

NETLIST INC  
Form 10-Q  
November 06, 2007

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549



# FORM 10-Q



(Mark One)

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

For the quarterly period ended September 29, 2007

or

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

For the transition period from            to

Commission file number 001-33170







**NETLIST, INC.**

(Exact name of registrant as specified in its charter)



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**Delaware**  
State or other jurisdiction of  
incorporation or organization

**95-4812784**  
(I.R.S. Employer  
Identification No.)

**51 Discovery, Irvine, CA 92618**

(Address of principal executive offices) (Zip Code)

**(949) 435-0025**

**(Registrant's telephone number, including area code)**



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

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

Large Accelerated Filer  Accelerated Filer  Non-accelerated filer

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

The number of shares outstanding of each of the registrant's classes of common stock as of the latest practicable date:

Common Stock, par value \$0.001 per share



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19,717,646 shares outstanding at October 31, 2007











**NETLIST, INC. AND SUBSIDIARIES**

**QUARTERLY REPORT ON FORM 10-Q**



**FOR THE THREE AND NINE MONTHS ENDED SEPTEMBER 29, 2007**



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**PART I. FINANCIAL INFORMATION**



**Item 1. Financial Statements**





**NETLIST, INC. AND SUBSIDIARIES**

**Unaudited Condensed Consolidated Balance Sheets**

(in thousands)



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	September 29, 2007	December 30, 2006
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 6,450	\$ 30,975
Investments in marketable securities	16,079	5,267
Accounts receivable, net	16,338	23,703
Inventories	5,958	19,473
Deferred taxes	4,970	1,054
Prepaid expenses and other current assets	447	988
Total current assets	50,242	81,460
Property and equipment, net	8,071	3,830
Deferred taxes	1,237	576
Long-term investments in marketable securities	8,103	1,502
Other assets	690	326
Total assets	\$ 68,343	\$ 87,694
<b>LIABILITIES AND STOCKHOLDERS EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 9,221	\$ 11,680
Revolving line of credit	10,280	19,238
Current portion of long-term debt	829	1,033
Current portion of deferred gain on sale and leaseback transaction	118	118
Income taxes payable		552
Accrued expenses and other current liabilities	2,739	3,255
Total current liabilities	23,187	35,876
Long-term debt, net of current portion	939	1,230
Deferred gain on sale and leaseback transaction, net of current portion	255	344
Total liabilities	24,381	37,450
Commitments and contingencies		
Stockholders' equity:		
Common stock	20	20
Additional paid-in capital	67,653	66,557
Note receivable from stockholder		(1)
Accumulated deficit	(23,729)	(16,332)
Accumulated other comprehensive income	18	
Total stockholders' equity	43,962	50,244
Total liabilities and stockholders' equity	\$ 68,343	\$ 87,694

See accompanying notes.

**NETLIST, INC. AND SUBSIDIARIES**

**Unaudited Condensed Consolidated Statements of Operations**

(in thousands, except per share amounts)





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	Three Months Ended		Nine Months Ended	
	September 29, 2007	September 30, 2006	September 29, 2007	September 30, 2006
Net sales	\$ 27,194	\$ 43,505	\$ 77,543	\$ 109,439
Cost of sales(1)	23,027	36,524	73,850	93,971
Gross profit	4,167	6,981	3,693	15,468
Operating expenses:				
Research and development(1)	1,256	874	3,801	2,388
Selling, general and administrative(1)	4,040	2,583	11,589	6,494
Total operating expenses	5,296	3,457	15,390	8,882
Operating income (loss)	(1,129)	3,524	(11,697)	6,586
Other income (expense):				
Interest income (expense), net	142	(565)	256	(1,514)
Other expense, net	(33)	(87)	(28)	(82)
Total other income (expense), net	109	(652)	228	(1,596)
Income (loss) before provision (benefit) for income taxes	(1,020)	2,872	(11,469)	4,990
Provision (benefit) for income taxes	(363)	1,084	(4,227)	1,896
Net income (loss)	\$ (657)	\$ 1,788	\$ (7,242)	\$ 3,094
Net income (loss) per common share:				
Basic	\$ (0.03)	\$ 0.16	\$ (0.37)	\$ 0.28
Diluted	\$ (0.03)	\$ 0.12	\$ (0.37)	\$ 0.21
Weighted-average common shares outstanding:				
Basic	19,689	11,235	19,655	11,072
Diluted	19,689	15,401	19,655	15,248

(1) Amounts include stock-based compensation expense as follows:

Cost of sales	\$ 53	\$ 46	\$ 161	\$ 60
Research and development	40	49	105	71
Selling, general and administrative	219	205	668	316

See accompanying notes.









**NETLIST, INC. AND SUBSIDIARIES**

**Unaudited Condensed Consolidated Statements of Cash Flows**



(in thousands)



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	Nine Months Ended	
	September 29, 2007	September 30, 2006
<b>Cash flows from operating activities:</b>		
Net income (loss)	\$ (7,242)	\$ 3,094
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:		
Depreciation and amortization	1,013	705
Amortization of deferred gain on sale and leaseback transaction	(89)	(89)
Deferred income taxes	(4,577)	(54)
Impairment of long-lived asset	257	
Loss on disposal of assets	68	15
Loss on inventory adjustments	5,063	
Facility relocation charge	150	
Stock-based compensation	934	447
Amortization of debt discount		50
Changes in operating assets and liabilities:		
Accounts receivable	7,365	(7,756)
Inventories	8,452	(8,038)
Income taxes receivable		259
Prepaid expenses and other current assets	541	(340)
Other assets	(364)	(169)
Accounts payable	(2,442)	8,700
Income taxes payable	(706)	588
Accrued expenses and other current liabilities	(666)	1,155
Net cash provided by (used in) operating activities	7,757	(1,433)
Cash flows from investing activities:		
Acquisition of property and equipment	(5,530)	(959)
Proceeds from sale of equipment		45
Repayment of note receivable from stockholder	1	
Purchase of investments in marketable securities	(50,944)	
Proceeds from maturities of investments in marketable securities	33,550	
Net cash used in investing activities	(22,923)	(914)
Cash flows from financing activities:		
Borrowings on lines of credit	86,740	106,972
Payments on lines of credit	(95,698)	(105,264)
Borrowings on debt	290	2,000
Payments on debt	(852)	(676)
Repayment of convertible notes		(950)
Proceeds from exercise of stock options and warrants	161	110
Tax benefit from exercise of warrants		203
Net cash provided by (used in) financing activities	(9,359)	2,395
Increase (decrease) in cash and cash equivalents	(24,525)	48
Cash and cash equivalents at beginning of period	30,975	953
Cash and cash equivalents at end of period	\$ 6,450	\$ 1,001
Supplemental disclosure of non-cash investing activities:		
Purchase of equipment through capitalized lease obligations	\$ 67	\$ 113

See accompanying notes.

**NETLIST, INC. AND SUBSIDIARIES**

**NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**



September 29, 2007





**NOTE 1 DESCRIPTION OF BUSINESS**



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Netlist, Inc. (the Company or Netlist ) was incorporated on June 12, 2000 in Delaware. Netlist designs and manufactures high performance memory subsystems for the server, high performance computing and communications markets. The Company's solutions are targeted at applications where memory plays a key role in meeting system performance requirements.

### **NOTE 2 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**



*Basis of Presentation*



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The interim unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America for interim financial information and with the instructions to Securities and Exchange Commission ( SEC ) Form 10-Q and Article 10 of SEC Regulation S-X. These financial statements do not include all of the information and footnotes required by accounting principles generally accepted in the United States of America for complete financial statements. Therefore, these interim unaudited condensed consolidated financial statements should be read in conjunction with the Company s audited consolidated financial statements and notes thereto for the year ended December 30, 2006, included in the Company s Annual Report on Form 10-K filed with the SEC on February 28, 2007.

The condensed consolidated financial statements included herein are unaudited; however, they contain all normal recurring accruals and adjustments that, in the opinion of the Company s management, are necessary to present fairly the consolidated financial position of the Company and its wholly owned subsidiaries as of September 29, 2007 and December 30, 2006, the consolidated results of its operations for the three and nine months ended September 29, 2007 and September 30, 2006, and the consolidated cash flows for the nine months ended September 29, 2007 and September 30, 2006. All intercompany balances and transactions have been eliminated in consolidation. The results of operations for the three and nine months ended September 29, 2007 are not necessarily indicative of the results to be expected for the full year or any future interim periods.

*Fiscal Year*





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Effective January 1, 2003, the Company changed its fiscal year from a calendar year to a 52/53-week fiscal year ending on the Saturday closest to December 31. Each of the Company's first three quarters in a fiscal year end on the Saturday closest to March 31, June 30 and September 30, respectively.

### *Use of Estimates*



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The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of the assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting period. Significant estimates made by management include, among others, provisions for uncollectible receivables and sales returns, warranty liabilities, valuation of inventories, recoverability of long-lived assets, realization of deferred tax assets and stock-based compensation expense. Actual results could differ from these estimates.

### *Revenue Recognition*



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The Company's revenues primarily consist of product sales of high performance memory subsystems to original equipment manufacturers ( OEMs ). Revenues also include sales of excess component inventories to distributors and other users of memory integrated circuits ( ICs ) totaling approximately \$0.4 million and \$1.8 million, respectively, for the three and nine months ended September 29, 2007 and approximately \$2.7 million and \$10.2 million, respectively, for the three and nine months ended September 30, 2006.

The Company recognizes revenues in accordance with the SEC's Staff Accounting Bulletin ( SAB ) No. 104, *Revenue Recognition* ( SAB No. 104 ). In accordance with the provisions of SAB No. 104, the Company recognizes revenues when

there is persuasive evidence of an arrangement, product delivery and acceptance have occurred, the sales price is fixed or determinable, and collectibility of the resulting receivable is reasonably assured.

The Company generally uses customer purchase orders and/or contracts as evidence of an arrangement. Delivery occurs when goods are shipped for customers with FOB Shipping Point terms and upon receipt for customers with FOB Destination terms, at which time title and risk of loss transfer to the customer. The Company assesses whether the sales price is fixed or determinable based on the payment terms associated with the transaction and whether the sales price is subject to refund. Customers are generally allowed limited rights of return for up to 30 days, except for sales of excess inventories, which contain no right-of-return privileges. Estimated returns are provided for at the time of sale based on historical experience or specific identification of an event necessitating a reserve. Returns from customers have not been material in any period as the Company's principal customers have adopted build-to-order manufacturing models or just-in-time management processes. The Company offers a standard product warranty to its customers and has no other post-shipment obligations. The Company assesses collectibility based on the creditworthiness of the customer as determined by credit checks and evaluations, as well as the customer's payment history.

A portion of the Company's international shipments are made to third-party inventory warehouses, or hubs, and the Company recognizes revenue when the inventory is pulled from the hub for use in production by the customer.

All amounts billed to customers related to shipping and handling are classified as revenues, while all costs incurred by the Company for shipping and handling are classified as cost of sales.

#### *Inventories*





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Inventories are valued at the lower of cost or net realizable value. Cost is determined on an average cost basis which approximates actual cost on a first-in, first-out basis and includes raw materials, labor and manufacturing overhead. At each balance sheet date, the Company evaluates its ending inventories for excess quantities and obsolescence. This evaluation includes an analysis of sales levels by product type. Among other factors, the Company considers historical demand and forecasted demand in relation to the inventory on hand, competitiveness of product offerings, market conditions and product life cycles when determining obsolescence and net realizable value. Provisions are made to reduce excess or obsolete inventories to their estimated net realizable values. Once established, write-downs are considered permanent adjustments to the cost basis of the excess or obsolete inventories.

### *Warranties*



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The Company offers warranties generally ranging from one to three years to its customers, other than on sales of excess inventory, depending on the product and negotiated terms of purchase agreements. Such warranties require the Company to repair or replace defective product returned to the Company during such warranty period at no cost to the customer. An estimate by the Company for warranty-related costs is recorded by the Company at the time of sale based on its historical and estimated product return rates and expected repair or replacement costs. Such costs have historically been consistent between periods and in-line with management's expectations. The Company's warranty liability is included as a component of accrued expenses and other current liabilities in the accompanying unaudited condensed consolidated balance sheets.

