MINDSPEED TECHNOLOGIES, INC
Form S-3/A
March 24, 2005

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As filed with the Securities and Exchange Commission on March 24, 2005

Registration No. 333-123193

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 20549

Pre-Effective
Amendment No. 2
to
Form S-3
REGISTRATION STATEMENT
UNDER THE SECURITIES ACT OF 1933

MINDSPEED TECHNOLOGIES, INC.
(Exact Name of Registrant as Specified in Its Charter)

Delaware (State or other jurisdiction of incorporation or organization)	**01-0616769** (I.R.S. Employer Identification No.)

4000 MacArthur Boulevard, East Tower
Newport Beach, CA 92660-3095
(949) 579-3000
(Address, including zip code, and telephone number, including area code, of registrant s principal executive offices)
Raouf Y. Halim
Chief Executive Officer
Mindspeed Technologies, Inc.
4000 MacArthur Boulevard, East Tower
Newport Beach, CA 92660-3095
(949) 579-3000
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies to:

Robert M. Mattson, Jr.
Craig S. Mordock
Morrison & Foerster LLP
19900 MacArthur Boulevard, Twelfth Floor
Irvine, California 92612-2445
(949) 251-7500

APPROXIMATE DATE OF COMMENCEMENT OF PROPOSED SALE TO THE PUBLIC: From time to time after the effective date of this registration statement.

If the only securities being registered on this form are being offered pursuant to dividend or interest reinvestment plans, please check the following box. o

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box. þ

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

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

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. o

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CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered	Proposed Maximum Aggregate Offering Price Per Unit	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
3.75% Convertible Senior Notes due 2009	$ 46,000,000	100%	$ 46,000,000	$ 5,414(1)
Common stock, par value $0.01 per share	19,913,420(2)	N/A	N/A	(3)

(1) The amount of the registration fee is calculated pursuant to Rule 457(o) under the Securities Act and was previously paid.

(2) The number of shares of common stock that are issuable upon conversion of the 3.75% Convertible Senior Notes due 2009 registered hereby may vary. 16,370,107 shares of common stock are issuable upon conversion of the notes at the initial conversion price of $2.81 per share of common stock. The number in the table reflects the number of shares of common stock issuable upon conversion of the notes at a conversion price of $2.31 per share of common stock, which assumes the future application of the barrier adjustment to the initial conversion price as described under Description of the Notes Conversion Rights Conversion Price Adjustments in the accompanying prospectus. Pursuant to Rule 416 under the Securities Act, the amount to be registered includes an indeterminate number of shares of common stock that may be issuable from time to time upon the conversion of the notes as a result of stock splits, stock dividends or similar events.

(3) Pursuant to Rule 457(i) under the Securities Act, no additional registration fee is required with respect to the shares of the Registrant s common stock issuable upon conversion of the 3.75% Convertible Senior Notes due 2009 because no additional consideration is to be received in connection with such conversion.

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

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The information in this prospectus is not complete and may be changed. The selling security holders may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and is not a solicitation of an offer to buy these securities in any state where the offer or sale is not permitted.

SUBJECT TO COMPLETION, DATED MARCH 24, 2005

$46,000,000

3.75% Convertible Senior Notes due 2009
and
Shares of Common Stock
Issuable upon Conversion of the Notes

We originally issued these notes in a private placement in December 2004. This prospectus covers resales of the notes, and sales of the shares of our common stock into which the notes are convertible, by the selling security holders named in this prospectus.

The notes are convertible, at the option of the holders thereof, into shares of our common stock initially at a conversion price of $2.81 per share, which is equivalent to an initial conversion rate of approximately 355.8719 shares of common stock per $1,000 principal amount of the notes. The conversion price will be adjusted to reflect stock dividends, stock splits, issuances of rights to purchase shares of common stock and other events. In addition, subject to certain limitations, if during the period from December 8, 2004 through December 7, 2005, the market price of our common stock is less than $1.89 per share (subject to adjustment), which is 32.7% below the conversion price (then in effect), for at least 20 trading days during any 30 consecutive trading day period, the conversion price will immediately be reduced to $2.31 per share (subject to adjustment), representing a reduction of 17.8% of the original conversion price; provided, however, that there can be no more than one such reduction of the conversion price during the term of the notes. Notes converted within 30 days of notice of certain transactions constituting a fundamental change will also benefit from the issuance of additional shares or an additional cash payment.

The notes bear interest at a rate of 3.75% per year. Interest on the notes is payable on May 18 and November 18 of each year, beginning on May 18, 2005. We have purchased a portfolio of U.S. Treasury securities that we pledged to secure the first four scheduled interest payments on the notes. The notes will mature on November 18, 2009.

Upon a fundamental change, in certain circumstances, holders may require us to repurchase all or a portion of their notes for cash at a repurchase price equal to 100% of the principal amount plus accrued and unpaid interest and additional interest, if any.

Our common stock is listed on The Nasdaq National Market under the symbol MSPD. The last reported sale price of our common stock on March 23, 2005, was $2.39 per share.

Since their original issuance, the notes have been eligible for trading on the Private Offerings, Resales and Trading through Automated Linkages (PORTAL) Market of the National Association of Securities Dealers, Inc. However, notes sold by means of this prospectus and the shares of common stock issuable upon conversion thereof will no longer be eligible for trading on the PORTAL Market. We do not intend to list the notes on any other automated quotation system or any securities exchange.

Other than the pledge of U.S. Treasury securities to secure the first four scheduled interest payments on the notes, the notes are senior unsecured obligations and rank equally with future senior unsecured indebtedness, and rank junior to existing and future senior secured indebtedness to the extent of the value of the assets securing such indebtedness and effectively junior to our subsidiaries indebtedness and other liabilities, including trade payables.

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The selling security holders named in this prospectus will receive all of the net proceeds from sales of the securities offered hereby, and will pay all underwriting discounts and selling commissions, if any, in connection with the sales. We are responsible for paying the other expenses incident to the registration of the securities offered hereby. We will not receive any proceeds from this offering.

