MONOLITHIC POWER SYSTEMS INC
Form 10-K/A
March 09, 2006
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UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K/A

(Amendment No. 1 to Form 10-K)

(Mark One)

x **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2004

Or

¨ **TRANSITION REPORT PURSUANT TO SECTION 13 Or 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

Commission file number: 000-51026

Monolithic Power Systems, Inc.

(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

Delaware	**77-0466789**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification Number)**

983 University Avenue, Building A, Los Gatos, CA 95032 (408) 357-6600

(ADDRESS OF PRINCIPAL EXECUTIVE OFFICES, INCLUDING ZIP CODE AND TELEPHONE NUMBER)

Securities registered pursuant to Section 12(b) of the Act: NONE

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

Common Stock, $0.001 Par Value

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 x

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the 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. x

The registrant s common stock was not publicly traded as of the last business day of the registrant s most recently completed second fiscal quarter.

There were 27,793,764 shares of the Registrant s common stock issued and outstanding as of March 1, 2005

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act). Yes ¨ No x

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DOCUMENTS INCORPORATED BY REFERENCE

(1) Items 10, 11, 12, 13 and 14 of Part III incorporate information by reference from the definitive proxy statement (the 2005 Proxy Statement) for the 2005 Annual Meeting of Stockholders.

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MONOLITHIC POWER SYSTEMS, INC.

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Explanatory Note:

We are filing this amendment to our annual report on Form 10-K/A to restate our consolidated financial statements for the years ended December 31, 2004 and 2003. See Note 18 to the Consolidated Financial Statements for detail regarding the restatement.

The following sections in this report have been amended as a result of the restatement:

Part I Item 1 Business;
Part II Item 6 Selected Financial Data;
Part II Item 7 Management s Discussion and Analysis of Financial Condition and Results of Operations;
Part II Item 8 Financial Statements and Supplementary Data;
Part II Item 9A Controls and Procedures; and
Part IV Item 15 Exhibits and Financial Statement Schedules.

We have not modified or updated disclosures presented in our original annual report on Form 10-K, except as required to reflect the effects of the restatement, in this Form 10-K/A. Accordingly, this Amendment No. 1 on Form 10-K/A does not reflect events occurring after the filing of our original Form 10-K and does not modify or update those disclosures affected by subsequent events, except as specifically referenced herein. Information not affected by this restatement is unchanged and reflects the disclosures made at the time of the original filing of the Form 10-K on March 31, 2005. References to the annual report on Form 10-K herein shall refer to the annual report on Form 10-K originally filed on March 31, 2005.

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FORWARD-LOOKING STATEMENTS

This annual report on Form 10-K/A and the documents incorporated herein by reference contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, that have been made pursuant to and in reliance on the provisions of the Private Securities Litigation Reform Act of 1995. All statements included or incorporated by reference in this annual report, other than statements that are purely historical, are forward-looking statements. Words such as anticipates, expects, intends, plans, believes, seeks, estimates, projects, forecasts, will, variations of such words and similar e to the future identify forward-looking statements.

All forward-looking statements are based on the Company s current outlook, expectations, estimates, projections, beliefs and plans or objectives about its business and its industry. These statements are not guarantees of future performance and are subject to risks and uncertainties. Actual results could differ materially from those predicted or implied in any such forward-looking statements.

Risks and uncertainties that could cause actual results to differ materially include those set forth throughout this annual report on Form 10-K/A and in the documents incorporated herein by reference. Particular attention should be paid to the section entitled Trends, Risks and Uncertainties and to the section entitled Management s Discussion and Analysis of Financial Condition and Results of Operations.

The Company disclaims any duty to and undertakes no obligation to update any forward-looking statements, whether as a result of new information relating to existing conditions, future events or otherwise or to release publicly the results of any future revisions it may make to forward-looking statements to reflect events or circumstances after the date hereof or to reflect the occurrence of unanticipated events. Readers are cautioned not to place undue reliance on such statements, which speak only as of the date of this annual report on Form 10-K/A. Readers should carefully review future reports and documents that the Company files from time to time with the Securities and Exchange Commission, such as its quarterly reports on Form 10-Q (particularly Management s Discussion and Analysis of Financial Condition and Results of Operations) and any current reports on Form 8-K.

PART I

ITEM 1. BUSINESS

General

Monolithic Power Systems, Inc. (together with its consolidated subsidiaries, MPS or the Company) is a high performance analog and mixed-signal semiconductor company. We design, develop, and market proprietary, advanced analog and mixed-signal semiconductors for large and high growth markets. Our semiconductors, or integrated circuits (ICs), are used in a variety of electronic products, such as notebook computers, flat panel displays, cellular handsets, digital cameras, wireless local area network (LAN) access points, home entertainment systems, and personal digital assistants. The Company competes on its ability to offer deep system-level and applications knowledge, strong analog and mixed-signal design expertise, and low cost and high performance products through our proprietary process technology for the design and manufacture of our ICs.

Industry Overview

Semiconductors comprise the basic building blocks of electronic systems and equipment. Within the semiconductor industry, components can be classified as either discrete devices, such as individual transistors, or ICs, in which a number of transistors and other elements are combined to form a more complicated electronic

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circuit. ICs can be further divided into three primary categories: digital, analog, and mixed-signal. Digital ICs, such as memory devices and microprocessors, can store or perform arithmetic functions on data that is represented by a series of ones and zeroes. Analog ICs, in contrast, handle real world signals such as temperature, pressure, light, sound, or speed. In addition, analog ICs also perform power management functions, such as regulating or converting voltages, for electronic devices. Mixed-signal ICs combine digital and analog functions onto a single chip and play an important role in bridging real world phenomena to digital systems.

Analog and Mixed-Signal Markets. We focus on the market for high performance analog and mixed-signal ICs. High performance includes integration of higher levels of functionality into a single chip, greater precision, higher speed and lower heat and noise. There are several key factors that distinguish the analog and mixed-signal IC market from digital IC markets. These factors include:

Longer product life cycles. Analog ICs generally have longer product life cycles than digital ICs because original equipment manufacturers (OEMs) and original design manufacturers (ODMs) typically design the analog portions of their systems to span multiple generations of their products. This enables manufacturers to avoid changing the analog portions of their systems, as changing analog components may cause unexpected problems with their products other components. As a result, the typical life cycle for analog and mixed-signal ICs often exceeds three years and spans over multiple product generations.

Relatively stable pricing environment. There are a number of aspects of the analog and mixed-signal IC market that contribute to a more stable pricing environment relative to the market for digital ICs:

Market fragmentation. Because of their various applications and functions, analog and mixed-signal ICs have a wide range of operating specifications. Different customers have unique requirements for ICs with respect to resolution, speed, power capabilities, and signal amplitudes. This differentiation results in a higher degree of market fragmentation and tends to limit the number of competitors within a specific product category.

Difficult-to-replicate technology. Because each high performance analog and mixed- signal IC incorporates proprietary design and process technology, it is relatively difficult for new market entrants to duplicate the functionality and performance characteristics of a given analog or mixed-signal IC.

Relative complexity of design and importance of design engineers. The design of an analog IC generally involves greater variety and less repetition of circuit elements than in a digital IC design. The interaction of analog circuit elements is complex, and their exact placement is critical to the accuracy and performance of an analog IC. Similarly, the process technology used plays an important role in analog IC development. For mixed-signal ICs, additional complexity is encountered, as these devices require the combination of high-speed digital circuits and sensitive analog circuits. Accordingly, more years of experience are required for a designer to develop an aptitude for analog and mixed-signal design versus digital IC design. Accordingly, engineers with these skills are in limited supply.

Lower capital requirements. Digital IC design attempts to minimize device size and maximize speed by increasing circuit densities. The process technologies required for most digital ICs necessitate expensive wafer fabrication equipment, photolithographic masks, and software development tools. In contrast, analog IC design focuses on the precise matching and placement of circuit elements and typically utilizes relatively larger feature sizes, resulting in relatively lower circuit densities. For these reasons, equipment used in the analog and mixed-signal IC manufacturing process does not need to be leading edge older equipment, often previously used in digital IC production, is generally sufficient. For analog and mixed-signal IC providers, this typically translates into lower manufacturing costs relative to digital IC production. In addition, given the larger supply of non-leading edge equipment in the semiconductor industry broadly; this results in an increased availability of manufacturing capacity.

Diversity of end markets. Analog and mixed-signal ICs are used in virtually every electronic system, such as computers, consumer electronic devices, communications equipment, industrial equipment, and automotive electronics. Because of the varied uses for analog and mixed-signal ICs, analog and mixed-signal IC suppliers often experience greater diversity in their mix of end markets and customers relative to digital IC suppliers, which tends to result in a more stable business model.

Products and Applications

We currently have four standard product families that address multiple applications within the computing, consumer, and communications markets. Our products are differentiated with respect to their high degree of integration and strong levels of accuracy and efficiency, making them cost-effective relative to many competing solutions. These product families include:

Liquid Crystal Display (LCD) Backlight Inverter ICs. LCD backlight inverter ICs are used in systems that provide the light source for LCD panels typically found in notebooks, LCD monitors, car navigational systems, and, more recently, LCD televisions. These ICs function by converting low voltage direct current (DC) or battery voltage to high voltage alternating current (AC). We believe our LCD backlight inverter ICs were the first to utilize a full bridge resonant topology that allows for high efficiency, extended lifetimes for cold cathode fluorescent lamps (CCFLs), and lower signal interference with adjacent components. The full bridge topology is now industry standard for these products. We also believe that our LCD backlight inverter ICs are the semiconductor industry s only backlight inverter ICs with four fully-integrated power devices. This integration reduces the overall size, total solution part count, and cost for our customers. Our LCD product family encompasses all of the products that we formerly referred to as our CCFL product family, as well as other non-CCFL solutions for LCD backlight inverters.

Direct Current (DC) to DC Converter ICs. DC to DC converter ICs are used to convert and control voltages within a broad range of electronic systems, such as portable electronic devices, wireless LAN access points, home appliances, automobiles, and medical equipment. We believe that our DC to DC converters are differentiated particularly with respect to their high degree of integration and rapid switching speeds. These features are important to our customers as they result in fewer components, smaller form factors, more accurate regulation of voltages, and, ultimately, lower system costs through the elimination of discrete power devices.

Light Emitting Diode (LED) Driver ICs. LED driver ICs are used in lighting displays and can be used in small, portable devices, such as color cellular handsets, personal digital assistants, global positioning systems, and electronic gaming systems, as well as in emerging applications such as traffic lights and automobile signal lights. We were one of the first companies to offer LED driver ICs with a protection feature that limits damage to a system in the event of a poor connection. We believe that our LED driver ICs are differentiated in the market with respect to their small size, power efficiency, and cost-effectiveness.

Audio Amplifier ICs. Audio amplifier ICs are used to amplify sound produced by audio processors. We currently offer Class D audio amplifiers, which are well-suited for applications that are particularly sensitive to both size and power efficiency, such as plasma televisions, LCD televisions, and DVD players. With today s systems becoming smaller and utilizing larger amounts of power, solution sizes and the management of heat dissipation are becoming increasingly important to overall system design. The high degree of power efficiency and small form factor provided by our Class D audio amplifiers allows system vendors to significantly reduce heat dissipation,

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eliminating the costly and sizable fans and heat sinks traditionally required by audio amplifier ICs. These features enable our customers to achieve their objectives without sacrificing sound quality.

We currently target the computing, consumer electronics, and wireless markets. Of these three markets, the computing market represents the largest portion of our revenues. As we continue to expand our product portfolio and addressable markets, and as other end markets in which we participate continue to grow, we expect that our revenues from the computing market may decline as a percentage of our total revenues over time. The following chart is a brief summary of our portfolio solution for various applications. For each of these applications, we either are currently shipping product or have design wins, which are decisions by OEMs or ODMs to use our ICs:

Application	LCD Backlight Inverter	DC to DC Converter	LED Driver	Audio Amplifier
Computing / Personal Digital Assistant	X	X	X	
Desktop Monitors	X	X		X
LCD / Plasma Display TV	X	X		X
Set Top Box		X		
Cell Phone / Speakers		X	X	X
Wireless Access Points		X		
Infotainment / Global Positioning Systems	X	X	X	
DVD Players	X	X		X
Hard Disk Drives / Networked Attached Storage Drives		X		

Customers, Sales, and Marketing

We market our products through distribution arrangements and through our direct sales organization to OEMs, ODMs, and electronic manufacturing service providers. ODMs typically design and manufacture electronic products on behalf of OEMs, and electronic manufacturing service providers typically provide manufacturing services for OEMs and other electronic product suppliers. In 2004, our largest direct customers were Asian Information Technology (AIT) and Uppertech, accounting for 28% and 21% of our net revenues, respectively. Our current distribution agreements with AIT and Uppertech provide that each distributor shall each have the non-exclusive right to sell, and each agrees to use its best efforts to promote and develop a market for, our products in China, Taiwan, and Hong Kong, that each agreement may be terminated by either us or the distributor on three months notice, and that payment shall occur within 30 days from the end of the month in which we deliver the product. Neither agreement includes price protection provisions. Original design manufacturers, electronic manufacturing service providers, and other third parties under distribution arrangements are not end customers, but rather serve as a channel to many end users of our products, while other end users of our products purchase from us directly.

We have sales offices located in the United States, Taiwan, China, and Korea. Because our products typically require a highly technical sales effort, we are planning to expand our base of sales and applications support personnel worldwide. For example, in 2005, we expect to expand or complete the opening of additional sales offices in the United States, Japan and Europe. Information about our revenues and long-lived assets in different geographic regions of the world is provided in Note 15 to the financial statements.

Because our sales are billed and payable in United States dollars, our sales are not directly subject to fluctuating currency exchange rates. However, because 98.9% of our revenues in 2004 were attributable to direct or indirect sales to customers who manufacture their products in Asia, changes in the relative value of the dollar may create pricing pressures for our products.

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We generally warrant our products for 90 days from shipment and for longer periods in certain cases. Historical warranty expense as a percentage of revenues has been negligible.

Our sales are made primarily pursuant to standard individual purchase orders. Our backlog consists of orders that we have received from customers that have not yet shipped. Our backlog at December 31, 2004 was $8.6 million. As order lead times may vary and as industry practice allows customers to reschedule or cancel orders on relatively short notice, we believe that backlog is not necessarily a good indicator of future sales, and our quarterly revenues also depend on orders booked and shipped in that quarter. Because our manufacturing lead times are generally 6 to 14 weeks, we often must build in advance of customer orders. This subjects us to certain risks, most notably the possibility that expected sales will not materialize, leading to excess inventory. If we have excess inventory we would expect to either sell it at a substantial discount or dispose of it altogether, either of which would negatively affect our profit margins.

Research and Development

We have assembled a qualified team of engineers with core competencies in analog and mixed-signal design expertise. Through our research and development efforts, we have developed a collection of intellectual property and know-how that we are able to leverage across our products and markets. Examples of our intellectual property and know-how include the development of high efficiency power devices, the design of precision analog circuits, and expertise in mixed-signal integration.

Our research and development efforts are generally targeted at three areas: system architectures, circuit design and implementation, and process technology. In the area of system architectures, we are exploring new ways of solving our customers system design challenges and are investing in the development of systems expertise in new markets and applications that align well with our core capabilities. In the area of circuit design and implementation, our initiatives include expanding our portfolio of products, developing more standard cells and libraries, improving our device structures, and adding new features to our products. For example, we are currently working to expand our product portfolio into new products areas such as operational amplifiers.

We have developed a proprietary process technology that is applicable across a wide range of analog and mixed-signal products. We intend to continue to invest in our process technology to further refine this technology with respect to overall chip size and power handling capabilities. As appropriate, in the future we may also expand our base of process technologies, but only if these technologies are cost-effective and enable us to further expand our product offerings beyond what is currently achievable.

Research and development expenses were approximately $7.7 million, $5.5 million, and $4.5 million in fiscal years 2004, 2003, and 2002, respectively, which excludes stock-based compensation of $5.2 million, $1.1 million and $6,900, respectively.

Patents and Intellectual Property Matters

We rely on our proprietary technologies, which include both our proprietary circuit designs for our products and our proprietary manufacturing process technologies for manufacturing our products. Our future success and competitive position depend in part upon our ability to obtain and maintain protection of our proprietary technologies.

In general, we have elected to pursue patent protection for aspects of our circuit designs that we believe are patentable and to protect our manufacturing process technologies by maintaining those process technologies as trade secrets. As of March 1, 2005, we have 13 issued United States and foreign patents and 61 United States and foreign applications on file. Our patents are material to our business, but we do not rely on any one particular patent for our success. Our issued U.S. patents are due to expire between 2018 and 2023. We also rely on a

combination of nondisclosure agreements and other contractual provisions, as well as our employees commitment to confidentiality and loyalty, to protect our technology, know-how, and processes. We have entered into a patent license agreement with another integrated circuit company, pursuant to which we have granted this company a license (with certain limited sublicense rights) under certain of our patents to make, use, and sell certain of this company s own integrated circuit products for a period of two years, and for which this company is obligated to pay us royalties based on sales of those products. We also seek to register certain of our trademarks as we deem appropriate. We have not to date registered any of our copyrights and do not believe registration of copyrights is material to our business. Despite precautions that we take, it may be possible for unauthorized third parties to copy aspects of our current or future technology or products or to obtain and use information that we regard as proprietary. There can be no assurance that the steps we take will be adequate to protect our proprietary rights, that our patent applications will lead to issued patents, that others will not develop or patent similar or superior products or technologies, or that our patents will not be challenged, invalidated, or circumvented by others. Furthermore, the laws of the countries in which our products are or may be developed, manufactured or sold may not protect our products and intellectual property rights to the same extent as laws in the United States. Our failure to adequately protect our proprietary technologies could harm our business.

The semiconductor industry is characterized by frequent claims of infringement and litigation regarding patent and other intellectual property rights, such as our litigation with O2, Linear, Microsemi, and Micrel. For a more complete description of our legal matters, please read Legal Proceedings beginning on page 23. Patent infringement is an ongoing risk, in part because other companies in our industry could have patent rights that may not be identifiable when we initiate development efforts. Litigation may be necessary to enforce our intellectual property rights, and we may have to defend ourselves against infringement claims. Any such litigation could be very costly and may divert our management s resources. Further, we have agreed to indemnify our customers and supplier in some circumstances against liability from infringement by our products. In the event any third party were to make an infringement claim against us or our customers, we could be enjoined from selling selected products or could be required to indemnify our customers or supplier or pay royalties or other damages to third parties. If any of our products is found to infringe and we are unable to obtain necessary licenses or other rights on acceptable terms, we would either have to change our product so that it does not infringe or stop making the infringing product, which could have a material adverse effect on our operating results, financial condition, and cash flows.

Manufacturing

We utilize a fabless business model, working with third parties to manufacture and assemble our integrated circuits. This fabless approach allows us to focus our engineering and design resources on our strengths and to reduce our fixed costs and capital expenditures. In contrast to many fabless semiconductor companies which utilize standard process technologies and design rules established by their foundry partners, we have developed our own proprietary process technology and collaborate with our foundry partners to install our technology on their equipment in their facilities for use solely on our behalf. This close collaboration and control over the manufacturing process has historically resulted in favorable yields for our integrated circuits.

We currently contract with Advanced Semiconductor Manufacturing Corporation of Shanghai (ASMC) to manufacture our wafers in foundries located in China. Once our silicon wafers have been produced, they are shipped either to third party subcontractors or to our facilities in Los Gatos, California for wafer sort. Our semiconductor products are then assembled and packaged by independent subcontractors in Malaysia, China, and Thailand. The assembled ICs are then forwarded for final testing, primarily at our Los Gatos facilities, prior to shipping to our customers.

We have signed an agreement with a Chinese local authority to establish a facility in China, initially for the testing of our ICs. Pursuant to the agreement, we have agreed to contribute capital (in the form of cash, in-kind assets, and/or intellectual property) of at least $5 million to a wholly owned Chinese subsidiary as the registered capital of the subsidiary. Pursuant to the agreement, the local authorities have agreed to pay for, design, and build our plant and related infrastructure based on our specifications. We have agreed to buy the plant five years after completion for the actual cost of construction, which is anticipated to be under $1 million. We expect the facility to become operational in the fourth quarter of 2005, at which point we hope to realize several improvements in our business model. In the near term, we expect to experience an immediate reduction in testing and shipping costs, due to lower labor and facility costs and significantly shorter transportation distances. In the intermediate to long term, we hope to expand our product testing capabilities in our China facility and be positioned to be able to take advantage of the rich pool of local engineering talent to expand our manufacturing support operations.

Key Personnel and Employees

The Company s performance is substantially dependent on the performance of its executive officers and key employees. Due to the relative complexity of the design of our analog and mixed-signal ICs, our engineers generally have more years of experience and greater aptitude for analog and mixed-signal design. Engineers with such skills are limited in number and difficult to replace. The loss of the services of key officers, managers, engineers and other technical personnel would harm the business. The success of the Company depends on its ability to identify, hire, train, develop and retain highly qualified technical and managerial personnel. As of December 31, 2004, we had 154 employees located in the United States, Taiwan, China, and Korea. Of these employees, approximately 40% were involved in research and development.

Competition

The analog and mixed-signal semiconductor industry is highly competitive, and we expect competitive pressures to continue. Our ability to compete effectively and to expand our business will depend on our ability to continue to recruit both applications and design talent, our ability to introduce new products, and our ability to maintain the rate at which we introduce these new products. Our industry is characterized by decreasing unit selling prices over the life of a product. We compete with domestic and international semiconductor companies, many of which have substantially greater financial and other resources with which to pursue engineering, manufacturing, marketing, and distribution of their products. We are in direct and active competition, with respect to one or more of our product lines, with at least 10 manufacturers of such products, of varying size and financial strength. The number of our competitors has grown due to expansion of the market segments in which we participate. We consider our primary competitors to include Intersil Corporation, Linear Technology Corporation, Maxim Integrated Products, Micrel Incorporated, Microsemi Corporation, National Semiconductor Corporation, O2 Micro International, Semtech Corporation, STMicroelectronic, and Texas Instruments.

We expect continued competition from existing competitors as well as competition from new entrants in the semiconductor market. We believe that we are competitive with respect to these factors, particularly because our ICs typically are smaller in size, are highly integrated, possess higher levels of power management functionalities and achieve high performance specifications at lower price points than competitive products. However, we cannot assure you that our products will continue to compete favorably or that we will be successful in the face of increasing competition from new products and enhancements introduced by existing competitors or new companies entering this market.

Trends, Risks and Uncertainties

Our business is inherently risky. You should carefully consider the risks described below, together with all of the other information in this annual report on Form 10-K/A and other filings with the Securities and Exchange Commission in evaluating our business. If any of the following risks actually occur, our business, financial condition, operating results, and growth prospects would likely be adversely affected. In such an event, the trading price of our common stock could decline and you could lose all or part of your investment in our common stock.