The following table summarizes the activity related to the warranty liability for the nine months ended September 29, 2007 (in thousands):

Beginning balance, December 30, 2006	\$	298
Charged to costs and expenses		173
Usage		(114)
Ending balance, September 29, 2007	\$	357

### *Stock-Based Compensation*



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The Company accounts for equity issuances to non-employees in accordance with Statement of Financial Accounting Standards ( SFAS ) No. 123, *Accounting for Stock-Based Compensation* ( SFAS No. 123 ), and Emerging Issues Task Force ( EITF ) No. 96-18, *Accounting for Equity Instruments that are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods and Services*. All transactions in which goods or services are the consideration received for the issuance of equity instruments are accounted for based on the fair value of the consideration received or the fair value of the equity instrument issued, whichever is more reliably measurable. The measurement date used to determine the fair value of the equity instrument issued is the earlier of the date on which the third-party performance is complete or the date on which it is probable that performance will occur.

In accordance with SFAS No. 123(R), *Share-Based Payment* ( SFAS No. 123(R) ), employee and director stock-based compensation expense recognized during the period is based on the value of the portion of share-based payment awards that is ultimately expected to vest during the period. Stock-based compensation expense recognized in the accompanying unaudited condensed consolidated statements of operations includes compensation expense for share-based payment awards granted prior to, but not yet vested as of December 31, 2005 based on the grant date fair value estimated in accordance with the pro forma provisions of SFAS No. 123 and compensation expense for the share-based payment awards granted subsequent to December 31, 2005 based on the grant date fair value estimated in accordance with the provisions of SFAS No. 123(R). Given that stock-based compensation expense recognized in the unaudited condensed consolidated statements of operations is based on awards ultimately expected to vest, it has been reduced for estimated forfeitures. SFAS No. 123(R) requires forfeitures to be estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates.

The fair value of stock-based awards to employees and directors is calculated using the Black-Scholes option pricing model. The Black-Scholes model requires subjective assumptions regarding future stock price volatility and expected time to exercise, along with assumptions about the risk-free interest rate and expected dividends, which affect the estimated fair values of the Company's stock-based awards. The expected term of options granted is derived from historical data on employee exercises and post-vesting employment termination behavior. The expected volatility is based on the historical volatilities of the common stock of comparable publicly traded companies based on the Company's belief that it currently has limited historical data regarding the volatility of its stock price on which to base a meaningful estimate of expected volatility. The risk-free rate selected to value any particular grant is based on the U.S. Treasury rate that corresponds to the expected term of the grant effective as of the date of the grant. The expected dividends assumption is based on the Company's history and expectation of dividend payouts. These factors could change in the future, affecting the determination of stock-based compensation expense in future periods.

*Net Income (Loss) Per Share*



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Basic net income (loss) per share is calculated by dividing net income (loss) by the weighted-average common shares outstanding during the period. Diluted net income (loss) per share is calculated by dividing the net income (loss) by the weighted-average common shares and dilutive potential common shares outstanding during the period. Dilutive potential common shares consist of dilutive shares issuable upon the exercise of outstanding stock options and warrants computed using the treasury stock method. During fiscal 2006 and prior years, in addition to outstanding stock options and warrants, dilutive potential common shares also consisted of shares issuable upon the conversion of convertible notes payable and convertible preferred stock using the if-converted method.

### **NOTE 3 SUPPLEMENTAL FINANCIAL INFORMATION**





*Inventories*

Inventories consist of the following (in thousands):

	<b>September 29, 2007</b>	<b>December 30, 2006</b>
Raw materials	\$ 3,001	\$ 10,513
Work in process	1,889	3,343
Finished goods	1,068	5,617
	\$ 5,958	\$ 19,473

During the nine months ended September 29, 2007, the Company incurred a loss of approximately \$5.1 million due to slow moving and lower-of-cost-or-market-value inventory adjustments.

*Comprehensive Income (Loss)*



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The components of comprehensive income (loss), net of taxes, consist of the following (in thousands):

	Three Months Ended		Nine Months Ended	
	September 29, 2007	September 30, 2006	September 29, 2007	September 30, 2006
Net income (loss)	\$ (657)	\$ 1,788	\$ (7,242)	\$ 3,094
Other comprehensive income:				
Change in net unrealized gain on investments	25		18	
Total comprehensive income (loss)	\$ (632)	\$ 1,788	\$ (7,224)	\$ 3,094

Accumulated other comprehensive income reflected on the unaudited condensed consolidated balance sheet at September 29, 2007 represents accumulated net unrealized gains on investments in marketable securities.

### *Computation of Net Income (Loss) Per Share*

The following table sets forth the computation of basic and diluted net income (loss) per share, including the reconciliation of the numerator and denominator used in the calculation of basic and diluted net income (loss) per share (in thousands, except per share data):

	Three Months Ended		Nine Months Ended	
	September 29, 2007	September 30, 2006	September 29, 2007	September 30, 2006
<b>Basic net income (loss) per share:</b>				
Numerator: Net income (loss)	\$ (657)	\$ 1,788	\$ (7,242)	\$ 3,094
Denominator: Weighted-average common shares outstanding, basic	19,689	11,235	19,655	11,072
Basic net income (loss) per share	\$ (0.03)	\$ 0.16	\$ (0.37)	\$ 0.28
<b>Diluted net income (loss) per share:</b>				
Numerator: Net income (loss)	\$ (657)	\$ 1,788	\$ (7,242)	\$ 3,094
Convertible notes interest expense (net of tax)		20		60
Numerator: Adjusted net income (loss) available to common stockholders	\$ (657)	\$ 1,808	\$ (7,242)	\$ 3,154
Weighted-average common shares outstanding, basic	19,689	11,235	19,655	11,072
Effect of dilutive securities:				
Stock options and warrants		2,089		2,099
Convertible preferred stock		1,000		1,000
Convertible notes payable		1,077		1,077
Denominator: Weighted-average common shares outstanding, diluted	19,689	15,401	19,655	15,248
Diluted net income (loss) per share	\$ (0.03)	\$ 0.12	\$ (0.37)	\$ 0.21

All potentially dilutive common share equivalents of approximately 1.1 million and 1.5 million shares have been excluded from the diluted net loss per share calculations for the three and nine months ended September 29, 2007, respectively, as their effect would be anti-dilutive for the periods then ended.

*Major Customers*

The Company's product sales have historically been concentrated in a small number of customers. The following table sets forth sales to customers comprising 10% or more of the Company's total revenues for the periods presented:

Customer:	Three Months Ended		Nine Months Ended	
	September 29, 2007	September 30, 2006	September 29, 2007	September 30, 2006
A	75%	45%	53%	37%
B	%	36%	%	41%
C	%	%	21%	%

The Company's accounts receivable are concentrated with two customers at September 29, 2007, representing approximately 70% and 10% of aggregate gross receivables. At December 30, 2006, accounts receivable are concentrated with four customers representing approximately 32%, 19%, 14% and 13% of aggregate gross receivables. A significant reduction in sales to, or the ability to collect receivables from, a significant customer could have a material adverse impact on the Company.

**NOTE 4 CREDIT AGREEMENT**



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In April 2007, the Company executed the Seventh Amendment to the Amended and Restated Credit and Security Agreement (the Seventh Amendment ). The Seventh Amendment, which was effective as of March 21, 2007, allows the Company to, at its election, increase its line of credit from \$25 million, in \$2.5 million increments, up to a total of \$40 million at the prime rate of interest, which was 7.75% at September 29, 2007 and 8.25% at December 30, 2006. In addition, the Seventh Amendment (i) extends the maturity date of the line of credit to July 31, 2009, (ii) establishes an equipment advance line of \$3 million, (iii) increases the sublimit for letters of credit to \$5 million, (iv) sets an inventory sublimit of \$7 million, with the ability to increase to \$10 million if certain financial targets are met, (v) provides for the reduction in interest rates on borrowings if certain borrowing amounts and financial performance targets are met and (vi) revised certain financial covenants.

In July 2007, the Company executed the Eighth Amendment to the Amended and Restated Credit and Security Agreement (the Eighth Amendment ), which was effective as of June 29, 2007. Among other things, the Eighth Amendment added certain minimum profitability financial covenant requirements. As of September 29, 2007, the Company was in compliance with all financial covenants.

Borrowings on the line of credit are limited to 85% of eligible accounts receivable, plus the least of (i) a percentage of eligible inventory determined from time to time by the Company's bank, (ii) 80% of the orderly liquidation value, as defined, of eligible inventories, and (iii) \$7 million. Interest is payable monthly, at the Company's option, either at prime rate plus 0.50% or LIBOR plus 3%. The interest rate was reduced to the prime rate or LIBOR plus 2.50% in December 2006 concurrent with the Company's raise of capital through an initial public offering.

Interest on the equipment advances is payable monthly, at the Company's option, either at the prime rate or LIBOR plus 2.50%. Interest only payments were required on the equipment advances through January 31, 2007. Commencing February 1, 2007, the Company is required to repay the equipment advances in 42 equal monthly installments. The outstanding balance on this loan was approximately \$1.1 million and \$1.1 million at September 29, 2007 and December 30, 2006, respectively (see Note 5).

Any borrowings on the line of credit are collateralized by a general first priority lien against all Company assets, both tangible and intangible.



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The following table presents details of interest expense related to borrowings on the line of credit, along with certain other applicable information (in thousands):

	Three Months Ended		Nine Months Ended	
	September 29, 2007	September 30, 2006	September 29, 2007	September 30, 2006
Interest expense	\$ 163	\$ 290	\$ 712	\$ 847

	September 29, 2007	December 30, 2006
Outstanding borrowings on the line of credit	\$ 10,280	\$ 19,238
Borrowing availability under the line of credit	\$ 5,460	\$ 4,872

**NOTE 5 LONG-TERM DEBT**



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Long-term debt consists of the following (in thousands):

	September 29, 2007		December 30, 2006
Obligations under capital leases	\$ 541	\$	802
Equipment note payable to bank (see Note 4)	1,137		1,072
Notes payable to others	90		389
	1,768		2,263
Less current portion	(829)		(1,033)
	\$ 939	\$	1,230

*Notes Payable to Others*



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In November 2002, the Company entered into a \$100,000 unsecured loan agreement with an individual, bearing interest at 7% payable annually, principal due, as amended, in June 2006. In January 2004, \$4,000 of the principal amount was used to exercise certain stock options. The balance of this note was \$96,000 at December 30, 2006, which, along with accrued interest, was repaid in full in January 2007.

In January 2003, the Company entered into a \$300,000 loan agreement with a financing company, collateralized by assets owned by an employee related to the majority stockholder. This note bears interest at 14% per annum and matures in January 2009. Principal and interest payments of approximately \$6,000 are due and payable monthly. The balance of this note was approximately \$90,000 and \$133,000 at September 29, 2007 and December 30, 2006, respectively.

In August 2005, the Company entered into an agreement with a financing company in connection with financing certain insurance policies. The financing agreement required monthly principal and interest payments of approximately \$25,000 through maturity on June 30, 2006. Interest was payable at 8.55% per annum. The outstanding principal balance on this financing was \$142,000 at December 31, 2005. During the year ended December 30, 2006, the balance was repaid in full. In August 2006, the Company entered into an agreement with a financing company to finance its insurance policies. The financing agreement required monthly principal and interest payments of approximately \$32,000 through maturity on June 30, 2007, with interest payable at 9.45% per annum. The principal balance was repaid in full as of June 30, 2007. The outstanding principal balance at December 30, 2006 was approximately \$160,000.

### *Capital Leases*



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The Company has acquired certain manufacturing and computer equipment through the use of various capital leases. As of September 29, 2007, these leases require aggregate monthly payments of approximately \$36,000 and mature at various dates through May 2011. The interest rates on these leases vary between 4.3% and 9.4%.

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Interest expense related to long-term debt is presented in the following table (in thousands):

	Three Months Ended		Nine Months Ended	
	September 29, 2007	September 30, 2006	September 29, 2007	September 30, 2006
Interest expense	\$ 58	\$ 42	\$ 166	\$ 145

**NOTE 6 INCOME TAXES**





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The following table sets forth the Company's provision (benefit) for income taxes, along with the corresponding effective tax rates (in thousands, except percentages):

	Three Months Ended		Nine Months Ended	
	September 29, 2007	September 30, 2006	September 29, 2007	September 30, 2006
Provision (benefit) for income taxes	\$ (363)	\$ 1,084	\$ (4,227)	\$ 1,896
Effective tax rate	(36)%	38%	(37)%	38%

The Company adopted FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes* (FIN 48), on December 31, 2006, the first day of fiscal 2007. As a result of the implementation of FIN 48, the Company recorded an increase in the net liability for unrecognized tax positions of approximately \$0.2 million, which was recorded as an adjustment to the beginning balance of accumulated deficit as of December 31, 2006. Including the increase in the net liability, at December 31, 2006 the Company had approximately \$0.5 million of total unrecognized tax benefits. Included in this balance were approximately \$0.5 million of tax positions that, if recognized, would affect the effective tax rate.