Investing in the notes and the common stock issuable upon conversion of the notes involves risks that are described in the Risk Factors section beginning on page 6 of this prospectus.

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

The date of this prospectus is , 2005.

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ABOUT THIS PROSPECTUS

You should rely only on the information contained or incorporated by reference in this prospectus. We have not authorized any other person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. You should assume that the information appearing in this prospectus and the documents incorporated by reference in this prospectus are accurate only as of their respective dates. Our business, financial condition, results of operations and prospects may have changed since those dates.

We are not making any representation to any purchaser of the securities registered hereby regarding the legality of an investment in the securities by such purchaser under any legal investment or similar laws or regulations. You should not consider any information in this prospectus to be legal, business or tax advice. You should consult your own attorney, business advisor and tax advisor for legal, business and tax advice regarding an investment in the securities offered hereby.

When used in this prospectus, the terms Mindspeed, we, our and us refer to Mindspeed Technologies, Inc., a Delaware corporation, and its consolidated subsidiaries, unless otherwise specified. Mindspeed Technologies® is a registered trademark of Mindspeed Technologies, Inc. Other brands, names and trademarks referred to in this prospectus are the property of their respective owners.

We maintain a fifty-two/fifty-three week fiscal year ending on the Friday closest to September 30. Fiscal year 2004 comprised 52 weeks and ended on October 1, 2004. For presentation purposes of this prospectus, references made to the September 30, 2004 period relate to the actual fiscal year ended October 1, 2004.

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FORWARD-LOOKING STATEMENTS

This prospectus and the documents that we incorporate by reference contain statements relating to Mindspeed Technologies, Inc. that are 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, and are subject to the safe harbor created by those sections. All statements included in this prospectus and the documents that we incorporate by reference, other than those that are historical, are forward-looking statements. Words such as expect, believe, anticipate, outlook, could, target, project, intend, plan, seek, estimate, should, may, assume variations of such words and similar expressions, also identify forward-looking statements. Forward-looking statements in this prospectus include, without limitation: our intent to not list the notes on any automated quotation system or any securities exchange; our expectations regarding our restructuring plans, including our expected reduction in headcount and facilities closures and the timing and amount of cost savings under our restructuring plan; our beliefs regarding the sufficiency of our liquidity and capital resources; our expectations regarding the sufficiency of the U.S. Treasury securities we purchased and pledged to the trustee pursuant to the terms of the indenture governing the notes to, upon receipt of scheduled principal and interest payments thereon, provide for the payment in full of the first four scheduled interest payments on the notes, but not additional interest; our expectations of future losses and negative cash flows; the impact of cyclical fluctuations on our business; our expectation that continued competition will continue to result in declining average sales prices for our products; our plans regarding use of the net proceeds of the initial offering of the notes; our expectations regarding our primary sources of future liquidity; and the potential dilution resulting from adjustments to the conversion price of the notes or outstanding warrants to purchase our common stock.

Forward-looking statements, including those regarding our expectations, beliefs, anticipations, objectives, intentions, plans and strategies regarding the future, are not guarantees of future performance and are subject to risks and uncertainties that could cause actual results, and actual events that occur, to differ materially from results contemplated by the forward-looking statement. These risks and uncertainties include, but are not limited to:

market demand for our new and existing products;

availability and terms of capital needed for our business;

our ability to reduce our cash consumption;

successful development and introduction of new products;

obtaining design wins and developing revenues from them;

pricing pressures and other competitive factors;

order and shipment uncertainty;

fluctuations in manufacturing yields;

product defects;

intellectual property infringement claims by others and our ability to protect our intellectual property;

our ability to maintain operating expenses within anticipated levels; and our ability to attract and retain qualified personnel.

The forward-looking statements in this prospectus are subject to additional risks and uncertainties, including those set forth herein under the heading Risk Factors and those detailed from time to time in our filings with the SEC. All forward-looking statements contained in this prospectus are made only as of the date on the cover hereof and, except as required by law, we undertake no obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

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SUMMARY

This summary highlights certain information contained elsewhere in this prospectus and in the documents incorporated into it by reference. Because it is a summary, it does not contain all of the information that you should consider before investing in our securities. You should carefully read the entire prospectus, including the section entitled Risk Factors, the documents incorporated by reference and the financial statements and related notes contained therein.

Mindspeed Technologies

We design, develop and sell semiconductor networking solutions for communications applications in enterprise, access, metropolitan and wide-area networks. Our products, ranging from physical-layer transceivers and framers to higher-layer network processors, are sold to original equipment manufacturers (OEMs) for use in a variety of network infrastructure equipment, including voice and media gateways, high-speed routers, switches, access multiplexers, cross-connect systems, add-drop multiplexers, digital loop carrier equipment and Internet protocol (IP) private branch exchanges (PBXs). Service providers and enterprises use this equipment for the processing, transmission and switching of high-speed voice and data traffic, including advanced services such as voice-over-IP (VoIP), within different segments of the communications network. Our largest OEM customers in fiscal 2004 included Alcatel Data Networks, Cisco Systems, Huawei Technologies, Nortel Networks and Siemens, and our largest OEM customers in the first quarter of fiscal 2005 included Alcatel Data Networks, Cisco Systems, McDATA Corporation, Nortel Networks and Siemens.

Recent Developments

On December 8, 2004, we completed the private placement of $46.0 million aggregate principal amount of our 3.75% convertible senior notes due 2009. The notes have been registered for resale, by the holders listed in this prospectus, pursuant to the registration statement of which this prospectus forms a part. In connection with our completion of the original issuance of the notes, the $50 million credit facility previously provided to us by Conexant Systems, Inc. terminated pursuant to its terms. Additionally, at the time we entered into the credit facility with Conexant, and pursuant to its terms, we issued to Conexant a warrant that entitled Conexant to acquire from us up to approximately 8.3 million shares of our common stock, based on the maximum level of borrowings we made under the credit facility at any time. We had made no borrowings under the credit facility at the time of its termination, and as a result Conexant is not, and will not become, entitled to acquire any shares of our common stock under that related warrant.