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We have a history of losses, and we may not achieve or sustain profitability on a quarterly or annual basis.

We have incurred losses on an annual basis since our inception. As of December 31, 2004, we had an accumulated deficit of $20.2 million. We expect to incur significant operating expenses over the next several years in connection with the continued development and expansion of our business. Our operating expenses include general and administrative expenses, selling and marketing expenses, litigation expenses, stock based compensation expenses, and research and development expenses relating to products that will not be introduced and will not generate revenues until later periods, if at all. We may not achieve or sustain profitability on a quarterly or annual basis in the future.

If we are unsuccessful in our current lawsuits with O2 Micro International Limited in either the U.S. or in Taiwan, we could be prevented from selling many of our products and/or be required to pay substantial damages or fines. Any unfavorable outcome would cause our revenues in the LCD backlight product family to decline significantly and severely harm our business and operating results.

This risk factor only summarizes the various legal proceedings and related events. We strongly advise you to read Legal Proceedings beginning on page 23 for a more detailed description.

We are engaged in multiple legal proceedings with O2 Micro, Inc. and its parent corporation, O2 Micro International Limited. We refer to O2 Micro and O2 Micro International together as O2. These proceedings involve various claims and counterclaims in the United States and Taiwan by O2 and us alleging, among other things, patent infringements and misappropriation of trade secrets, all of which relate to our CCFL backlight inverter ICs, which are part of our LCD backlight inverter product family. O2 has obtained an injunction in Taiwan prohibiting us from manufacturing, designing, displaying, importing, or selling two of our most significant products in Taiwan, either directly or through a third party acting at our request. The patent dispute in both the United States and the Taiwanese litigation involves issues that could affect all of our CCFL backlight inverter products used in the United States and Taiwan. O2 has also taken legal action against our wafer manufacturer and some of our customers and users of our products in the United States and Taiwan. If we are not successful in our litigation with O2, we could be ordered to pay monetary fines and/or damages to O2 and/or our customers if we are found to be in violation of the Taiwan injunction or liable to O2 on its claims against us. We could also be prevented from selling many of our products, either into Taiwan, directly or through the distribution arrangements we currently employ, or in the U.S. Because we have agreed to indemnify certain of our customers and manufacturer against patent infringement claims, and we are currently defending our manufacturer and one of our customers against claim by O2, we could be liable to our manufacturer or customers who have purchased our products and whom we have indemnified against liability for damages arising from claims by O2 or others that our products infringe patents of O2 or others. Our customers and end-users of our products could decide not to use our products, or our wafer manufacturer could decide to reduce or eliminate its manufacturing of the related LCD backlight inverter product family, in an attempt to avoid litigation with O2, or our products, or their accounts payable to us, could be seized from them.

A significant portion of our expected future revenues over the next several years is expected to come from users of our LCD backlight product family in Taiwan. Any of the outcomes described above would have a material and adverse effect on our results of operations for one or more quarters, and any injunction that prohibits us from selling significant products for any length of time would have an immediate and drastic negative effect on our business and results of operations. Depending on the scope and severity of those claims, any injunctions that may be issued against us, or fines and/or damages that we may to pay, could have a material and adverse effect on our business and results of operations.

If we are unsuccessful in our current patent infringement lawsuits with Linear Technology Corporation, Microsemi Corporation, or Micrel, Incorporated, we could be prevented from selling many of our products and/or be required to pay substantial damages or fines. Any unfavorable outcome would cause our revenues to decline significantly and severely harm our business and operating results.

This risk factor only summarizes the various legal proceedings and related events. We strongly advise you to read Legal Proceedings beginning on page 23 for a more detailed description.

In July 2004, Linear Technology Corporation (Linear) filed a complaint with the U.S. International Trade Commission (ITC) alleging that two of our products, the MP1556 (a product within our DC to DC converter product family) and the EV0063 (the evaluation board containing the MP1556), infringe its U.S. Patent Nos.

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5,481,178 and 6,580,258. Linear has subsequently supplemented its infringement allegations to include certain additional products and products under development. Linear s complaint requests that the ITC issue an exclusion order and a cease and desist order that would prevent products utilizing the circuitry in question from being imported into the U.S. Sales of our products identified by Linear in its complaint accounted for less than 2% of our revenues for 2004. However, if Linear successfully adds other products to its complaint, then the potential financial impact on the Company could be much greater. Our DC to DC converter products are expected to account for a significant portion of our future revenues over the next several years.

In October 2004, Microsemi Corporation (Microsemi) sued us in the United States District Court for the Central District of California, alleging that our products infringe four of its patents. Microsemi s complaint does not identify which claims in the four patents are allegedly infringed nor does it identify which of our products supposedly infringe the patent claims. We have filed an answer and counterclaim, denying infringement and seeking a declaration that we do not infringe the patents and/or that the patents are invalid based upon the description of the technology contained in Microsemi s complaint and responses to our discovery requests. We understand that Microsemi will contend that one or more of our CCFL backlight inverter products infringes its patents. The complaint requests an injunction to prevent us from allegedly infringing the patents, as well as unspecified damages, attorneys fees, costs, and expenses.

In November 2004, Micrel, Incorporated (Micrel) sued us in the United States District Court for the Northern District of California alleging that our products infringe two of its patents. Michael Hsing, our Chief Executive Officer, and another of our employees are named inventors on both of Micrel s patents and Jim Moyer, our Chief Design Engineer, is a named inventor on one of them. Micrel s complaint does not identify which claims in the two patents are allegedly infringed nor does it identify which of our products supposedly infringe the patent claims. However, because Micrel s patents relate to semiconductor manufacturing processes and semiconductor design elements rather than a specific device, all of our products could potentially be implicated. Micrel s complaint requests an injunction to prevent us from allegedly infringing the patents, as well as unspecified damages, attorneys fees, costs, and expenses.

If we do not prevail in the Linear litigation, the Microsemi litigation, or the Micrel litigation, we could be enjoined from selling one or more of our products into the U.S., either directly or indirectly. Because many of our products are sold indirectly by our customers back into the U.S., a U.S. injunction covering one or more of our products would likely substantially reduce sales of those products. In addition, if we do not prevail in the Microsemi or Micrel litigation, we could be ordered to pay monetary damages to Microsemi and/or Micrel. We could also be liable to customers who have purchased our products and whom we have indemnified against liability for damages arising from claims that our products infringe the intellectual property rights of others. Even if we are ultimately successful in the litigation with Linear, Microsemi, and Micrel, we could lose customers in the interim due to the surrounding uncertainty. Any of these results would have a material and adverse effect on our results of operations for one or more quarters, and any injunction that prohibits us from selling significant products for any length of time would have an immediate and drastic negative effect on our business and results of operations.

Given our inability to control the timing and nature of significant events in our litigations, our legal expenses are difficult to forecast, and may vary substantially from our predictions with respect to any given quarter.

As described in Management s Discussion of Financial Condition and Results of Operations Overview Patent Litigation, until our litigations with O2, Linear, Microsemi, and Micrel are resolved we will continue to incur substantial legal expenses that vary with the level of activity in the legal proceedings. This level of activity is not entirely within our control as we may need to respond to legal actions by O2, Linear, Microsemi, or Micrel. Consequently, we may find it difficult to predict the legal expenses for any given quarter, which will impair our ability to forecast our results of operations for that quarter. It is likely that these expenses will increase leading up to and during our O2 trial scheduled for May 2005, the O2-Sumida trial scheduled for June, 2005, and Linear trial scheduled for June 2005. Interim developments in these lawsuits may also contribute to increased volatility in our stock price as the market assesses the impact of those developments on the likelihood that we will or will not ultimately prevail. In addition, along with the claims asserted by O2, Linear, Microsemi, and Micrel, these or other third parties could assert that these or other of our products infringe their intellectual property rights, which could result in restrictions or prohibitions on the sale of our products and/or cause us to pay license fees and damages.

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Interim developments in our various legal proceedings may contribute to increased volatility in our stock price as the market assesses the impact of those developments on the likelihood that we will or will not ultimately prevail in the litigations.

The semiconductor industry is characterized by frequent claims of infringement and litigation regarding patent and other intellectual property rights, such as our litigation matters with O2, Linear, Microsemi, and Micrel. Patent infringement is an ongoing risk, in part because other companies in our industry could have patent rights that may not be identifiable when we initiate development efforts. Litigation may be necessary to enforce our intellectual property rights, and we may have to defend ourselves against infringement claims. Such litigation is very costly and may divert our management s resources. Our management team could also be required to devote so much time, effort and energy to the legal proceedings that the rest of our business suffers. For example, we spent $7.8 million, or 16.5% of revenue in 2004, on patent litigation expenses, and we expect patent litigation expenses to increase in absolute dollars in 2005. Further, we have agreed to indemnify our customers and supplier in some circumstances against liability from infringement by our products. In the event any third party were to make an infringement claim against us or our customers, we could be enjoined from selling some or potentially all of our products, or could be required to indemnify our customers or pay royalties or other damages to third parties. If we were unable to obtain necessary licenses or other rights on acceptable terms, we would either have to change our products so that they did not infringe or stop selling the infringing products, which could have a material adverse effect on our operating results, financial condition, and cash flows.

We do not expect to sustain our recent growth rate.

Due primarily to increased sales of our CCFL backlight inverter product family (which are now part of our LCD backlight inverter product family) and our DC to DC converter product family, we have experienced significant revenue growth and have gained significant market share in relatively a short period of time. Specifically, our annual revenues increased from $12.2 million in 2002 to $24.2 million in 2003 to $47.6 million in 2004. However, we do not expect similar revenue growth or market share gains in the future periods. Accordingly, you should not rely on results of any prior quarterly or annual periods as an indication of our future operating performance.

Due to our limited operating history, we may have difficulty both in accurately predicting our future revenues and appropriately budgeting for our expenses.

We were incorporated in 1997 and did not begin generating meaningful revenues until 2000. As a result, we have only a short history from which to predict future revenues. Our limited operating experience combined with the rapidly evolving nature of the markets into which we sell our products, as well as other factors which are beyond our control, reduces our ability to accurately forecast quarterly or annual revenues. We are currently expanding our staffing and increasing our expense levels in anticipation of future revenue growth. If our revenues do not increase as anticipated, significant losses could result due to our higher expense levels.

We expect our operating results to fluctuate from quarter to quarter and year to year, which may make it difficult to predict our future performance and could cause our stock price to decline.

Our revenues, expenses, and results of operations are difficult to predict, have varied significantly in the past and will continue to fluctuate significantly from quarter to quarter and year to year in the future due to a number of factors, many of which are beyond our control. For example, our revenues for the first quarter of each year tend to be significantly less than the revenues for the last quarter of the previous year. We expect fluctuations to continue for a number of reasons, including:

- the timing of developments in our litigation matters with O2, Linear, Microsemi, Micrel and any future litigation and the related expenses;
- the timing of new product introductions by us and our competitors;
- our ability to develop new process technologies and achieve volume production;
- the scheduling, rescheduling, or cancellation of orders by our customers;

the cyclical nature of demand for our customers products;

inventory level and product obsolescence;

- seasonality and variability in the computer, consumer electronics, and wireless markets;
- the availability of adequate supply commitments from our outside suppliers;
- changes in manufacturing yields;
- general economic conditions in the countries where our products are used; and
- movements in exchange rates, interest rates, or tax rates.

Due to the factors noted above and other risks described in this section, many of which are beyond our control, you should not rely on quarter-to-quarter or year-over-year comparisons to predict our future financial performance. Unfavorable changes in any of the above factors may seriously harm our business and cause our stock price to decline.

The highly cyclical nature of the semiconductor industry, which has produced significant and sometimes prolonged downturns, could materially adversely affect our operating results, financial condition, and cash flows.

The semiconductor industry has historically been highly cyclical and, at various times, has experienced significant downturns and wide fluctuations in supply and demand. These conditions have caused significant variances in product demand, production capacity and rapid erosion of average selling prices. Although the semiconductor industry has recently experienced strong demand, the industry may experience severe or prolonged downturns in the future, which could result in pricing pressure on our products as well as lower demand for our products. Because a significant portion of our expenses is fixed in the short term or is incurred in advance of anticipated sales, we may not be able to decrease our expenses in a timely manner to offset any shortfall of sales. This could materially adversely affect our operating results, financial condition, and cash flows.

If demand for our products declines in the major end markets that we serve, our revenues will decrease.

We believe that applications of our products in the computer, consumer electronics and wireless markets will continue to account for a majority of our revenues. In addition, within these markets we are dependent upon a small number of products. We are particularly dependent on the computing market, including notebook and flat panel monitor applications, and we expect that a significant level of our revenues and operating results will continue to be dependent upon notebook and flat panel monitor applications for at least the near term. If demand for our products declines in the major end markets that we serve, our revenues will decrease.

We receive a significant portion of our revenues from a small number of customers and the loss of any one of these customers or failure to collect a receivable from them could adversely affect our operations and financial position.

We market our products through distribution arrangements and through our direct sales and applications support organization to customers that include original equipment manufacturers, original design manufacturers, and electronic manufacturing service providers. Receivables from our customers are not secured by any type of collateral and are subject to the risk of being uncollectible. Significant deterioration in the liquidity or financial condition of any of our major customers or any group of our customers could have a material adverse impact on the collectibility of our accounts receivable and our future operating results.

In addition, in 2003, CTP, Yosun, and Ambit/Unique Logistics, third parties with whom we currently have or formerly had distribution arrangements accounted for 30%, 16%, and 14% of our revenues, respectively. We terminated our distribution arrangement with CTP in March 2004, and entered into expanded distribution agreements with Asian Information Technology, or AIT, and Uppertech. In 2004, AIT, Uppertech, and Yosun, each of which is a distributor, accounted for 28%, 21%, and 9% of our revenues, respectively. Any future termination or loss of a distribution arrangement could reduce customers willingness or ability to purchase our products and could thereby reduce our revenues and adversely affect our future operating results.

We primarily conduct our sales on a purchase order basis, rather than pursuant to long-term supply contracts. The loss of any significant customer, any material reduction in orders by any of our significant customers or by their OEM customers, the cancellation of a significant customer order, or the cancellation or delay of a customer s or OEM s significant program or product could reduce our revenues and adversely

affect our operations and financial condition. For example, revenues from our audio amplifier product family declined from 14.0% of total revenues in 2002 to 1.3% of total revenues in 2003. The decline was due to the loss of one major customer who placed a large non-recurring order in the third and fourth quarters of 2002.

Moreover, we believe a high percentage of our products are eventually sold to a small number of end customer original equipment manufacturers, or OEMs, such as Dell, Hewlett-Packard, IBM, and Sony. Although we communicate with OEMs in an attempt to achieve design wins, which are decisions by OEMs and/or original design manufacturers to use our products, we do not have agreements with any of these end customers, formal or informal. Therefore, there can be no assurance that they will continue to choose to incorporate our ICs into their products. We cannot be certain that we will continue to achieve design wins from large OEMs, that our direct customers will continue to be successful in selling to OEMs, or that the OEMs will be successful in selling products which incorporate our ICs.

We have recently had to improve our internal accounting systems and controls, and if we fail to make continued improvements, our business may suffer.

Our reporting obligations as a public company will place a significant strain on our management, operational and financial resources and systems for the foreseeable future. As we have been an early stage private company, we have had limited accounting personnel and other resources with which to address our internal controls and procedures. As a result, when we prepared our financial statements as of and for the year ended December 31, 2003, we identified and reported to our audit committee three significant deficiencies in our internal accounting controls. Two of these significant deficiencies rose to the level of material weaknesses, while the third was considered a reportable condition. The two material weaknesses were that (i) we lacked certain formalized accounting policies and procedures, including written procedures for the monthly, quarterly, and annual closing of our financial books and records and (ii) we lacked sufficient staff in our accounting and information technology departments. The reportable condition was that our accounting personnel lacked adequate training on our enterprise resource planning system. Subsequently, we consulted with our audit committee and undertook remedial steps to address these deficiencies, including hiring additional staff, training our new and existing staff, and establishing monthly, quarterly, and annual closing procedures.

We believe that we have remediated the material weaknesses and reportable conditions in our internal controls, as identified in connection with the preparation of our fiscal 2003 financial statements. At the direction of our audit committee, we engaged our external auditors to audit our financial statements for the quarter ended March 31, 2004, which audit did not include an audit of internal control over financial reporting. In their report to the audit committee following this audit, the material weaknesses and reportable condition previously identified were no longer reported; however, other matters that did not constitute material weaknesses or reportable conditions were identified. These other matters included control deficiency recommendations relating to:

- hiring a financial analyst to assist with management reporting and analysis;
- enhancing certain cost accounting procedures;
- modifying or documenting policies relating to certain other reserve and accrual procedures and closing procedures; and
- documenting information security policies.

In response to these recommendations, we will be transferring an internal employee to the position of Financial Planning and Analysis. This transfer will take effect once we hire a replacement to fill this employee s current position of Compliance and SEC Reporting. We anticipate hiring this replacement in early April 2005. We have implemented the other recommendations relating to cost accounting and other reserve, accrual, and closing procedures in connection with our June 30, and September 30, 2004 quarterly closes and our 2004 year-end audit. We have also completed documentation of our information security policies. These other control deficiencies did not have a material impact on our financial statements and, as they all have now been addressed, are not expected to have any future material impact on our financial statements. If, however, we fail to continue to adequately staff our accounting and finance function and maintain internal controls adequate to meet the demands that will be placed upon us as a public company, including the requirements of the Sarbanes-Oxley Act of 2002, our business may suffer.

Standards for compliance with Section 404 of the Sarbanes-Oxley Act of 2002 are uncertain, and if we fail to comply in a timely manner, our business could be harmed and our stock price could decline.

We must comply with the rules promulgated under Section 404 of the Sarbanes-Oxley Act of 2002, Section 404, by December 31, 2005. We expect to incur additional administrative expense as we implement Section 404 of the Sarbanes-Oxley Act, which requires management to report on, and our independent registered public accounting firm to attest to, our internal controls. In addition, The Nasdaq National Market, on which our common stock is listed, has also adopted comprehensive rules and regulations relating to corporate governance. These laws, rules and regulations have increased and will continue to increase the scope, complexity and cost of our corporate governance, reporting and disclosure practices, which could harm our results of operations and divert management s attention from business operations. These new or changed laws, regulations and standards are also subject to varying interpretations in many cases, and as a result, their application in practice may evolve over time as new guidance is provided by regulatory and governing bodies, which could result in higher costs necessitated by ongoing revisions to disclosure and governance practices. We cannot be certain that we will comply with the requirements of Section 404 or other requirements in a timely manner. If we fail to comply in a timely manner, public perception of our internal controls could be damaged, causing our financial results to suffer and our stock price to decline.

The loss of any of our key personnel or the failure to attract or retain specialized technical and management personnel could impair our ability to grow our business.

Our future success depends upon our ability to attract and retain highly qualified technical and managerial personnel. We are particularly dependent upon the continued services of Michael Hsing, our President and Chief Executive Officer, who founded our company and developed our proprietary process technology. Also, personnel with highly skilled analog and mixed-signal design engineering expertise are scarce and competition for personnel with these skills is intense. There can be no assurance that we will be able to retain existing key employees or that we will be successful in attracting, integrating or retaining other highly qualified personnel in the future. If we are unable to retain the services of existing key employees or are unsuccessful in attracting new highly qualified employees, our business could be harmed.

We currently depend on one third-party supplier to provide us with wafers for our products. If our wafer supplier fails to provide us sufficient wafers at acceptable yields and at anticipated costs, our revenues and gross margins may decline.

We have a supply arrangement with ASMC for the production of wafers. Although certain aspects of our relationship with ASMC are contractual, many important aspects of this relationship depend on their continued cooperation. We began this relationship with ASMC in 2001 and commenced volume production at ASMC s facilities in the first half of 2003. In October 2004, O2 sued ASMC for patent infringement based on its manufacture of our products, and it is possible that our relationship with ASMC could be materially and adversely affected by the O2 litigation.

In addition, the fabrication of ICs is a highly complex and precise process. Problems in the fabrication process can cause a substantial percentage of wafers to be rejected or numerous ICs on each wafer to be non-functional, thereby reducing yields. The failure of ASMC to supply us wafers at acceptable yields could prevent us from fulfilling our customers orders for our products and would likely cause a decline in our revenues.

Although we provide ASMC with rolling forecasts of our production requirements, their ability to provide wafers to us is limited by the available capacity of the facilities in which they manufacture wafers for us. An increased need for capacity to meet internal demands or demands of other customers could cause ASMC to reduce capacity available to us. ASMC may also require us to pay amounts in excess of contracted or anticipated amounts for wafer deliveries or require us to make other concessions in order to acquire the wafer supply necessary to meet our customers requirements. If ASMC extends lead times, limits supplies, or increases prices due to capacity constraints or other factors, our revenues and gross margins may decline.

Further, as is common in the semiconductor industry, our customers may reschedule or cancel orders on relatively short notice. We are required under our agreement with ASMC to order wafers at least three months in advance. If we cancel these orders after ASMC s commencement of manufacturing which generally occurs six to fourteen weeks before scheduled delivery of the wafers, we must pay cancellation fees to ASMC. If our customers cancel orders after we have ordered the corresponding wafers from ASMC, we may be forced to incur cancellation fees or to purchase wafers that we may not be able to resell, which would adversely affect our operating results, financial condition, and cash flows.

We might not be able to deliver our products on a timely basis if our relationships with our assembly and test subcontractors are disrupted or terminated.

All of our products are assembled by third-party subcontractors and a small percentage of our testing is performed by third-party subcontractors. We do not have any ongoing agreements with these subcontractors. As a result, we may not have direct control over product delivery schedules or product quality. Also, due to the amount of time typically required to qualify assembly and test subcontractors, we could experience delays in the shipment of our products if we were forced to find alternate third parties to assemble or test our products. Any future product delivery delays or disruptions in our relationships with our subcontractors could have a material adverse effect on our operating results, financial condition, and cash flows.

Failure to protect our proprietary technologies or maintain the right to certain technologies may negatively affect our ability to compete.

We rely heavily on our proprietary technologies. Our future success and competitive position depend in part upon our ability to obtain and maintain protection of certain proprietary technologies used in our products. We pursue patents for some of our new products and unique technologies, and we also rely on a combination of nondisclosure agreements and other contractual provisions, as well as our employees commitment to confidentiality and loyalty, to protect our technology, know-how, and processes. Despite the precautions we take, it may be possible for unauthorized third parties to copy aspects of our current or future technology or products or to obtain and use information that we regard as proprietary. We intend to continue protecting our proprietary technology, including through patents. There can be no assurance that the steps we take will be adequate to protect our proprietary rights, that our patent applications will lead to issued patents, that others will not develop or patent similar or superior products or technologies, or that our patents will not be challenged, invalidated, or circumvented by others. Furthermore, the laws of the countries in which our products are or may be developed, manufactured, or sold may not protect our products and intellectual property rights to the same extent as laws in the United States. Our failure to adequately protect our proprietary technologies could harm our business.

