

Spansion Inc.
Form S-1
September 17, 2010
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As filed with the Securities and Exchange Commission on September 17, 2010

Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

SPANSION INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation or organization)

3674
(Primary Standard Industrial
Classification Code Number)

20-3898239
(I.R.S. Employer
Identification Number)

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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)

John H. Kispert

President and Chief Executive Officer

Spansion Inc.

915 DeGuigne Drive

P.O. Box 3453

Sunnyvale, CA 94088

(408) 962-2500

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

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Approximate date of commencement of the proposed sale to the public:

As soon as practicable after this Registration Statement becomes effective.

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box. "

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If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. "

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. "

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. "

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 the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act.

Large accelerated filer "

Accelerated filer "

Non-accelerated filer ☒ (Do not check if a smaller reporting company)

Smaller reporting company "

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered ⁽¹⁾	Proposed Maximum Offering Price per Share ⁽²⁾	Proposed Maximum Aggregate Offering Price ⁽²⁾	Amount of Registration Fee ⁽³⁾
Class A Common Stock, par value \$0.001 per share	7,762,500 shares	\$14.54	\$112,866,750	\$8,047.40

(1) Includes 1,013,856 shares of common stock subject to the underwriters' over-allotment option to purchase additional shares.

(2) Estimated solely for the purpose of computing the amount of the registration fee pursuant to Rule 457 under the Securities Act of 1933, as amended.

(3) Calculated pursuant to Rule 457(c) under the Securities Act of 1933, as amended, based on the average of the high and low trading prices for the common stock on The New York Stock Exchange on September 16, 2010.

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

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The information in this preliminary prospectus is not complete and may be changed. These securities may not be sold until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell nor does it seek an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

PRELIMINARY PROSPECTUS

Subject to Completion, dated September 17, 2010.

6,750,000 Shares

Common Stock

We are offering 6,750,000 shares of our common stock.

Our common stock is traded on the New York Stock Exchange under the symbol CODE. On September 16, 2010, the last reported sale price of our common stock was \$14.79 per share.

*See **Risk Factors** on page 9 to read about factors you should consider before buying shares of our common stock.*

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

	Per Share	Total
Public Offering Price	\$	\$
Underwriting Discounts and Commissions		
Proceeds, Before Expenses, to Spansion		

To the extent that the underwriters sell more than 6,750,000 shares of common stock, the underwriters have the option to purchase up to an additional 1,012,500 shares from us at the public offering price less the underwriting discount.

The underwriters expect to deliver the shares on or about , 2010.

Morgan Stanley

**Barclays
Capital**

Prospectus dated , 2010.

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No dealer, salesperson or other person is authorized to give any information or to represent anything not contained in this prospectus. You must not rely on any unauthorized information or representations. This prospectus is an offer to sell only the shares offered hereby, but only under circumstances and in jurisdictions where it is lawful to do so. The information contained in this prospectus is current only as of its date.

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PROSPECTUS SUMMARY

This summary highlights information contained in greater detail elsewhere in this prospectus. This summary may not contain all the information that you should consider before investing in our common stock. You should read the entire prospectus carefully, including Risk Factors beginning on page 9 and our consolidated financial statements and related notes included elsewhere in this prospectus, before making an investment decision. Unless otherwise indicated, the terms Spansion, we, us and our refer to Spansion Inc. and its subsidiaries.

Overview

We are a leading designer, manufacturer and developer of Flash memory semiconductors and software technologies. 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, Inc., 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 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.

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

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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 system-level 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

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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 and on May 10, 2010, 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 prospectus.

Risks Affecting Us

Our business is subject to numerous risks, which are highlighted in the section entitled Risk Factors. These risks represent challenges to the successful implication of our strategy and to the growth and future profitability of our business. Some of these risks are:

our ability to continue transforming our business after emergence from the Chapter 11 Cases and implement our new business strategy focused primarily on the embedded Flash memory market;

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a significant shift in the Flash memory market from NOR to NAND architecture;

the cyclical nature of the Flash memory market and recent severe downturns therein;

declining average selling prices over time;

our ability to accurately forecast customer demand for our products;

our ability to successfully develop, introduce and commercialize new products and technologies;

our reliance on third-party manufacturers and distributors;

our ability to successfully develop new applications and markets for our products;

inaccurate forecasting of customer demand leading to excess inventory and low gross margins; and

worldwide economic and political conditions.

Corporate Information

We were originally incorporated in Delaware in November 2005. 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 prospectus and the inclusion of our website address in this prospectus is an inactive textual reference only.

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

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THE OFFERING

Common stock offered by us	6,750,000 shares (or 7,762,500 shares if the underwriters exercise in full their over-allotment option).
Shares outstanding after the offering	66,020,916 shares (or 67,033,416 shares if the underwriters exercise in full their over-allotment option).
Use of proceeds	We estimate that we will receive net proceeds from this offering of approximately \$92.8 million based on an assumed public offering price of \$14.79 per share and after deducting underwriting discounts and commissions and estimated offering expenses payable by us. We will use 50 percent of the net proceeds to reduce amounts outstanding under our Term Loan and the remaining net proceeds will be used for general corporate purposes. See Use of Proceeds.
Risk factors	See Risk Factors beginning on page 9 and the other information included elsewhere in this prospectus for a discussion of factors you should carefully consider before deciding to invest in our common stock.

New York Stock Exchange symbol

CODE.