The Company's continuing practice is to recognize accrued interest and penalties related to unrecognized tax benefits as a component of tax expense. This policy did not change as a result of the adoption of FIN 48. The Company had approximately \$30,000 accrued for interest and \$0 accrued for penalties at December 31, 2006.

The Company files tax returns with federal and state jurisdictions. The Company is no longer subject to IRS or state examinations prior to fiscal 2003, although certain carryforward attributes that were generated prior to fiscal 2003 may still be adjusted by the IRS if they either have been or will be used in a future period.

### NOTE 7 COMMITMENTS AND CONTINGENCIES







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Beginning in May 2007, the Company and certain of its officers and directors (the Individuals ) were named as defendants in four purported class action shareholder complaints, two of which were filed in the U.S. District Court for the Southern District of New York (Tran v. Netlist, Inc., Case No. 07 CV 3754; Benjamin v. Netlist, Inc., Case No. 07 CV5518) (the New York Actions ), and two of which were filed in the U.S. District Court for the Central District of California (Belodoff v. Netlist, Inc., Case No. SACV07-677 DOC (MLGx); Swofford v. Netlist, Inc., Case No. CV07-04006 PSG (FMOx) (the California Actions ). These purported class action lawsuits were filed on behalf of persons and entities who purchased or otherwise acquired the Company s common stock pursuant or traceable to the Company s November 30, 2006 Initial Public Offering (the IPO ). The complaints allege that the Registration Statement and Prospectus issued by the Company in connection with the IPO contained untrue statements of material fact or omissions of material fact in violation of Sections 11, 12(a)(2) and 15 of Securities Act of 1933. The actions seek unspecified monetary damages and other relief.

On September 5, 2007, the California Actions were consolidated by the U.S. District Court for the Central District of California. At that time, the court also designated Belodoff v. Netlist, Inc., Case No. SACV07-677 DOC (MLGx), as the lead case in this matter and appointed Iron Workers Local No. 25 Pension Fund to serve as lead plaintiff.

On September 12, 2007, the New York Actions were consolidated by the U.S. District Court for the Southern District of New York and Iron Workers Local No. 25 Pension Fund was again appointed to serve as lead plaintiff. The court also ordered, at the request of the parties, that the consolidated New York action be transferred to the U.S. District Court for the Central District of California and consolidated into the lead case there.

Now that all four actions have been consolidated into one lead action in the Central District of California, and pursuant to a previous court order, the lead plaintiff has sixty days from the order appointing lead plaintiff to file a consolidated complaint. Once the consolidated complaint is filed and served on the defendants, defendants will have sixty days to respond. The Company believes these lawsuits lack merit and intends to vigorously defend against them. However, it is impossible at this time to assess whether or not the outcome of these proceedings will or will not have a material adverse effect on the Company. The Company has not recorded any accrual for a contingent liability associated with this legal proceeding based on its belief that a liability, while possible, is not probable and any range of potential future charge cannot be reasonably estimated at this time.

*California Derivative Action*





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In August 2007, a derivative lawsuit was filed in California Superior Court for County of Orange - Smith v. Hong, Case No. 07CC01359 - against certain of the Company's current officers and directors. This action contains factual allegations similar to those of the federal lawsuit mentioned above, but the plaintiff in this case asserts claims, on behalf of Netlist, for violations of California's insider trading laws, breaches of fiduciary duty, abuse of control, gross mismanagement, waste of corporate assets, and unjust enrichment. The plaintiff in this action seeks unspecified damages, equitable and/or injunctive relief and disgorgement of all profits, benefits and other compensation obtained by the defendants. As this action contains factual allegations similar to those averred in the federal securities class action, the parties have agreed to temporarily stay this action pending a final judicial determination on the Defendants' anticipated motions to dismiss in the federal action. Accordingly, no response by any Defendant in this action is required at this time. The Company believes that this lawsuit lacks merit and intends to vigorously defend against it. However, it is impossible at this time to assess whether or not the outcome of this proceeding will or will not have a material adverse effect on the Company. The Company has not recorded any accrual for a contingent liability associated with this legal proceeding based on its belief that a liability, while possible, is not probable and any range of potential future charge cannot be reasonably.

### *Other Obligations*

During its normal course of business, the Company has made certain indemnities, commitments and guarantees under which it may be required to make payments in relation to certain transactions. These include (i) intellectual property indemnities to the Company's customers and licensees in connection with the use, sales and/or license of Company products; (ii) indemnities to vendors and service providers pertaining to claims based on the negligence or willful misconduct of the Company; (iii) indemnities involving the accuracy of representations and warranties in certain contracts; (iv) indemnities to directors and officers of the Company to the maximum extent permitted under the laws of the State of Delaware; and (v) certain real estate leases, under which the Company may be required to indemnify property owners for environmental and other liabilities, and other claims arising from the Company's use of the applicable premises. The duration of these indemnities, commitments and guarantees varies and, in certain cases, may be indefinite. The majority of these indemnities, commitments and guarantees do not provide for any limitation of the maximum potential for future payments the Company could be obligated to make. Historically, the Company has not been obligated to make significant payments for these obligations, and no liabilities have been recorded for these indemnities, commitments and guarantees in the accompanying unaudited condensed consolidated balance sheets.

In April 2007, the Company entered into a four year facility lease agreement for approximately 28,700 rentable square feet in Irvine, California. The Company began its occupation of the new facility in July 2007, which allows for the consolidation of its headquarters and domestic manufacturing operations into a single location. The total base rent for the term of the lease is approximately \$1.7 million, with monthly rent payments ranging from approximately \$33,000 to \$37,000 during the term of the lease.

### **NOTE 8 RELATED PARTY TRANSACTIONS**



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In February 2003, the Company loaned an employee \$19,900 to exercise a portion of his then-vested common stock options. This full recourse note bore interest at a rate of 7% payable annually, and was due on February 17, 2008. In December 2006, the employee repaid \$23,000 of the note, and thus as of December 30, 2006, the remaining amount outstanding was approximately \$1,000, which was recorded as a reduction of stockholders' equity in the consolidated balance sheet. In May 2007, the remaining \$1,000 was repaid to the Company in full.

### **NOTE 9 IMPAIRMENT OF LONG-LIVED ASSET**



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During fiscal 2006, the Company acquired certain laser soldering equipment (the Equipment ) primarily intended for use in connection with a new product technology to be developed for a customer. In the first quarter of 2007, management

determined that certain alternative equipment and related design processes were a more appropriate complement to the development of this technology. As a result, the Company determined the extent to which it expected to utilize the Equipment in the future had decreased from its original estimates, and thus the Company concluded that the carrying value of the Equipment of approximately \$0.3 million was no longer recoverable and was in fact impaired. In accordance with SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets*, during the first quarter of 2007, the Company estimated the current fair value of the Equipment primarily using market prices for comparable machinery and equipment. As a result of its analysis, the Company recorded an impairment charge of approximately \$0.1 million to write down the carrying value of the Equipment to its estimated fair value during the three months ended March 31, 2007. Subsequently, during the quarter ended June 30, 2007, management determined that, due primarily to the highly customized nature of the Equipment, the likelihood of alternative uses or disposal through a sale were significantly remote, and therefore recorded an additional charge of approximately \$0.2 million to write-off the remaining carrying value of the Equipment as of June 30, 2007. These charges are included as a component of research and development expense in the accompanying unaudited condensed consolidated statement of operations for the nine months ended September 29, 2007.

**NOTE 10 FACILITY RELOCATION COSTS**



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As a result the relocation of its new domestic headquarters and manufacturing facility during the third quarter of 2007, in September 2007 the Company vacated its previous manufacturing facility. The Company is currently obligated under a noncancellable operating lease of this facility through November 2010, and has thus recorded a one-time charge and related liability of approximately \$150,000, which is equal to the estimated fair value of the net remaining lease payments in accordance with SFAS No. 146, *Accounting for Costs Associated with Exit or Disposal Activities*. This charge is included as a component of selling, general and administrative expense in the accompanying unaudited condensed consolidated statements of operations for the three and nine months ended September 29, 2007. The related liability is included as a component of accrued expenses and other current liabilities in the accompanying unaudited condensed consolidated balance sheet at September 29, 2007.

### **NOTE 11 STOCK OPTIONS AND WARRANTS**





*Common Stock Options*



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A summary of common stock option activity as of and for the nine months ended September 29, 2007 is presented below (shares in thousands):

	Number of Shares	Weighted- Average Exercise Price
Options outstanding at December 30, 2006	3,318	\$ 3.34
Options granted	1,098	3.18
Options exercised	(126)	1.28
Options cancelled	(392)	5.57
Options outstanding at September 29, 2007	3,898	\$ 3.14

In September 2007, the Company granted options to purchase approximately 380,000 shares of its common stock to employees, including 100,000 options granted to the Company's chief executive officer, as a result of the Company's semi-annual employee performance review program. The Company also granted options to purchase 10,000 shares of its common stock to each of its five non-employee directors in connection with the Company's annual non-employee director compensation program. Additionally, the Company granted an option to purchase 200,000 shares of its common stock to its new chief financial officer in connection with her employment by the Company. The securities underlying this option grant are issuable pursuant to an individual option agreement issued by the Company, and are not issued under the Company's 2006 Equity Incentive Plan.

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The following table presents details of the assumptions used to calculate the weighted-average grant date fair value of common stock options granted by the Company:

	Nine Months Ended	
	September 29, 2007	September 30, 2006
Expected term (in years)	5.4	6
Expected volatility	80%	40%
Risk-free interest rate	4.46%	4.91%
Expected dividends		
Weighted-average grant date fair value per share	\$ 2.20	\$ 2.91

*At September 29, 2007, the amount of unearned stock-based compensation currently estimated to be expensed from fiscal 2007 through fiscal 2011 related to unvested common stock options is approximately \$3.7 million, net of estimated forfeitures. The weighted-average period over which the unearned stock-based compensation is expected to be recognized is approximately 3 years. If there are any modifications or cancellations of the underlying unvested common stock options, the Company may be required to accelerate, increase or cancel any remaining unearned stock-based compensation expense. Future stock-based compensation expense and unearned stock-based compensation will increase to the extent that the Company grants additional common stock options or other equity awards.*



*Warrants*





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At September 29, 2007, certain non-employees held outstanding warrants to purchase shares of the Company's common stock. A summary of the warrant activity as of and for the nine months ended September 29, 2007 is presented below (shares in thousands):

	Number of Shares	Weighted- Average Exercise Price
Warrants outstanding at December 30, 2006	398	\$ 1.35
Warrants granted		
Warrants exercised	(23)	1.25
Warrants cancelled	(46)	3.10
Warrants outstanding at September 29, 2007	329	\$ 1.12
Warrants exercisable at September 29, 2007	329	

In July 2007, a warrant holder exercised 42,000 warrants to purchase shares of the Company's common stock, whereby the Company issued approximately 23,000 shares of common stock pursuant to a net issue election and effectively received approximately 19,000 shares back from the warrant holder as consideration in lieu of cash for the exercised warrants. The 19,000 shares were forfeited on the exercise date.

In August 2007, approximately 27,000 outstanding unvested warrants held by a consulting firm were deemed cancelled pursuant to the terms of their governing agreements as a result of the termination of a resource agreement between the Company and the firm in connection with the resignation of the Company's former chief financial officer. As of September 29, 2007, the firm continues to hold approximately 11,000 exercisable warrants with a per share weighted-average exercise price of \$4.10. These outstanding warrants will be deemed cancelled pursuant to the terms of their governing agreements 90 days subsequent to the termination of the resource agreement if they remain unexercised at that time.

### NOTE 12 SEGMENT AND GEOGRAPHIC INFORMATION



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The Company operates in one reportable segment: the design and manufacture of high-performance memory subsystems for the server, high-performance computing and communications markets. The Company evaluates financial performance on a Company-wide basis. To date, all the Company's international sales relate to shipments of products to its U.S. customers' international manufacturing sites or third-party hubs and have been denominated in U.S. dollars.

At September 29, 2007, approximately \$2.8 million of the Company's long-lived assets were located outside the United States in the People's Republic of China.

**Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations**



**Cautionary Statement**



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*The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our Unaudited Condensed Consolidated Financial Statements and the related notes thereto contained in Part I, Item 1 of this Report. The information contained in this Quarterly Report on Form 10-Q is not a complete description of our business or the risks associated with an investment in our common stock. We urge you to carefully review and consider the various disclosures made by us in this Report and in our other reports filed with the Securities and Exchange Commission, or SEC, including our Annual Report on Form 10-K for the fiscal year ended December 30, 2006 and subsequent reports on Form 10-Q and Form 8-K, which discuss our business in greater detail.*

*The section entitled Risk Factors set forth in Part II, Item 1A, and similar discussions in our other SEC filings, describe some of the important risk factors that may affect our business, results of operations and financial condition. You should carefully consider those risks, in addition to the other information in this Quarterly Report on Form 10-Q and in our other filings with the SEC, before deciding to purchase, hold or sell our common stock.*

*This report contains forward-looking statements that involve risks, uncertainties, estimates and assumptions. These statements are not guarantees of future performance and are subject to certain risks, uncertainties and assumptions that are difficult to predict. Therefore, our actual results could differ materially and adversely from those expressed in any forward-looking statements as a result of various factors, including but not limited to those identified under the heading Risk Factors set forth in Part II, Item 1A. We undertake no obligation to revise or update publicly any forward-looking statements for any reason.*

### **Overview**





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We design, manufacture and sell high performance memory subsystems for the server, high performance computing and communications markets. Our memory subsystems consist of dynamic random access memory integrated circuits, or DRAM ICs, and other components assembled on a printed circuit board, or PCB. We engage with our original equipment manufacturer, or OEM, customers from the earliest stages of new product definition, which provides us unique insight into their full range of system architecture and performance requirements. This close collaboration has also allowed us to develop a significant level of systems expertise. We leverage a portfolio of proprietary technologies and design techniques, including efficient planar design, alternative packaging techniques and custom semiconductor logic, to deliver memory subsystems with high memory density, small form factor, high signal integrity, attractive thermal characteristics and low cost per bit.

Consistent with the concentrated nature of the OEM customer base in our target markets, a small number of large customers have historically accounted for a significant portion of our net sales. Net sales to Dell, Hewlett Packard and IBM represented approximately 53%, 21% and 9%, respectively, for the nine month period ended September 29, 2007, and approximately 36%, 1% and 41%, respectively, for the nine month period ended September 30, 2006. Net sales to some of our OEM customers include memory modules that are qualified by us directly with the OEM customer and sold to electronic manufacturing services providers, or EMSs, for incorporation into products manufactured exclusively for the OEM customer. These net sales to EMSs have historically fluctuated quarter by quarter as a portion of the total net sales to these OEM customers. Net sales to Hon Hai Precision Industry Co. Ltd., or Hon Hai, an EMS that purchases memory modules from us for incorporation into products manufactured exclusively for Dell, represented approximately 58% of net sales to Dell for the nine month period ended September 29, 2007 and approximately 27% of net sales to Dell for the nine month period ended September 30, 2006. Net sales to Kingston Technology Company, Inc., or Kingston, and to International Systems Technology Co. Ltd., or IST, both EMSs that purchase memory modules from us for incorporation into products manufactured exclusively for IBM, represented approximately 42% and 21%, respectively, of net sales to IBM for the nine month period ended September 29, 2007 and approximately 57% and 22%, respectively, of net sales to IBM for the nine month period ended September 30, 2006.

For the nine months ended September 29, 2007, the market price for mainstream DRAM ICs decreased by approximately 77%. This decline has adversely affected the selling prices of many of our products and contributed to lower revenues, lower gross margin and reduced inventory value during this period. Should the decline in the DRAM IC market continue, it would result in lower net sales, lower gross margin and reduced inventory value in subsequent periods.

**Key Business Metrics**



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The following describes certain line items in our statements of operations that are important to management's assessment of our financial performance:

*Net Sales.* Net sales consist primarily of sales of our high performance memory subsystems, net of a provision for estimated returns under our right of return policies, which generally range up to 30 days. We generally do not have long-term sales agreements with our customers. Although OEM customers typically provide us with non-binding forecasts of future product demand over specific periods of time, they generally place orders with us approximately two weeks in advance of scheduled delivery. Selling prices are typically negotiated monthly, based on competitive market conditions and the current price of DRAM ICs. Purchase orders generally have no cancellation or rescheduling penalty provisions. We often ship our products to our customers' international manufacturing sites. All of our sales to date, however, are denominated in U.S. dollars. We also sell excess component inventory of DRAM ICs to distributors and other users of memory ICs. These sales accounted for approximately \$0.4 million and \$1.8 million, respectively, of our net sales for the three and nine months ended September 29, 2007 and approximately \$2.7 million and \$10.2 million, respectively, of our net sales for the three and nine months ended September 30, 2006. We expect that component inventory sales will continue to decrease as a percentage of net sales in future periods as we diversify our customer base and therefore are able to use components in a wider range of memory subsystems.

*Cost of Sales.* Our cost of sales includes the cost of materials, manufacturing costs, depreciation and amortization of equipment, inventory valuation provisions, stock-based compensation and occupancy costs and other allocated fixed costs. The DRAM ICs incorporated into our products constitute a significant portion of our cost of sales, and thus our cost of sales will fluctuate based on the current price of DRAM ICs. We attempt to pass through such DRAM IC cost fluctuations to our customers by frequently renegotiating pricing prior to the placement of their purchase orders. To the extent we are successful, a large majority of our product cost is variable, and thus our cost of sales and gross margin percentages may not be significantly impacted by changes in sales volume. However, the sales prices of our memory subsystems can also fluctuate due to competitive situations unrelated to the pricing of DRAM ICs, which will affect gross margins. The gross margin on our sales of excess component DRAM IC inventory is much lower than the gross margin on our sales of our memory subsystems. As a result, a decrease in DRAM IC inventory sales as a percentage of our overall sales would result in an improved overall gross margin. We assess the valuation of our inventories on a monthly basis and record a provision to cost of sales as necessary to reduce inventories to the lower of cost or net realizable value.

*Research and Development.* Research and development expense consists primarily of employee and independent contractor compensation and related costs, stock-based compensation, computer-aided design software licenses, reference design development costs, patent-related fees, depreciation or rental of evaluation equipment, and occupancy and other allocated overhead costs. Also included in research and development expense are the costs of material and overhead related to the production of engineering samples of new products under development or products used solely in the research and development process. Our customers typically do not separately compensate us for design and engineering work involved in developing application-specific products for them. All research and development costs are expensed as incurred. As we continue to develop additional proprietary technologies, we anticipate that research and development expenditures will increase.

*Selling, General and Administrative.* Selling, general and administrative expenses consist primarily of employee salaries and related costs, stock-based compensation, independent sales representative commissions, professional services, promotional and other selling and marketing expenses, and occupancy and other allocated overhead costs. A

significant portion of our selling efforts is directed at building relationships with OEMs and working through the product approval and qualification process with them. Therefore, the cost of material and overhead related to products manufactured for qualification is included in selling expenses. As we continue to service existing and penetrate new OEM customers, we anticipate that our sales and marketing expenses will increase. We also anticipate that our general and administrative expenses will increase as a percentage of net sales as we incur accounting and legal expenses associated with our ongoing public reporting obligations and compliance with the requirements of the Sarbanes-Oxley Act of 2002.

*Provision (Benefit) for Income Taxes.* Our income tax provision (benefit) is based on the statutory federal tax rate of 35% and is typically impacted by state taxes and permanent book-tax differences.

**Critical Accounting Policies**



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The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of net sales and expenses during the reporting period. By their nature, these estimates and assumptions are subject to an inherent



degree of uncertainty. We base our estimates on our historical experience, knowledge of current conditions and our beliefs of what could occur in the future considering available information. We review our estimates on an on-going basis. Actual results may differ from these estimates, which may result in material adverse effects on our operating results and financial position. We believe the following critical accounting policies involve the more significant assumptions and estimates used in the preparation of our consolidated financial statements:

*Revenue Recognition.* We recognize revenues in accordance with the Securities and Exchange Commission's Staff Accounting Bulletin No. 104, *Revenue Recognition*, or SAB No. 104. Under the provisions of SAB No. 104, we recognize revenues when there is persuasive evidence of an arrangement, product delivery and acceptance have occurred, the sales price is fixed or determinable, and collectibility of the resulting receivable is reasonably assured.

We generally use customer purchase orders and/or contracts as evidence of an arrangement. Delivery occurs when goods are shipped for customers with FOB Shipping Point terms and upon receipt for customers with FOB Destination terms, at which time title and risk of loss transfer to the customer. Shipping documents are used to verify delivery and customer acceptance. We assess whether the sales price is fixed or determinable based on the payment terms associated with the transaction and whether the sales price is subject to refund.

Customers are generally allowed limited rights of return for up to 30 days, except for sales of excess inventories, which contain no right-of-return privileges. Estimated returns are provided for at the time of sale based on historical experience or specific identification of an event necessitating a reserve. Returns from customers have not been material in any period as our principal customers have adopted build-to-order manufacturing models or just-in-time management processes. While these returns have historically been within our expectations and the provisions established, we cannot guarantee that we will continue to experience similar return rates in the future. We offer a standard product warranty to our customers and have no other post-shipment obligations. Any significant increase in product failure rates and the resulting product returns could have a material adverse effect on our operating results for the period or periods in which such returns materialize.

We assess collectibility based on the creditworthiness of the customer as determined by credit checks and evaluations, as well as the customer's payment history. Most of our international shipments are made to third-party inventory warehouses, or hubs, and we recognize revenue when the inventory is pulled from the hub for use in production by the customer. We receive a report from the customer on a daily basis indicating the inventories pulled from a hub for use by the customer, and perform a daily reconciliation of inventories shipped to and pulled by the customer to those inventories reflected on the customer's reports to ensure that sales are recognized in the appropriate periods.

All amounts billed to customers related to shipping and handling are classified as net sales, while all costs incurred by us for shipping and handling are classified as cost of sales.

*Warranty Reserve.* We offer warranties on our memory subsystems generally ranging from one to three years, depending on the product and negotiated terms of purchase agreements with our customers. Such warranties require us to repair or replace defective product returned to us during such warranty period at no cost to the customer. Our estimates for warranty-related costs are recorded at the time of sale based on historical and estimated future product return rates and expected repair or replacement costs. While such costs have historically been within our expectations and the provisions established, unexpected changes in failure rates could have a material adverse impact on us.

*Accounts Receivable.* We perform credit evaluations of our customers' financial condition and limit the amount of credit extended to our customers as deemed necessary, but generally require no collateral. We continuously monitor collections and payments from our customers and maintain a provision for estimated credit losses based upon our historical experience and any specific customer collection issues that we have identified. Generally, these credit losses have been within our expectations and the provisions established. However, we cannot guarantee that we will continue to experience credit loss rates similar to those we have experienced in the past.

Our accounts receivable are highly concentrated among a small number of customers, and a significant change in the liquidity or financial position of one of these customers could have a material adverse effect on the collectibility of our accounts receivable, our liquidity and our future operating results.

*Inventories.* We value our inventories at the lower of the actual cost to purchase or manufacture the inventory or the net realizable value of the inventory. Cost is determined on an average cost basis which approximates actual cost on a first-in, first-out basis and includes raw materials, labor and manufacturing overhead. We regularly review inventory quantities on hand and on order and record a provision for excess and obsolete inventories based primarily on our estimated forecast of product demand and production requirements for the next three to six months. In addition, we consider changes in the market

value of DRAM ICs in determining the realizable value of our raw material inventory. Once established, any write-downs are considered permanent adjustments to the cost basis of our inventories. A significant decrease in demand for our products could result in an increase in the amount of excess inventory quantities on hand. In addition, our estimates of future product demand may prove to be inaccurate, in which case we may have understated or overstated the provision required for excess and obsolete inventory. In the future, if our inventories are determined to be overvalued, we would be required to recognize additional expense in our cost of sales at the time of such determination. Likewise, if our inventories are determined to be undervalued, we may have over-reported our costs of sales in previous periods and would be required to recognize additional gross profit at the time such inventories are sold. In addition, should the market value of DRAM ICs decrease significantly, we may be required to lower our selling prices to reflect the lower cost of our raw materials. If such price decreases reduce the realizable value of our inventories to less than our cost, we would be required to recognize additional expense in our cost of sales in the same period. Although we make every reasonable effort to ensure the accuracy of our forecasts of future product demand, any significant unanticipated changes in demand, technological developments or the market value of DRAM ICs could have a material effect on the value of our inventories and our reported operating results.