We derive a substantial majority of our revenues from direct or indirect sales to foreign customers and have significant foreign operations, which may expose us to political, regulatory, economic, foreign exchange, and operational risks.

We derive a substantial majority of our revenues from direct or indirect sales to foreign customers, including 98.9% for 2004 from sales either directly or through distribution arrangements to parties located in Asia, a majority of which represents revenues from parties with whom we have distribution arrangements for resale to users of our products in Taiwan. As a result, we are subject to increased risks due to this concentration of business and operations. There are risks inherent in doing business internationally, including:

- changes in, or impositions of, legislative or regulatory requirements, including tax laws in the United States and in the countries in which we manufacture or sell our products;
- trade restrictions;
- transportation delays;
- work stoppages;
- economic and political instability;
- changes in import/export regulations, tariffs, and freight rates;

longer accounts receivable collection cycles and difficulties in collecting accounts receivables;

difficulties in collecting receivables and enforcing contracts generally;

currency exchange rate fluctuations adversely impacting intra-company transactions; and

less effective protection of intellectual property.

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We and our manufacturing partners are or will be subject to extensive government regulation, and may receive the benefit of various incentives from Chinese governments, which could increase our costs or limit our ability to sell products and conduct activities in China.

Most of our manufacturing partners, including ASMC, our current foundry, are located in China. In addition, we are currently in the process of establishing a facility in China, initially for the testing of our ICs. The Chinese government has broad discretion and authority to regulate the technology industry in China. China s government has implemented policies from time to time to regulate economic expansion in China. It also exercises significant control over China s economic growth through the allocation of resources, controlling payment of foreign currency-denominated obligations, setting monetary policy and providing preferential treatment to particular industries or companies. New regulations or the readjustment of previously implemented regulations could require us and our manufacturing partners to change our business plans, increase our costs, or limit our ability to sell products and conduct activities in China, which could adversely affect our business and operating results.

In addition, the Chinese government and provincial and local governments have provided, and continue to provide, various incentives to encourage the development of the semiconductor industry in China. Such incentives include tax rebates, reduced tax rates, favorable lending policies, and other measures, some or all of which may be available to our manufacturing partners and to us with respect to the facility we are establishing in China. Any of these incentives could be reduced or eliminated by governmental authorities at any time. Any such reduction or elimination of incentives currently provided to our manufacturing partners could adversely affect our business and operating results.

For example, pursuant to our agreement to establish the facility in Chengdu, China, the local authorities have agreed to pay for, design, and build our plant and related infrastructure based on our specifications. We have agreed to buy the plant five years after completion for the actual cost of construction. Prior to the plant purchase, we have agreed to make quarterly lease payments, which will ultimately be applied against the construction costs due at the end of the five years. The local authorities have agreed to ensure that we will obtain all necessary licenses for doing business, that we will obtain favorable tax treatment, similar to other foreign technology companies, and that we will obtain our land use rights. Additionally, we will not require an export license and, upon approval by the applicable authorities, will be exempt from certain import value-added taxes and custom duties. If, at the end of five years, we elect not to purchase the plant, then the agreement will terminated and the local authorities can take back title to the plant, revoke our land use rights, and will refund our land purchase price. However, the local authority will retain all lease payments. If any of these terms or incentives is reduced, altered or eliminated, the profitability of our China facility could be harmed and overall our revenues and financial condition could be materially adversely affected.

We may be unsuccessful in developing and selling new products or in penetrating new markets required to maintain or expand our business.

We operate in a dynamic environment characterized by rapidly changing technologies and industry standards and technological obsolescence. Our competitiveness and future success depend on our ability to design, develop, manufacture, assemble, test, market, and support new products and enhancements on a timely and cost-effective basis. A fundamental shift in technologies in any of our product markets could have a material adverse effect on our competitive position within these markets. Our failure to develop new technologies or to react to changes in existing technologies could materially delay our development of new products, which could result in product obsolescence, decreased revenues, and/or a loss of market share to competitors.

The success of a new product depends on accurate forecasts of long-term market demand and future technological developments, as well as on a variety of specific implementation factors, including:

- timely and efficient completion of process design and device structure improvements;
- timely and efficient implementation of manufacturing, assembly, and test processes;
- product performance;
- the quality and reliability of the product; and

effective marketing, sales and service.

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To the extent that we fail to introduce new products or penetrate new markets, our revenues and financial condition could be materially adversely affected.

Because of the lengthy sales cycles for our products and the fixed nature of a significant portion of our expenses, we may incur substantial expenses before we earn associated revenues and may not ultimately achieve our forecasted sales for our products.

The introduction of new products presents significant business challenges because product development plans and expenditures must be made up to two years or more in advance of any sales. It takes us up to 12 months or more to design and manufacture a new product prototype. Only after we have a prototype do we introduce the product to the market and begin selling efforts in an attempt to achieve design wins. This sales process, which averages 6 to 12 months, requires us to expend significant sales and marketing resources without any assurance of success. Volume production of products that use our ICs, if any, may not be achieved for an additional 3 to 6 months after an initial sale. Sales cycles for our products are lengthy for a number of reasons:

- our customers usually complete an in-depth technical evaluation of our products before they place a purchase order;
- the commercial adoption of our products by original equipment manufacturers, or OEMs, and original device manufacturers is typically limited during the initial release of their product to evaluate product performance and consumer demand;
- our products must be designed into a customer s product or system; and
- the development and commercial introduction of our customers products incorporating new technologies frequently are delayed.

As a result of our lengthy sales cycles, we may incur substantial expenses before we earn associated revenues because a significant portion of our operating expenses is relatively fixed and based on expected revenues. The lengthy sales cycles of our products also make forecasting the volume and timing of orders difficult. In addition, the delays inherent in lengthy sales cycles raise additional risks that customers may cancel or change their orders. Our sales are made by purchase orders. Because industry practice allows customers to reschedule or cancel orders on relatively short notice, backlog is not always a good indicator of our future sales. If customer cancellations or product changes occur, we could lose anticipated sales and not have sufficient time to reduce our inventory and operating expenses.

Our products must meet exacting specifications, and undetected defects and failures may occur, which may cause customers to return or stop buying our products and may expose us to product liability risk.

Our customers generally establish demanding specifications for quality, performance, and reliability that our products must meet. Integrated circuits as complex as ours often encounter development delays and may contain undetected defects or failures when first introduced or after commencement of commercial shipments, which might require product replacement or recall. We have from time to time in the past experienced product quality, performance or reliability problems. If defects and failures occur in our products, we could experience lost revenues, increased costs, including warranty expense and costs associated with customer support, delays in or cancellations or rescheduling of orders or shipments, and product returns or discounts, any of which would harm our operating results.

In addition, product liability claims may be asserted with respect to our technology or products. Although we currently have insurance, there can be no assurance that we have obtained a sufficient amount of insurance coverage, that asserted claims will be within the scope of coverage of the insurance, or that we will have sufficient resources to satisfy any asserted claims.

We intend to expand our operations, which may strain our resources and increase our operating expenses.

We plan to expand our operations, domestically and internationally, and may do so through internal growth, strategic relationships, or acquisitions, including but not limited to the establishment of a testing facility in China. We expect that any such expansion will strain our systems and operational and financial controls. In addition, we are likely to incur significantly higher operating costs. To manage our growth effectively, we must continue to improve and expand our systems and controls. If we fail to do so, our growth will be limited. If we fail to effectively manage our planned expansion of operations, our business and operating results may be harmed.

We compete against many companies with substantially greater financing and other resources, and our market share may be reduced if we are unable to respond to our competitors effectively.

The analog and mixed-signal semiconductor industry is highly competitive, and we expect competitive pressures to continue. Our ability to compete effectively and to expand our business will depend on our ability to continue to recruit applications and design talent, our ability to introduce new products, and our ability to maintain the rate at which we introduce these new products. We compete with several domestic and international semiconductor companies, many of which have substantially greater financial and other resources with which to pursue engineering, manufacturing, marketing, and distribution of their products. We are in direct and active competition, with respect to one or more of our product lines, with at least 10 manufacturers of such products, of varying size and financial strength. The number of our competitors has grown due to expansion of the market segments in which we participate. We consider our primary competitors to include Intersil Corporation, Linear, Maxim Integrated Products, Micrel, Microsemi, National Semiconductor Corporation, O2, Semtech Corporation, STMicroelectronic, and Texas Instruments. We expect continued competition from existing competitors as well as competition from new entrants in the semiconductor market.

We cannot assure you that our products will continue to compete favorably or that we will be successful in the face of increasing competition from new products and enhancements introduced by existing competitors or new companies entering this market, which would materially and adversely affect our results of operations and our financial condition.

Our current backlog may not be indicative of future sales.

Due to the nature of our business, in which order lead times may vary, and customers are generally allowed to reschedule or cancel orders on short notice, we believe that backlog is not necessarily a good indicator of future sales. Our quarterly revenues also depend on orders booked and shipped in that quarter. Because lead times for the manufacturing of our products generally take 6 to 8 weeks, we often must build in advance of orders. This subjects us to certain risks, most notably the possibility that expected sales will not materialize, leading to excess inventory, which we may be unable to sell to other customers. Therefore, our backlog may not be a reliable indicator of future sales.

Major earthquakes or other natural disasters and resulting systems outages may cause us significant losses.

Our corporate headquarters, the production facilities of our third-party wafer supplier, a portion of our assembly and research and development activities, and certain other critical business operations are located in or near seismically active regions and are subject to periodic earthquakes. We do not maintain earthquake insurance and could be materially and adversely affected in the event of a major earthquake. Much of our revenues, as well as our manufacturers and assemblers, are concentrated in Southeast Asia. Such concentration increases the risk that other natural disasters, labor strikes, terrorism, war, political unrest, epidemics, and/or health advisories like Sudden Acute Respiratory Syndrome or bird flu could disrupt our operations. In addition, we rely heavily on our internal information and communications systems and on systems or support services from third parties to manage our operations efficiently and effectively. Any of these are subject to failure due to a natural disaster or other disruption. System-wide or local failures that affect our information processing could have material adverse effects on our business, financial condition, operating results, and cash flows.

We may engage in future acquisitions that dilute the ownership interests of our stockholders and cause us to incur debt or to assume contingent liabilities, and we may be unable to successfully integrate these companies into our operations, which would adversely affect our business.

As a part of our business strategy, we expect to review acquisition prospects that would complement our current product offerings, enhance our design capability or offer other growth opportunities. In the event of future acquisitions, we could use a significant portion of our available cash, issue equity securities which would dilute current stockholders percentage ownership, and/or incur substantial debt or contingent liabilities. Such actions by us could impact our operating results and/or the price of our common stock.

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In addition, if we are unsuccessful in integrating any acquired company into our operations or if integration is more difficult than anticipated, we may experience disruptions that could harm our business.

The future trading price of our common stock could be subject to wide fluctuations in response to a variety of factors.

The future trading price of our common stock is likely to be highly volatile and could be subject to wide fluctuations in price in response to various factors, many of which are beyond our control, including:

- the depth and liquidity of the market for our common stock;
- developments generally affecting the semiconductor industry;
- commencement of or developments relating to our involvement in litigation, including the ongoing O2, Linear, Microsemi, and/or Micrel litigation matters;
- investor perceptions of us and our business;
- changes in securities analysts expectations or our failure to meet those expectations;
- actions by institutional or other large stockholders;
- terrorist acts;
- actual or anticipated fluctuations in our results of operations;
- developments with respect to intellectual property rights;
- announcements of technological innovations or significant contracts by us or our competitors;
- introduction of new products by us or our competitors;
- our sale of common stock or other securities in the future;
- conditions and trends in technology industries;
- changes in market valuation or earnings of our competitors;

- changes in the estimation of the future size and growth rate of our markets;
- our results of operations and financial performance; and
- general economic, industry and market conditions.

In addition, the stock market in general often experiences substantial volatility that is seemingly unrelated to the operating performance of particular companies. These broad market fluctuations may adversely affect the trading price of our common stock.

If securities or industry analysts do not continue to publish research or reports about our business, our stock price and trading volume could decline.

The trading market for our common stock will depend on the research and reports that industry or securities analysts publish about us or our business. We do not have any control over these analysts. If one or more of the analysts who cover us downgrade our stock, our stock price would likely decline. If one or more of these analysts cease coverage of our company or fail to regularly publish reports on us, we could lose visibility in the financial markets, which in turn could cause our stock price or trading volume to decline.

Sales of substantial amounts of our common stock could harm the market price of our stock.

If our stockholders sell substantial amounts of common stock in the public market soon after the lock-up period ends, the market price of our common stock could fall. As of December 31, 2004, we had outstanding 7,785,825 freely tradable shares of common stock. Another 19,693,392 shares will be eligible for sale in the public market on May 18, 2005 which is 180 days from the date of our initial public offering on November 18, 2004, all of which are subject to lock-up agreements with us and/or the underwriters. Either we or the underwriters

may in our respective sole discretion and at any time without notice, release all or any portion of the securities from the restrictions imposed by our respective lock-up agreements with security holders prior to the expiration of such 180-day period. Additionally, 261,324 shares are restricted securities that will become eligible for sale in the public market pursuant to Rule 144 at various dates in the future. The sale of a significant number of these shares could cause the price of our common stock to decline.

Because of their significant stock ownership, our officers and directors will be able to exert significant influence over our future direction.

Executive officers, directors, and affiliated entities beneficially own in aggregate, approximately 36.2% of our outstanding common stock. Additionally, Jim Jones, one of our directors, is associated with BAVP, L.P., which owns approximately 8.3% of our outstanding common stock. These stockholders, if acting together, would be able to significantly influence all matters requiring approval by our stockholders, including the election of directors and the approval of mergers or other business combination transactions.

Available Information

We were incorporated in California in 1997 and reincorporated into Delaware in November 2004. Our executive offices are located at 983 University Avenue, Building A, Los Gatos, CA 95032. Our telephone number is (408) 357-6600. Our e-mail address is investors@monolithicpower.com, and our website is www.monolithicpower.com. Our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those filed or furnished pursuant to Sections 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, are available free of charge. These may be obtained from our website, as soon as reasonably practicable after we electronically file such material with, or furnish it to, the Securities and Exchange Commission, or at the SEC website at www.sec.gov. Information contained on our website is not a part of this Form 10-K/A.

Executive Officers of the Registrant

The executive officers of the Company, and their ages as of December 31, 2004, are as follows:

Name	Age	Position
Michael R. Hsing	45	President, Chief Executive Officer, and Director
Tim Christoffersen	62	Chief Financial Officer and Secretary
Jim C. Moyer	61	Chief Design Engineer and Director
Deming Xiao	42	Vice President of Operations
Saria Tseng	34	Vice President and General Counsel

Michael R. Hsing has served on our board of directors and has served as our President and Chief Executive Officer since founding Monolithic Power Systems in August 1997. Before founding our company, Mr. Hsing held senior technical positions at companies such as Supertex, Inc. and Micrel, Incorporated. Mr. Hsing is an inventor on numerous patents related to the process development of bipolar mixed-signal semiconductor manufacturing. Mr. Hsing holds a B.S.E.E. from the University of Florida.

Tim Christoffersen has served as our Chief Financial Officer since June 2004, served on our board of directors from March 2004 to July 2004, and served as chairman of our audit committee from March 2004 through June 2004. Since January 1999, Mr. Christoffersen has been a financial consultant to technology companies. Prior to that, Mr. Christoffersen served as Chief Financial Officer of NeoParadigm Labs, Inc. from 1998 to 1999 and as Chief Financial Officer of Chips & Technologies, Inc. from 1994 until its sale to Intel Corporation in 1998. Mr. Christoffersen serves on the board of Genesis Microchip Incorporated. Mr. Christoffersen is a Phi Beta Kappa graduate of Stanford University where he earned a B.A. in Economics, and he also holds a Masters in Divinity from Union Theological Seminary in New York City.

Jim C. Moyer has served on our board of directors since October 1998 and has served as our Chief Design Engineer since September 1997. Before joining our company, from June 1990 to September 1997, Mr. Moyer held a senior technical position at Micrel, Incorporated. Prior to that, Mr. Moyer held senior design engineering positions at Hytek Microsystems Incorporated, National Semiconductor Corporation, and Texas Instruments Incorporated. Mr. Moyer holds a B.A.E.E. from Rice University.

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Deming Xiao has served as our Vice President of Operations since October 2003. Mr. Xiao joined us in May 2001 and served as Foundry Manager until he was appointed Director of Operations in January 2002. Before joining us, from June 2000 to May 2001, Mr. Xiao was Engineering Account Manager at Chartered Semiconductor Manufacturing, Inc. Prior to that, Mr. Xiao spent 6 years as the Manager of Process Integration Engineering at Fairchild Imaging Sensors, a company that manufactures and sells silicon based products for the medical, scientific, professional, industrial, and military imaging applications. Mr. Xiao holds a B.S. in Semiconductor Physics from Sichuan University, Chengdu, China and a M.S.E.E. from Wayne State University.

Saria Tseng has served as our Vice President and General Counsel since November 2004. Ms. Tseng joined MPS from MaXXan Systems, Inc., a privately held provider of intelligent storage networking solutions, where she was also vice president and general counsel from January 2001 to November 2004. Prior to her corporate experience, Ms.Tseng was an attorney at Gray Care Ware & Freidenrich, LLP from July 1999 to January 2001. Previously, she practiced law at Wang & Wang and Jones Day, Reavis & Pogue. Ms. Tseng is a member of the state bar in both California and New York and is a member of the bar association of the Republic of China (Taiwan). She holds Masters of Law degrees from Boalt Hall, University of California at Berkeley and Chinese Culture University in Taipei.

ITEM 2. PROPERTIES

Our corporate headquarters, which serve as our principal administrative, sales, manufacturing, and research and development offices, are located in two buildings in Los Gatos, California. We also complete the majority of our product testing at this location. Under a lease that expires in February 2009, we occupy approximately 36,000 square feet in these two buildings, of which approximately 3,400 square feet are devoted to production activities. We have signed an agreement to establish a facility in Chengdu, China, initially for the testing of our ICs. Upon completion of our Chengdu, China facility, we expect that testing activities at the Los Gatos facility will decrease and that such activities would then be limited to the testing of new products not released to production. We also lease branch offices in China, Taiwan and Korea. We believe that our existing facilities are adequate for our current operations. We believe that suitable replacement and additional space will be available in the future on commercially reasonable terms.

ITEM 3. LEGAL PROCEEDINGS

O2 Micro, Inc.

Overview

Since November 2000, we have been engaged in multiple legal proceedings against O2 Micro, Inc. (O2 Micro) and its parent corporation, O2 Micro International Limited (O2 International). We refer to O2 Micro and O2 International together as (O2). These proceedings involve various claims and counterclaims in the United States and Taiwan by us and O2 alleging patent infringements and misappropriation of trade secrets, all of which relate to our CCFL backlight inverter product family. Although the Taiwanese injunction against us specifically named only our MP 1011A and MP 1015 products within that product family, the underlying patent dispute involves issues that could affect all of our CCFL backlight inverter products that are used in Taiwan. In 2004, revenues from our CCFL backlight inverter product family were $21.9 million or 46.0% of total revenue, of which products used in Taiwan, represented a significant portion of our revenues in 2004. O2 has also sued a number of other companies in the U.S. and Taiwan for patent infringement, including purchasers and/or users of certain of our products and our wafer manufacturer. All of these legal proceedings pose various degrees of risk to our business.

Regardless of the extent to which these legal actions have been successful or not successful, the legal expenses associated with the various actions in the U.S. and Taiwan have been high and have had a significant impact on our financial position and results of operations. Please read Management s Discussion and Analysis of Financial Position and Results of Operations for more detail on the financial impact these legal actions have had on us.

Patents at Issue

The various litigations arise from patents issued to O2 and us covering products that compete with each other.

Our Patents. Our patents at issue are (i) U.S. Patent No. 6,114,814, issued to us on November 5, 2000 and relating to inverter ICs for LCD display products (which include, for example, our CCFL backlight inverter product family) (the 814 patent) and (ii) U.S. Patent No. 6,316,881 (the 881 patent), a continuation of the 814 patent that issued to us on November 13, 2001.

O2 s Patents. The O2 patents at issue are (i) U.S. Patent No. 6,259,615 B1 issued to O2 International on July 10, 2001 and also relating to inverter ICs for LCD display products (the 615 patent), (ii) U.S. Patent No. 6,396,722 (the 722 patent), a continuation of the 615 patent that issued to O2 on May 28, 2002, (iii) U.S. Patent No. 6,804,129 (the 129 patent), a continuation of the 615 and 722 patents that issued to O2 on October 12, 2004, and (iv) Taiwan Patent No. 152318 issued to O2 International on March 1, 2002, which is a counterpart to the 615 patent (the 318 patent). O2 s original applications for its U.S. 615 patent and its Taiwan 318 patent were substantially similar, but some of O2 s claims contained in the 318 patent were rejected by the U.S. Patent and Trademark Office and accordingly the U.S. patent was narrowed significantly before issuance. The Taiwan patent, however, was not similarly narrowed and was issued in the broader form originally requested.

U.S. Litigation

Various U.S. lawsuits between O2 and us have been consolidated in the U.S. District Court for the Northern District of California. O2 has (i) claimed that we interfered with O2 s prospective economic advantage and disrupted O2 s customer relationships by misrepresenting the scope of our 814 patent, (ii) asked the court to declare that O2 does not infringe our 814 patent and that our 814 patent is invalid, (iii) claimed that our products infringe its 615 patent, and (iv) claimed that we misappropriated its trade secrets. We have (i) claimed that O2 s products infringe our 814 and 881 patents and (ii) asked the court to declare that O2 s 615 patent is invalid or not enforceable or that our products do not infringe O2 s 615 patent. Each party denied the allegations in the other party s complaints and sought damages and an injunction prohibiting the other party from selling its products.

In February 2004 and May 2004, the court ruled on these matters as follows: (i) granting summary judgment for us that our products do not infringe the 615 patent, (ii) dismissing O2 s claim that we interfered with O2 s economic advantage, (iii) denying O2 s motion for summary judgment that O2 s products do not infringe our 814 and 881 patents or that those patents are invalid, and (iv) denying both parties motions for summary judgment on O2 s trade secret claims. We expect O2 to eventually appeal one or more of these rulings to the U.S. Court of Appeals for the Federal Circuit. O2 could wait to file any such appeal until conclusion of the trial or could ask the trial judge to allow an earlier appeal prior to the trial.