We were organized as a Delaware corporation in July 2001. Until June 2003, we were a wholly owned subsidiary of Conexant Systems, Inc. On June 27, 2003, Conexant completed the distribution to its stockholders of all outstanding shares of our common stock, which we refer to as the distribution. Our principal executive offices are located at 4000 MacArthur Boulevard, East Tower, Newport Beach, California, 92660-3095, and our telephone number is (949) 579-3000. Our web site is located at www.mindspeed.com. The information contained on or accessible through our web site is not a part of this prospectus.

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The Offering

The summary below describes, among other things, the principal terms of the notes. Certain of the terms and conditions described below are subject to important limitations and exceptions. The Description of the Notes section of this prospectus contains a more detailed description of the terms and conditions of the notes.

Issuer	Mindspeed Technologies, Inc.
Securities Offered	$46,000,000 aggregate principal amount of 3.75% Convertible Senior Notes due 2009, and the shares of our common stock issuable upon conversion of the notes.
Maturity Date	November 18, 2009.
Ranking	Except as described under Security below, the notes are senior unsecured obligations of Mindspeed and rank equal in right of payment with all future senior unsecured indebtedness of Mindspeed. As of December 31, 2004, Mindspeed had no senior debt outstanding.
Interest Rate	3.75% per year. Interest is payable on May 18 and November 18 of each year, beginning May 18, 2005.
Security	We purchased and pledged to the trustee under the indenture, for the exclusive benefit of the holders of the notes, approximately $3.4 million aggregate face amount of U.S. Treasury securities, which we expect will be sufficient, upon receipt of scheduled principal and interest payments thereon, to provide for the payment in full of the first four scheduled interest payments, but not additional interest, if any, on the notes when due. There is no other security for the notes. See Description of the Notes Security.
Conversion Right	You may convert your notes into shares of our common stock, initially at the conversion price of $2.81 per share, equal to a conversion rate of approximately 355.8719 shares per $1,000 principal amount of notes, at any time prior to the close of business on the business day prior to the final maturity date. Upon a conversion, we will have the right to deliver to holders, at our option, (i) cash, (ii) shares of our common stock or (iii) a combination thereof. See Description of the Notes Conversion Rights.

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The conversion price will be adjusted to reflect stock dividends, stock splits, issuances of rights to purchase shares of common stock and other events. In addition, the conversion price will be subject to adjustment, which adjustment we refer to as the barrier adjustment, if during the period from December 8, 2004 through December 7, 2005, the market price of our common stock is less than $1.89 (subject to adjustment), that is 32.7% below the conversion price (then in effect), for at least 20 trading days during any 30 consecutive trading day period, the conversion price will immediately be reduced to $2.31 (subject to adjustment), representing a reduction of 17.8% of the original conversion price; provided that there can be no more than one such reduction of the conversion price during the term of the notes; and provided further, that no adjustment shall be made if, prior to any such adjustment being required, a fundamental change (as defined in this prospectus) has occurred of the type triggering an adjustment to the conversion price or an additional cash payment as described in Description of the Notes Conversion Rights Adjustment to Conversion Price Upon Certain Fundamental Changes.

The conversion price is also subject to adjustment to increase the number of shares issuable if you convert your notes under certain circumstances in connection with certain transactions constituting a fundamental change, provided that an additional cash payment may be made in lieu of additional shares in certain circumstances.

You may only convert notes to the extent that you and any group of which you are a member will not beneficially own, immediately following such conversion, outstanding shares constituting more than 14.9% of our common stock.

Sinking Fund — None.

Optional Redemption by Mindspeed — None.

Repurchase Right of Holders Upon a Fundamental Change — If we undergo a fundamental change meeting certain conditions prior to maturity, you will have the right, at your option, to require us to repurchase for cash some or all of your notes at a repurchase price equal to 100% of the principal amount of the notes being repurchased, plus accrued and unpaid interest (including additional interest, if any) to, but not including, the repurchase date. See Description of the Notes Repurchase at Option of Holders Upon a Fundamental Change.

Adjustment to Conversion Price Upon Certain Types of Fundamental Changes

If and only to the extent holders elect to convert the notes in connection with certain transactions described under the first or third clause of the definition of fundamental change as described in Description of the Notes Repurchase at Option of Holders Upon a Fundamental Change pursuant to which 10% or more of the consideration for our common stock (other than cash payments for fractional shares and cash payments made in respect of dissenters appraisal rights) in such transaction consists of cash or securities (or other property) that are not traded or scheduled to be traded immediately following such transaction on a U.S. national securities exchange or The Nasdaq National Market, we will increase the number of shares issuable upon conversion.

The number of additional shares will be determined by reference to the table in Description of the Notes Conversion Rights Adjustment to Conversion Price Upon Certain Fundamental Changes, based on the effective date and the price paid per share of our common stock in such transaction. If holders of our common stock receive only cash in such transaction, the stock price shall be the cash amount paid per share. Otherwise, the stock price shall be the average of the last reported sale prices of our common stock on the five trading days prior to but not including the effective date of such transaction.

Notwithstanding the foregoing, in connection with any fundamental change of the type described above occurring after the barrier adjustment has been made, no additional shares shall be issued upon conversion of the notes in respect of the transaction otherwise requiring adjustment to the conversion price, but instead we shall make an additional cash payment in lieu thereof. In the event that a fundamental change of the type described above occurs and no barrier adjustment has been made, we may, at our election, adjust the conversion price and issue the additional shares upon conversion and/or make an additional cash payment in lieu thereof.