*Long-Lived Assets.* We review the recoverability of the carrying value of long-lived assets on an annual basis or whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of these assets is determined based upon the forecasted undiscounted future net cash flows from the operations to which the assets relate, utilizing our best estimates, appropriate assumptions and projections at the time. These projected future cash flows may vary significantly over time as a result of increased competition, changes in technology, fluctuations in demand, consolidation of our customers and reductions in average selling prices. If the carrying value is determined not to be recoverable from future operating cash flows, the asset is deemed impaired and an impairment loss is recognized to the extent the carrying value exceeds the estimated fair market value of the asset.

*Stock-Based Compensation.* We account for equity issuances to non-employees in accordance with Statement of Financial Accounting Standards, or SFAS, No. 123, *Accounting for Stock Based Compensation*, and Emerging Issues Task Force, or EITF, Issue No. 96-18, *Accounting for Equity Instruments that are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods and Services*. All transactions in which goods or services are the consideration received for the issuance of equity instruments are accounted for based on the fair value of the consideration received or the fair value of the equity instrument issued, whichever is more reliably measurable. The measurement date used to determine the fair value of the equity instrument issued is the earlier of the date on which the third-party performance is complete or the date on which it is probable that performance will occur.

Prior to January 1, 2006, we accounted for stock-based compensation issued to employees and directors using the intrinsic value method of accounting prescribed by Accounting Principles Board Opinion No. 25, *Accounting for Stock Issued to Employees* and related pronouncements. Under this method, compensation expense was recognized over the respective vesting period based on the excess, on the date of grant, of the fair value of our common stock over the grant price, net of forfeitures. Deferred stock-based compensation was amortized on a straight-line basis over the vesting period of each grant.

On January 1, 2006, we adopted SFAS No. 123(R), *Share-Based Payment*, or SFAS No. 123(R), which requires the measurement and recognition of compensation expense for all share-based payment awards made to our employees and directors based on estimated fair values. We adopted SFAS No. 123(R) using the modified prospective transition method, which requires the application of the accounting standard as of January 1, 2006, the first day of our fiscal year 2006. Our consolidated financial statements as of and for the year ended December 30, 2006 reflect the impact of adopting SFAS No. 123(R). In accordance with the modified prospective transition method, our consolidated financial statements for prior periods have not been restated to reflect, and do not include, the impact of SFAS No. 123(R).

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*We currently use the Black-Scholes option pricing model to estimate the fair value of stock-based awards. While this model meets the requirements of SFAS No. 123(R), the estimated fair values generated by it may not be indicative of the actual fair values of our stock-based awards as it does not consider certain factors important to those awards to employees, such as continued employment and periodic vesting requirements as well as limited transferability. The Black-Scholes model requires subjective assumptions regarding future stock price volatility and expected time to exercise, along with assumptions about the risk-free interest rate and expected dividends, all of which affect the estimated fair values of the Company's stock-based awards. The expected term of options granted is derived from historical data on employee exercises and post-vesting employment termination behavior. The expected volatility is based on the historical volatilities of the common stock of comparable publicly traded companies based on the Company's belief that it currently has limited historical data regarding the volatility of its stock price on which to base a meaningful estimate of expected volatility. The risk-free rate selected to value any particular grant is based on the U.S. Treasury rate that corresponds to the expected term of the grant effective as of the date of the grant. The expected dividends assumption is based on our history and expectation of dividend payouts. We*



*evaluate the assumptions used to value stock-based awards on a quarterly basis. If factors change and we employ different assumptions, stock-based compensation expense may differ significantly from what we have recorded in the past.*



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*The value of the portion of stock-based awards that are ultimately expected to vest is recognized as expense over the requisite service periods in our financial statements in fiscal 2006 and thereafter. As stock-based compensation expense recognized in our financial statements is based on awards ultimately expected to vest, it has been reduced for estimated forfeitures. SFAS No. 123(R) requires forfeitures to be estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates. If there are any modifications or cancellations of the underlying unvested stock-based awards, we may be required to accelerate, increase or cancel any remaining unearned stock-based compensation expense. Future stock-based compensation expense and unearned stock-based compensation will increase to the extent that we grant additional stock-based awards.*





*Income Taxes.* We recognize deferred tax assets and liabilities based on the differences between the financial statement carrying values and the tax bases of assets and liabilities. We regularly review our deferred tax assets for recoverability and establish a valuation allowance, when determined necessary, based on historical taxable income, projected future taxable income, and the expected timing of the reversals of existing temporary differences. If we operate at a loss for an extended period of time or are unable to generate sufficient future taxable income, or if there is a material change in the actual effective tax rates or time period within which the underlying temporary differences become taxable or deductible, we could be required to record a valuation allowance against all or a significant portion of our deferred tax assets which could substantially increase our effective tax rate for such period. Any significant changes in statutory tax rates or the amount of our valuation allowance could have a material effect on the value of our deferred tax assets and liabilities, and our reported financial results. Additionally, we adopted Financial Accounting Standards Board, or FASB, Interpretation No. 48, *Accounting for Uncertainty in Income Taxes*, or FIN 48, on December 31, 2006, the first day of fiscal 2007. FIN 48 is an interpretation of SFAS No. 109, *Accounting for Income Taxes*, and seeks to reduce the diversity in practice associated with certain aspects of measurement and recognition in accounting for income taxes. FIN 48 prescribes a recognition threshold and measurement requirement for the financial statement recognition of a tax position that has been taken or is expected to be taken on a tax return. FIN 48 provides guidance on de-recognition, classification, interest and penalties, accounting in interim periods, disclosure, and transition. Under FIN 48 we may only recognize or continue to recognize tax positions that meet a more likely than not threshold. Refer to Note 6, *Income Taxes*, of Notes to Unaudited Condensed Consolidated Financial Statements for additional information.

#### **Results of Operations**



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The following table sets forth certain consolidated statements of operations data as a percentage of net sales for the periods indicated:

	Three Months Ended		Nine Months Ended	
	September 29, 2007	September 30, 2006	September 29, 2007	September 30, 2006
Net sales	100%	100%	100%	100%
Cost of sales	85	84	95	86
Gross profit	15	16	5	14
Operating expenses:				
Research and development	5	2	5	2
Selling, general and administrative	15	6	15	6
Total operating expenses	19	8	20	8
Operating income (loss)	(4)	8	(15)	6
Other income (expense):				
Interest income (expense), net	1	(1)		(1)
Other expense, net				
Total other income (expense), net	1	(1)		(1)
Income (loss) before provision (benefit) for income taxes	(4)	7	(15)	5
Provision (benefit) for income taxes	(1)	2	(5)	2
Net income (loss)	(2)%	5%	(9)%	3%



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*Three and Nine Months Ended September 29, 2007 Compared to Three and Nine Months Ended September 30, 2006*



*Net Sales, Cost of Sales and Gross Profit*

The following tables present net sales, cost of sales and gross profit for the three and nine months ended September 29, 2007 and September 30, 2006 (in thousands, except percentages):

	Three Months Ended		Increase (Decrease)	% Change
	September 29, 2007	September 30, 2006		
Net sales	\$ 27,194	\$ 43,505	\$ (16,311)	(37)%
Cost of sales	23,027	36,524	(13,497)	(37)%
Gross profit	\$ 4,167	\$ 6,981	\$ (2,814)	(40)%
Gross margin	15%	16%	(1)%	

	Nine Months Ended		Decrease	% Change
	September 29, 2007	September 30, 2006		
Net sales	\$ 77,543	\$ 109,439	\$ (31,896)	(29)%
Cost of sales	73,850	93,971	(20,121)	(21)%
Gross profit	\$ 3,693	\$ 15,468	\$ (11,775)	(76)%
Gross margin	5%	14%	(9)%	

*Net Sales.* Net sales for the three and nine months ended September 29, 2007 were adversely impacted by two primary factors. First, the significant decrease in DRAM IC market prices during the period, which was primarily driven by continued oversupply in the DRAM market, forced us to significantly reduce our selling prices on many of our products. Additionally, we experienced decreases in demand as falling market prices caused certain customers to delay purchases during the period.

The decrease in net sales in the three and nine months ended September 29, 2007 as compared to the three and nine months ended September 30, 2006 resulted primarily from decreases of approximately \$12.6 million and \$36.8 million, respectively, in sales of our very low profile memory subsystems, decreases of approximately \$7.4 million and \$14.6 million, respectively, in sales of Double Data Rate, or DDR and DDR2 memory subsystems and decreases of approximately \$7.1 million and \$16.3 million, respectively, in certain other memory products. These decreases were slightly offset by an increase in net sales for the three and nine months ended September 29, 2007 as compared to the three and nine months ended September 30, 2006 of approximately \$8.7 million and \$23.0 million, respectively, in sales of laptop personal computer memory subsystems and increases of approximately \$2.4 million and \$14.9 million, respectively, in sales of memory subsystems used to control Redundant Arrays of Independent Disks, or RAIDs. The overall decreases in net sales are primarily attributable to (i) the market-driven reductions in selling prices of our products and lower customer demand as described above, particularly on our high volume products with lower average selling prices and (ii) overall lower than expected demand from OEM products in which our products are incorporated, such as blade servers that use our very low profile memory subsystems.

Should market price declines for DRAM ICs continue, our overall revenues could be adversely impacted as we lower prices on some products to meet market conditions.

Sales of our component inventory to distributors and other users of memory ICs represented approximately 2% and 6% of net sales for the three months ended September 29, 2007 and September 30, 2006, respectively, and approximately 2% and 9% of net sales for the nine months ended September 29, 2007 and September 30, 2006, respectively. We expect that component inventory sales will continue to represent a relatively small percentage of net sales in future periods as we diversify our customer base and therefore are able to use components in a wider range of memory subsystems.



*Gross Profit and Gross Margin.* Gross profit for the three months ended September 29, 2007 as compared to the three months ended September 30, 2006 decreased primarily due to the 37% decrease in net sales between the two periods. Gross margin for the three months ended September 29, 2007 was relatively consistent with that for the three months ended September 30, 2006. The decrease in gross profit and gross margin for the nine months ended September 29, 2007 as

compared to the nine months ended September 30, 2006 is primarily attributable to the significant decrease in the market price of DRAM ICs during the nine months ended September 29, 2007. This significantly impacted the valuation of our inventories, whereby we incurred a loss in the nine months ended September 29, 2007 of approximately \$5.1 million as a result of slow moving and lower-of-cost-or-market-value inventory adjustments. To the extent that DRAM IC market prices continue to decline, and should our product sales mix shift more toward lower margin products such as laptop memory, our gross profit, gross margin and overall operating results could be adversely affected in future periods.

***Research and Development.***

The following tables present research and development expenses for the three and nine months ended September 29, 2007 and September 30, 2006 (in thousands, except percentages):

	Three Months Ended		Increase	% Change
	September 29, 2007	September 30, 2006		
Research and development	\$ 1,256	\$ 874	\$ 382	44%

	Nine Months Ended		Increase	% Change
	September 29, 2007	September 30, 2006		
Research and development	\$ 3,801	\$ 2,388	\$ 1,413	59%

The increase in research and development expense in the three and nine months ended September 29, 2007 as compared to the three and nine months ended September 30, 2006 resulted primarily from increases of \$0.2 million and \$0.7 million, respectively, in personnel-related expenses and increases of \$0.1 million and \$0.2 million, respectively, for certain engineering and design tools, product qualification and other related expenses. Research and development expense for the nine months ended September 29, 2007 also increased compared to the corresponding prior year period due to increases of \$0.3 million in equipment-related expenses and \$0.1 million in legal and professional services. These increases are primarily attributable to (i) an increase in the number of employees engaged in research and development activities since September 30, 2006, (ii) an increase in research and development activities related to new and emerging markets and technologies and (iii) impairment write-downs of certain long-lived assets used in the product development process, as further discussed in Note 9 of Notes to Unaudited Condensed Consolidated Financial Statements.