The number of shares of our common stock outstanding after this offering is based on 59,270,916 shares outstanding as of June 27, 2010, includes all of the shares issued and remaining for distribution in accordance with the Plan of Reorganization, and excludes:

3,031,436 shares of common stock issuable upon the exercise of options to purchase our common stock outstanding as of June 27, 2010 at a weighted average exercise price of \$10.51 per share;

2,969,821 shares of common stock issuable upon the vesting of restricted stock units outstanding as of June 27, 2010; and

an aggregate of 530,323 additional shares of common stock reserved for issuance under our equity incentive plans.

Except as otherwise indicated, all information in this prospectus assumes no exercise of the underwriters' option to purchase additional shares to cover over-allotments, if any.

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SUMMARY CONSOLIDATED FINANCIAL DATA

The following tables present our summary historical consolidated financial and other data for our business for the periods indicated. We derived the consolidated statements of operations data for the years ended December 30, 2007, December 28, 2008 and December 27, 2009 from our audited consolidated financial statements included elsewhere in this prospectus. Fiscal 2007, 2008 and 2009 each consisted of 52 weeks. We 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 our unaudited consolidated financial statements included elsewhere in this prospectus. The six months ended June 27, 2010 and June 29, 2009 each consisted of 26 weeks.

Our 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, or the Emergence Date, we adopted fresh start accounting as prescribed under Accounting Standards Codification (ASC) 852 *Reorganizations*, which requires us to revalue our assets and liabilities to their related fair values. As such, we adjusted our 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. We 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 we 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 our financial statements included in this prospectus 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 our consolidated financial statements and related notes, all included elsewhere in this prospectus.

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	Successor ⁽¹⁾ Period from May 11, 2010 to June 27, 2010	Predecessor ⁽¹⁾ Period from December 28, 2009 to May 10, 2010	Six Months Ended June 28, 2009	Predecessor ⁽¹⁾		
				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	\$ 124,569	\$ 324,914	\$ 630,000	\$ 1,059,408	\$ 1,630,573	\$ 1,627,253
Net sales to related parties	4,801	78,705	145,929	351,245	651,230	873,560
Total net sales	129,370	403,619	775,929	1,410,653	2,281,803	2,500,813
Cost of sales	111,413	274,817	663,301	1,103,757	2,193,345	2,065,143
Gross profit	17,957	128,802	112,628	306,896	88,458	435,670
Research and development	13,420	35,068	82,635	136,449	431,808	436,785
Sales, general and administrative	18,259	68,105	137,817	216,298	253,878	239,317
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)
Interest and other income (expense), net	364	(2,904)	2,396	4,038	5,200	32,595
Interest expense ⁽⁴⁾	(4,877)	(30,573)	(33,678)	(50,976)	(105,536)	(87,460)
Gain on deconsolidation of subsidiary ⁽⁵⁾			30,100	30,100		
Loss before reorganization items and income taxes	(18,235)	(5,076)	(147,160)	(122,079)	(2,372,147)	(295,297)
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)
Benefit from (provision for) income taxes ⁽⁶⁾	21	(1,640)	(429)	(597)	(62,865)	25,144
Net income (loss)	(18,214)	363,624	(519,888)	\$ (514,059)	\$ (2,435,012)	\$ (270,153)
Net income (loss) per share						
Basic	\$ (0.31)	\$ 2.24	\$ (3.22)	\$ (3.18)	\$ (15.69)	\$ (2.00)
Diluted ⁽⁷⁾	\$ (0.31)	\$ 2.24	\$ (3.22)	\$ (3.18)	\$ (15.69)	\$ (2.00)
Shares used in per share calculation:						
Basic	59,271	162,439	161,530	161,847	155,162	134,924
Diluted ⁽⁷⁾	59,271	162,610	161,530	161,847	155,162	134,924

	As of June 27, 2010	
	Actual	Adjusted ⁽⁸⁾
Consolidated Balance Sheet:		
<i>(in thousands)</i>		
Working capital	\$ 384,265	\$ 430,686
Total assets	1,467,269	1,513,690
Long-term debt and capital lease obligations, including current portion, short term note, and notes payable to banks under	461,531	415,110

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revolving loans

Total stockholders' equity	657,956	750,739
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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 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 six months ended June 28, 2009 was \$89.4 million and \$48.0 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 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.
- (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 prospectus.

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RISK FACTORS

Investing in our common stock involves a high degree of risk. You should carefully consider the risks described below and the other information in this prospectus before making a decision to invest in our common stock. If any of such risks actually occur, our business, operating results, financial condition or growth prospects could be adversely affected. In those cases, the trading price of our common stock could decline and you may lose all or part of your investment. 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 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

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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

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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.

We may not satisfy the covenants, financial tests and ratios in our debt instruments, which if not met, would have a material adverse effect on us.

Our \$450 million credit agreement, or Term Loan, and our \$65 million loan and security agreement, or Revolving Credit Facility, require us to comply with covenants, financial tests and ratios. We cannot assure you that we will be able to satisfy or comply with these covenants, financial tests and ratios, as our ability to do so may be affected by events beyond our control. If we fail to satisfy or comply with such covenants, financial tests and ratios, or if we disagree with our lenders about whether or not we are in compliance, we cannot assure you that we will be able to obtain waivers or amendments if required to avoid a default. 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, any of which would materially adversely affect us.

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, 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

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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

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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 cyclicalities 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

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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

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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.

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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.

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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 the Term Loan and the Revolving Credit Facility 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 or may in the future file lawsuits against us seeking damages (potentially including treble damages or 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

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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.

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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 such geopolitical concerns continue or 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 location of our facilities; and

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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.

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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

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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 su