Conversion After a Public Acquirer Change of Control

In the case of a non-stock change of control constituting a public acquirer change of control (as defined in this prospectus), we may, in lieu of issuing additional shares or making an additional cash payment upon conversion as described in Description of the Notes Conversion Rights Adjustment to Conversion Price Upon Certain Fundamental Changes, elect to adjust the conversion price and the related conversion obligation such that from and after the effective date of such public acquirer change of control, holders of the notes will be entitled to convert their notes (subject to the satisfaction of certain conditions) into a number of shares of public acquirer common stock by adjusting the conversion price in effect immediately before the public acquirer change of control by a fraction:

the numerator of which will be the average of the last reported sale prices of the public acquirer common stock for the five consecutive trading days commencing on the trading day next succeeding the effective date of such public acquirer change of control; and

the denominator of which will be (i) in the case of a share exchange, consolidation, merger or binding share exchange pursuant to which our common stock is converted into cash, securities or other property, the average value of all cash and any other consideration (as determined by our board of directors) paid or payable per share of common stock or (ii) in the case of any other public acquirer change of control, the average of the last reported sale prices of our common stock for the five consecutive trading days prior to but excluding the effective date of such public acquirer change of control.

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Covenants	The indenture does not contain any financial covenants.
Events of Default	If there is an event of default on the notes, the principal amount of the notes plus accrued and unpaid interest (including additional interest) to the date of acceleration may be declared immediately due and payable subject to certain conditions set forth in the indenture. These amounts automatically become due and payable in the case of certain types of bankruptcy or insolvency events of default involving Mindspeed or any of its significant subsidiaries.
Form, Denomination and Registration	The notes were issued in fully registered form, in denominations of $1,000 and are represented by one or more global notes, deposited with the trustee as custodian for The Depository Trust Company, or DTC, and registered in the name of Cede & Co., DTC s nominee. Beneficial interests in the global notes are shown on, and transfers are effected only through, records maintained by DTC and its participants. See Description of the Notes Form, Denomination and Registration.
Use of Proceeds	Proceeds from the sale of the securities offered pursuant to this prospectus are solely for the account of the selling security holders. Accordingly, we will not receive any proceeds from the sale of the securities offered by this prospectus. See Use of Proceeds.
Registration Rights	Pursuant to the terms of a resale registration rights agreement we entered into with the initial purchaser of the notes, we have filed a shelf registration statement, of which this prospectus is a part, with respect to the resale of the notes and the common stock issuable upon conversion of the notes. See Description of the Notes Registration Rights.
Trading	Since their initial issuance, the notes have been eligible for trading on The PORTAL Market^{SM} of The National Association of Securities Dealers, Inc. However, notes sold by means of this prospectus will no longer be eligible for trading on the PORTAL Market, and we do not intend to list the notes on any other automated quotation system or any securities exchange. Furthermore, we can provide no assurances as to the liquidity of, or trading market for, the notes.

Nasdaq National Market Symbol for Our Common Stock	Our common stock is traded on The Nasdaq National Market under the symbol MSPD.

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RISK FACTORS

You should carefully consider the following risks and warnings before deciding to invest in the notes or the common stock issuable upon conversion of the notes. If any of the following risks actually occur, our business, financial condition, results of operations and prospects could be materially and adversely affected, and you could lose all or part of your investment. You should also refer to the other information set forth in this prospectus, including the documents incorporated by reference and our consolidated financial statements and the related notes included therein.

This prospectus and the documents incorporated by reference into it also contain forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those anticipated in these forward-looking statements as a result of certain factors, including the risks faced by us described below and elsewhere in this prospectus.

Risks Related to Our Business

We are incurring substantial operating losses, we anticipate additional future losses and we must significantly increase our revenues to become profitable.

We incurred a net loss of $30.5 million for the first quarter of fiscal 2005 compared to a net loss of $26.2 million in the first quarter of fiscal 2004. We incurred net losses of $93.2 million in fiscal 2004 and $750.4 million ($177.3 million, before the $573.2 million cumulative effect of a change in accounting for goodwill) in fiscal 2003. We expect that we will continue to incur significant losses and negative cash flows at least through fiscal 2005, and we may incur additional significant losses and negative cash flows in subsequent periods.

In order to become profitable, or to generate positive cash flows from operations, we must achieve substantial revenue growth. This additional revenue growth will depend on a further renewal in demand for network infrastructure equipment that incorporates our products, which in turn depends primarily on the level of capital spending by communications service providers. In October 2004, we announced additional cost reduction actions designed to reduce our combined quarterly research and development and selling, general and administrative expenses to approximately $26 million by the fourth quarter of fiscal 2005. However, these expense reductions alone, without additional revenue growth, will not make us profitable. We may not be successful in achieving the necessary revenue growth or the expected expense reductions within the anticipated time frame, or at all. We may not achieve profitability or sustain such profitability, if achieved.

We have substantial cash requirements to fund our operations, research and development efforts and capital expenditures. Our capital resources are limited and capital needed for our business may not be available when we need it.

For the first quarter of fiscal 2005, our net cash used in operating activities was $9.8 million compared to net cash used in operating activities of $15.4 million for the first quarter of fiscal 2004. Net cash used in operating activities was $43.2 million for fiscal 2004 and $125.6 million for fiscal 2003. Our principal sources of liquidity are our existing cash balances ($75.6 million as of December 31, 2004) and cash generated from product sales. We believe that our existing sources of liquidity will be sufficient to fund our operations, research and development efforts, anticipated capital expenditures, working capital and other financing requirements for at least the next twelve months. However, we cannot assure you that this will be the case, and if we continue to incur operating losses and negative cash flows in the future, we may need to reduce further our operating costs or obtain alternate sources of financing, or both. We may not have access to additional sources of capital on favorable terms or at all. If we raise additional funds through the issuance of equity, equity-based or debt securities, such securities may have rights, preferences or privileges senior to those of our common stock and our stockholders may experience dilution of their ownership interests.

We operate in the highly cyclical semiconductor industry, which is subject to significant downturns.

The semiconductor industry is highly cyclical and is characterized by constant and rapid technological change, rapid product obsolescence and price erosion, evolving technical standards, short product life cycles and wide fluctuations in product supply and demand. From time to time these and other factors, together with changes in general economic conditions, cause significant upturns and downturns in the industry in general, and in our business in particular. Periods of industry downturns have been characterized by diminished product demand, production overcapacity, high inventory levels and accelerated erosion of average selling prices. These factors have caused substantial fluctuations in our revenues and our results of operations in the past, and we may experience similar fluctuations in our business in the future.