***Selling, General and Administrative.***

The following tables present selling, general and administrative expenses for the three and nine months ended September 29, 2007 and September 30, 2006 (in thousands, except percentages):

	Three Months Ended		Increase	% Change
	September 29, 2007	September 30, 2006		
Selling, general and administrative	\$ 4,040	\$ 2,583	\$ 1,457	56%

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	Nine Months Ended			
	September 29, 2007	September 30, 2006	Increase	% Change
Selling, general and administrative	\$ 11,589	\$ 6,494	\$ 5,095	78%

The increase in selling, general and administrative expense in the three and nine months ended September 29, 2007 as compared to the three and nine months ended September 30, 2006 resulted primarily from increases of \$0.5 million and \$1.8 million, respectively, in personnel-related and stock-based compensation expenses, increases of \$0.2 million and \$1.0 million, respectively, in various selling and promotion expenses, increases of \$0.3 million and \$1.2 million, respectively, in legal and professional services, increases of \$0.2 million and \$0.2 million, respectively, related to certain facility lease relocation costs, and increases of \$0.3 million and \$0.6 million, respectively, in certain allocated overhead expenses. These increases are primarily attributable to (i) an increase in the number of employees engaged in selling, general and

administrative activities since September 30, 2006, (ii) an increase in selling expenses as a result of additional product qualification activities, travel and other costs incurred in connection with our efforts to prepare for operations at our facility in the People's Republic of China, (iii) an increase in legal, insurance and professional services primarily related to certain reporting and other obligations as a result of becoming a public company, (iv) costs for current litigation and other legal matters as further discussed in Note 7 of Notes to Unaudited Condensed Consolidated Financial Statements and (v) charges recorded in connection with future lease payments related to our vacated domestic manufacturing facility as further discussed in Note 10 of Notes to Unaudited Condensed Consolidated Financial Statements.

***Other Income (Expense).***

The following tables present other income (expense) for the three and nine months ended September 29, 2007 and September 30, 2006 (in thousands, except percentages):

	Three Months Ended		Increase (Decrease)	% Change
	September 29, 2007	September 30, 2006		
Interest income (expense), net	\$ 142	\$ (565)	\$ 707	(125)%
Other expense, net	(33)	(87)	(54)	(62)%
Total other income (expense), net	\$ 109	\$ (652)	\$ 653	(100)%

	Nine Months Ended		Increase (Decrease)	% Change
	September 29, 2007	September 30, 2006		
Interest income (expense), net	\$ 256	\$ (1,514)	\$ 1,770	(117)%
Other expense, net	(28)	(82)	(54)	(66)%
Total other income (expense), net	\$ 228	\$ (1,596)	\$ 1,716	(108)%

Net interest income for the three and nine months ended September 29, 2007 was comprised of interest income of approximately \$0.4 million and \$1.3 million, respectively, partially offset by interest expense of approximately \$0.3 million and \$1.0 million, respectively. The increase in net interest income in the three and nine months ended September 29, 2007 as compared to the three and nine months ended September 30, 2006 resulted primarily from (i) interest income earned on our cash equivalent and marketable securities balances, which is attributable to the proceeds from our initial public offering, or IPO, in December 2006, and (ii) a decrease in interest expense due to our lower outstanding line of credit and debt balances in 2007 as compared to 2006.

Other income, net, primarily includes gains and losses on foreign currency transactions in fiscal 2007 and dispositions of property and equipment.

***Provision (Benefit) for Income Taxes.***

The following tables present the provision (benefit) for income taxes for the three and nine months ended September 29, 2007 and September 30, 2006 (in thousands, except percentages):

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	Three Months Ended			
	September 29, 2007	September 30, 2006	Decrease	% Change
Provision (benefit) for income taxes	\$ (363)	\$ 1,084	\$ (1,447)	(133)%

	Nine Months Ended			
	September 29, 2007	September 30, 2006	Decrease	% Change
Provision (benefit) for income taxes	\$ (4,227)	\$ 1,896	\$ (6,123)	(323)%

We recorded a benefit for income taxes for the three and nine months ended September 29, 2007. On an interim basis, we estimate what our effective tax rate will be in each jurisdiction for the full fiscal year and record a quarterly income tax provision (benefit) in accordance with the anticipated blended annual rate.

**Liquidity and Capital Resources**



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Since our inception, we have financed our operations primarily through issuances of equity and debt securities and cash generated from operations. We have also funded our operations with a revolving line of credit under our bank credit facility, from capitalized lease obligations, financing of receivables and from the sale and leaseback of our domestic manufacturing facility.

### *Working Capital and Cash and Marketable Securities*

The following table presents working capital, cash and cash equivalents and investments in marketable securities (in thousands):

	September 29, 2007	December 30, 2006
Working Capital	\$ 27,055	\$ 45,584
Cash and cash equivalents(1)	\$ 6,450	\$ 30,975
Short-term marketable securities(1)	16,079	5,267
Long-term marketable securities	8,103	1,502
	\$ 30,632	\$ 37,744

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(1) Included in working capital

Our working capital decreased in the nine months ended September 29, 2007 primarily as a result of (i) additional net purchases of long-term investments in marketable securities of approximately \$6.6 million, (ii) purchases of equipment and leasehold improvements of approximately \$5.5 million and (iii) decreases in certain current operating assets and liabilities, primarily due to the overall decline in net sales during the period.

**Cash Provided and Used in the Nine Months Ended September 29, 2007 and September 30, 2006**

The following table summarizes our cash flows for the periods indicated (in thousands):

	Nine Months Ended	
	September 29, 2007	September 30, 2006
<b>Net cash provided by (used in):</b>		
Operating activities	\$ 7,757	\$ (1,433)
Investing activities	(22,923)	(914)
Financing activities	(9,359)	2,395
Net increase (decrease) in cash and cash equivalents	\$ (24,525)	\$ 48

*Operating Activities.* Net cash provided by operating activities for the nine months ended September 29, 2007 was primarily a result of (i) approximately \$2.8 million in net non-cash operating expenses, primarily comprising inventory adjustments, depreciation and amortization, deferred income taxes, stock-based compensation and impairment of long-lived assets and (ii) approximately \$12.2 million in net cash provided by changes in operating assets and liabilities, partially offset by a net loss of approximately \$7.2 million for the nine months ended September 29, 2007. Net cash used in operating activities for the nine months ended September 30, 2006 was primarily a result of (i) net income of \$3.1 million and (ii) approximately \$1.1 million of net non-cash operating expenses, primarily comprising depreciation and amortization and stock-based compensation offset by approximately \$5.6 million in net cash used by changes in operating assets and liabilities.

*Investing Activities.* Net cash used in investing activities for the nine months ended September 29, 2007 was primarily a result of purchases of additional investments in marketable securities of approximately \$50.9 million, partially offset by proceeds received from maturities of certain investments in marketable securities of approximately \$33.6 million. We also used approximately \$5.5 million in cash primarily to purchase equipment and leasehold improvements related to our new facilities in the People's Republic of China and in Irvine, California. Net cash used in investing activities for the nine months ended September 30, 2006 resulted from the purchase of approximately \$1.0 million of capital equipment to support growth in our operations in 2006, partially offset by the receipt of \$45,000 in proceeds from the sale of certain other capital equipment.

*Financing Activities.* Net cash used in financing activities for the nine months ended September 29, 2007 was primarily a result of net repayments on our outstanding revolving line of credit of approximately \$9.0 million, along with net repayments of approximately \$0.6 million on our long term debt. Net cash provided by financing activities for the nine months ended September 30, 2006 was primarily a result of (i) approximately \$1.7 million in net cash provided due to increased borrowings on our revolving line of credit and (ii) approximately \$2.0 million in borrowings on our new term loan facility, partially offset by approximately \$1.6 million in payments on debt and convertible notes payable.

***Capital Resources***



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In April 2007, we executed a seventh amendment to our credit agreement with our bank, which was effective March 21, 2007. This amendment allows us, at our election, to increase our maximum borrowings on the line of credit from \$25 million, in \$2.5 million increments, up to a total of \$40 million. In addition, among other terms, the amendment (i) extends the maturity date of the line of credit to July 31, 2009, (ii) establishes an equipment advance line of \$3 million, (iii) increases the sublimit for letters of credit to \$5 million, (iv) sets an inventory sublimit of \$7 million, subject to increase to \$10 million if certain targets are met and (v) provides for the reduction in interest rates on borrowings if certain borrowing amounts and financial performance targets are met.

Under the revolving line of credit, we may borrow up to the greater of 85% of eligible accounts receivable plus the least of (i) a percentage of eligible inventory determined from time to time by the Company's bank, (ii) 80% of the orderly liquidation value, as defined, of eligible inventories, and (iii) \$7 million. Interest is payable monthly at the prime rate of 7.75% as of September 29, 2007. Outstanding borrowings under the revolving line of credit were approximately \$10.3 million and \$19.2 million as of September 29, 2007 and December 30, 2006, respectively. Borrowing availability as of September 29, 2007 was approximately \$5.5 million.

Under the equipment financing line of credit, we may borrow up to 80% of the cost of equipment purchases up to a maximum of \$3 million. Interest on equipment line of credit advances was payable at the prime rate plus 0.5% prior to the Company's initial public offering in December 2006 and was reduced to the prime rate thereafter. Principal is due monthly through the maturity date of the credit agreement in July 2009, when all unpaid principal and interest is due. Outstanding borrowings under the new equipment line of credit were approximately \$1.1 million and \$1.1 million at September 29, 2007 and December 30, 2006, respectively.

Any borrowings on the line of credit are collateralized by a general first priority lien against all of our assets, both tangible and intangible.

In July 2007, we executed an eighth amendment to our credit agreement, which was effective June 29, 2007, and which revised the various financial and other covenants of which we are required to comply. The amendment requires us to (i) achieve minimum book net worth on a monthly basis, (ii) limit annual capital expenditures under a defined annual cap, (iii) achieve certain minimum monthly profitability thresholds and (iv) maintain a minimum liquidity threshold as of the end of each month. While we are currently in compliance with all financial covenants and expect to maintain compliance for the foreseeable future, we have in the past been in violation of one or more covenants. We cannot assure you that we will not violate one or more covenants in the future. If we were to be in violation of covenants under our credit agreement, our lender could choose to accelerate payment on all outstanding loan balances. There can be no assurance that we would be able to quickly obtain equivalent or suitable replacement financing in this event. If we were not able to secure alternative sources of funding, such acceleration would have a material adverse impact on our financial condition.

We have in the past utilized equipment leasing arrangements to finance certain capital expenditures. Equipment leases will continue to be a financing alternative that we may pursue in the future.

We believe our existing cash balances, borrowing availability under our bank credit facility, and the cash expected to be generated from operations, will be sufficient to meet our anticipated cash needs for at least the next 12 months. Our future

capital requirements will depend on many factors, including our levels of net sales, the timing and extent of expenditures to support research and development activities, the expansion of manufacturing capacity both domestically and internationally and the continued market acceptance of our products. We could be required, or may choose, to seek additional funding through public or private equity or debt financings. In addition, in connection with any future acquisitions, we may require additional funding which may be provided in the form of additional debt or equity financing or a combination thereof. These additional funds may not be available on terms acceptable to us, or at all.

*Off-Balance Sheet Arrangements*



*We do not have any relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities, which would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes. In addition, we do not have any undisclosed borrowings or debt, and we have not entered into any synthetic leases. We are, therefore, not materially exposed to any financing, liquidity, market or credit risk that could arise if we had engaged in such relationships.*





**Item 3.** Quantitative and Qualitative Disclosures About Market Risk



*Interest Rate Risk*



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Our exposure to market risk for changes in interest rates relates primarily to our bank credit facility because borrowings under the facility are variable rate borrowings, generally at prime. Assuming that all lines under the facility are fully drawn and holding other variables constant, each 1.0% increase in interest rates on our variable rate borrowings will result in an increase in annual interest expense and a decrease in our cash flows and income before taxes of approximately \$0.4 million per year. We do not use derivative instruments to hedge the interest rate risk related to our credit facility.

We have invested most of the proceeds of our IPO in securities which may be subject to market risk for changes in interest rates. To mitigate this risk, we maintain a portfolio of cash equivalents and investments in a variety of marketable securities, which include commercial paper, money market funds, government and non-government debt securities. We currently do not use derivative financial instruments.

Our cash equivalents and investments in marketable securities are classified as available-for-sale in accordance with SFAS No. 115, *Accounting for Certain Investments in Debt and Equity Securities*, and are therefore stated at fair value. Differences between fair value and amortized cost are recorded as unrealized gains and losses and are reported, net of taxes, as a component of accumulated other comprehensive income (loss). The fair value of our investments in marketable securities fluctuates based on changes in market conditions and interest rates; however, given the general short-term maturities of our investments, we do not believe these instruments are subject to significant market or interest rate risk.