The claims remaining after these rulings include (i) O2 s trade secret claims and (ii) our infringement claims for injunctive relief only and not for damages. Trial on these matters is currently scheduled for May 2005. While we believe that our 814 and 881 patents are valid and that we have not misappropriated any of O2 s trade secrets, a court could find differently. If the court finds that our 814 and 881 patents are invalid, our competitive position would be severely harmed. If the court finds that we have misappropriated O2 s trade secrets, we could be liable for damages to O2 and/or be enjoined from further misappropriation or use of the alleged trade secrets. Any award of damages could have a material adverse effect on our financial position and operating results.

In addition, if O2 appeals the rulings in our favor, we will at a minimum continue to incur substantial legal expense contesting any such appeal. If O2 were to be successful on any such appeals, O2 s claims would be remanded for further proceedings potentially including trial. If the court were to find that our products infringe the 615 patent, we could be liable to O2 for damages and could be enjoined from selling our products in the U.S. Any such injunction would have a material adverse effect on our business and results of operations, at least for several quarters and possibly for a much longer period of time, depending on the extent of any such damage award and the scope and applicability of any such injunction. If the court found that we have interfered with O2 s economic advantage, we could be liable for damages to O2, which could have a material adverse effect on our financial position and operating results.

In January 2003, O2 filed a lawsuit against Sumida Corp. and Taiwan Sumida Electronics Inc. in the U.S. District Court for the Eastern District of Texas alleging that Sumida s use of our products in Sumida s products infringes the 615 and 722 patents. We have agreed to assume the defense of Sumida pursuant to an indemnity agreement. That case has been set for trial for June 2005.

In response to O2 s action against Sumida, in May 2004, we filed a complaint against O2 in the U.S. District Court for the Northern District of California seeking a declaratory judgment that we do not infringe O2 s

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722 patent. That case has been assigned to the same Judge presiding over the litigation over the 615, 814, and 881 patents described above, but it has not been consolidated with the earlier case. In October 2004, O2 filed a counterclaim for alleged infringement of the 722 patent, and added our foundry, Advanced Semiconductor Manufacturing Corporation of Shanghai (ASMC), as a counterclaim defendant. Because the litigation is in a very preliminary stage, it is difficult to predict how it will proceed or what the ultimate outcome will be. No trial date has yet been set in this matter.

On or about October 12, 2004, O2 filed a lawsuit against us in the U.S. District Court for the Eastern District of Texas for alleged infringement of the 129 patent. We have filed an answer and an antitrust and unfair competition counterclaim against O2. Because the litigation is in a very preliminary stage, it is difficult to predict how it will proceed or what the ultimate outcome will be.

If the California court were to find that our products infringe the 722 patent, or if a court were to find that our products infringe the 129 patent, we could be liable to O2 for damages and could be enjoined from selling our products in the U.S. Any such injunction would have a material adverse effect on our business and results of operations, at least for several quarters and possibly for a much longer period of time, depending on the extent of any such damage award and the scope and applicability of any such injunction.

Taiwan Litigation

Summary. In addition to the U.S. litigation described above, O2 has brought legal proceedings against us in Taiwan based upon its 318 patent. Unlike the U.S., where a party seeking a preliminary injunction must first file a lawsuit on the merits of the underlying claim, in Taiwan it is possible for a party to be granted a preliminary injunction without first filing a lawsuit on the merits. In January 2003, upon O2 s request, the Shihlin District Court in Taiwan issued a preliminary injunction prohibiting us from manufacturing, designing, displaying, importing or selling our MP1011A and MP1015 products in Taiwan, either directly or through a third party acting at our request.

We believe that we have at all times conducted our business in compliance with the injunction. Nevertheless, O2 has attempted repeatedly various actions to persuade the court that we have violated it. The court has not yet issued a ruling on O2 s motion. We have also taken several legal actions in an attempt to have the injunction lifted and/or to have O2 s 318 patent declared invalid. These actions include appealing the Shihlin District Court s injunction, initiating proceedings with the Taiwan Intellectual Property Office (TIPO) to invalidate O2 s 318 patent and seeking counter-injunctions from the Taipei District Court. Some of those actions have produced legal outcomes in our favor and others have not, but none has yet resulted in the lifting of the injunction or the invalidation of O2 s patent. We intend to continue pursuing the available legal avenues to achieve these objectives.

In June 2003, O2 filed a lawsuit against us in the Shihlin District Court for a resolution on the merits of O2 s claim that our products infringe O2 s 318 patent. That lawsuit was dismissed in April 2004, but O2 filed a similar lawsuit in Taipei District Court shortly thereafter.

In August 2004, the TIPO issued a letter ordering O2 to amend its 318 patent. The TIPO letter indicated that two of the three independent claims asserted by O2 lacked inventive steps and therefore should be amended or deleted by O2. As to the third independent claim, the TIPO indicated that certain corrections should be made, but has not at this time indicated that the third independent claim should be amended or deleted. In December 2004, O2 filed its amendment on its 318 patent and we have responded with our comments on its amendment in February 2005. TIPO has not made a decision on whether O2 s amendment is adequate. If, following such correction, the third claim is upheld by the TIPO, such claim could be sufficient for O2 to continue its patent claims against us. In July 2004, the Taiwan Supreme Court issued a ruling that remanded our motion for a retrial of O2 s preliminary injunction against us to the Taiwan High Court. In that ruling, the Taiwan Supreme Court indicated that, in order for O2 to be entitled to sue for or seek injunctions relating to infringement of its patents under Taiwan patent law, it must be demonstrated whether O2 s country of incorporation, the Cayman Islands, offers similar, reciprocal protections to Taiwanese individuals and entities under its patent law. The court has not yet ruled on this issue.

Our Counter-Injunctions Against O2. We have obtained two defensive counter-injunctions from the Taipei District Court, the first of which prohibits O2 from interfering with our or other parties use of our MP 1011A and MP1015 products. The second injunction prohibits O2 from interfering with the manufacture, sale, use or importation, by either us or a third party, of a number of our other products which are specifically enumerated in the injunction, although the MP1010B is not specifically addressed. We posted cash bonds of approximately $6.1

million (including the $90,000 bond discussed below) with the Taipei District Court in connection with the two defensive preliminary injunctions. These bonds are currently recorded as restricted assets on our balance sheet. If we do not prevail at trial, we might have to forfeit some or all of these bonds. Any such forfeiture would be an expense in the quarter in which the outcome of the trial is probable and reasonably estimable. A forfeiture of any substantial part of the bonds would materially and adversely affect our results of operations and financial position for that quarter.

O2 s Other Actions Against Us. In August 2003, November 2003, and March 2004, O2 filed for provisional seizures against us in the Shihlin District Court and Taipei District Court, which would entitle O2 to seize up to approximately $1.9 million of our assets in Taiwan, including but not limited to MP 1011A and MP 1015 parts. This $1.9 million figure represents the amount of damages O2 has currently claimed in its Taiwan patent infringement suit against us, although at various times in the past O2 has claimed substantially higher damage amounts. The court granted the provisional seizures. The execution of the first provisional seizure was exempted because we posted a bond in the amount of approximately $90,000. We elected not to post a bond to exempt the second and third provisional seizure orders, and the court seized property from our Taiwan office. We have appealed the second and third provisional seizures to the Supreme Court. One of our appeals, involving the third seizure, has been denied but the other appeal regarding the second seizure is still pending. The second and third provisional seizure orders have not yet been executed to the satisfaction of O2 s demand, and accordingly O2 may continue to request that the court seize our property under these orders. O2 has applied for court orders allowing O2 to seize payments from our customers if such payments are made in Taiwan to us. The Court has granted two such orders against two of our customers, Asustek and Sumida, but it is our understanding that O2 thus far has not been successful in seizing or attaching property of either of these customers. The seized assets would be released to us upon the earlier to occur of: (i) if and when the provisional seizure orders were to be revoked by the court or upon O2 s application or (ii) if and when the lawsuits on the merits filed by O2 were to be dismissed and such dismissal were final and conclusive. However, if O2 were to receive final judgment in its favor on the merits, O2 would be able to file an application to sell the seized assets by auction to cover any damages that the court determines O2 to have suffered.

Trial on the Merits in Taiwan. We could lose at trial on the question of whether our products infringe O2 s 318 patent. Although O2 has named only our MP1011A and MP1015 products in its lawsuit, if the court were to conclude that those products infringe the 318 patent, the court could also conclude that many of our newer products, including the 1010B and other CCFL products that are physically similar to the MP1011A and/or the MP1015, infringe O2 s 318 patent. We do not believe that the 318 patent is a valid patent or that any of our products infringe the 318 patent, but a court may come to a different conclusion. O2 s original applications for its U.S. 615 patent and its Taiwan 318 patent were substantially similar, but some of O2 s claims contained in the 318 patent were rejected by the U.S. Patent and Trademark Office. Since the claims in the 318 patent are formulated more broadly than those of the 615 patent, the summary judgment in the U.S. that our products do not infringe the 615 patent may not be as helpful to us in the 318 case as it might be if the patents were identical.

If the court were to conclude that any of our products infringe the 318 patent (and if the 318 patent were valid), we could be liable to O2 for damages based on past sales, and could further be permanently enjoined from selling those products (directly or through distribution arrangements) for use in Taiwan. Although many system and module manufacturers who use our products have shifted, and are continuing to shift, their manufacturing from Taiwan to China, a significant portion of our expected future revenue over the next several years is expected to come from users of our CCFL backlight inverter product family in Taiwan. A final judgment awarded by a court prohibiting direct or indirect sales of our MP 1011A or MP 1015 products into Taiwan would have a material adverse effect on our business and results of operations for at least several quarters while we work to transition customers to alternative, non-infringing products. We cannot be sure that we could successfully effect such a transition. If we are permanently enjoined from selling other, newer products into Taiwan, this would have an immediate, drastic, and adverse effect on our ability to continue in our business as presently conducted.

O2 s Lawsuits against Our Customers and Other Third Parties.

In addition to lawsuits between O2 and us, O2 has also initiated numerous legal proceedings in Taiwan and in the United States against other companies which have been purchasers, supplier and/or users of our products. We are aware that in some cases those companies have been enjoined from using MP1011A and MP1015 products imported into Taiwan. In at least two cases, preliminary injunctions were upheld by district courts in Taiwan. Injunctions against end-users of our products necessarily reduce the demand for our products, potentially leading to reduced sales. Under certain circumstances, we have agreed to indemnify certain customers and manufacturer against patent infringement. Continued expenditure of our funds in defending customers and manufacturer against O2 s lawsuits could materially and adversely affect our financial condition and operating results.

Additional O2 Patents.

We are aware that O2 has recently been issued at least one other U.S. patent that is a continuation of the patents it has accused us of infringing, has also filed for a U.S. patent that would be a continuation of the patents it has accused us of infringing, and has filed for related patents in other Asian countries. We are not aware that any foreign patents have been issued in response to these patent applications and do not know when, if ever, any such patent will issue. Nevertheless, we expect O2 may pursue claims against us based on this additional issued U.S. patent or any other additional U.S. or foreign patents that O2 may obtain in the future. In this regard, O2 often has sued us on additional patents as they have issued, including suits on two additional patents filed in October 2004. Depending on the scope and severity of those claims, any injunctions that may be issued against us, or damages that may be awarded against us, could have a material and adverse effect on our business and results of operations.

Linear Technology Corporation

On May 3, 2004, Linear filed a complaint for misappropriation of trade secrets, unfair business practices, California common law unfair competition, breach of agreement, and breach of the duty of good faith and fair dealing against us and Timothy Cox, a former Linear employee who currently works for us, in the Superior Court of the State of California, Santa Clara County. Effective January 25, 2005, we entered into an agreement to settle the action on terms mutually satisfactory to the parties, and the case was dismissed.

On July 16, 2004, Linear filed a complaint with the U.S. International Trade Commission (ITC) under section 337 of the Tariff Act of 1930. The investigation is now captioned: In the Matter of Certain Voltage Regulator Circuits, Components Thereof and Products Containing Same, Inv. No. 337-TA-521. Linear filed a letter supplementing the complaint on August 10, 2004. In its complaint, Linear alleges that two of our products, the MP1556 (a product within our DC to DC converter product family) and the EV0063 (the evaluation board containing the MP1556), infringe its U.S. Patent Nos. 5,481,178 and 6,580,258. Linear subsequently supplemented its infringement allegations to include additional products and products under development. Linear has examined numerous other products within our DC to DC converter product family that do not employ the particular circuitry utilized in the MP1556 and has not accused those other products of infringement. Therefore, Linear s allegations appear limited to the particular circuitry used in a relatively small number of products and products under development. Linear alleges that we violated section 337 because we imported these allegedly infringing products into the United States, sold them for importation in the United States, and/or sold them within the United States after importing them. The complaint requests that the ITC institute an investigation and, after the investigation, issue an exclusion order and a cease and desist order prohibiting specific unfair acts found to be illegal in the investigation. On August 11, 2004, the ITC ordered that an investigation be instituted to determine whether there has been a violation of section 337, as alleged in the complaint. We believe we have meritorious defenses to the claims and are defending vigorously against them. The matter had been scheduled for trial before the ITC commencing March 30, 2005; however, at Linear s request due to a conflict with another trial, the judge has rescheduled the trial to commence June 22, 2005. If Linear is successful in securing an exclusion order against the MP1556, EV0063, and potentially other products, such an exclusion order would prevent such products from being shipped into the United States and would have a material adverse effect on our business.

Microsemi Corporation

On October 7, 2004, Microsemi filed a patent infringement lawsuit in the United States District Court for the Central District of California. The lawsuit identifies four patents U.S. Patent Nos. 5,615,093; 5,923,129; 5,930,121; and 6,198,234 that purportedly are now owned by Microsemi and alleges that we infringe those patents. The complaint describes the patents as covering display lamp driver technologies, which facilitate the lighting of electronic displays found in laptop and personal computers, personal digital assistants and televisions as well as countless LCD screens.

The complaint does not identify which claims in the four patents are allegedly infringed nor does it identify which of our products supposedly infringe the patent claims. The complaint requests an injunction to prevent us from allegedly infringing the patents, as well as unspecified damages, attorneys fees, costs, and expenses. We have filed an answer and counterclaim, denying infringement and seeking a declaration that we do not infringe the patents and/or that the patents are invalid. The court has scheduled a case management conference hearing for April 18, 2005.

Based upon the description of the technology contained in Microsemi s complaint and Microsemi s responses to discovery requests, we understand that Microsemi will contend that one or more of our CCFL backlight inverter products infringes its patents. Because the litigation is in a preliminary stage, it is difficult to predict how it will proceed or what the ultimate outcome will be. If we do not prevail in the litigation, we could be ordered to pay monetary damages, and we could be enjoined from selling one or more of our CCFL backlight inverter products into the U.S., either directly or indirectly. In 2004, revenues from our CCFL backlight inverter product family were $21.9 million, respectively, or 46.0% of total revenue. Because many of our products are sold indirectly by our customers back into the U.S., a U.S. injunction covering one or more of our products would likely substantially reduce sales of those products. Any of the results described above would have a material adverse effect on our cash flow, results of operations, and financial condition.

Micrel Corporation

On November 10, 2004, Micrel filed a patent infringement lawsuit in the United States District Court for the Northern District of California. The lawsuit identifies two patents U.S. Patent Nos. 5,517,046, entitled High Voltage Lateral DMOS Device With Enhanced Drift Region, and 5,556,796, entitled Self-Alignment Technique For Forming Junction Isolation And Wells that purportedly are owned by Micrel and alleges that our products infringe those patents. Michael Hsing, our Chief Executive Officer, and another of our employees are named inventors on both of Micrel s patents and Jim Moyer, our Chief Design Engineer, is a named inventor on one of them. Micrel s complaint does not identify which claims in the two patents are allegedly infringed nor does it identify which of our products allegedly infringe the patent claims. However, because Micrel s patents relate to semiconductor manufacturing processes and semiconductor design elements rather than a specific device, all of our products could potentially be implicated. The complaint requests among other remedies preliminary and permanent injunctions to prevent us from allegedly infringing the patents, as well as unspecified damages, attorneys fees, costs, and expenses.

On November 29, 2004, Micrel filed an amended complaint adding causes of action for alleged statutory and common law misappropriation of trade secrets, alleged breach of confidentiality agreements by Messrs. Hsing and Moyer (both former employees of Micrel), and alleged violation of California s Unfair Competition Law. The amended complaint also adds Messrs. Hsing and Moyer as defendants. Micrel s amended complaint adds requests for damages attributable to the alleged misappropriation of Micrel s trade secrets and alleged violation of the confidentiality agreements; for preliminary and permanent injunctive relief to prevent our future use of Micrel s alleged trade secrets; and for attorneys fees and costs. We have filed a motion to dismiss these claims on statute of limitations and preemption grounds.

The court has not set a trial date, and discovery has not yet begun. Because the litigation is in a very preliminary stage, it is difficult to predict how it will proceed or what the ultimate outcome will be. We have, however, conducted an initial review of the Micrel patents and compared them with the manufacturing processes and design elements we use for our products. We have also conducted an initial review of the causes of action added by the amended complaint. Based on this initial review, we believe that we have meritorious defenses to all of Micrel s claims. If we do not prevail in the litigation, we could be ordered to pay to Micrel substantial monetary damages, including restitution, disgorgement of profits and punitive damages, and we could be enjoined from selling one or more of our products into the U.S., either directly or indirectly. Because many of our products are sold indirectly by our customers back into the U.S., a U.S. injunction covering one or more of our products would likely substantially reduce sales of those products. Any of these results would have a material and adverse effect on our results of operations and any injunction that prohibits us from selling significant products for any length of time would have an immediate and drastic negative effect on our business and results of operations.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

During the fourth quarter of fiscal 2004 and prior to our initial public offering, the following matters were submitted to a vote of the Company s security holders:

On October 5, 2004, acting by written consent, the holders of at least 73.86% of our Series D preferred stock approved the issuance of 176,740 shares of our common stock to certain of our employees.

On November 12, 2004, acting by written consent, the holders of at least 73.85%. of our capital stock approved our reincorporation into Delaware.

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On November 12, 2004, acting by written consent, the holders of at least 64.03% of our capital stock approved various items relating to our initial public offering (IPO), including our post-IPO charter and bylaws, classification of directors, form of indemnification agreement, and equity incentive plans.

On November 12, 2004, acting by written consent, the holders of at least 60.79% of our capital stock approved a certificate of amendment to our pre-IPO charter to increase the number of shares of common stock authorized thereunder and amend an anti-dilution provision therein.

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PART II

ITEM 5. Market for the Registrant s Common Equity, Related Stockholders Matters, and Issuer Purchases of Equity Securities.
The information required by this item regarding equity compensation plans is set forth under the caption Equity Compensation Plan Information in our Proxy Statement for the 2005 Annual Meeting of Stockholders and is incorporated herein by reference

Market Price of Our Common Stock

Our common stock is traded on the Nasdaq National Market under the symbol MPWR . As of March 1, 2005, we had approximately 168 stockholders of record. We have never declared or paid any cash dividends on our common stock and do not expect to pay cash dividends on our common stock in the foreseeable future. We currently intend to retain our earnings, if any, for use in our business.

	Common Stock Closing Price	
	High	Low
Fiscal 2004		
4th Quarter (from November 18, 2004)	$ 11.14	$ 9.30

Recent Sales of Unregistered Securities

Since January 1, 2004, we have sold and issued the following unregistered securities:

(1) From January 1, 2004 to November 17, 2004, we granted stock option to purchase an aggregate of 4,239,600 shares of common stock at the exercise price ranging from $5.00 to $10.00 per share to employees, consultants, directors and other service providers pursuant to our 1998 Stock Plan.

(2) On October 5, 2004 and October 28, 2004, we issued 176,740 shares of our common stock at a price of $0.001 per share to certain of our employees for an aggregate offering price of $176.74.

The sales and issuances of securities described in paragraphs (1) and (2) above were exempt from registration under the Securities Act by virtue of Section 4(2) of the Securities Act or by virtue of Rule 701 promulgated under the Securities Act in that they were offered and sold either pursuant to a written compensatory benefit plan or pursuant to a written contract relating to compensation, as provided by Rule 701.

Use of Proceeds

On November 18, 2004, our registration statement on Form S-1 (Registration No. 333-117327) was declared effective for our initial public offering. Our initial public offering of common stock occurred on November 18, 2004. This offering terminated upon the expiration of the unexercised portion of the underwriters over-allotment option; therefore, 39,175 of the registered shares covered by the underwriters over-allotment option were not sold. The underwriting syndicate was managed by Goldman, Sachs & Co., Merrill Lynch & Co., Deutsche Bank Securities, and Piper Jaffray.

Under this registration statement, we registered 6,325,000 shares of our common stock at a price to the public of $8.50 per share, including 825,000 shares subject to the underwriters over-allotment option (which option was exercised in part), with an aggregate public offering price of approximately $53.8 million. We registered 4,825,000 of these shares on the Company s behalf and 1,500,000 of these shares on behalf of certain of our selling stockholders.

The sale of 4,785,825 shares of common stock by the Company, including 785,825 shares sold pursuant to the underwriters exercise of the over-allotment option, resulted in aggregate gross proceeds to the Company of approximately $40.7 million, approximately $2.8 million of which the Company applied to underwriting discounts and commissions and approximately $2.9 million of which the Company applied to related costs. As a result, the Company received net proceeds of approximately $34.9 million from the offering.

As of March 1, 2005, we had invested the $34.9 million in net proceeds from the offering in government securities and corporate preferred equities. We intend to use these proceeds for general corporate purposes, including working capital, research and development, general and administrative expenses and capital expenditures, including the facility in China described in Business Manufacturing, which facility involves a

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commitment of at least $5 million. We may also use a portion of the net proceeds to fund possible investments in, or acquisitions of, complementary businesses, products or technologies or in establishing joint ventures, although none is currently contemplated.

ITEM 6. SELECTED FINANCIAL DATA

The following financial data is derived from our audited annual consolidated financial statements as of and for the years ended December 31, 2000, 2001, 2002, 2003 and 2004. You should read the following table in conjunction with the consolidated financial statements and the related notes contained elsewhere in this report on Form 10-K/A.

Operating results for any year are not necessarily indicative of results for any future periods.