Our operating results are subject to substantial quarterly and annual fluctuations.

Our revenues and operating results have fluctuated in the past and may fluctuate in the future. These fluctuations are due to a number of factors, many of which are beyond our control. These factors include, among others:

- changes in end-user demand for the products manufactured and sold by our customers;
- the timing of receipt, reduction or cancellation of significant orders by customers;
- fluctuations in the levels of component inventories held by our customers;
- the gain or loss of significant customers;
- market acceptance of our products and our customers products;
- our ability to develop, introduce and market new products and technologies on a timely basis;
- the timing and extent of product development costs;
- new product and technology introductions by competitors;
- fluctuations in manufacturing yields;
- significant warranty claims, including those not covered by our suppliers;
- availability and cost of products from our suppliers;
- intellectual property disputes; and
- the effects of competitive pricing pressures, including decreases in average selling prices of our products.

The foregoing factors are difficult to forecast, and these, as well as other factors, could materially adversely affect our quarterly or annual operating results. If our operating results fail to meet the expectations of analysts or investors, it could materially and adversely affect the prices of the notes and our common stock.

We are entirely dependent upon third parties for the manufacture, assembly and testing of our products and are vulnerable to their capacity constraints during times of increasing demand for semiconductor products.

We are entirely dependent upon outside wafer fabrication facilities, known as foundries, for wafer fabrication services. Under our fabless business model, our long-term revenue growth is dependent on our ability to obtain sufficient external manufacturing capacity, including wafer production capacity. Periods of upturns in the semiconductor industry may be characterized by rapid increases in demand and a shortage of wafer fabrication capacity, and we may experience delays in shipments or increased manufacturing costs.

The significant risks associated with our reliance on third-party foundries are compounded at times of increasing demand for semiconductor products. They include:

- the lack of assured wafer supply, potential wafer shortages and higher wafer prices;
- limited control over delivery schedules, manufacturing yields, production costs and product quality; and
- the unavailability of, or delays in obtaining, products or access to key process technologies.

We obtain external wafer manufacturing capacity primarily from Taiwan Semiconductor Manufacturing Company and Jazz Semiconductor, Inc. However, these and other foundries we use may allocate their limited capacity to fulfill the production requirements of other customers that are larger and better financed than us. If we choose to use a new foundry, it typically takes several months to complete the qualification process before we can begin shipping products from the new foundry.

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We are also dependent upon third parties, including Amkor Technology, Inc., for the assembly and testing of our products. Our reliance on others to assemble and test our products subjects us to many of the same risks as are described above with respect to our reliance on outside wafer fabrication facilities.

Wafer fabrication processes are subject to obsolescence, and foundries may discontinue a wafer fabrication process used for certain of our products. In such event, we generally offer our customers a last-time buy program to satisfy their anticipated requirements for our products. The unanticipated discontinuation of a wafer fabrication process on which we rely may adversely affect our revenues and our customer relationships.

The foundries and other suppliers on whom we rely may experience financial difficulties or suffer disruptions in their operations due to causes beyond our control, including labor strikes, work stoppages, electrical power outages, fire, earthquake, flooding or other natural disasters. Certain of our suppliers manufacturing facilities are located near major earthquake fault lines in the Asia-Pacific region, Mexico and California. In the event of a disruption of the operations of one or more of our suppliers, we may not have a second manufacturing source immediately available. Such an event could cause significant delays in shipments until we could shift the products from an affected facility or supplier to another facility or supplier. The manufacturing processes we rely on are specialized and are available from a limited number of suppliers. Alternate sources of manufacturing capacity, particularly wafer production capacity, may not be available to us on a timely basis. Even if alternate wafer production capacity is available, we may not be able to obtain it on favorable terms, or at all. Difficulties or delays in securing an adequate supply of our products on favorable terms, or at all, could impair our ability to meet our customers requirements and have a material adverse effect on our operating results.

In addition, the highly complex and technologically demanding nature of semiconductor manufacturing has caused foundries to experience, from time to time, lower than anticipated manufacturing yields, particularly in connection with the introduction of new products and the installation and start-up of new process technologies. Lower than anticipated manufacturing yields may affect our ability to fulfill our customers demands for our products on a timely basis. Moreover, lower than anticipated manufacturing yields may adversely affect our cost of goods sold and our results of operations.

We are subject to intense competition.

The communications semiconductor industry in general, and the markets in which we compete in particular, are intensely competitive. We compete worldwide with a number of United States and international semiconductor manufacturers that are both larger and smaller than us in terms of resources and market share. We currently face significant competition in our markets and expect that intense price and product competition will continue. This competition has resulted, and is expected to continue to result, in declining average selling prices for our products.

Many of our current and potential competitors have certain advantages over us, including:

- stronger financial position and liquidity;
- longer presence in key markets;
- greater name recognition;
- access to larger customer bases; and
- significantly greater sales and marketing, manufacturing, distribution, technical and other resources.

As a result, these competitors may be able to adapt more quickly to new or emerging technologies and changes in customer requirements or may be able to devote greater resources to the development, promotion and sale of their products than we can. Moreover, we have recently incurred substantial operating losses, and we anticipate future losses. Our OEM customers may choose semiconductor suppliers whom they believe have a stronger financial position or liquidity.

Current and potential competitors also have established or may establish financial or strategic relationships among themselves or with our existing or potential customers, resellers or other third parties. These relationships may affect customers purchasing decisions. Accordingly, it is possible that new competitors or alliances among competitors could emerge and rapidly acquire significant market share. We may not be able to compete successfully against current and potential competitors.

Our success depends on our ability to develop competitive new products in a timely manner.

Our operating results will depend largely on our ability to continue to introduce new and enhanced semiconductor products on a timely basis. Successful product development and introduction depends on numerous factors, including, among others:

- our ability to anticipate customer and market requirements and changes in technology and industry standards;
- our ability to accurately define new products;
- our ability to complete development of new products, and bring our products to market, on a timely basis;
- our ability to differentiate our products from offerings of our competitors; and
- overall market acceptance of our products.

