 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. We believe we have strong defenses to the amount of Spansion Japan's

Table of Contents

proof of claim, and we intend 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 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 Plan of Reorganization, Spansion Japan would be entitled, at most, to its pro-rata distribution of new Spansion common stock.

Although we have agreed to the Settlement with Spansion Japan regarding certain issues outlined in this Report, there is risk in continuing to do business with Spansion Japan due to the uncertainty of whether Spansion Japan will successfully reorganize. The current deadline for Spansion Japan to submit a plan of reorganization to the Tokyo District Court is February 24, 2010. We can provide no assurance that Spansion Japan's plan of reorganization will be approved, or that Spansion Japan will not be liquidated. As a result, we have plans to either replace with in-house capabilities the services that Spansion Japan provides or to utilize another third party for such services in order to mitigate the impact that would result if for any reason Spansion Japan reduced its supply of, or ceased supplying, the goods and services to us. Nevertheless, a sudden and unanticipated reduction or cessation of the supply of goods and services from Spansion Japan would likely be disruptive and have an adverse impact on our results of operations and that impact could be material.

Our Products and Technology

Our current product portfolio offers densities ranging from 1-megabit to 2-gigabits and a broad array of interfaces and features. We have developed two Flash memory technologies, single-bit-per-cell floating gate technology and one-, two- or more-bit-per-cell MirrorBit technology, our proprietary charge trapping non-volatile memory technology. Our current MirrorBit products are based primarily on two-bits per cell and allow us to offer a broad range of product configurations and capabilities, including high read performance and high reliability. 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. The majority of our new product designs and revenue are based on MirrorBit technology.

Our products that are designed primarily for code storage and execution are based on NOR Flash memory architecture and utilize either traditional floating gate technology or our MirrorBit technology. We have created and own fundamental intellectual property in both floating gate and MirrorBit technologies.

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 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 segment with our products based on floating gate technology. Our products using floating gate technology are typically used for code storage in applications requiring very high read speeds or the ability to operate at extreme temperatures in harsh environments such as those found in automotive applications.

MirrorBit Technology

To achieve storage density of two bits per cell, we developed MirrorBit NOR technology. MirrorBit NOR technology stores two distinct charges in a single memory cell, with each charge equivalent to one bit of data thereby at least doubling the density, or storage capacity, of each memory cell and enabling higher density, lower cost products. MirrorBit technology, which enables the storage of charge without it diffusing, moving or flowing, is generally referred to as charge trapping technology. MirrorBit technology is the foundation for our product roadmap.

Table of Contents

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, including Spansion Japan and Fujitsu, 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 as discussed above, in fiscal 2009, sales to Spansion Japan accounted for approximately 21 percent of our total net sales. Spansion Japan resells substantially all its purchases to Fujitsu who in turn acts as a distributor of our products in Japan. No OEM, ODM or contract manufacturer accounted for more than ten percent of our net sales for fiscal 2009. We believe that our recent decision to focus on the embedded portion of the Flash memory market will reduce our customer concentration in the future. For fiscal 2008, Nokia Corporation accounted for approximately 18 percent of our net sales, and for fiscal 2008 and fiscal 2007, Fujitsu accounted for approximately 29 percent and 35 percent of our net sales. Net sales to Fujitsu (in its capacity as a distributor) for fiscal 2009, including sales made through Spansion Japan after its deconsolidation, accounted for approximately 24 percent of our total net sales. 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 our intermediary Spansion Japan.

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.

Table of Contents

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, Europe and Asia. Our primary development focus is on MirrorBit products for embedded applications. We conduct our process development primarily in Sunnyvale, California, at our fabrication facility located in Austin, Texas (Fab 25) 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. For more information, see Part II, Item 7 Management's Discussion and Analysis of Financial Condition and Results of Operations.

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 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 Limited and Spansion Japan. 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 own in house capacity. Also, the deployment of leading edge technology in support of foundry manufacturing provides a more cost efficient solution for future research and development wafer production as an alternative to an in house dedicated research and development manufacturing facility for wafer production. 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 Spansion Japan has evolved over time. Historically, Spansion Japan provided us foundry services. As discussed above, on January 8, 2010, we agreed to the Settlement with Spansion Japan. Under the terms of the Settlement, we will, among other things, obtain foundry services, including wafer and sort services, from Spansion Japan. 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. We may in the future change the location where our products are manufactured to reflect changes in customer demand. We have in the past, and may in the future, obtain foundry, subcontractor and other arrangements with third parties to meet demand.

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.

Table of Contents

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. See Item 1A Risk Factors We are subject to a variety of environmental laws that could result in liabilities.

Competition

Our principal NOR Flash memory competitors are Numonyx B.V., Macronix International Co., Ltd. and Samsung Electronics Co., Ltd. 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., Numonyx B.V. and Micron Technology, Inc. In the future, our principal NAND Flash memory competitors may include Hynix Semiconductor Inc., Toshiba Semiconductor Company 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 segments;

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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.

Table of Contents

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 3,400 employees at December 27, 2009.

Backlog

We generally manufacture and market standard lines of products. Consequently, 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

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. Subject to our confidentiality obligations to third parties, and only for so long as AMD's and Fujitsu's ownership interests in us remain above specific minimum levels, which ownership interests we expect will be reduced below such levels upon emergence from the Chapter 11 Cases in accordance with the Plan of Reorganization, we are obligated to identify any of our technology to each of AMD and Fujitsu, and to provide copies of and training with respect to that technology to them. In addition, we have granted a non-exclusive, perpetual, irrevocable, fully paid and royalty-free license of our rights in that technology to each of AMD and Fujitsu.