	Year ended December 31,				
	2004 Restated (1)	2003 Restated (1)	2002	2001	2000
	(in thousands, except per share data)				
Revenues	$ 47,595	$ 24,204	$ 12,206	$ 8,130	$ 5,252
Cost of revenues:					
Product costs	18,681	10,750	6,825	5,969	3,850
Stock-based compensation	913	216	6	6	3
Total cost of revenues	19,594	10,966	6,831	5,975	3,853
Gross profit	28,001	13,238	5,375	2,155	1,399
Operating expenses:					
Research and development (excluding stock-based compensation*)	7,689	5,493	4,459	2,610	1,435
Selling, general and administrative (excluding stock-based compensation*)	7,066	3,914	2,440	1,808	1,102
Patent litigation	7,833	4,332	1,603	958	
Stock-based compensation*	10,648	2,948	167	180	494
Total operating expenses	33,236	16,687	8,669	5,556	3,031
Loss from operations	(5,235)	(3,449)	(3,294)	(3,401)	(1,632)
Other income (expense):					
Interest and other income	171	170	178	111	37
Interest and other expense	(93)		(121)	(283)	(8)
Total other income (expense), net	78	170	57	(172)	29
Loss before income taxes	(5,157)	(3,279)	(3,237)	(3,573)	(1,603)
Income tax benefit	(1,438)				
Net loss	(3,719)	(3,279)	(3,237)	(3,573)	(1,603)
Accretion of redeemable convertible preferred stock	1,183	1,340	447		
Net loss attributable to common shareholders	$ (4,902)	$ (4,619)	$ (3,684)	$ (3,573)	$ (1,603)
Basic and diluted loss per common share	$ (0.54)	$ (0.75)	$ (0.63)	$ (0.63)	$ (0.33)
Shares used in basic and diluted loss per common share	9,132	6,143	5,863	5,682	4,846
* Stock-based compensation has been excluded from the following items:					
Research and development	$ 5,165	$ 1,104	$ 7	$ 8	$ 32
Selling, general and administrative	5,483	1,844	160	172	462

Total	10,648	$	2,948	$	167	$	180	$	494

(1) Restated. See Note 18, Restatement of Consolidated Financial Statements , in the notes to consolidated financial statements for related discussion.

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Consolidated Balance Sheet Data:

	As of December 31,				
	2004 Restated (1)	2003 Restated (1)	2002	2001	2000
	(in thousands)				
Cash and cash equivalents	$ 32,019	$ 11,635	$ 17,223	$ 5,264	$ 904
Short-term investments	17,000	1,507			
Working capital	52,638	16,743	17,568	4,621	796
Restricted assets	6,641	787			
Total assets	72,384	22,603	21,614	8,078	4,346
Redeemable convertible preferred stock		18,413	17,074		
Convertible preferred stock		11,163	11,163	11,163	4,379
Total stockholders equity	63,939	1,231	1,979	5,441	1,697

(1) Restated. See Note 18, Restatement of Consolidated Financial Statements , in the notes to consolidated financial statements for related discussion.

ITEM 7. MANAGEMENT S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion should be read in conjunction with the consolidated financial statements and related notes which appear elsewhere in this report on Form 10-K/A. This discussion contains forward-looking statements that involve risks and uncertainties. Please see Forward-Looking Statements above. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of various factors, including those discussed below and elsewhere in this report on Form 10-K/A, particularly under the heading Trends, Risks and Uncertainties.

The accompanying Management s Discussion and Analysis reflects the effects of the restatement discussed in Note 18 to the consolidated financial statements.

Critical Accounting Policies and Estimates

Our discussion and analysis of our financial condition and results of operations are based upon our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the U.S. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amount of assets, liabilities, revenues and expenses, and related disclosure of contingent assets and liabilities. We evaluate our estimates on an on-going basis, including those related to uncollectible accounts receivable, inventories, income taxes, warranty obligations and contingencies, and litigation. We base our estimates on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making the judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Because these estimates can vary depending on the situation, actual results may differ from the estimates.

We believe the following critical accounting policies affect our more significant judgments used in the preparation of our consolidated financial statements.

Revenue Recognition. We recognize revenues in accordance with Staff Accounting Bulletin No. 101, *Revenue Recognition in Financial Statements*, as amended by SAB 101A and 101B (SAB 101) and Staff Accounting Bulletin No.104, *Revenue Recognition* (collectively referred to as SAB 104) issued by the Staff of the SEC . SAB 104 requires that four basic criteria must be met before revenue can be recognized: (1) persuasive evidence of an arrangement exists; (2) delivery has occurred or services have been rendered; (3) the fee is fixed and determinable; and (4) collectibility is reasonably assured. Determination of criteria (3) and (4) are based on management s judgment regarding the fixed nature of the fee charged for products delivered and the collectibility of those fees. The application of these criteria has resulted in our recognizing revenue upon shipment (when title passes) to most customers, but in the case of one third party, who accounted for 30% of our revenue in 2003, we have recognized revenue upon its sale of our products to its customers (sell through basis). We discontinued using this third party in March 2004. Should changes in conditions cause management to determine these criteria are not met for certain future transactions, revenues recognized for any reporting period could be adversely impacted.

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The majority of our sales are made through distribution arrangements with third parties. Although some of these arrangements include stock rotation rights that permit the return of up to 5% of the previous six months purchases (no more than once every six months), we have not experienced any significant returns pursuant to these provisions. Our normal payment terms with our distributors are 30 days from invoice date and our arrangements with our largest distributors do not include price protection provisions. Although some of our arrangements with smaller distributors include price protection provisions permitting them a credit for unsold inventory if we reduce our list prices, we have not experienced any significant claims pursuant to these provisions. In addition, terms of our significant distribution agreements include the non-exclusive right to sell, and the agreement to use best efforts to promote and develop a market for, our products in certain regions of the world and the ability to terminate the agreement by either party with three months notice. We provide a standard 90-day warranty against defects in materials and workmanship and will either repair the goods, provide replacements at no charge to the customer, or refund amounts to the customer for defective products. Estimated sales returns and warranty costs, based on historical experience by product, are recorded at the time product revenue is recognized. We formerly had one distribution arrangement with a third party with extended payment terms. These terms were the lesser of 60 days or upon receipt of end customer payment by the third party. Revenue for this arrangement was recognized on a sell-through basis, when the goods were shipped by the third party to the end customer. Under such distribution arrangement, the third party did not stock inventory of our products.

Inventory Valuation. We value our inventory at the lower of the actual costs of our inventory or its current estimated market value. We write down inventory for obsolescence or unmarketable inventories based upon assumptions about future demand and market conditions. If actual market conditions are less favorable than those projected by management, additional inventory write-downs may be required.

Accounting for Income Taxes. Statement of Financial Accounting Standards No. 109, (SFAS No. 109), *Accounting for Income Taxes*, establishes financial accounting and reporting standards for the effect of income taxes. In accordance with SFAS No. 109, we recognize federal, state and foreign current tax liabilities or assets based on our estimate of taxes payable or refundable in the current fiscal year by tax jurisdiction. We also recognize federal, state and foreign deferred tax assets or liabilities for our estimate of future tax effects attributable to temporary differences and carryforwards; and we record a valuation allowance to reduce any deferred tax assets by the amount of any tax benefits that, based on available evidence and judgment, are not expected to be realized.

Our calculation of current and deferred tax assets and liabilities is based on certain estimates and judgments and involves dealing with uncertainties in the application of complex tax laws. Our estimates of current and deferred tax assets and liabilities may change based, in part, on added certainty or finality to an anticipated outcome, changes in accounting or tax laws in the United States, or U.S., or foreign jurisdictions where we operate, or changes in other facts or circumstances. In addition, we recognize liabilities for potential U.S. and foreign income tax contingencies based on our estimate of whether, and the extent to which, additional taxes may be due. If we determine that payment of these amounts is unnecessary or if the recorded tax liability is less than our current assessment, we may be required to recognize an income tax benefit or additional income tax expense in our financial statements, accordingly.

As of December 31, 2003, we had a valuation allowance of approximately $4.8 million, attributable principally to certain unrealizable net operating loss and tax credit carryforwards. As of December 31, 2004, we had a valuation allowance of approximately $1.8 million, attributable to the estimated unrealizable deferred tax assets generated from tax benefits resulting from certain stock-based compensation transactions. Should it be determined that all or part of the net deferred tax asset would not be realized in the future, an adjustment to increase the deferred tax asset valuation allowance would be charged to income in the period such determination would be made.

Contingencies. From time to time, we receive notices or become aware that our products or manufacturing processes may be infringing the intellectual property rights of others. When this occurs, we will investigate and determine whether a contingent liability in accordance with Statement of Financial Accounting Standards No. 5 (SFAS 5), Accounting for Contingencies, should be recorded. In making this determination, management may, depending on the nature of the matter, consult with internal and external legal counsel and technical experts. Based on the management s judgment and given the facts and circumstances in each matter, we determine whether it is probable that a contingent loss may be incurred and whether the amount of such loss can be estimated. Should a loss be probable and estimable, we record a contingent loss in accordance with SFAS 5. In determining the amount of a contingent loss, we take into account advice received from the technical experts in each specific matter, the status of legal proceedings, settlement negotiations, which may be ongoing,

prior case history and other factors. Should the judgments and estimates made by management need to be adjusted as additional information becomes available, we may need to record additional contingent losses that could materially and adversely impact our results of operations. Alternatively, if the judgments and estimates made by management are adjusted, for example, if a particular contingent loss does not occur, the contingent loss recorded would be reversed which could result in a favorable outcome to operations.

Accounting for Stock-Based Compensation. Our stock-based employee compensation plans are described more fully in Note 8 to the consolidated financial statements. We account for these plans under the recognition and measurement principles of Accounting Principles Board (APB) Opinion No. 25, *Accounting for Stock issued to Employees*, and related interpretations. We amortize deferred stock-based compensation over the vesting periods of the related options, which are generally four years, in accordance with FASB Interpretation No. 28, *Accounting for Stock Appreciation Rights and Other Variable Stock Option or Award Plans, an interpretation of APB Opinions No. 15 and 25*.

We have recorded deferred stock-based compensation representing the difference between the deemed fair market value of our common stock at the grant date and the option exercise price. We determined the fair market value of our common stock based upon several factors, including trends in the broad market for technology stocks and the expected valuation we would obtain in an initial public offering. Had different assumptions or criteria been used to determine the fair market value of our common stock, materially different amounts of stock-based compensation could have been reported.

Pro forma information regarding net loss attributable to common stockholders and net loss per share attributable to common stockholders is required in order to show our net loss as if we had accounted for employee stock options under the fair value method of Statement of Financial Accounting Standards (SFAS) No. 123, Accounting for Stock-Based Compensation, as amended by SFAS No. 148, *Accounting for Stock-Based Compensation, Transition and Disclosure*. This information is contained in Note 1 to our consolidated financial statements. The fair value of options issued pursuant to our option plan at the grant date were estimated using the Black-Scholes option-pricing model.

Recent Accounting Pronouncements.

The Financial Accounting Standards Board (FASB) issued Interpretation No. 46 (FIN 46), *Consolidation of Variable Interest Entities*, in January 2003, and a revised interpretation of FIN 46 (FIN 46-R) in December 2003. FIN 46 requires certain variable interest entities (VIEs) to be consolidated by the primary beneficiary of the entity if the equity investors in the entity do not have the characteristics of a controlling financial interest or do not have sufficient equity at risk for the entity to finance its activities without additional subordinated financial support from other parties. The provisions of FIN 46 are effective immediately for all arrangements entered into after January 31, 2003. Since January 31, 2003, we have not invested in any entities we believe are variable interest entities for which we are the primary beneficiary. For all arrangements entered into after January 31, 2003, we are required to continue to apply FIN 46 through the end of the first quarter of fiscal 2004. We are required to adopt the provisions of FIN 46-R for those arrangements in the second quarter of fiscal 2004. For arrangements entered into prior to February 1, 2003, we were required to adopt the provisions of FIN 46-R in the second quarter of fiscal 2004. The adoption of FIN 46-R did not have an impact on our financial position, results of operations or cash flows.

In May 2003, the FASB issued Statement of Financial Accounting Standards No. 150 (SFAS 150), *Accounting for Certain Financial Instruments with Characteristics of both Liabilities and* Equity. SFAS 150 establishes standards for how an issuer classifies and measures certain financial instruments with characteristics of both liabilities and equity. SFAS 150 is effective for financial instruments entered into or modified after May 31, 2003, and otherwise is effective at the beginning of the first interim period beginning after June 15, 2003. SFAS 150 is to be implemented by reporting the cumulative effect of a change in an accounting principle for financial instruments created before the issuance date of the statement and still existing at the beginning of the interim period of adoption. The adoption of SFAS 150 did not have a material effect on our consolidated financial statements.

In December 2003, the SEC issued Staff Accounting Bulletin No. 104 (SAB 104), *Revenue Recognition*. SAB 104 updates portions of existing interpretative guidance in order to make this guidance consistent with current authoritative accounting and auditing guidance and SEC rules and regulations. The adoption of SAB 104 did not have a material effect on our consolidated financial statements.

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On December 16, 2004, the FASB issued Statement of Financial Accounting Standards No. 123 (revised 2004), *Share-Based Payment* (SFAS 123R). SFAS 123R eliminates the alternative of applying the intrinsic value measurement provisions of APB Opinion 25 to stock compensation awards issued to employees. Rather, the new standard requires enterprises to measure the cost of employee services received in exchange for an award of equity instruments based on the grant-date fair value of the award. That cost will be recognized over the period during which an employee is required to provide services in exchange for the award, known as the requisite service period (usually the vesting period).

We have not yet quantified the effects of the adoption of SFAS 123R, but it is expected that the new standard may result in significant stock-based compensation expense. The actual effects of adopting SFAS 123R will be dependent on numerous factors including, but not limited to, the valuation model chosen by us to value stock-based awards; the assumed award forfeiture rate; the accounting policies adopted concerning the method of recognizing the fair value of awards over the requisite service period; and the transition method (as described below) chosen for adopting SFAS 123R.

SFAS 123R will be effective for our fiscal quarter beginning July 1, 2005. SFAS 123R is applied to new awards and to awards modified, repurchased, or cancelled after the effective date. Additionally, compensation cost for the portion of awards for which the requisite service has not been rendered (such as unvested options) that are outstanding as of the date of adoption shall be recognized as the remaining requisite services are rendered. The compensation cost relating to unvested awards at the date of adoption shall be based on the grant-date fair value of those awards as calculated for pro forma disclosures under the original SFAS123.

In December 2004, the FASB issued Statement of Financial Accounting Standards No. 151, *Inventory Costs, (SFAS 151, an amendment of ARB No. 43).* Adoption is required for inventory costs incurred during fiscal years beginning after June 15, 2005. SFAS 151 requires that abnormal amounts of idle facility expense, freight handling costs and wasted material be recognized as current-period expenses. In addition, SFAS 151 requires that the allocation of production overhead be based on normal capacity. We do not expect the adoption of SFAS 151 to have a material impact on the consolidated financial statements.

Results of Operations

The table below states the income statement items as a percentage of revenues.

	Year ended December 31,		
	2004	**2003**	**2002**
Revenues	100.0%	100.0%	100.0%
Cost of revenues	41.2	45.3	55.9
Gross profit	58.8	54.7	44.1
Operating expenses:			
Research and development	16.2	22.7	36.5
Selling, general and administrative	14.9	16.2	20.0
Patent litigation	16.5	17.9	13.1
Stock-based compensation	22.3	12.2	1.4
Total operating expenses	69.9	69.0	71.0
Operating loss	(11.1)	(14.3)	(26.9)
Interest and other income	0.3	0.7	1.5
Interest expense	(0.2)		(1.0)
Total other income (expense), net	0.1	0.7	0.5
Loss before income taxes	(11.0)	(13.6)	(26.4)
Income tax credit	(3.0)		
Net loss	(8.0)%	(13.6)%	(26.4)%

Revenues. Revenues for the year ended December 31, 2004 were $47.6 million, an increase of $23.4 million, or 96.6%, over $24.2 million for the previous fiscal year. This was due to higher unit shipments for several new products introduced in 2002 and 2003 resulting in volume shipments that took place in 2004, our products gaining market share, and growth of the computer and consumer electronic markets. Revenues from our DC to DC converter product family increased $13.9 million, or 250.8%, due to higher volume shipments resulting from increased order rates for existing and new products for shipments into the computer and consumer electronic communications markets. Revenues from our CCFL backlight inverter product family increased $5.0 million, or 29.7%, due to higher volume shipments resulting from increased order rates for existing and new products. Revenues from our LED driver product family increased $3.5 million, or 240.2%, due to higher volume shipments resulting from increased order rates for existing and new products. Revenues for our audio amplifier product family increased $1.0 million, or 316.5%, due to an increased demand for our existing products.

Revenues for the year ended December 31, 2003 were $24.2 million compared to $12.2 million for the year ended December 31, 2002, an increase of 98.3%. This increase was due to an increase in revenues from our CCFL backlight inverter and DC to DC converter product families. The increase in revenues from our CCFL backlight inverter product family was due to several new product releases and increased demand for our existing products. This resulted in higher unit volumes, which were partially offset by a decline in average selling prices. The increase in revenues from our DC to DC converter product family was due to an increased number of new product offerings for the computer, consumer electronics, and communications markets. Volume sales began in the third quarter of 2003 for our DC to DC product family. Revenues from our audio amplifier product family accounted for 1.3% and 14.0% of total revenues for the years ended December 31, 2003 and December 31, 2002, respectively. Revenues for our audio amplifier product family for the year ended December 31, 2002 were primarily driven by a non-recurring order by one customer.

Geographically, international revenues were $46.0 million or 96.7% of net revenues for year ended December 31, 2004, an increase of $29.5 million as compared to international revenues of $16.5 million or 68.3% of net revenues for the same period in fiscal 2003. International revenues consist of shipments to countries outside the United States.

Although 3.3% and 31.7% of direct sales are to customers in the United States in 2004 and 2003, the majority of these shipments were made to a third party in the U.S. with whom we had a distribution arrangement who, in turn, shipped to customers in Asia. Our distribution arrangement with this third party was terminated in March 2004. As a result, our overall revenues from both direct sales and sales through third parties into Asia were 98.9% and 98.6% in 2004 and 2003, respectively.

The following table illustrates changes in our revenues by product family (amounts in thousands):

	Years ended December 31,						Percentage change	
	2004		2003		2002		2004 to 2003	2003 to 2002
	Amount	% of Revenue	Amount	% of Revenue	Amount	% of Revenue	Change	Change
CCFL Inverters*	$ 21,910	46.0%	$ 16,898	69.8%	$ 9,694	79.4%	29.7%	74.3%
DC to DC Converters	19,468	40.9%	5,549	22.9%	388	3.2%	250.8%	1330.2%
LED Drivers	4,905	10.3%	1,442	6.0%	421	3.4%	240.2%	242.5%
Audio Amplifiers	1,312	2.8%	315	1.3%	1,703	14.0%	316.3%	(81.5)%
	$ 47,595	100.0%	$ 24,204	100.0%	$ 12,206	100.0%	96.6%	98.3%

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* Please note that our CCFL backlight inverter product family is now part of our LCD backlight inverter product family. Therefore, in future periods, this component of our revenues will be reported as our LCD backlight inverter product family, which will include other products in addition to our CCFL backlight inverter ICs.

Gross Profit. Gross profit as a percentage of revenues, or gross margin, was 58.8% for the year ended December 31, 2004, compared to 54.7% for year ended December 31, 2003. The increase in gross margin was primarily due volume efficiencies attributable to a growth in unit shipments from our DC to DC converter product family and volume efficiencies attributable to a growth in unit shipments from our CCFL backlight inverter product family. The gross margin was adversely impacted by $913,000, or 1.9%, for stock compensation expense for the year ended December 31, 2004, compared to $217,000, or 0.9%, for the year ended December 31, 2003.

Gross margin was 54.7% for the year ended December 31, 2003, compared with 44.1% for the year ended December 31, 2002. The increase in gross margin was primarily due to lower per unit costs associated with volume efficiencies attributable to a growth in unit shipments from our CCFL backlight inverter product family and the introduction of several new products in our DC to DC converter product. In addition, we reduced our manufacturing costs by converting to a lower cost foundry in the first half of 2003, reducing our assembly costs, and improving our test yields. The gross margin was adversely impacted by $217,000, or 0.9%, for stock compensation expense for the year ended December 31, 2003.

Research and Development.

	Years ended December 31,			Percentage Change	
	2004	2003 (in thousands)	2002	2004 to 2003	2003 to 2002
Net revenues	$ 47,595	$ 24,204	$ 12,206	96.6%	98.3%
Research and development (R&D) (excluding stock-based compensation)	$ 7,688	$ 5,494	$ 4,459	39.9%	23.2%
R&D as a percentage of net revenues	16.2%	22.7%	36.5%	(6.5)%	(13.8)%

Research and development expenses were $7.7 million, or 16.2% of revenues, for the year ended December 31, 2004 and $5.5 million, or 22.7% of revenues, for the year ended December 31, 2003. This increase of $2.2 million was due to an increase in personnel and expenses associated with new product development activities.

Research and development expenses increased to $5.5 million, or 22.7% of revenues, for the year ended December 31, 2003 from $4.5 million, or 36.5% of revenues for the year ended December 31, 2002. This dollar increase of 23.2% was primarily due to higher compensation and related costs of $0.8 million driven by increases in our engineering headcount.

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Selling, General and Administrative.

	Years ended December 31,			Percentage Change	
	2004	2003	2002	2004 to 2003	2003 to 2002
		(in thousands)			
Net revenues	$ 47,595	$ 24,204	$ 12,206	96.6%	98.3%
Selling, general and administrative (SG&A) (excluding stock-based compensation)	$ 7,066	$ 3,914	$ 2,441	80.5%	60.4%
SG&A as a percentage of net revenues	14.8%	16.2%	20.0%	(1.4)%	(3.8)%

Selling, general and administrative expenses were $7.1 million, or 14.8% of revenues, for the year ended December 31, 2004 and $3.9 million, or 16.2% of revenues, for the year ended December 31, 2003. The increase of $3.2 million was due to an increase in sales and marketing personnel in the United States, Taiwan and China to support our increase in customers and growth in revenues. In addition, general and administrative expenses increased due to an increase in professional fees, such as legal, audit, tax and director and officer liability insurance. Sales, general and administrative expenses could increase in absolute dollar amounts in the future as a result of on-going efforts to comply with the Sarbanes-Oxley Act of 2002.

Selling, general and administrative expenses were $3.9 million, or 16.2% of revenues, for the year ended December 31, 2003 and $2.4 million, or 20.0% of revenues, for the year ended December 31, 2002. The increase of $1.5 million was due to an increase in sales and marketing personnel in the United States, Taiwan and China, which started in the second quarter of 2003, to support our increase in customers and growth in revenues. In addition, general and administrative expenses increased in administrative personnel, higher insurance costs and professional service costs, such as legal, audit and tax.

Patent Litigation.