We may not have sufficient resources to make the substantial investment in research and development in order to develop and bring to market new and enhanced products, particularly if we are required to take further cost reduction actions. Furthermore, we are required to evaluate expenditures for planned product development continually and to choose among alternative technologies based on our expectations of future market growth. We may be unable to develop and introduce new or enhanced products in a timely manner, our products may not satisfy customer requirements or achieve market acceptance, or we may be unable to anticipate new industry standards and technological changes. We also may not be able to respond successfully to new product announcements and introductions by competitors.

If we are not able to keep abreast of the rapid technological changes in our markets, our products could become obsolete.

The demand for our products can change quickly and in ways we may not anticipate because our markets generally exhibit the following characteristics:

- rapid technological developments;
- rapid changes in customer requirements;
- frequent new product introductions and enhancements;
- declining prices over the life cycle of products; and
- evolving industry standards.

Our products could become obsolete sooner than we expect because of faster than anticipated, or unanticipated, changes in one or more of the technologies related to our products. The introduction of new technology representing a substantial advance over current technology could adversely affect demand for our existing products. Currently accepted industry standards are also subject to change, which may also contribute to the obsolescence of our products. If we are unable to develop and introduce new or enhanced products in a timely manner, our business may be adversely affected.

The complexity of our products may lead to errors, defects and bugs, which could subject us to significant costs or damages and adversely affect market acceptance of our products.

Although we, our customers and our suppliers rigorously test our products, our products are complex and may contain errors, defects or bugs when first introduced or as new versions are released. We have in the past experienced, and may in the future experience, such errors, defects and bugs. If any of our products contain production defects or reliability, quality or compatibility problems that are significant to our customers, our reputation may be damaged and customers may be reluctant to buy our products, which could adversely affect our ability to retain existing customers and attract new customers. In addition, these defects or bugs could interrupt or delay sales of affected products to our customers, which could adversely affect our results of operations.

If defects or bugs are discovered after commencement of commercial production of a new product, we may be required to make significant expenditures of capital and other resources to resolve the problems. This could result in significant additional development costs and the diversion of technical and other resources from our other development efforts. We could also incur significant costs to repair or replace defective products and we could be subject to claims for damages by our customers or others against us. These costs or damages could have a material adverse effect on our financial condition and results of operations.

We may not be able to attract and retain qualified personnel necessary for the design, development and sale of our products. Our success could be negatively affected if key personnel leave.

Our future success depends on our ability to attract, retain and motivate qualified personnel, including executive officers and other key management and technical personnel. As the source of our technological and product innovations, our key technical personnel represent a significant asset. The competition for such personnel can be intense in the semiconductor industry. We may not be able to attract and retain qualified management and other personnel necessary for the design, development and sale of our products.

We may have particular difficulty attracting and retaining key personnel during periods of poor operating performance. If we are not successful in assuring our employees of our financial stability and our prospects for success, our employees may seek other employment, which may materially adversely affect our business. Moreover, our recent expense reduction and restructuring initiatives, including a series of worldwide workforce reductions, have significantly reduced the number of our technical employees. The loss of the services of one or more of our key employees, including Raouf Y. Halim, our chief executive officer, or certain key design and technical personnel, or our inability to attract, retain and motivate qualified personnel could have a material adverse effect on our ability to operate our business.

Approximately 10% of our engineers are foreign nationals working in the United States under visas. The visas held by many of our employees permit qualified foreign nationals working in specialty occupations, such as certain categories of engineers, to reside in the United States during their employment. The number of new visas approved each year may be limited and may restrict our ability to hire additional qualified technical employees. In addition, immigration policies are subject to change, and these policies have generally become more stringent since the events of September 11, 2001. Any additional significant changes in immigration laws, rules or regulations may further restrict our ability to retain or hire technical personnel.

If network infrastructure OEMs do not design our products into their equipment, we will be unable to sell those products. Moreover, a design win from a customer does not guarantee future sales to that customer.

Our products are not sold directly to the end-user but are components of other products. As a result, we rely on network infrastructure OEMs to select our products from among alternative offerings to be designed into their equipment. We may be unable to achieve these design wins. Without design wins from OEMs, we would be unable to sell our products. Once an OEM designs another supplier s semiconductors into one of its product platforms, it is more difficult for us to achieve future design wins with that OEM s product platform because changing suppliers involves significant cost, time, effort and risk. Achieving a design win with a customer does not ensure that we will receive significant revenues from that customer and we may be unable to convert design wins into actual sales. Even after a design win, the customer is not obligated to purchase our products and can choose at any time to stop using our products if, for example, its own products are not commercially successful.

Because of the lengthy sales cycles of many of our products, we may incur significant expenses before we generate any revenues related to those products.

Our customers may need six months or longer to test and evaluate our products and an additional six months or more to begin volume production of equipment that incorporates our products. These lengthy periods also increase the possibility that a customer may decide to cancel or change product plans, which could reduce or eliminate sales to that customer. As a result of this lengthy sales cycle, we may incur significant research and development and selling, general and administrative expenses before we generate any revenues from new products. We may never generate the anticipated revenues if our customers cancel or change their product plans.

Uncertainties involving the ordering and shipment of our products could adversely affect our business.

Our sales are typically made pursuant to individual purchase orders and we generally do not have long-term supply arrangements with our customers. Generally, our customers may cancel orders until 30 days prior to shipment. In addition, we sell a substantial portion of our products through distributors, some of whom have a right to return unsold products to us. Sales to distributors accounted for approximately 53% and 47%, respectively, of our net revenues for fiscal 2004 and the first quarter of fiscal 2005.

Because of the significant lead times for wafer fabrication and assembly and test services, we routinely purchase inventory based on estimates of end-market demand for our customers products, which may be subject to dramatic changes and is difficult to predict. This difficulty may be compounded when we sell to OEMs indirectly through distributors or contract manufacturers, or both, as our forecasts of demand are then based on estimates provided by multiple parties. In addition, our customers may change their inventory practices on short notice for any reason. The cancellation or deferral of product orders, the return of previously sold products or overproduction due to the failure of anticipated orders to materialize could result in our holding excess or obsolete inventory, which could result in write-downs of inventory.