The carrying value, maturity and estimated fair value of our cash equivalents and investments in marketable securities as of September 29, 2007 were as follows (in thousands, except interest rates):

	Carrying Value September 29, 2007	Maturity Within One Year after September 29, 2007	Maturity Greater Than One Year After September 29, 2007	Fair Value September 29, 2007
<b>Investments</b>				
Cash equivalents	\$ 4,799	\$ 4,799	\$	\$ 4,799
Weighted average interest rate	5.30%	5.30%		
Marketable securities	\$ 25,181	\$ 16,079	\$ 8,103	\$ 25,181
Weighted average interest rate	5.62%	5.69%	5.47%	

**Item 4.** Controls and Procedures



*(a) Evaluation of Disclosure Controls and Procedures.* We carried out an evaluation, under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, of the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934, ( Exchange Act )) as of the end of our fiscal quarter ended September 29, 2007. Based upon that evaluation, our principal executive officer and principal financial officer concluded that our disclosure controls and procedures are effective in ensuring that information required to be disclosed by us in reports that we file or submit under the Exchange Act (i) is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and (ii) is accumulated and communicated to our management, including our principal executive officer and principal financial officer to allow timely decisions regarding required disclosure.

*(b) Change in internal controls over financial reporting.* During the fiscal quarter that ended September 29, 2007, there have not been any changes in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

#### *Inherent Limitations on Internal Control*

A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, have been detected. These inherent limitations include the realities that judgments in decision making can be faulty, and that breakdowns can occur because of simple errors. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the control. The design of any system of controls is also based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

## **PART II. OTHER INFORMATION**





**Item 1.** Legal Proceedings



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The information set forth in the sections entitled Federal Securities Class Action and California Derivative Action under Note 7 of Notes to Unaudited Condensed Consolidated Financial Statements, included in Part I, Item I of this Report, is incorporated herein by reference.

### **Item 1A.** Risk Factors



*This Report includes forward-looking statements. These forward-looking statements generally are identified by words such as believe , expect , anticipate , estimate , intend , strategy , may , will likely and similar words or phrases. A forward-looking statement is neither a prediction nor a guarantee of future events or circumstances, and those future events or circumstances may not occur. Investors should not place undue reliance on the forward-looking statements, which speak only as of the date of this Report. We are under no obligation to update or alter any forward-looking statements, whether as a result of new information, future events or otherwise. These forward-looking statements are all based on currently available market, operating, financial and competitive information and are subject to various risks and uncertainties, including but not limited to the rapidly-changing nature of technology; evolving industry standards; introductions of new products by competitors; changes in end-user demand for technology solutions; our ability to attract and retain skilled personnel; our reliance on suppliers of critical components; fluctuations in the market price of critical components; and the political and regulatory environment in the People s Republic of China ( PRC ). Our actual future results and trends may differ materially depending on a variety of factors including, but not limited to, the risks and*

*uncertainties discussed below. The risks below are not the only ones we face. Additional risks and risks that management currently considers immaterial may also have an adverse effect on us.*

**We have a limited operating history, and we expect a number of factors to cause our operating results to fluctuate on a quarterly and annual basis, which may make it difficult to predict our future performance.**





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Our limited operating history makes it difficult to predict our future performance. Our operating results have varied significantly in the past and will continue to fluctuate from quarter-to-quarter or year-to-year in the future due to a variety of factors, many of which are beyond our control. Factors relating to our business that may contribute to these quarterly and annual fluctuations include the following factors, as well as other factors described elsewhere in this report:

the loss of, or a significant reduction in sales to, a key customer;

the cyclical nature of the industry in which we operate;

a reduction in the demand for our high performance memory subsystems or the systems into which they are incorporated;

changes in the prices of our products or in the cost of the materials that we use to build our products, including fluctuations in the market price of DRAM ICs;

our inability to develop new or enhanced products that achieve customer or market acceptance in a timely manner;

the timing of introductions of competing products or technologies;

our ability to adequately finance future growth;

our ability to procure an adequate supply of key components, particularly DRAM ICs;

our failure to maintain the qualification of our products with our current customers or to qualify future products with our current or prospective customers;

our failure to produce products that meet the quality requirements of our customers;

our establishment and ongoing operation of a new manufacturing facility in the PRC;

the loss of any of our key personnel;

delays in fulfilling orders for our products or a failure to fulfill orders;

disputes regarding intellectual property rights;

litigation involving our products;

our customers' failure to pay us on a timely basis; and;

changes in accounting principles or policies.

Due to the various factors mentioned above, and others, the results of any prior quarterly or annual periods should not be relied upon as an indication of our future operating performance.

**Sales to a limited number of customers represent a significant portion of our net sales and the loss of, or a significant reduction in sales to, any one of these customers could materially harm our business.**



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Sales to Dell, IBM and Hewlett Packard represented approximately 53%, 9% and 21%, respectively, of our net sales in the nine months ended September 29, 2007. Sales to Dell and IBM represented 36% and 41%, respectively, of our net sales in the nine months ended September 30, 2006. We currently expect that sales to Dell and Hewlett Packard will continue to represent a significant percentage of our net sales for at least the next 12 months. We do not have long-term agreements with these customers, or with any other customer. Any one of these three customers could decide at any time to discontinue, decrease or delay their purchase of our products. In addition, the prices that these customers pay for our products could

change at any time. The loss of Dell, IBM or Hewlett Packard as a customer, or a significant reduction in sales to any of them, would significantly reduce our net sales and adversely affect our operating results.

Our ability to maintain or increase our net sales to our key customers depends on a variety of factors, many of which are beyond our control. These factors include our customers' continued sales of servers and other computing systems that incorporate our memory subsystems and our customers' continued incorporation of our products into their systems.

Because of these and other factors, we cannot assure you that net sales to these customers will continue or that the amount of such net sales will reach or exceed historical levels in any future period. Because these customers account for a substantial portion of our net sales, the failure of any one of these customers to pay on a timely basis would negatively impact our cash flow.

**A limited number of relatively large potential customers dominate the markets for our products.**



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Our target markets are characterized by a limited number of large companies. Consolidation in one or more of our target markets may further increase this industry concentration. As a result, we anticipate that sales of our products will continue to be concentrated among a limited number of large customers in the foreseeable future. We believe that our financial results will depend in significant part on our success in establishing and maintaining relationships with, and effecting substantial sales to, these potential customers. Even if we establish these relationships, our financial results will be largely dependent on these customers' sales and business results.

**The markets in which we compete are cyclical in nature, and any future downturn could adversely affect our business.**





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The markets in which we compete and in which our customers operate have been cyclical and are characterized by wide fluctuations in product supply and demand. These markets have experienced significant downturns, often connected with, or in anticipation of, maturing product cycles, reductions in technology spending and declines in general economic conditions. These downturns have been characterized by diminished product demand, production overcapacity, high inventory levels and the erosion of average selling prices. As a result, our sales will likely decline during these periods. In addition, if we are unable to control our expenses adequately in response to reduced net sales, our results of operations would be negatively impacted.

**We are subject to risks relating to product concentration and lack of market diversification.**



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In the nine months ended September 29, 2007 and September 30, 2006, we derived approximately 69% and 83%, respectively, of our net sales from sales of our high performance memory subsystems for use in the server market. We expect these memory subsystems to continue to account for a significant portion of our net sales in the near term. Continued market acceptance of these products for use in servers is critical to our success. If the demand for servers deteriorates or if the demand for our products to be incorporated in servers declines, our operating results would be adversely affected, and we would be forced to diversify our product portfolio and our target markets. We may not be able to achieve this diversification, and our inability to do so may adversely affect our business.

**We have historically incurred losses and may continue to incur losses.**



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We incurred net losses each year from the inception of our business through fiscal 2005, as well as for the nine months ended September 29, 2007. Our cumulative net losses were \$23.7 million and \$16.3 million as of September 29, 2007 and December 30, 2006, respectively. We may not be able to achieve or maintain profitability on a quarterly or annual basis in the future.

**The price of DRAM ICs is volatile, and excess inventory of DRAM ICs, other components, and finished products could adversely affect our gross margin.**



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The prices of our products are adjusted periodically based in part on the market price of DRAM ICs, which have historically constituted approximately 70% - 90% of the total cost of our memory subsystems. Once our prices with a customer are negotiated, we are generally unable to revise pricing with that customer until our next regularly scheduled price adjustment. Consequently, we are exposed to the risks associated with the volatility of the price of DRAM ICs during that period. If the market price for DRAM ICs increases, we generally cannot pass this price increase on to our customers for products purchased under an existing purchase order. As a result, our cost of sales could increase and our gross margins could

decrease. Alternatively, if there is a decline in the price of DRAM ICs, we may need to reduce our selling prices for subsequent purchase orders, which may result in a decline in our expected net sales.

Customer demand for our products, and thus DRAM ICs, can be difficult to estimate because we do not have long-term commitments from our customers, and our customers may cancel or defer purchase orders for any reason. If we overestimate customer demand, we may have excess inventory of DRAM ICs. If there is a subsequent decline in the price of DRAM ICs, the value of our inventory will fall. As a result, we may need to write-down the value of our DRAM IC inventory, which may result in a significant decrease in our gross margin and financial condition. If we underestimate customer demand, we may not have sufficient inventory of DRAM ICs to manufacture our products. This will lead to delays in the delivery of our products, which could cause order cancellations, the loss of customers and a decrease in our net sales.

**We use a small number of DRAM IC suppliers and are subject to risks of disruption in the supply of DRAM ICs.**





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Our ability to fulfill customer orders is dependent on a sufficient supply of DRAM ICs, which are an essential component of our memory subsystems. There is a relatively small number of suppliers of DRAM ICs, and we purchase from only a subset of these suppliers. We have no long-term DRAM supply contracts. Our dependence on a small number of suppliers and the lack of any guaranteed sources of DRAM supply expose us to several risks, including the inability to obtain an adequate supply of DRAM ICs, price increases, delivery delays and poor quality.

The recent declines in customer demand and revenues has caused us to reduce our purchases of DRAM ICs. Should we not maintain sufficient purchase levels with some suppliers, our ability to obtain future supplies of raw materials may be impaired due to the practice of some suppliers to allocate their products to customers with the highest regular demand.

From time to time, shortages in DRAM ICs have required some suppliers to limit the supply of their DRAM ICs. As a result, we may be unable to obtain the DRAM ICs necessary to fill customers' orders for our products in a timely manner. If we are unable to obtain a sufficient supply of DRAM ICs to meet our customers' requirements, these customers may reduce future orders for our products or not purchase our products at all, which would cause our net sales to decline and harm our operating results. In addition, our reputation could be harmed, we may not be able to replace any lost business with new customers, and we may lose market share to our competitors.

Our customers qualify the DRAM ICs of our suppliers for use in their systems. If one of our suppliers should experience quality control problems, it may be disqualified by one or more of our customers. This would disrupt our supplies of DRAM ICs and reduce the number of suppliers available to us, and may require that we qualify a new supplier.

**If the supply of other component materials used to manufacture our products is interrupted, or if our inventory becomes obsolete, our results of operations and financial condition could be adversely affected.**



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We use consumables and other components, including PCBs, to manufacture our memory subsystems. We sometimes procure PCBs and other components from single or limited sources to take advantage of volume pricing discounts. Material shortages or transportation problems could interrupt the manufacture of our products from time to time in the future. These delays in manufacturing could adversely affect our results of operations.

Frequent technology changes and the introduction of next-generation products also may result in the obsolescence of other items of inventory, such as our custom-built PCBs, which could reduce our gross margin and adversely affect our operating performance and financial condition. We may not be able to sell some products developed for one customer to another customer because our products are often designed to address specific customer requirements, and even if we are able to sell these products to another customer, our margin on such products may be reduced.

**We may lose our competitive position if we are unable to timely and cost-effectively develop new or enhanced products that meet our customers requirements and achieve market acceptance.**



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Our industry is characterized by intense competition, rapid technological change, evolving industry standards and rapid product obsolescence. Evolving industry standards and technological change or new, competitive technologies could render our existing products obsolete. Accordingly, our ability to compete in the future will depend in a large part on our ability to identify and develop new or enhanced products on a timely and cost-effective basis, and to respond to changing customer requirements. In order to develop and introduce new or enhanced products, we need to:

identify and adjust to the changing requirements of our current and potential customers;

identify and adapt to emerging technological trends and evolving industry standards in our markets;

design and introduce cost-effective, innovative and performance-enhancing features that differentiate our products from those of our competitors;

develop relationships with potential suppliers of components required for these new or enhanced products;

qualify these products for use in our customers' products; and

develop and maintain effective marketing strategies.