	Years ended December 31,			Percentage Change	
	2004	2003	2002	2004 to 2003	2003 to 2002
		(in thousands)			
Net revenues	$ 47,595	$ 24,204	$ 12,206	96.6%	98.3%
Litigation expenses	$ 7,833	$ 4,332	$ 1,602	80.8%	170.4%
Litigation expenses as a percentage of net revenues	16.5%	17.9%	13.1%	(1.4)%	4.8%

Patent litigation expenses were $7.8 million, or 16.5% of revenue, for the year ended December 31, 2004, and $4.3 million, or 17.9% of revenue, for the year ended December 31, 2003. The dollar increase was due to the increase in activities associated with multiple lawsuits in the U.S. and Taiwan. In addition to the O2 lawsuit that existed in 2003, three more patent infringement suits were brought against us in 2004 by Linear, Microsemi and Micrel. For a more complete description of our litigation matters, please read Legal Proceedings beginning on page 25.

Patent litigation expenses increased to $4.3 million or 17.9% of revenues, for the year ended December 31, 2003 from $1.6 million or 13.1% of revenues, for the year ended December 31, 2002. This dollar increase of 170.3% was due to increased activities associated with multiple lawsuits in the U.S. and Taiwan with O2.

Stock-Based Compensation.

Years ended December 31,			Percentage Change	
2004	2003	2002	2004 to 2003	2003 to 2002

(in thousands) incipally long-term care facilities located throughout the United States. We provide lease or mortgage financing to qualified operators of skilled nursing facilities and, to a lesser extent, assisted living facilities, independent living facilities and rehabilitation and acute care facilities.

We were incorporated in the State of Maryland on March 31, 1992. Our principal executive offices are located at 200 International Circle, Suite 3500, Hunt Valley, Maryland 21030, and our telephone number is (410) 427-1700. Additional information regarding our Company is set forth in documents on file with the SEC and incorporated by reference in this prospectus. See "Incorporation of Certain Information by Reference" and "Available Information."

Our filings with the SEC, including our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to those reports are accessible free of charge on our website at www.omegahealthcare.com. Information on our website does not constitute part of this prospectus.

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USE OF PROCEEDS

Unless otherwise indicated in a prospectus supplement, we intend to use the net proceeds of any offering of securities sold by us for general corporate purposes. Unless otherwise set forth in a prospectus supplement, we will not receive any proceeds in the event that the securities are sold by a selling security holder.

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RATIO OF EARNINGS TO FIXED CHARGES

The table below sets forth, for the periods indicated, our ratios of earnings to combined fixed charges and preferred stock dividends. We have calculated the ratio of earnings to combined fixed charges and preferred stock dividends by adding net income (loss) from continuing operations to fixed charges and dividing that sum by such fixed charges plus preferred dividends, irrespective of whether or not such dividends were actually paid. Earnings consist of income (loss) from continuing operations plus fixed charges. Fixed charges consist of interest expense, amortization of deferred financing costs and costs related to retiring certain debt early.

	Year Ended December 31,									
	2007		**2008**		**2009**		**2010**		**2011**	
Earnings/combined fixed charges and preferred dividends coverage ratio	2.1	x	2.4	x	2.5	x	1.5	x	2.6	x

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DESCRIPTION OF SECURITIES

We may issue from time to time, in one or more offerings, the following securities:

- shares of our preferred stock, par value $1.00 per share, in one or more series;
- shares of our common stock, par value $0.10 per share;
- warrants to purchase preferred stock, common stock or any combination thereof; or
- any combination of the foregoing, either individually or as units.

This prospectus contains a summary of certain general terms of the various securities that we may offer. The specific terms of the securities, including the initial offering price and the net proceeds to us, will be described in a prospectus supplement, which may be in addition to or different from the general terms summarized in this prospectus. Where applicable, the prospectus supplement will also describe any material United States federal income tax considerations relating to the securities offered to the extent so required and indicate whether the securities offered are or will be listed on any securities exchange. When we refer to a prospectus supplement we are also referring to any applicable pricing supplement, free writing prospectus or other offering materials that we authorize, as appropriate, unless the context otherwise requires. The summaries contained in this prospectus and in any prospectus supplements do not contain all of the information or restate the agreements under which the securities may be issued and do not contain all of the information that you may find useful. We urge you to read the actual agreements relating to any securities because they, and not the summaries, define your rights as a holder of the securities. The agreements will be on file with the SEC as described under “Available Information” and “Incorporation of Certain Information By Reference.”

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DESCRIPTION OF CAPITAL STOCK

The following description summarizes the material provisions of the common stock and preferred stock we may offer. This description is not complete and is subject to, and is qualified in its entirety by reference to our charter and our bylaws and applicable provisions of relevant Maryland law, including the Maryland General Corporation Law, or the MGCL. The terms of any series of preferred stock being offered by us will be described in the prospectus supplement relating to that series of preferred stock. That prospectus supplement may not restate the articles supplementary that establishes a particular series of preferred stock in its entirety. We urge you to read at that time the articles supplementary because it, and not the description in the prospectus supplement, will define your rights as a holder of preferred stock. The articles supplementary will be filed with the State Department of Assessments and Taxation of the State of Maryland of the State of Maryland and with the SEC.

As of December 31, 2011, our authorized capital stock consisted of 200,000,000 shares of common stock, par value $0.10 per share and 20,000,000 shares of preferred stock, par value $1.00 per share. As of February 22, 2012, there were 103,898,612 shares of our common stock issued and outstanding and no shares of our preferred stock issued and outstanding.

Common Stock

All shares of our common stock participate equally in dividends payable to stockholders of our common stock when and as declared by our board of directors and in net assets available for distribution to stockholders of our common stock on liquidation or dissolution, have one vote per share on all matters submitted to a vote of the stockholders and do not have cumulative voting rights in the election of directors. All of our outstanding shares of common stock are fully paid and non-assessable. Any shares of common stock issued in an offering pursuant to this prospectus, including those issuable upon the exercise of warrants or upon conversion of preferred stock issued pursuant to this prospectus, will be fully paid and non-assessable. Holders of our common stock do not have preference, conversion, exchange or preemptive rights. We may issue additional shares of authorized common stock without stockholder approval, subject to applicable rules of the NYSE.

Registrar and Transfer Company is the registrar and transfer agent for our common stock. Our common stock is listed on the NYSE under the symbol “OHI.”

Preferred Stock

Under our charter, our board of directors has the authority to authorize from time to time, without further stockholder action, the issuance of shares of our preferred stock, in one or more series as the board of directors shall deem appropriate, and to fix the rights, powers and restrictions of the preferred stock by resolution and the filing of an amendment to our charter, including but not limited to the designation of the following:

- the number of shares constituting such series and the distinctive designation thereof;
- the voting rights, if any, of such series;
- the rate of dividends payable on such series, the time or times when such dividends will be payable, the preference to, or any relation to, the payment of dividends to any other class or series of stock and whether the dividends will be cumulative or non-cumulative;
- whether there shall be a sinking or similar fund for the purchase of shares of such series and, if so, the terms and provisions that shall govern such fund;
- the rights of the holders of shares of such series upon the liquidation, dissolution or winding up of the Company;
- the rights, if any, of holders of shares of such series to convert such shares into, or to exchange such shares for, shares of any other class or classes or any other series of the same or of any other class or classes of equity shares, the price or prices or rate or rates of conversion or exchange, with such adjustments thereto as shall be provided, at which such shares shall be convertible or exchangeable, whether such rights of conversion or exchange shall be exercisable at the option of the holder of the shares or the Company (or both) or upon the happening of a specified event, and any other terms or conditions of such

conversion or exchange; and

- any other preferences, powers and relative participating, optional or other special rights and qualifications, limitations or restrictions of shares of such series.

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Except as otherwise provided in any prospectus supplement, all shares of the same series of preferred stock will be identical to each other share of said stock. The shares of different series may differ, including as to ranking, as may be provided in our charter, or as may be fixed by our board of directors as described above. We may from time to time amend our charter to increase or decrease the number of authorized shares of preferred stock. Unless otherwise provided in any prospectus supplement, all shares of preferred stock will be fully paid and non-assessable.

Certain Effects of Authorized but Unissued Stock

We may issue additional shares of common stock or preferred stock without stockholder approval, subject to applicable rules of the NYSE, for a variety of corporate purposes, including raising additional capital, corporate acquisitions and employee benefit plans. The existence of unissued and unreserved common and preferred stock may enable us to issue shares to persons who are friendly to current management, which could discourage an attempt to obtain control of the Company through a merger, tender offer, proxy contest or otherwise, and protect the continuity of management and possibly deprive you of opportunities to sell your shares at prices higher than the prevailing market prices. We could also use additional shares to dilute the stock ownership of persons seeking to obtain control of the Company.

Transfer and Ownership Restrictions

To qualify as a real estate investment trust, or REIT, under the Internal Revenue Code of 1985, as amended, or the Code, we must satisfy certain criteria, including:

- not more than 50% in value of our outstanding capital stock may be directly or beneficially owned (after application of certain rules relating to the attribution of stock ownership) by five or fewer individuals during the last half of a taxable year (commonly referred to as the “5/50 Standard”); and

- our capital stock must be owned (without regard to attribution rules) by 100 or more persons during at least 335 days of a taxable year of 12 months or during a proportionate part of a shorter taxable year (commonly referred to as the “100 Stockholder Rule”).

To ensure that we meet the Code’s requirements for a REIT, our charter, as amended:

- restricts any person from beneficially or constructively owning our capital stock in any manner that would cause us to fail to qualify as a REIT;

- provides our board of directors with the authority to allow certain persons to own more than 9.8% of our capital stock subject to certain limitations and requirements intended to ensure compliance with the 5/50 Standard and the 100 Stockholder Rule;

- prohibits any transfer that would cause us to have fewer than 100 stockholders, and treat any such purported transfer as void ab initio;

- with respect to certain transactions that would violate the ownership limitations (other than transactions that violate the 100 Stockholder Rule), requires the automatic transfer of the subject shares of our capital stock to a trust that allows the purchasing stockholder generally to recoup up to the amount invested and the distribution of any excess amounts to a charitable beneficiary, and require that the trustee sell the shares to a person whose ownership would not violate the ownership limitations; and

- provides that the purchase price per share for shares held in trust equal the lesser of (a) the price paid by the prohibited transferee for the shares (or, in the case of a gift, devise or similar transfer, the market price of the shares) on the day that the prohibited transfer occurs, or (b) the market price per share on the date of the sale received by the trustee from the sale or other disposition of the shares, in either case reduced by the amount of any dividends or other distributions on those shares received by the prohibited transferee.

All certificates representing shares of common stock bear a legend referring to the restrictions described above. The foregoing ownership limitations could delay, defer or prevent a transaction or a change in control of us that might involve a premium price for the common stock or otherwise be in the best interest of our stockholders.

Anti-Takeover Protections

Following is a description of certain provisions included in our charter, bylaws and Maryland law that may have the effect of discouraging unilateral tender offers or other takeover proposals that stockholders might deem to be in their interests or in which they might receive a substantial premium. Our board of directors’ authority to issue and establish the terms of currently authorized preferred stock, without stockholder approval, may also have the effect of discouraging takeover attempts. The following provisions could also have the effect of insulating current management against the possibility of

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removal and could, by possibly reducing temporary fluctuations in market price caused by accumulations of shares of our common stock, deprive stockholders of opportunities to sell at a temporarily higher market price. Our board of directors believes, however, that these provisions may help assure fair treatment of our stockholders and preserve our assets.

Charter and Bylaws

Our charter and bylaws contain certain provisions, including the provisions described below, that may discourage certain types of transactions that involve an actual or threatened change of control of us. Since the terms of our charter and bylaws may differ from the general information we are providing, you should only rely on the actual provisions of our charter and bylaws. If you would like to read our charter or bylaws, they are on file as exhibits to documents we have filed with the SEC, which are available as described under "Available Information."

Classified Board; Size of Board. Our charter and bylaws provide that our board of directors will be divided into three classes, with the classes to be as nearly equal in number as possible, and that one class shall be elected each year and serve for a three-year term. Our charter specifies that the number of directors at the effective date of the charter shall be six, which number may be increased or decreased as provided in the bylaws, but shall not be less than five nor more than thirteen. The current Board is composed of six directors.

Election of Directors. A director is generally elected by the vote of a majority of the votes cast at the meeting at which the election is held, except that, in case of a contested election, directors are elected by the vote of a plurality of the votes present in person or represented by proxy at the meeting. For one of our stockholders to nominate a candidate for director, our bylaws require that such stockholder give timely notice to us in advance of the meeting. Ordinarily, the stockholder must give notice not less than 90 days nor more than 120 days before the first anniversary of the preceding year's annual meeting. The notice must describe various matters regarding the nominee, the stockholder giving the notice and the beneficial owner on whose behalf the nomination is made. Our charter does not permit cumulative voting in the election of directors. Accordingly, the holders of a majority of the then-outstanding shares of common stock can elect all of the directors of the class then being elected at that meeting of stockholders.

Removal of Directors. Maryland law provides that, if a corporation has a classified board, the holders of a majority of the corporation's voting stock may remove a director or the entire board from office only for cause, unless the charter provides otherwise. Our charter and bylaws provide that stockholders may remove a director only "for cause" and with the affirmative vote of not less than two-thirds of the-then outstanding shares of our capital stock entitled to vote, subject to any rights of holders of any outstanding series of preferred stock or any other series or class of stock to elect additional directors under specified circumstances.

Filling Vacancies. Our bylaws provide that, subject to the rights, if any, of the holders of any class of preferred stock then outstanding, any vacancies on the board of directors, including vacancies by reason of an increase in the number of directors, may be filled only by a majority vote of the directors then in office, for the remainder of the full term of the class of directors in which the vacancy occurs and until his or her successor is elected and qualifies.

Limitations on Stockholder Action by Written Consent. Our bylaws provide that, except for the election of directors, action may be taken without a meeting of stockholders only if all of the stockholders entitled to vote with respect to the subject matter thereof consent in writing or by electronic transmission to such action being taken. The election of directors may not be undertaken by written consent.

Limitations on Calling Stockholder Meetings. Under our bylaws, special meetings of the stockholders may be called by a majority of our board of directors, the chairman of our board of directors, our chief executive officer or president, or by our secretary upon written request of holders of not less than a majority of the votes entitled to be cast on the business proposed.

Advance Notice Bylaw; Proposal and Nomination Information Requirements. In order for a stockholder to bring a proposal before an annual meeting, including director nominations, our bylaws require that the stockholder give timely notice to us in advance of the meeting. Ordinarily, the stockholder must give notice at least 90 days but not more than 120 days before the first anniversary of the preceding year's annual meeting. Each proponent of a matter to be considered at a stockholder meeting and each stockholder nominating a director must furnish certain information, including his or her ownership of common stock, options or any short positions related to our common stock and any fees such proponent stands to earn based on the value of the common stock or derivatives related to the common stock. Each director nominated by a stockholder must certify that he or she is not a party to, and will not become a party to, any agreement with any person or entity in connection with service or action as a director. Such director nominee must also submit a completed director questionnaire provided by us.

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Our board of directors may reject any proposals that have not followed these procedures or that are not a proper subject for stockholder action in accordance with the provisions of applicable law.

Certain Amendments to our Charter and Bylaws. The provisions of our charter establishing a classified board and the number of directors, governing certain business combinations and governing ownership limitations and excess shares may not be amended without the approval of 80% of the outstanding shares of our capital stock entitled to vote.

Our bylaws may be amended, altered, changed or repealed by (1) a majority of all the outstanding shares of capital stock entitled to vote, unless the bylaws provide that a higher voting requirement applies, or (2) a majority of our board of directors.

Business Combinations. Our charter requires that, except in some circumstances, “business combinations” between us and a beneficial holder of 10% or more of our outstanding voting stock, or a Related Person, be approved by the affirmative vote of at least 80% of our outstanding voting shares. A “business combination” is defined in our charter as:

- any merger or consolidation of the Company with or into a Related Person;
- any sale, lease, exchange, transfer or other disposition, including without limitation a mortgage or any other security device, of all or any “Substantial Part” (as defined below) of the assets of the Company (including without limitation any voting securities of a subsidiary) to a Related Person;
- any merger or consolidation of a Related Person with or into the Company;
- any sale, lease, exchange, transfer or other disposition of all or any Substantial Part of the assets of a Related Person to the Company;
- the issuance of any of our securities (other than by way of pro rata distribution to all stockholders) of the Company to a Related Person; and
- any agreement, contract or other arrangement providing for any of the transactions described above.

The term “Substantial Part” means more than 10% of the book value of our total assets as of the end of our most recent fiscal year ending prior to the time the determination is being made.

Maryland Law

Business Combinations. Pursuant to Section 5.09 of our charter, we have opted out of Maryland’s statutory “business combination” provisions under the Maryland Business Combination Act. Nevertheless, we cannot assure you that our board of directors will not decide in the future to endorse to our stockholders an articles supplementary opting into the statutory business combination provisions. An alteration or repeal of the charter’s “opt out” provision, however, would not have any effect on any business combinations that have been consummated or upon any agreements existing at the time of such modification or repeal.

If we were to opt into the Maryland Business Combination Act, certain “business combinations” (including a merger, consolidation, share exchange or, in certain circumstances specified under the statute, an asset transfer or issuance or reclassification of equity securities) between a Maryland corporation and any interested stockholder, or an affiliate of such an interested stockholder, would be prohibited for five years after the most recent date on which the interested stockholder becomes an interested stockholder. Maryland law defines an interested stockholder as:

- any person who beneficially owns, directly or indirectly, 10% or more of the voting power of the corporation’s outstanding voting stock; or

- an affiliate or associate of the corporation who, at any time within the two-year period prior to the date in question, was the beneficial owner of 10% or more of the voting power of the then outstanding voting stock of the corporation.

A person is not an interested stockholder under the statute if the board of directors approved in advance the transaction by which the person otherwise would have become an interested stockholder. In approving a transaction, however, a board of directors may provide that its approval is subject to compliance, at or after the time of the approval, with any terms and conditions determined by it. After such five-year period, any such business combination must be recommended by the board of directors of the corporation and approved by the affirmative vote of at least:

- 80% of the votes entitled to be cast by holders of outstanding shares of voting stock of the corporation; and

- two-thirds of the votes entitled to be cast by holders of voting stock of the corporation other than shares held by the interested stockholder with whom (or with whose affiliate) the business combination is to be effected or held by an affiliate or associate of the interested stockholder.

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These supermajority approval requirements do not apply if, among other conditions, the corporation's common stockholders receive a minimum price (as defined in the Maryland General Corporation Law) for their shares and the consideration is received in cash or in the same form as previously paid by the interested stockholder for its shares.

For a description of the Business Combinations provision included in our charter, see "Charter and Bylaws, Business Combinations" above.

Control Share Acquisitions. Pursuant to Section 5.09 of our charter, we have opted out of Maryland's statutory "control share acquisition" provisions under the Maryland Business Combination Act. Nevertheless, we cannot assure you that our board of directors will not decide in the future to endorse to our stockholders an articles supplementary opting into the statutory control share acquisition provisions. An alteration or repeal of the charter's "opt out" provision, however, would not have any effect on any control share acquisitions that have been consummated or upon any agreements existing at the time of such modification or repeal.

Maryland law provides that "control shares" of a Maryland corporation acquired in a "control share acquisition" have no voting rights except to the extent approved by a vote of two-thirds of the votes entitled to be cast on the matter. Shares of stock owned by the acquirer, by officers or by directors who are employees of the corporation are excluded from shares entitled to vote on the matter. "Control shares" are voting shares of stock, that, if aggregated with all other shares of stock owned by the acquirer or shares of stock for which the acquirer is able to exercise or direct the exercise of voting power except solely by virtue of a revocable proxy, would entitle the acquirer to exercise direct or indirect voting power in electing directors within one of the following ranges of voting power:

- one-tenth or more, but less than one-third of all voting power;
- one-third or more, but less than a majority of all voting power; or
- a majority or more of all voting power.

Control shares do not include shares the acquiring person is then entitled to vote as a result of having previously obtained stockholder approval. Except as otherwise specified in the statute, a "control share acquisition" means the direct or indirect acquisition of control shares.

Once a person who has made or proposes to make a control share acquisition has undertaken to pay expenses and satisfied other conditions, the person may compel the board of directors to call a special meeting of stockholders to be held within 50 days of the corporation's receipt of demand to consider the voting rights of the shares. If no request for a special meeting is made, the corporation itself may present the question at any stockholders meeting.

If voting rights are not approved at the meeting or if the acquiring person does not deliver an acquiring person statement as required by the statute, then the corporation may be able to redeem any or all of the control shares for fair value, except for control shares for which voting rights previously have been approved. The right of the corporation to redeem control shares is subject to certain conditions and limitations. Fair value is determined without regard to the absence of voting rights for control shares, as of the date of the last control share acquisition by the acquirer or of any meeting of stockholders at which the voting rights of control shares are considered and not approved. If voting rights for control shares are approved at a stockholders meeting and the acquirer becomes entitled to vote a majority of the shares entitled to vote, all other stockholders may exercise appraisal rights. The fair value of the shares as determined for purposes of these appraisal rights may not be less than the highest price per share paid by the acquirer in the control share acquisition. Some of the limitations and restrictions otherwise applicable to the exercise of appraisal rights do not apply in the context of a control share acquisition.

Duties of Directors with Respect to Unsolicited Takeovers. Maryland law provides protection for Maryland corporations against unsolicited takeovers by limiting, among other things, the duties of the directors in unsolicited takeover situations. The duties of directors of Maryland corporations do not require them to (a) accept, recommend or respond on behalf of the corporation to any proposal by a person seeking to acquire control of the corporation, (b) make a determination under the Maryland business combination or control share acquisition statutes described above, or (c) act or fail to act solely because of the effect the act or failure to act may have on an acquisition or potential acquisition of control of the corporation or the amount or type of consideration that may be offered or paid to the stockholders in an acquisition. Moreover, under Maryland law the act of a director of a Maryland corporation relating to or affecting an acquisition or potential acquisition of control is not subject to any higher duty or greater scrutiny than is applied to any other act of a director. Maryland law also contains a statutory presumption that an act of a director of a Maryland corporation satisfies the applicable standards of conduct for directors under Maryland law.

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DESCRIPTION OF WARRANTS

We may issue warrants, including warrants to purchase preferred stock or common stock or any combination of the foregoing. Warrants may be issued independently or as part of a unit with any other securities and may be attached to or separate from the underlying securities. The warrants will be issued under warrant agreements to be entered into between us and a bank or trust company, as warrant agent, as detailed in the prospectus supplement relating to the warrants being offered.