We are subject to the risks of doing business internationally.

For fiscal 2004 and the first quarter of fiscal 2005, approximately 68% and 64%, respectively, of our net revenues were from customers located outside the United States, primarily in the Asia-Pacific region and Europe. In addition, we have design centers, and rely on suppliers, located outside the United States, including foundries and assembly and test service providers located in the Asia-Pacific region. Our international sales and operations are subject to a number of risks inherent in selling and operating abroad which could adversely affect our ability to increase or maintain our foreign sales. These include, but are not limited to, risks regarding:

- currency exchange rate fluctuations;
- local economic and political conditions;
- disruptions of capital and trading markets;
- restrictive governmental actions (such as restrictions on the transfer or repatriation of funds and trade protection measures, including export duties and quotas and customs duties and tariffs);
- changes in legal or regulatory requirements;
- difficulty in obtaining distribution and support;

- the laws and policies of the United States and other countries affecting trade, foreign investment and loans, and import or export licensing requirements;
- tax laws; and
- limitations on our ability under local laws to protect our intellectual property.

Because most of our international sales, other than sales to Japan (which are denominated principally in Japanese yen), are currently denominated in U.S. dollars, our products could become less competitive in international markets if the value of the U.S. dollar increases relative to foreign currencies.

From time to time we may enter into foreign currency forward exchange contracts to mitigate the risk of loss from currency exchange rate fluctuations for foreign currency commitments entered into in the ordinary course of business. We have not entered into foreign currency forward exchange contracts for other purposes. Our financial condition and results of operations could be adversely affected by currency fluctuations.

We may be subject to claims of infringement of third-party intellectual property rights or demands that we license third-party technology, which could result in significant expense and reduction in our intellectual property rights.

The semiconductor industry is characterized by vigorous protection and pursuit of intellectual property rights. From time to time, third parties have asserted and may in the future assert patent, copyright, trademark and other intellectual property rights to technologies that are important to our business and have demanded and may in the future demand that we license their patents and technology. Any litigation to determine the validity of allegations that our products infringe or may infringe these rights, including claims arising through our contractual indemnification of our customers, or claims challenging the validity of our patents, regardless of its merit or resolution, could be costly and divert the efforts and attention of our management and technical personnel. We may not prevail in litigation given the complex technical issues and inherent uncertainties in intellectual property litigation. If litigation results in an adverse ruling we could be required to:

- pay substantial damages for past, present and future use of the infringing technology;
- cease the manufacture, use or sale of infringing products;
- discontinue the use of infringing technology;
- expend significant resources to develop non-infringing technology;
- pay substantial damages to our customers or end users to discontinue use or replace infringing technology with non-infringing technology;
- license technology from the third party claiming infringement, which license may not be available on commercially reasonable terms, or at all; or
- relinquish intellectual property rights associated with one or more of our patent claims, if such claims are held invalid or otherwise unenforceable.

In connection with the distribution, we generally assumed responsibility for all contingent liabilities and litigation against Conexant or its subsidiaries related to the Mindspeed business.

If we are not successful in protecting our intellectual property rights, it may harm our ability to compete.

We rely primarily on patent, copyright, trademark and trade secret laws, as well as employee and third-party nondisclosure and confidentiality agreements and other methods, to protect our proprietary technologies and processes. At times we incorporate the intellectual property of our customers into our designs, and we have obligations with respect to the non-use and non-disclosure of their intellectual property. In the past, we have engaged in litigation to enforce our intellectual property rights, to protect our trade secrets or to determine the validity and scope of proprietary rights of others, including our customers. We may engage in future litigation on similar grounds, which may require us to expend significant resources and to divert the efforts and attention of our management from our business operations. In particular:

- the steps we take to prevent misappropriation or infringement of our intellectual property or the intellectual property of our customers may not be successful;
- any existing or future patents may be challenged, invalidated or circumvented; or
- the measures described above may not provide meaningful protection.

Despite the preventive measures and precautions that we take, a third party could copy or otherwise obtain and use our technology without authorization, develop similar technology independently or design around our patents. If any of our patents fails to protect our technology, it would make it easier for our competitors to offer similar products. In addition, effective patent, copyright, trademark and trade secret protection may be unavailable or limited in certain countries.

We may make business acquisitions or investments, which involve significant risk.

We may from time to time make acquisitions, enter into alliances or make investments in other businesses to complement our existing product offerings, augment our market coverage or enhance our technological capabilities. However, any such transactions could result in:

- issuances of equity securities dilutive to our existing stockholders;
- the incurrence of substantial debt and assumption of unknown liabilities;
- large one-time write-offs;
- amortization expenses related to intangible assets;
- the diversion of management s attention from other business concerns; and
- the potential loss of key employees from the acquired business.

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Integrating acquired organizations and their products and services may be expensive, time-consuming and a strain on our resources and our relationships with employees and customers, and ultimately may not be successful.

Additionally, in periods subsequent to an acquisition, we must evaluate goodwill and acquisition-related intangible assets for impairment. When such assets are found to be impaired, they will be written down to estimated fair value, with a charge against earnings.

Antidilution and other provisions in the warrant issued to Conexant may also adversely affect our stock price or our ability to raise additional financing.

In connection with the distribution of our common stock by Conexant to its stockholders, we issued to Conexant a warrant to purchase 30 million shares of our common stock at a price of $3.408 per share (subject to adjustment in certain circumstances), exercisable through June 27, 2013, representing approximately 19% of our outstanding common stock on a fully diluted basis. The warrant issued to Conexant contains antidilution provisions that provide for adjustment of the warrant s exercise price, and the number of shares issuable under the warrant, upon the occurrence of certain events. If we issue, or are deemed to have issued, shares of our common stock, or securities convertible into our common stock, at prices below the current market price of our common stock (as defined in the warrant) at the time of the issuance of such securities, the warrant s exercise price will be reduced and the number of shares issuable under the warrant will be increased. The amount of such adjustment, if any, will be determined pursuant to a formula specified in the warrant and will depend on the number of shares issued, the offering price and the current market price of our common stock at the time of the issuance of such securities. Adjustments to the warrant pursuant to these antidilution provisions may result in significant dilution to the interests of our existing stockholders and may adversely affect the market price of our common stock. The antidilution provisions may also limit our ability to obtain additional financing on terms favorable to us.