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

Table of Contents

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 the later of June 30, 2013 or the date AMD's or Fujitsu's, whichever is the other party to the agreement, ownership interest in us is transferred or disposed of in its entirety. 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.

Under each agreement, in cases where there is a change of control of us or the other party (AMD or Fujitsu, or each of their semiconductor groups, as applicable), the other party 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 relating to 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:

- i. each existing and pending product of such party as of the date of change of control;
- ii. 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
- iii. successor products of products described in (i) and (ii) above provided such successor product is based substantially on the same technology.

Beginning in November 2008, we no longer incurred royalties associated with licenses that survive the termination of the cross-license agreement. In both fiscal 2008 and fiscal 2007, we incurred royalty expenses of approximately \$3 million to each of AMD and Fujitsu under their respective patent cross-license agreements.

We may be subject to claims 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 will be vulnerable to claims by such parties that our products or operations infringe such parties' patents or other intellectual property rights.

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. 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 December 27, 2009, we had 1,442 U.S. patents and 740 foreign patents as well as 552 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.

Table of Contents

ITEM 1A. RISK FACTORS

You should carefully consider the risks described below and the other information in this Annual Report on Form 10-K. If any of the following risks materialize, our business could be materially harmed, and our financial condition and results of operations could be materially and adversely affected.

Certain statements in this report contain words such as could, expect, may, anticipate, will, believe, intend, estimate, plan, envision, seek and other similar language and are considered forward-looking statements. These statements are based on our current expectations, estimates, forecasts and projections about the operating environment, economies and markets in which we operate. In addition, other written or oral statements that are considered forward-looking may be made by us or others on our behalf. These statements are subject to important risks, uncertainties and assumptions, that are difficult to predict and actual outcomes may be materially different. The Creditor Protection Proceedings will have a direct impact on our business and exacerbate these risks and uncertainties. In particular, the risks described below could cause actual events to differ materially from those contemplated in forward-looking statements. Unless otherwise required by applicable securities laws, we do not have any intention or obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

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, results of operations, financial condition and liquidity.

Risks Related to the 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. On March 1, 2009 (the Petition Date), Spansion Inc., Spansion LLC, Spansion Technology LLC, Spansion International, Inc. and Cerium Laboratories LLC 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, together with the Spansion Japan Proceeding, the Creditor Protection Proceedings). The following risks relate to the Creditor Protection Proceedings.

Our business, operations and financial position are subject to the risks and uncertainties associated with the Chapter 11 Cases.

For the duration of the Chapter 11 Cases, our business, operations and financial position will be subject to the risks and uncertainties associated with such proceedings. These risks, without limitation and in addition to the risks otherwise noted in this Report, include:

Strategic risks, including risks associated with our ability to:

stabilize the business to maximize the chances of preserving all or a portion of the enterprise;

successfully focus on and pursue the embedded portion of the Flash memory market;

resolve ongoing issues with creditors and other third parties whose interests may differ from ours;

obtain creditor, court and any other requisite third party approvals for the Plan of Reorganization; and

successfully implement the Plan of Reorganization.

Table of Contents

Financial risks, including risks associated with our ability to:

generate cash from operations and maintain adequate available cash;

continue to maintain currently approved intercompany lending and transfer pricing arrangements and ongoing deployment of cash resources throughout our company and subsidiaries in connection with ordinary course intercompany trade obligations and requirements;

continue to maintain our cash management arrangements; and obtain any further approvals from the court, creditors or other third parties, as necessary to continue such arrangements;

maintain research and development investments; and

realize full or fair value for any assets or business we may divest as part of the Plan of Reorganization.

Operational risks, including risks associated with our ability to:

continue to depend on Spansion Japan for wafer production and distribution of products in Japan due to actions taken by either (i) Spansion Japan (at the direction of the Spansion Japan trustee or pursuant to orders of the Tokyo District Court or otherwise) or (ii) Spansion Inc. or Spansion LLC (pursuant to the order of the U.S. Bankruptcy Court or otherwise);

transfer wafer production capacity in-house or to a third-party foundry, or to find alternative methods of distributing and selling our products, in the event that Spansion Japan is not successful in, or has difficulties in reorganizing, and we are unable to negotiate a new foundry agreement with Spansion Japan;

retain and attract customers despite the uncertainty caused by the Creditor Protection Proceedings;

maintain market share generally and at specific customer accounts despite the uncertainty caused by the Creditor Protection Proceedings, including uncertainty surrounding future research and development expenditures, plans relating to the introduction of new products, price reductions and manufacturing;

respond to competitors' efforts to capitalize on customer concerns;

operate our business effectively in consultation with the U.S. Bankruptcy Court and our creditors;

actively and adequately communicate on and respond to events, media and rumors associated with the Creditor Protection Proceedings that could adversely affect our relationships with customers, suppliers, partners and employees;

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retain and incentivize key employees and attract new employees;

retain, or if necessary, replace major suppliers on acceptable terms; and

avoid disruptions in our supply chain as a result of uncertainties related to the Creditor Protection Proceedings.

Procedural risks, including risks associated with our ability to:

obtain court orders or approvals with respect to motions we file from time to time, including motions seeking extensions of the applicable stays of actions and proceedings against us, or obtain timely approval of transactions outside the ordinary course of business, or other events that may require a timely reaction by us;

resolve the claims made against us in such proceedings for amounts not exceeding our recorded liabilities subject to compromise;