A prospectus supplement relating to any warrants being offered will include specific terms relating to the offering, including a description of any other securities sold together with the warrants. Such terms will include:

- the title of the warrants;
- the aggregate number of the warrants;
- the price or prices at which the warrants will be issued;
- the currencies in which the price or prices of the warrants may be payable;
- the designation, amount and terms of the preferred stock or common stock purchasable upon exercise of the warrants and procedures by which those numbers may be adjusted;
- the designation and terms of the other offered securities, if any, with which the warrants are issued and the number of the warrants issued with each security;
- if applicable, the date on and after which the warrants and the offered securities purchasable upon exercise of the warrants will be separately transferable;
- the price or prices at which the offered securities purchasable upon exercise of the warrants may be purchased;
- the date on which the right to exercise the warrants shall commence and the date on which the right shall expire;
- the minimum or maximum amount of the warrants that may be exercised at any one time;
- any terms relating to the modification of the warrants, including adjustments in the exercise price;
- information with respect to book-entry procedures, if any;

- a discussion of any material Federal income tax considerations; and
- any other material terms of the warrants, including terms, procedures, and limitations relating to the transferability, exchange, exercise or redemption of the warrants.

The descriptions of the warrants in this prospectus are summaries of the material provisions that will appear in the applicable agreements. These descriptions do not include all terms of those agreements and do not contain all of the information that you may find useful. The applicable prospectus supplement will describe the terms of any warrants or warrant units in more detail; and we urge you to read the applicable documents because they, and not our summaries and descriptions, will define your rights as holders of the warrants or any warrant units. The forms of the relevant documents will be filed with the SEC and will be available as described under the heading “Available Information” above.

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DESCRIPTION OF UNITS

We may, from time to time, issue units composed of one or more of the other securities that may be offered under this prospectus, in any combination. Each unit will be issued so that the holder of the unit is also the holder of each security included in the unit. Thus, the holder of a unit will have the rights and obligations of a holder of each included security. The unit agreement under which a unit is issued may provide that the securities included in the unit may not be held or transferred separately at any time, or at any time before a specified date.

The prospectus supplement relating to any units that we are offering will specify the material terms of the units, including one or more of the following:

- the material terms of the units and of the securities making up the units, including whether and under what circumstances those securities may be held or transferred separately;
- any material provisions relating to the issuance, payment, settlement, transfer or exchange of the units or of the securities making up the units;
- any special federal income tax considerations applicable to the units; and
- any material provisions of the governing unit agreement that differ from those described above.

The descriptions of the units in this prospectus are summaries of the material provisions that will appear in the applicable documents. These descriptions do not include all terms of those documents and do not contain all of the information that you may find useful. The applicable prospectus supplement will describe the terms of any units in more detail; and we urge you to read the applicable documents because they, and not our summaries and descriptions, will define your rights as holders of the units. The forms of the relevant documents will be filed with the SEC and will be available as described under the heading “Available Information” above.

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U.S. FEDERAL INCOME TAX CONSIDERATIONS

Consequences of an Investment in Our Securities

The following is a general summary of material U.S. federal income tax considerations applicable to us, and to the purchasers of our securities and our election to be taxed as a REIT. It is not tax advice. The summary is not intended to represent a detailed description of the U.S. federal income tax consequences applicable to a particular stockholder in view of any person's particular circumstances, nor is it intended to represent a detailed description of the U.S. federal income tax consequences applicable to stockholders subject to special treatment under the federal income tax laws such as insurance companies, tax-exempt organizations, financial institutions, securities broker-dealers, investors in pass-through entities, expatriates and taxpayers subject to alternative minimum taxation.

The following discussion relating to an investment in our securities was based on consultations with Bryan Cave LLP, our counsel. In the opinion of Bryan Cave LLP, the following discussion, to the extent it constitutes matters of law or legal conclusions (assuming the facts, representations, and assumptions upon which the discussion is based are accurate), accurately represents the material U.S. federal income tax considerations relevant to purchasers of our securities. Bryan Cave LLP has not rendered any opinion regarding any effect of such issuance on purchasers of our securities. The sections of the Code relating to the qualification and operation as a REIT are highly technical and complex. The following discussion sets forth the material aspects of the Code sections that govern the federal income tax treatment of a REIT and its stockholders. The information in this section is based on the Code; current, temporary, and proposed Treasury regulations promulgated under the Code; the legislative history of the Code; current administrative interpretations and practices of the Internal Revenue Service, or IRS; and court decisions, in each case, as of the date of this prospectus. In addition, the administrative interpretations and practices of the IRS include its practices and policies as expressed in private letter rulings which are not binding on the IRS, except with respect to the particular taxpayers who requested and received these rulings.

Taxation of Omega

General. We have elected to be taxed as a real estate investment trust, or a REIT, under Sections 856 through 860 of the Code, beginning with our taxable year ended December 31, 1992. We believe that we were organized and have operated in such a manner as to qualify for taxation as a REIT under the Code. We intend to continue to operate in a manner that will allow us to maintain our qualification as a REIT, but no assurance can be given that we have operated or will be able to continue to operate in a manner so as to qualify or remain qualified as a REIT.

The sections of the Code that govern the federal income tax treatment of a REIT are highly technical and complex. The following sets forth the material aspects of those sections. This summary is qualified in its entirety by the applicable Code provisions, rules and regulations promulgated thereunder, and administrative and judicial interpretations thereof.

In the opinion of Bryan Cave LLP, which opinion has been filed as an exhibit to the registration statement of which this prospectus is a part, we are organized in conformity with the requirements for qualification as a REIT, and our current and proposed method of operation will enable us to continue to meet the requirements for continued qualification and taxation as a REIT under the Code. This opinion is based on various assumptions and is conditioned upon certain representations made by us as to factual matters concerning our business and properties. Moreover, such qualification and taxation as a REIT depends upon our ability to meet, through actual annual operating results, distribution levels and diversity of stock ownership, the various qualification tests imposed under the Code discussed below, the results of which will not be reviewed by Bryan Cave LLP on an ongoing basis. Accordingly, no assurance can be given that the various results of our operation for any particular taxable year will satisfy such requirements. Further, such requirements may be changed, perhaps retroactively, by legislative or administrative actions at any time. We have neither sought nor obtained any formal ruling from the IRS regarding our qualification as a REIT and presently have no plan to apply for any such ruling. See "—Failure to Qualify."

If we qualify for taxation as a REIT, we generally will not be subject to federal corporate income taxes on our net income that is currently distributed to stockholders. This treatment substantially eliminates the "double taxation" (i.e., taxation at both the corporate and the stockholder levels) that generally results from an investment in a corporation. However, we will be subject to certain federal income taxes as follows: First, we will be taxed at regular corporate rates on any undistributed REIT taxable income, including undistributed net capital gains; provided, however, that if we have a net capital gain, we will be taxed at regular corporate rates on our undistributed REIT taxable income, computed without regard to net capital gain and the deduction for capital gains dividends, plus a 35% tax on undistributed net capital gain, if our tax as thus

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computed is less than the tax computed in the regular manner. Second, under certain circumstances, we may be subject to the “alternative minimum tax” on our items of tax preference that we do not distribute or allocate to our stockholders. Third, if we have (i) net income from the sale or other disposition of “foreclosure property” which is held primarily for sale to customers in the ordinary course of business, or (ii) other non-qualifying income from foreclosure property, we will be subject to tax at the highest regular corporate rate on such income. Fourth, if we have net income from prohibited transactions (which are, in general, certain sales or other dispositions of property (other than foreclosure property) held primarily for sale to customers in the ordinary course of business by us, (i.e., when we are acting as a dealer)), such income will be subject to a 100% tax. Fifth, if we should fail to satisfy the 75% gross income test or the 95% gross income test (as discussed below), but have nonetheless maintained our qualification as a REIT because certain other requirements have been met, we will be subject to a 100% tax on an amount equal to (a) the gross income attributable to the greater of the amount by which we fail the 75% or 95% test, multiplied by (b) a fraction intended to reflect our profitability. Sixth, if we should fail to distribute by the end of each year at least the sum of (i) 85% of our REIT ordinary income for such year, (ii) 95% of our REIT capital gain net income for such year, and (iii) any undistributed taxable income from prior periods, we will be subject to a 4% excise tax on the excess of such required distribution over the amounts actually distributed. Seventh, we will be subject to a 100% excise tax on transactions with a taxable REIT subsidiary, or TRS, that are not conducted on an arm’s-length basis. Eighth, if we acquire any asset that is defined as a “built-in gain asset” from a C corporation that is not a REIT (i.e., generally a corporation subject to full corporate-level tax) in a transaction in which the basis of the built-in gain asset in our hands is determined by reference to the basis of the asset (or any other property) in the hands of the C corporation, and we recognize gain on the disposition of such asset during the 10-year period beginning on the date on which such asset was acquired by us, which is defined as the “recognition period,” then, to the extent of the built-in gain (i.e., the excess of (a) the fair market value of such asset on the date such asset was acquired by us over (b) our adjusted basis in such asset on such date), our recognized gain will be subject to tax at the highest regular corporate rate. The results described above with respect to the recognition of built-in gain assume that we will not make an election pursuant to Treasury Regulations. Section 1.337(d)-7(c)(5).

Requirements for Qualification. The Code defines a REIT as a domestic corporation, trust or association: (1) which is managed by one or more trustees or directors; (2) the beneficial ownership of which is evidenced by transferable shares, or by transferable certificates of beneficial interest; (3) which would be taxable as a domestic corporation, but for Sections 856 through 859 of the Code; (4) which is neither a financial institution nor an insurance company as defined in provisions of the Code; (5) the beneficial ownership of which is held by 100 or more persons; (6) during the last half year of each taxable year not more than 50% in value of the outstanding stock of which is owned, actually or constructively, by five or fewer individuals (as defined in the Code to include certain entities); and (7) which meets certain other tests, described below, regarding the nature of its income and assets and the amount of its annual distributions to stockholders. The Code provides that conditions (1) to (4), inclusive, must be met during the entire taxable year and that condition (5) must be met during at least 335 days of a taxable year of twelve months, or during a proportionate part of a taxable year of less than twelve months. For purposes of conditions (5) and (6), pension funds and certain other tax-exempt entities are treated as individuals, subject to a “look-through” exception in the case of condition (6). We may avoid disqualification as a REIT for a failure to satisfy any of these tests if such failure is due to reasonable cause and not willful neglect, and we pay a penalty of $50,000 for each such failure.

Income Tests. To maintain our qualification as a REIT, we annually must satisfy two gross income requirements. First, at least 75% of our gross income (excluding gross income from prohibited transactions) for each taxable year must be derived directly or indirectly from investments relating to real property or mortgages on real property (including generally “rents from real property,” interest on mortgages on real property and gains on sale of real property and real property mortgages, other than property described in Section 1221(a)(1) of the Code) and income derived from certain types of temporary investments. Second, at least 95% of our gross income (excluding gross income from prohibited transactions) for each taxable year must be derived from such real property investments, dividends, interest, and gain from the sale or disposition of stock or securities other than property held for sale to customers in the ordinary course of business.

Rents received by us will qualify as “rents from real property” in satisfying the gross income requirements for a REIT described above only if several conditions are met. First, the amount of the rent must not be based in whole or in part on the income or profits of any person. However, any amount received or accrued generally will not be excluded from the term “rents from real property” solely by reason of being based on a fixed percentage or percentages of receipts or sales. Second, the Code provides that rents received from a tenant (other than rent from a tenant that is a TRS that meets the requirements described below) will not qualify as “rents from real property” in satisfying the gross income tests if we or an owner (actually or constructively) of 10% or more of the value of our stock, actually or constructively owns 10% or more of such tenant, which is defined as a related party tenant. Third, if rent attributable to personal property, leased in connection

with a lease of real property, is greater than 15% of the total rent received under the lease, then the portion of rent attributable to such personal property will not qualify as “rents from real property.” Finally, for rents received to qualify as “rents from real property,” we generally must not operate or manage the property or furnish or render services to the tenants of such property, other than through an independent contractor from which we derive no revenue. We may, however, directly perform certain services that are “usually or customarily rendered” in connection with the rental of space for occupancy only and are not otherwise considered “rendered to the occupant” of the property. In addition, we may directly provide a minimal amount of “non-customary” services to the tenants of a property as long as our income from the services does not exceed 1% of our income from the related property. Furthermore, we may own up to 100% of the stock of a TRS, which may provide customary and non-customary services to our tenants without tainting our rental income from the related properties.
The term “interest” generally does not include any amount received or accrued (directly or indirectly) if the determination of such amount depends in whole or in part on the income or profits of any person. However, an amount received or accrued generally will not be excluded from the term “interest” solely by reason of being based on a fixed percentage or percentages of gross receipts or sales. In addition, an amount that is based on the income or profits of a debtor will be qualifying interest income as long as the debtor derives substantially all of its income from the real property securing the debt from leasing substantially all of its interest in such real property, but only to the extent that the amounts received by the debtor would be qualifying “rents from real property” if received directly by a REIT.
If a loan contains a provision that entitles us to a percentage of the borrower’s gain upon the sale of the real property securing the loan or a percentage of the appreciation in the property’s value as of a specific date, income attributable to that loan provision will be treated as gain from the sale of the property securing the loan, which generally is qualifying income for purposes of both gross income tests.
Interest on debt secured by mortgages on real property or on interests in real property generally is qualifying income for purposes of the 75% gross income test. However, if the highest principal amount of a loan outstanding during a taxable year exceeds the fair market value of the real property securing the loan as of the date we agreed to originate or acquire the loan, a portion of the interest income from such loan will not be qualifying income for purposes of the 75% gross income test, but will be qualifying income for purposes of the 95% gross income test. The portion of the interest income that will not be qualifying income for purposes of the 75% gross income test will be equal to the portion of the principal amount of the loan that is not secured by real property.
Prohibited Transactions. We will incur a 100% tax on the net income derived from any sale or other disposition of property, other than foreclosure property, that we hold primarily for sale to customers in the ordinary course of a trade or business. We believe that none of our assets is primarily held for sale to customers and that a sale of any of our assets would not be in the ordinary course of our business. Whether a REIT holds an asset primarily for sale to customers in the ordinary course of a trade or business depends, however, on the facts and circumstances in effect from time to time, including those related to a particular asset. Nevertheless, we will attempt to comply with the terms of safe-harbor provisions in the federal income tax laws prescribing when an asset sale will not be characterized as a prohibited transaction. We cannot assure you, however, that we can comply with the safe-harbor provisions or that we will avoid owning property that may be characterized as property that we hold primarily for sale to customers in the ordinary course of a trade or business.
Foreclosure Property. We will be subject to tax at the maximum corporate rate on any income from foreclosure property, other than income that otherwise would be qualifying income for purposes of the 75% gross income test, less expenses directly connected with the production of that income. However, gross income from foreclosure property is treated as qualifying for purposes of the 75% and 95% gross income tests. Foreclosure property is any real property, including interests in real property, and any personal property incident to such real property:

- that is acquired by a REIT as the result of the REIT having bid on such property at foreclosure, or having otherwise reduced such property to ownership or possession by agreement or process of law, after there was a default or default was imminent on a lease of such property or on indebtedness that such property secured;

- for which the related loan or lease was acquired by the REIT at a time when the default was not imminent or anticipated; and

- for which the REIT makes a proper election to treat the property as foreclosure property.

Such property generally ceases to be foreclosure property at the end of the third taxable year following the taxable year in which the REIT acquired the property, or longer (for a total of up to six years) if an extension is granted by the Secretary of the Treasury. In the case of a “qualified health care property” acquired solely as a result of termination of a lease, but not in connection with default or an imminent

default on the lease, the initial grace period terminates on the second (rather
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than third) taxable year following the year in which the REIT acquired the property (unless the REIT establishes the need for and the Secretary of the Treasury grants one or more extensions, not exceeding six years in total, including the original two-year period, to provide for the orderly leasing or liquidation of the REIT's interest in the qualified health care property). This grace period terminates and foreclosure property ceases to be foreclosure property on the first day:

- on which a lease is entered into for the property that, by its terms, will give rise to income that does not qualify for purposes of the 75% gross income test, or any amount is received or accrued, directly or indirectly, pursuant to a lease entered into on or after such day that will give rise to income that does not qualify for purposes of the 75% gross income test;

- on which any construction takes place on the property, other than completion of a building or any other improvement, where more than 10% of the construction was completed before default became imminent; or

- which is more than 90 days after the day on which the REIT acquired the property and the property is used in a trade or business that is conducted by the REIT, other than through an independent contractor from whom the REIT itself does not derive or receive any income.

The definition of foreclosure property includes any "qualified health care property," as defined in Code Section 856(e)(6) acquired by us as the result of the termination or expiration of a lease of such property. We have from time to time operated qualified healthcare facilities acquired in this manner for up to two years (or longer if an extension was granted). However, we do not currently own any property with respect to which we have made foreclosure property elections other than the Haven facilities discussed in our Form 10-K for the year ended December 31, 2011. Properties that we had taken back in a foreclosure or bankruptcy and operated for our own account were treated as foreclosure properties for income tax purposes, pursuant to Code Section 856(e). Gross income from foreclosure properties was classified as "good income" for purposes of the annual REIT income tests upon making the election on the tax return. Once made, the income was classified as "good" for a period of three years, or until the properties were no longer operated for our own account. In all cases of foreclosure property, we utilized an independent contractor to conduct day-to-day operations to maintain REIT status. In certain cases, we operated these facilities through a taxable REIT subsidiary. For those properties operated through the taxable REIT subsidiary, we utilized an eligible independent contractor to conduct day-to-day operations to maintain REIT status. As a result of the foregoing, we do not believe that our participation in the operation of nursing homes increased the risk that we would fail to qualify as a REIT. Through our 2011 taxable year, we had not paid any tax on our foreclosure property because those properties had been producing losses. We cannot predict whether, in the future, our income from foreclosure property will be significant and whether we could be required to pay a significant amount of tax on that income.

Hedging Transactions. From time to time, we may enter into hedging transactions with respect to one or more of our assets or liabilities. Our hedging activities may include entering into interest rate swaps, caps and floors, options to purchase these items and futures and forward contracts. To the extent that we enter into an interest rate swap or cap contract, option, futures contract, forward rate agreement, or any similar financial instrument to hedge our indebtedness incurred to acquire or carry "real estate assets," any periodic income or gain from the disposition of that contract should be qualifying income for purposes of the 95% gross income test, but not the 75% gross income test. Accordingly, our income and gain from our interest rate swap agreements generally is qualifying income for purposes of the 95% gross income test, but not the 75% gross income test. To the extent that we hedge with other types of financial instruments, or in other situations, it is not entirely clear how the income from those transactions will be treated for purposes of the gross income tests. We have structured and intend to continue to structure any hedging transactions in a manner that does not jeopardize our status as a REIT.

TRS Income. A TRS may earn income that would not be qualifying income if earned directly by the parent REIT. Both the subsidiary and the REIT must jointly elect to treat the subsidiary as a TRS. A corporation of which a TRS directly or indirectly owns more than 35% of the voting power or value of the stock will automatically be treated as a TRS. Overall, no more than 25% of the value of a REIT's assets may consist of securities of one or more TRSs. Prior to 2009, a TRS was not permitted to directly or indirectly (i) operate or manage a health care (or lodging) facility, or (ii) provide to any other person (under a franchise, license, or otherwise) rights to any brand name under which a health care (or lodging) facility is operated. Beginning in 2009, TRSs became permitted to own or lease a health care facility provided that the facility is operated and managed by an "eligible independent contractor." A TRS will pay income tax at regular corporate rates on any income that it earns. In addition, the new rules limit the deductibility of interest paid or accrued by a TRS to its parent REIT to

assure that the TRS is subject to an appropriate level of corporate taxation. The rules also impose a 100% excise tax on transactions between a TRS and its parent REIT or the REIT's operators that are not conducted on an arm's-length basis. As stated above, we do not lease any of our facilities to any of our TRSs.

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Failure to Satisfy Income Tests. If we fail to satisfy one or both of the 75% or 95% gross income tests for any taxable year, we may nevertheless qualify as a REIT for such year if we are entitled to relief under certain provisions of the Code. These relief provisions will be generally available if our failure to meet such tests was due to reasonable cause and not due to willful neglect, we attach a schedule of the sources of our income to our tax return, and any incorrect information on the schedule was not due to fraud with intent to evade tax. It is not possible, however, to state whether in all circumstances we would be entitled to the benefit of these relief provisions. Even if these relief provisions apply, we would incur a 100% tax on the gross income attributable to the greater of the amounts by which we fail the 75% and 95% gross income tests, multiplied by a fraction intended to reflect our profitability and we would file a schedule with descriptions of each item of gross income that caused the failure.

Asset Tests. At the close of each quarter of our taxable year, we must also satisfy the following tests relating to the nature of our assets. First, at least 75% of the value of our total assets must be represented by (i) real estate assets (including (i) our allocable share of real estate assets held by partnerships in which we own an interest, and (ii) stock or debt instruments held for less than one year purchased with the proceeds of a stock offering or long-term (at least five years) debt offering of our company), cash, cash items and government securities. Second, of our investments not included in the 75% asset class, the value of our interest in any one issuer's securities may not exceed 5% of the value of our total assets. Third, we may not own more than 10% of the voting power or value of any one issuer's outstanding securities. Fourth, no more than 25% of the value of our total assets may consist of the securities of one or more TRSs. Fifth, no more than 25% of the value of our total assets may consist of the securities of TRSs and other non-TRS taxable subsidiaries and other assets that are not qualifying assets for purposes of the 75% asset test.

For purposes of the second and third asset tests, the term "securities" does not include our equity or debt securities of a qualified REIT subsidiary, a TRS, or an equity interest in any partnership, since we are deemed to own our proportionate share of each asset of any partnership of which we are a partner. Furthermore, for purposes of determining whether we own more than 10% of the value of only one issuer's outstanding securities, the term "securities" does not include: (i) any loan to an individual or an estate; (ii) any Code Section 467 rental agreement; (iii) any obligation to pay rents from real property; (iv) certain government issued securities; (v) any security issued by another REIT; and (vi) our debt securities in any partnership, not otherwise excepted under (i) through (v) above, (A) to the extent of our interest as a partner in the partnership or (B) if 75% of the partnership's gross income is derived from sources described in the 75% income test set forth above.

We may own up to 100% of the stock of one or more TRSs. However, overall, no more than 25% of the value of our assets may consist of securities of one or more TRSs, and no more than 25% of the value of our assets may consist of the securities of TRSs and other non-TRS taxable subsidiaries (including stock in non-REIT C corporations) and other assets that are not qualifying assets for purposes of the 75% asset test.

If the outstanding principal balance of a mortgage loan exceeds the fair market value of the real property securing the loan, a portion of such loan likely will not be a qualifying real estate asset for purposes of the 75% test. The non-qualifying portion of that mortgage loan will be equal to the portion of the loan amount that exceeds the value of the associated real property. As discussed under the 75% gross income test (see above), the IRS recently provided relief from re-testing certain mortgage loans held by a REIT that have been modified as a result of the current distressed market conditions with respect to real property. At present, we do not hold any mortgage loans that have been modified, which would require us to take advantage of these rules for special relief.

After initially meeting the asset tests at the close of any quarter, we will not lose our status as a REIT for failure to satisfy any of the asset tests at the end of a later quarter solely by reason of changes in asset values. If the failure to satisfy the asset tests results from an acquisition of securities or other property during a quarter, the failure can be cured by disposition of sufficient non-qualifying assets within 30 days after the close of that quarter.