Moreover, we may not realize any cash proceeds from the exercise of any of the warrant held by Conexant. A holder of the warrant may opt for a cashless exercise of all or part of the warrant. In a cashless exercise, the holder of the warrant would make no cash payment to us, and would receive a number of shares of our common stock having an aggregate value equal to the excess of the then-current market price of the shares of our common stock issuable upon exercise of the warrant over the exercise price of the warrant. Such an issuance of common stock would be immediately dilutive to the interests of other stockholders.

Some of our directors and executive officers may have potential conflicts of interest because of their positions with Conexant or their ownership of Conexant common stock.

Some of our directors are Conexant directors, and our non-executive chairman of the board is chairman of the board and chief executive officer of Conexant. Several of our directors and executive officers own Conexant common stock and hold options to purchase Conexant common stock. Service on our board of directors and as a director or officer of Conexant, or ownership of Conexant common stock by our directors and executive officers, could create, or appear to create, potential conflicts of interest when directors and officers are faced with decisions that could have different implications for us and Conexant. For example, potential conflicts could arise in connection with decisions involving the warrant to purchase our common stock issued to Conexant, or other agreements entered into between us and Conexant in connection with the distribution.

Our restated certificate of incorporation includes provisions relating to the allocation of business opportunities that may be suitable for both us and Conexant based on the relationship to the companies of the individual to whom the opportunity is presented and the method by which it was presented and also includes provisions limiting challenges to the enforceability of contracts between us and Conexant.

We may have difficulty resolving any potential conflicts of interest with Conexant, and even if we do, the resolution may be less favorable than if we were dealing with an entirely unrelated third party.

Risks Related to the Notes

The notes do not contain financial covenants and there is limited protection in the event of a change of control.

The indenture under which we issued the notes does not contain any financial covenants. In particular, the indenture does not contain covenants that limit our ability to incur indebtedness, to pay dividends or to make distributions on or to redeem our capital stock and, therefore, protect you in the event of a highly leveraged transaction or other similar transaction. In addition, the requirement that we offer to repurchase the notes upon a change of control is limited to the transactions specified in clauses (1), (2), (3) and (4) of the definition of a fundamental change under Description of the Notes Repurchase at Option of Holders Upon a Fundamental Change. Accordingly, we could enter into certain transactions, such as acquisitions, refinancings or recapitalizations, that could affect our capital structure and the value of our common stock but would not constitute a fundamental change.

Our ability to repurchase the notes with cash upon a fundamental change may be limited.

In certain circumstances involving a fundamental change, you may require us to repurchase all or a portion of your notes to the extent set forth in this prospectus. If a fundamental change were to occur, we cannot assure you that, if required, we will have sufficient cash or other financial resources at that time or would be able to arrange financing to pay the repurchase price of the notes in cash. Our ability to repurchase the notes in that event may be limited by law, by the terms of other agreements relating to our senior debt and by indebtedness and agreements that we may enter into in the future. If a fundamental change occurs at a time when we are prohibited from repurchasing or redeeming the notes, we could seek the consent of lenders to repurchase the notes or could attempt to refinance the borrowings that contain this prohibition. If we do not obtain a consent or refinance these borrowings, we could remain prohibited from repurchasing the notes. Our failure to repurchase the notes would constitute an event of default under the indenture under which we issued the notes, which might also constitute a default under the terms of our other indebtedness at that time.

The adjustment to the conversion price or payment of an additional cash amount following the occurrence of certain types of fundamental change may not adequately compensate you for the lost option time value of your notes as a result of such fundamental change and may not be enforceable.

If certain types of fundamental change occur on or prior to maturity of the notes, we will adjust the conversion price of the notes to increase the number of shares issuable upon conversion or make an additional cash payment. The number of additional shares to be issued (or the amount of any cash payment) will be determined based on the date on which the fundamental change becomes effective and the price paid per share of our common stock in the fundamental change as described under Description of the Notes Conversion Rights Adjustment to Conversion Price Upon Certain Fundamental Changes. While this adjustment or payment is designed to compensate you for the lost option time value of your notes as a result of certain types of fundamental changes, the adjustment or payment is only an approximation of such lost value and may not adequately compensate you for such loss. In addition, if the price paid per share of our common stock in the fundamental change is less than $2.30 or more than $10.00 (subject to adjustment), there will be no such adjustment or payment. Furthermore, our obligation to make the adjustment could be considered a penalty, in which case the enforceability thereof would be subject to general principles of reasonableness of economic remedies.

Your right to fully convert notes may be limited.

You may not be able to fully convert your notes because you may only convert notes to the extent that you and any group (which expression has the same meaning as that used for purposes of Section 13 under the Exchange Act) of which you are a member will not beneficially own, immediately following such conversion, outstanding shares constituting more than 14.9% of our common stock.

An active trading market may not develop for the notes, and, if such a market is not developed or sustained, the trading price of the notes could decline.

We initially issued the notes to the initial purchaser in a private placement in December 2004. Since their initial issuance, the notes have been eligible for trading in the PORTAL Market of the National Association of Securities

Dealers, Inc. However, the notes resold pursuant to the registration statement of which this prospectus is a part will no longer be eligible for trading in the PORTAL Market, and we do not intend to list them on any other automated quotation system or any securities exchange. At the time of the initial issuance of the notes, the initial purchaser of the notes advised us that it intended to make a market in the notes; however, it is not obligated to do so and may discontinue market making at any time without notice. In addition, market making activity by the initial purchaser is subject to the limits imposed by the Securities Act and the Exchange Act. As a result, a market for the notes may not

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develop or, if one does develop, it may not be maintained.