Subject to certain de minimis exceptions, we may avoid REIT disqualification in the event of certain failures under the asset tests, provided that (i) we file a schedule with a description of each asset that caused the failure, (ii) the failure was due to reasonable cause and not willful neglect, (iii) we dispose of the assets within 6 months after the last day of the quarter in which the identification of the failure occurred (or the requirements of the rules are otherwise met within such period) and (iv) we pay a tax on the failure equal to the greater of (A) $50,000 per failure and (B) the product of the net income generated by the assets that caused the failure for the period beginning on the date of the failure and ending on the date we dispose of the asset (or otherwise satisfy the requirements) multiplied by the highest applicable corporate tax rate.

Annual Distribution Requirements. To qualify as a REIT, we are required to distribute dividends (other than capital gain dividends) to our stockholders in an amount at least equal to (A) the sum of (i) 90% of our "REIT taxable income"

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(computed without regard to the dividends paid deduction and our net capital gain) and (ii) 90% of the net income (after tax), if any, from foreclosure property, minus (B) the sum of certain items of noncash income.

Such distributions must be paid in the taxable year to which they relate, or in the following taxable year if declared before we timely file our tax return for such year and paid on or before the first regular dividend payment after such declaration. In addition, such distributions are required to be made pro rata, with no preference to any share of stock as compared with other shares of the same class, and with no preference to one class of stock as compared with another class except to the extent that such class is entitled to such a preference. To the extent that we do not distribute all of our net capital gain or distribute at least 90%, but less than 100% of our "REIT taxable income," as adjusted, we will be subject to tax thereon at regular ordinary and capital gain corporate tax rates. Furthermore, if we fail to distribute during a calendar year, or by the end of January following the calendar year in the case of distributions with declaration and record dates falling in the last three months of the calendar year, at least the sum of:

- 85% of our REIT ordinary income for such year;
- 95% of our REIT capital gain income for such year; and
- any undistributed taxable income from prior periods,

we will incur a 4% nondeductible excise tax on the excess of such required distribution over the amounts we actually distribute. We may elect to retain and pay income tax on the net long-term capital gain we receive in a taxable year. If we so elect, we will be treated as having distributed any such retained amount for purposes of the 4% excise tax described above. We have made, and we intend to continue to make, timely distributions sufficient to satisfy the annual distribution requirements. We may also be entitled to pay and deduct deficiency dividends in later years as a relief measure to correct errors in determining our taxable income. Although we may be able to avoid income tax on amounts distributed as deficiency dividends, we will be required to pay interest to the IRS based upon the amount of any deduction we take for deficiency dividends.

The availability to us of, among other things, depreciation deductions with respect to our owned facilities depends upon the treatment by us as the owner of such facilities for federal income tax purposes, and the classification of the leases with respect to such facilities as "true leases" rather than financing arrangements for federal income tax purposes. The questions of whether we are the owner of such facilities and the leases are true leases for federal tax purposes, are essentially factual matters. We believe that we will be treated as the owner of each of the facilities that we lease, and such leases will be treated as true leases for federal income tax purposes. However, no assurances can be given that the IRS will not successfully challenge our status as the owner of our facilities subject to leases, and the status of such leases as true leases, asserting that the purchase of the facilities by us and the leasing of such facilities merely constitute steps in secured financing transactions in which the lessees are owners of the facilities and we are merely a secured creditor. In such event, we would not be entitled to claim depreciation deductions with respect to any of the affected facilities. As a result, we might fail to meet the 90% distribution requirement or, if such requirement is met, we might be subject to corporate income tax or the 4% excise tax.

Reasonable Cause Savings Clause. We may avoid disqualification in the event of a failure to meet certain requirements for REIT qualification if the failures are due to reasonable cause and not willful neglect, and if the REIT pays a penalty of $50,000 for each such failure. This reasonable cause safe harbor is not available for failures to meet the 95% and 75% gross income tests, the rules with respect to ownership of securities of more than 10% of a single issuer and the new rules provided for failures of the asset tests.

Failure to Qualify

If we fail to qualify as a REIT in any taxable year, and the reasonable cause relief provisions do not apply, we will be subject to tax (including any applicable alternative minimum tax) on our taxable income at regular corporate rates. Distributions to stockholders in any year in which we fail to qualify will not be deductible and our failure to qualify as a REIT would reduce the cash available for distribution by us to our stockholders. In addition, if we fail to qualify as a REIT, all distributions to stockholders will be taxable as ordinary income, to the extent of current and accumulated earnings and profits, and, subject to certain limitations of the Code, corporate distributees may be eligible for the dividends received deduction. Unless entitled to relief under specific statutory provisions, we would also be disqualified from taxation as a REIT for the four taxable years following the year during which qualification was lost. It is not possible to state whether in all circumstances we would be entitled to such statutory relief. Failure to qualify could result in our incurring indebtedness or liquidating investments in order to pay the resulting taxes.

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Other Tax Matters

We own and operate a number of properties through subsidiaries, known as qualified REIT subsidiaries, or QRSs. Code Section 856(i) provides that a corporation that is a qualified REIT subsidiary shall not be treated as a separate corporation, and all assets, liabilities, and items of income, deduction, and credit of a qualified REIT subsidiary shall be treated as assets, liabilities and such items (as the case may be) of the REIT. Thus, in applying the tests for REIT qualification described in this prospectus under the heading "Taxation of Omega," the QRSs will be ignored, and all assets, liabilities and items of income, deduction, and credit of such QRSs will be treated as our assets, liabilities and items of income, deduction, and credit.

In the case of a REIT that is a partner in a partnership, such REIT is treated as owning its proportionate share of the assets of the partnership and as earning its allocable share of the gross income of the partnership for purposes of the applicable REIT qualification tests. Thus, our proportionate share of the assets, liabilities, and items of income of any partnership, joint venture, or limited liability company that is treated as a partnership for federal income tax purposes in which we own an interest, directly or indirectly, will be treated as our assets and gross income for purposes of applying the various REIT qualification requirements.

Taxation of Stockholders

Taxation of Domestic Stockholders. As long as we qualify as a REIT, if you are a taxable U.S. stockholder, distributions made to you out of current or accumulated earnings and profits (and not designated as capital gain dividends) will be taken into account by you as ordinary income and will not be eligible for the dividends received deduction for corporations or the special 15% tax rate applicable to individuals and certain other taxpayers in the case of dividends paid by a regular C corporation. However, to the extent that any of our income represents income on which we have paid tax at corporate income tax rates or dividend income from a regular C corporation, including dividend income from a TRS that we own, your proportionate share of such dividend income will be eligible for such special 15% tax rate. Distributions that are designated as capital gain dividends will be taxed as long-term capital gains (to the extent they do not exceed our actual net capital gain for the taxable year) and eligible for the special 15% maximum tax rate on capital gain income applicable to individuals and certain other tax payers (unless such capital gain income is attributable to unrecaptured Section 1250 gain, in which case the applicable maximum tax rate will be 25%, instead of 15%), without regard to the period for which you have held our stock. However, if you are a corporation, you may be required to treat up to 20% of certain capital gain dividends as ordinary income. Further, if we designate a dividend as a capital gain dividend to you and you dispose of your shares in a sale or exchange in which you recognize a loss, and have held those shares for six (6) months or less, you will be required to treat the loss from the sale of your shares as long-term (instead of short-term) capital loss to the extent of the of the dividend distributions you received from us that were designated as capital gain distributions that were permitted to treat as long-term capital gains.

Distributions in excess of current and accumulated earnings and profits will not be taxable to you to the extent that they do not exceed the adjusted basis of your shares, but rather will reduce the adjusted basis of those shares. To the extent that distributions in excess of current and accumulated earnings and profits exceed the adjusted basis of your shares, you will include the distributions in income as long-term capital gain (or short-term capital gain if you have held the shares for one year or less) assuming the shares are a capital asset in your hands. In addition, any distribution declared by us in October, November, or December of any year payable to you as a stockholder of record on a specified date in any of these months shall be treated as both paid by us and received by you on December 31 of that year, provided that the distribution is actually paid by us during January of the following calendar year. You may not include in your individual income tax returns any of our net operating losses or capital losses.

Backup Withholding

Assuming that you are a U.S. stockholder, we will report to you and the IRS the amount of distributions paid during each calendar year, and the amount of tax withheld, if any. Under the backup withholding rules, you may be subject to backup withholding with respect to distributions paid unless you:

- are a corporation or come within certain other exempt categories and when required, demonstrate this fact; or

- provide a taxpayer identification number, certify as to no loss of exemption from backup withholding, and otherwise comply with applicable requirements of the backup withholding rules.

If you do not provide us with your correct taxpayer identification number, you may also be subject to penalties imposed by the IRS. Any amount paid as backup withholding will be creditable against your income tax liability. In addition, we may be required to withhold a portion of capital gain distributions to you, if you fail to certify your non-foreign status to us. See "— Taxation of Stockholders—Taxation of Foreign Stockholders."

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Treatment of Tax-Exempt Stockholders. If you are a tax-exempt employee pension trust or other domestic tax-exempt stockholder, our distributions to you generally will not constitute "unrelated business taxable income," or UBTI, unless you have borrowed to acquire or carry our common stock. However, qualified trusts that hold more than 10% (by value) of certain REITs may be required to treat a certain percentage of that REIT's distributions as UBTI. This requirement will apply only if:

- the REIT would not qualify for federal income tax purposes but for the application of a "look-through" exception to the "five or fewer" requirement applicable to shares held by qualified trusts; and
- the REIT is "predominantly held" by qualified trusts.

A REIT is predominantly held if either:

- a single qualified trust holds more than 25% by value of the REIT interests; or
- one or more qualified trusts, each owning more than 10% by value of the REIT interests, hold in the aggregate more than 50% by value of the REIT interests.

The percentage of any REIT dividend treated as UBTI is equal to the ratio of the UBTI earned by the REIT (treating the REIT as if it were a qualified trust and therefore subject to tax on UBTI) to the total gross income (less certain associated expenses) of the REIT.
A de minimis exception applies where the ratio set forth in the preceding sentence is less than 5% for any year. For those purposes, a qualified trust is any trust described in section 401(a) of the Internal Revenue Code and exempt from tax under section 501(a) of the Internal Revenue Code. The provisions requiring qualified trusts to treat a portion of REIT distributions as UBTI will not apply if the REIT is able to satisfy the "five or fewer" requirement without relying upon the "look-through" exception. The restrictions on ownership of our common stock in our Amended and Restated Articles of Incorporation, as amended, generally will prevent application of the provisions treating a portion of REIT distributions as UBTI to tax-exempt entities purchasing our common stock, absent approval by our board of directors.
Taxation of Foreign Stockholders. The rules governing U.S. federal income taxation of nonresident alien individuals, foreign corporations, foreign partnerships and other foreign stockholders (collectively, Non-U.S. Stockholders) are complex and no attempt will be made herein to provide more than a summary of these rules. Prospective Non-U.S. Stockholders should consult with their own tax advisors to determine the impact of federal, state and local income tax laws with regard to an investment in shares, including any reporting requirements.
If you are a Non-U.S. Stockholder, the following discussion will apply to you. Distributions that are not attributable to gain from our sales or exchanges of U.S. real property interests and not designated by us as capital gains dividends will be treated as dividends of ordinary income to the extent that they are made out of our current or accumulated earnings and profits. Such distributions will ordinarily be subject to a withholding tax equal to 30% of the gross amount of the distribution unless an applicable tax treaty reduces or eliminates that tax.
However, if income from the investment in the shares is treated as effectively connected with your conduct of a U.S. trade or business, you generally will be subject to a tax at graduated rates, in the same manner as U.S. stockholders are taxed with respect to the distributions (and may also be subject to the 30% branch profits tax if you are a foreign corporation unless an applicable tax treaty reduces or eliminates that tax). We expect to withhold U.S. income tax at the rate of 30% on the gross amount of any distributions made to you unless:

- a lower treaty rate applies, you file an IRS Form W-8BEN with us and other conditions are met; or
- you file an IRS Form W-8ECI with us claiming that the distribution is effectively connected income, and other conditions are met.

Distributions in excess of our current and accumulated earnings and profits will not be taxable to you to the extent that the distributions do not exceed the adjusted basis of your shares, but rather will reduce the adjusted basis of the shares. To the extent that distributions in excess of current accumulated earnings and profits exceed the adjusted basis of your shares, these distributions will give rise to tax liability if you would otherwise be subject to tax on any gain from the sale or disposition of your shares in us, as described below. If it cannot be determined at the time a distribution is made whether or not the distribution will be in excess of current and accumulated earnings and profits, the distributions will be subject to withholding at the same rate as dividends. However, amounts withheld can be refundable if the Non-U.S. stockholder files a U.S. tax return if it is subsequently reporting that a distribution was, in fact, in excess of our current and accumulated earnings and profits.

For any year in which we qualify as a REIT, distributions that are attributable to gain from our sales or exchanges of U.S. real property interests will be taxed to you under the provisions of the Foreign Investment in Real Property Tax Act of 1980,

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or FIRPTA. Under FIRPTA, distributions attributable to gain from sales of U.S. real property interests are taxed to you as if the gain were effectively connected with a U.S. business. You would thus be taxed at the normal capital gain rates applicable to U.S. stockholders (subject to applicable alternative minimum tax and a special alternative minimum tax in the case of nonresident alien individuals). Also, distributions subject to FIRPTA may be subject to a 30% branch profits tax in the hands of a foreign corporate stockholder not entitled to a lower rate or an exemption under an applicable treaty. We are required by applicable Treasury Regulations to withhold 35% of any distribution that could be designated by us as a capital gains dividend. This amount is creditable against your FIRPTA tax liability. Notwithstanding the foregoing, in the case of any distribution attributable to gain from a sale by us of U.S. real property interests, if the distribution is with respect to a class of our stock that is regularly traded on an established securities market, you do not own more than 5% of that class of stock at any time during the one-year period ending on the date of the distribution, and we are a "domestically controlled REIT" as defined below, then the distribution will be exempted from the application of the FIRPTA rules and the distribution will be subject to the withholding rules for ordinary income, i.e., subject to a 30% withholding tax unless the a Form W-8BEN has been filed (indicating that a lower treaty rate applies) or a Form W-8ECI has been filed (indicating that the distribution is effectively connected income).

Gain recognized by you upon a sale of shares generally will not be taxed under FIRPTA if we are a "domestically controlled REIT," defined generally as a REIT in which at all times during a specified testing period less than 50% in value of the stock was held directly or indirectly by foreign persons. It is currently anticipated that we will be a "domestically controlled REIT," although there can be no assurance that we will retain that status. If we are not "domestically controlled," gain recognized by you will continue to be exempt under FIRPTA if you at no time owned more than five percent of our common stock. However, gain not subject to FIRPTA will be taxable to you if:

- investment in the shares is effectively connected with your U.S. trade or business, in which case you will be subject to the same treatment as U.S. stockholders with respect to the gain; or

- you are a nonresident alien individual who was present in the United States for more than 182 days during the taxable year and other applicable requirements are met, in which case you will be subject to a 30% tax on your capital gains.

If the gain on the sale of shares were to be subject to taxation under FIRPTA, you will be subject to the same treatment as U.S. stockholders with respect to the gain (subject to applicable alternative minimum tax and a special alternative minimum tax in the case of nonresident alien individuals).

If the proceeds of a sale of shares by you are paid by or through a U.S. office of a broker, the payment is subject to information reporting and to backup withholding unless you certify as to your name, address and non-U.S. status or otherwise establish an exemption. Generally, U.S. information reporting and backup withholding will not apply to a payment of disposition proceeds if the payment is made outside the U.S. through a non-U.S. office of a non-U.S. broker. U.S. information reporting requirements (but not backup withholding) will apply, however, to a payment of disposition proceeds outside the U.S. if:

- the payment is made through an office outside the U.S. of a broker that is: (a) a U.S. person; (b) a foreign person that derives 50% or more of its gross income for certain periods from the conduct of a trade or business in the U.S.; or (c) a "controlled foreign corporation" for U.S. federal income tax purposes; and

- the broker fails to initiate documentary evidence that you are a Non-U.S. Stockholder and that certain conditions are met or that you otherwise are entitled to an exemption.

Recent Legislation

Recently enacted legislation would, among other things, (i) require withholding at a rate of 30 percent on certain payments (including payments of U.S. source dividends and gross proceeds from the sale of stock that can produce U.S. source dividends) paid after December 31, 2012, to certain foreign financial institutions, investment funds, and other non-U.S. persons that fail to meet certain requirements, and (ii) require that, in certain circumstances, certain U.S. holders that are individuals, estates and trusts pay a 3.8 percent tax on "net investment income", which includes, among other things, dividends on and gains from the disposition of stock, effective for taxable years beginning after December 31, 2012. Shareholders are urged to consult their tax advisors regarding the possible

implications of the legislation on their investment in our stock.

Possible Legislative or Other Actions Affecting Tax Consequences

Prospective holders of our securities should recognize that the present federal income tax treatment of investment in our company may be modified by legislative, judicial or administrative action at any time and that any of these actions may

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affect investments and commitments previously made. The rules dealing with federal income taxation are constantly under review by persons involved in the legislative process and by the IRS and the Treasury Department, resulting in revisions of regulations and revised interpretations of established concepts as well as statutory changes. Revisions in federal tax laws and interpretations thereof could adversely affect the tax consequences of investment in our company.

State and Local Taxes

We may be and you may be subject to state or local taxes in other jurisdictions such as those in which we may be deemed to be engaged in activities or own property or other interests. The state and local tax treatment of us may not conform to the federal income tax consequences discussed above.

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PLAN OF DISTRIBUTION

General

We may sell the securities covered by this prospectus in one or more of the following ways from time to time, including without limitation:

- to or through underwriters for resale to purchasers, which underwriters may act directly or through a syndicate represented by one or more managing underwriters;
- directly to one or more purchasers, through a specific bidding, auction or other process;
- through agents or dealers;
- through a block trade in which the broker or dealer engaged to handle the block trade will attempt to sell the securities as agent, but may position and resell a portion of the block as principal to facilitate the transaction;
- in exchange for outstanding indebtedness; or
- through a combination of any of these methods of sale.

A prospectus supplement with respect to each series of securities will state the terms of the offering of the securities, including:

- the terms of the offering;
- the name or names of any underwriters or agents and the amounts of securities underwritten or purchased by each of them, if any;
- the public offering price or purchase price of the securities and the net proceeds to be received by us from the sale;
- any underwriting discounts or agency fees and other items constituting underwriters' or agents' compensation;
- any delayed delivery arrangements;
- any discounts or concessions allowed or re-allowed or paid to dealers; and
- any securities exchange on which the securities may be listed.

If we use underwriters or dealers in the sale, the securities will be acquired by the underwriters or dealers for their own account and may be resold from time to time in one or more transactions, including:

- privately negotiated transactions;
- at a fixed public offering price or prices, which may be changed;
- in "at the market offerings" within the meaning of Rule 415(a)(4) of the Securities Act;
- at prices related to prevailing market prices; or
- at negotiated prices.

We may directly solicit offers to purchase securities, or agents may be designated to solicit such offers. We will, in the prospectus supplement relating to such offering, name any agent that could be viewed as an underwriter under the Securities Act and describe any commissions that we must pay. Any such agent will be acting on a best efforts basis for the period of its appointment or, if indicated in the applicable prospectus supplement, on a firm commitment basis. Agents, dealers and underwriters may be customers of, engage in transactions with, or perform services for us in the ordinary course of business.

If any underwriters or agents are utilized in the sale of the securities in respect of which this prospectus is delivered, we will enter into an underwriting agreement or other agreement with them at the time of sale to them, and we will set forth in the prospectus supplement relating to such offering the names of the underwriters or agents and the terms of the related agreement with them.

If a dealer is utilized in the sale of the securities in respect of which the prospectus is delivered, we will sell such securities to the dealer, as principal. The dealer may then resell such securities to the public at varying prices to be determined by such dealer at the time of resale.

Remarketing firms, agents, underwriters and dealers may be entitled under agreements which they may enter into with us to indemnification by us against certain civil liabilities, including liabilities under the Securities Act, and may be customers of, engage in transactions with or perform services for us in the ordinary course of business.

Market-Making, Stabilization and Other Transactions

To facilitate the offering of the securities, any underwriters may engage in transactions that stabilize, maintain or otherwise affect the price of the securities or any other securities the prices of which may be used to determine payments on such securities. Specifically, any underwriters may overallot in connection with the offering, creating a short position for their own accounts. In addition, to cover overallotments or to stabilize the price of the securities or of any such other securities, the underwriters may bid for, and purchase, the securities or any such other securities in the open market. Finally, in any offering of the securities through a syndicate of underwriters, the underwriting syndicate may reclaim selling concessions allowed to an underwriter or a dealer for distributing the securities in the offering if the syndicate repurchases previously distributed securities in transactions to cover syndicate short positions, in stabilization transactions or otherwise. Any of these activities may stabilize or maintain the market price of the securities above independent market levels. Any such underwriters are not required to engage in these activities and may end any of these activities at any time.

There is currently no market for any of the offered securities, other than the common stock which is listed on the NYSE. If the offered securities are traded after their initial issuance, they may trade at a discount from their initial offering price, depending upon prevailing interest rates, the market for similar securities and other factors. While it is possible that an underwriter could inform us that it intends to make a market in the offered securities, such underwriter would not be obligated to do so, and any such market-making could be discontinued at any time without notice. Therefore, no assurance can be given as to whether an active trading market will develop for the offered securities. We have no current plans for listing of any preferred stock, warrants or units on any securities exchange; any such listing with respect to any particular security will be described in the applicable prospectus supplement or pricing supplement, as the case may be.

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LEGAL MATTERS

In connection with particular offerings of our securities in the future, and unless otherwise indicated in the applicable prospectus supplement, the validity of such securities will be passed upon for Omega Healthcare Investors, Inc. by Bryan Cave LLP, Atlanta, Georgia. In addition, the description of material federal income tax consequences contained in this prospectus under the heading "U.S. Federal Income Tax Considerations" is based upon the opinion of Bryan Cave LLP, Atlanta, Georgia.

EXPERTS

Ernst & Young LLP, independent registered public accounting firm, has audited our consolidated financial statements and schedules included in our Annual Report on Form 10-K for the year ended December 31, 2011, and the effectiveness of our internal control over financial reporting as of December 31, 2011, as set forth in their reports, which are incorporated by reference in this prospectus and elsewhere in the registration statement. Our financial statements and schedules are incorporated by reference in reliance on Ernst & Young LLP's reports, given on their authority as experts in accounting and auditing.

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2,500,000 Shares

Common Stock

Prospectus Supplement

Jefferies

October 2, 2013