Our product development efforts are costly and inherently risky. It is difficult to foresee changes or developments in technology or anticipate the adoption of new standards. Moreover, once these things are identified, if at all, we will need to hire the appropriate technical personnel, develop the product and identify and eliminate design flaws. As a result, we may not be able to successfully develop new or enhanced products, or we may experience delays in the development and introduction of new or enhanced products. Delays in product development and introduction could result in the loss of, or delays in generating, net sales and the loss of market share, as well as damage to our reputation. Even if we develop new or enhanced products, they may not meet our customers' requirements or gain market acceptance. Accordingly, we cannot assure you that our future product development efforts will result in the development of new or enhanced products or that such products will achieve market acceptance.

**Our customers require that our products undergo a lengthy and expensive qualification process without any assurance of net sales.**





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Our prospective customers generally make a significant commitment of resources to test and evaluate our memory subsystems prior to purchasing our products and integrating them into their systems. This extensive qualification process involves rigorous reliability testing and evaluation of our products, which may continue for six months or longer and is often subject to delays. In addition to qualification of specific products, some of our customers may also require us to undergo a technology qualification if our product designs incorporate innovative technologies that the customer has not previously encountered. Such technology qualifications often take substantially longer than product qualifications and can take over a year to complete. Qualification by a prospective customer does not ensure any sales to that prospective customer. Even after successful qualification and sales of our products to a customer, changes in our products, our manufacturing facilities, our production processes or our component suppliers may require a new qualification process, which may result in additional delays. In addition, because the qualification process is both product-specific and platform-specific, our existing customers sometimes require us to requalify our products, or to qualify our new products, for use in new platforms or applications. For example, as our OEM customers transition from prior generation DDR DRAM architectures to current generation DDR2 DRAM architectures, we must design and qualify new products for use by those customers. In the past, this process of design and qualification has taken up to six months to complete, during which time our net sales to those customers declined significantly. After our products are qualified, it can take several months before the customer begins production and we begin to generate net sales. We must devote substantial resources, including design, engineering, sales, marketing and management efforts, to qualify our products with prospective customers in anticipation of sales. If we delay or do not succeed in qualifying a product with a prospective customer, we will not be able to sell that product to that prospect, which would harm our operating results and business.

**We may not be able to maintain our competitive position because of the intense competition in our targeted markets.**



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We participate in a highly competitive market, and we expect competition to intensify. Many of these competitors have longer operating histories, significantly greater resources and name recognition, a larger base of customers and longer-standing relationships with customers and suppliers than we have. As a result, some of these competitors are able to devote greater resources to the development, promotion and sale of products and are better positioned than we are to influence customer acceptance of their products over our products. These competitors also may be able to respond better to new or emerging technologies or standards and may be able to deliver products with comparable or superior performance at a lower price. For these reasons, we may not be able to compete successfully against these competitors.

In addition to the competitors described above, some of our OEM customers have their own internal design groups that may develop solutions that compete with ours. These design groups have some advantages over us, including direct access to their respective companies' technical information and technology roadmaps. Our OEM customers also have substantially greater resources, financial or otherwise, than we do, and may have lower cost structures than ours. As a result, they may be

able to design and manufacture competitive products more efficiently or inexpensively. If any of these OEM customers are successful in competing against us, our sales could decline, our margins could be negatively impacted and we could lose market share, any or all of which could harm our business and results of operations.

We expect our competitors to continue to improve the performance of their current products, reduce their prices and introduce new or enhanced technologies that may offer greater performance and improved pricing. If we are unable to match or exceed the improvements made by our competitors, our market position would deteriorate and our net sales would decline. In addition, our competitors may develop future generations and enhancements of competitive products that may render our technologies obsolete or uncompetitive.

We also expect to face competition from new and emerging companies that may enter our existing or future markets. These potential competitors may have similar or alternative products which may be less costly or provide additional features.

**The establishment and ongoing operation of our manufacturing facility in the People's Republic of China, or the PRC, could expose us to new and significant risks.**



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Thus far in fiscal 2007, we have invested significant time and effort in establishing a new manufacturing facility in the PRC and preparing it for full-scale operations. Our new manufacturing facility became operational in July 2007 and was successfully qualified by certain key customers. The difficulties normally associated with this complicated process are compounded by language and cultural differences, as well as the geographic distance from our current facility. Our management has limited experience in creating or overseeing foreign operations, and this new facility may divert substantial amounts of their time. Further, this new facility will be subject to factory audits by our customers. Even if this facility is fully operational and is qualified by our customers, we cannot assure you that we will be able to maintain control over product quality, delivery schedules, manufacturing yields and costs as we increase our output. We also have to manage a local workforce that may subject us to uncertainties or regulatory policies. Should our facility achieve full operations, we will still be subject to risks related to managing the increased production capacity provided by the facility. Should anticipated demand not materialize, the costs related to having excess capacity would have an adverse impact on our gross margins and operating results.

As we continue to increase our operations in the PRC, some of our net sales may be denominated in Chinese Renminbi, or Yuan in future periods. The Chinese government controls the procedures by which Yuan is converted into other currencies, and conversion of Yuan generally requires government consent. As a result, Yuan may not be freely convertible into other currencies at all times. If the Chinese government institutes changes in currency conversion procedures, or imposes restrictions on currency conversion, those actions may negatively impact our operations and could reduce our operating results. In addition, fluctuations in the exchange rate between Yuan and U.S. dollars may adversely affect our expenses and results of operations as well as the value of our assets and liabilities. These fluctuations may also adversely affect the comparability of our period-to-period results. If we decide to declare dividends and repatriate funds from our Chinese operations, we will be required to comply with the procedures and regulations of applicable Chinese law. Any changes to these procedures and regulations, or our failure to comply with those procedures and regulations, could prevent us from making dividends and repatriating funds from our Chinese operations, which could adversely affect our financial condition. If we are able to make dividends and repatriate funds from our Chinese operations, these dividends would be subject to U.S. corporate income tax.

The PRC currently provides for favorable tax rates for certain foreign-owned enterprises operating in specified locations in the PRC. We are establishing our PRC facility in such a tax-favored location. Should the PRC government enact a revised tax structure, it is possible that we would not realize the tax benefits that we currently anticipate and this could adversely impact our operating results.

**We depend on a few key employees, and if we lose the services of any of those employees or are unable to hire additional personnel, our business could be harmed.**



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Our success to date has been highly dependent on the experience, relationships and technical knowledge of Chun K. Hong, our President, Chief Executive Officer and Chairman of the Board, Jayesh Bhakta, our Chief Technology Officer, and Christopher Lopes, our Vice President of Sales. We believe that our future success will be dependent on our ability to retain the services of these key employees, develop their successors, reduce our reliance on them, and properly manage the transition of their roles should departures occur.



The loss of these key employees could delay the development and introduction of, and negatively impact our ability to sell, our products and otherwise harm our business. We do not have employment agreements with any of these key employees other than Mr. Hong. We do not carry Key Man life insurance on any of our key employees.

Our future success also depends on our ability to attract, retain and motivate highly skilled engineering, manufacturing, other technical and sales personnel. Competition for experienced personnel is intense. We may not be successful in attracting new engineers or other technical personnel, or in retaining or motivating our existing personnel. If we are unable to hire and retain engineers with the skills necessary to keep pace with the evolving technologies in our markets, our ability to continue to provide our current products and to develop new or enhanced products will be negatively impacted, which would harm our business. In addition, the shortage of experienced engineers, and other factors, may lead to increased recruiting, relocation and compensation costs for such engineers, which may exceed our expectations and resources. These increased costs may make hiring new engineers difficult, or may reduce our margins.

As of September 29, 2007, approximately 16% of our workforce consisted of contract personnel. We invest considerable time and expense in training these contract employees. We may experience high turnover rates in our contract employee workforce, which may require us to expend additional resources in the future. If we convert any of these contract employees into permanent employees, we may have to pay finder's fees to the contract agency.

**Our lack of a significant backlog of unfilled orders, and the difficulty inherent in forecasting customer demand, makes it difficult to forecast our short-term production requirements to meet that demand.**



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We do not have long-term purchase agreements with our customers. Instead, our customers generally place purchase orders no more than two weeks in advance of their desired delivery date, and these purchase orders generally have no cancellation or rescheduling penalty provisions. This fact, combined with the quick turn-around times that apply to each order, makes it difficult to forecast our production needs and allocate production capacity efficiently. Our production expense levels are based in part on our forecasts of our customers' future product requirements and to a large extent are fixed in the short term. As a result, we likely will be unable to adjust spending on a timely basis to compensate for any unexpected shortfall in those orders. Any significant shortfall of customer orders in relation to our expectations could hurt our operating results, cash flows and financial condition. Also, any rapid increases in production required by our customers could strain our resources and reduce our margins. If such a rapid increase were to occur at any given time, we may not have sufficient short-term manufacturing capacity to meet our customers' immediate demands.

We attempt to forecast the demand for the DRAM ICs and other components needed to manufacture our products. Lead times for components vary significantly and depend on various factors, such as the specific supplier and the demand and supply for a component at a given time. If we underestimate customer demand or if we have not provided for sufficient manufacturing capacity, we would not be able to manufacture a sufficient quantity of our products and could forego sales opportunities, lose market share and damage our customer relationships.

**If we are unable to manufacture our products efficiently, our operating results could suffer.**



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We must continuously review and improve our manufacturing processes in an effort to maintain satisfactory manufacturing yields and product performance, lower our costs and otherwise remain competitive. For example, we began implementing lead-free soldering technologies in our manufacturing processes in the second quarter of 2005, and Reduction of Hazardous Substances manufacturing processes in the fourth quarter of 2005, both of which have been fully implemented. Implementing process improvements in the future could negatively impact our manufacturing yields, which would in turn adversely affect our results of operations.

As we manufacture more complex products, the risk of encountering delays or difficulties increases. The start-up costs associated with implementing new manufacturing technologies, methods and processes, including the purchase of new equipment, and any resulting manufacturing delays and inefficiencies, could negatively impact our results of operations.

If we need to add manufacturing capacity, an expansion of our existing manufacturing facility or establishment of a new facility could be subject to factory audits by our customers. For example, our new manufacturing facility in the PRC will need to be audited and approved by our key customers. Any delays or unexpected costs resulting from this audit process could adversely affect our net sales and results of operations. In addition, we cannot be certain that we will be able to increase our manufacturing capacity on a timely basis or meet the standards of any applicable factory audits.

**If we fail to protect our proprietary rights, our customers or our competitors might gain access to our proprietary designs, processes and technologies, which could adversely affect our operating results.**

We rely on a combination of patent protection, trade secret laws and restrictions on disclosure to protect our intellectual property rights. We have submitted a number of patent applications regarding our proprietary processes and technology. It is not certain when or if any of the claims in the remaining applications will be allowed. To date we have had only four patents issued. We intend to continue filing patent applications with respect to most of the new processes and technologies that we develop. However, patent protection may not be available for some of these processes or technologies.

It is possible that our efforts to protect our intellectual property rights may not:

prevent challenges to, or the invalidation or circumvention of, our existing intellectual property rights;

prevent our competitors from independently developing similar products, duplicating our products or designing around any patents that may be issued to us;

prevent disputes with third parties regarding ownership of our intellectual property rights;

prevent disclosure of our trade secrets and know-how to third parties or into the public domain;

result in valid patents, including international patents, from any of our pending or future applications; or

otherwise adequately protect our intellectual property rights.

Others may attempt to reverse engineer, copy or otherwise obtain and use our proprietary technologies without our consent. Monitoring the unauthorized use of our technologies is difficult. We cannot be certain that the steps we have taken will prevent the unauthorized use of our technologies. This is particularly true in foreign countries, such as the PRC, where we are in the process of establishing a new manufacturing facility and where the laws may not protect our proprietary rights to the same extent as applicable U.S. laws.

If some or all of the claims in our patent applications are not allowed, or if any of our intellectual property protections are limited in scope by a court or circumvented by others, we could face increased competition with regard to our products. Increased competition could significantly harm our business and our operating results.

**We may be involved in costly legal proceedings to defend against claims that we infringe the intellectual property rights of others or to enforce or protect our intellectual property rights.**





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Lawsuits claiming that we are infringing others' intellectual property rights may be brought against us, and we may have to defend against claims of infringement or invalidity. We currently plan to explore new technologies such as flash memory and to develop new products for our existing markets, such as communications, and for new markets, such as networking. By making use of these new technologies and entering these new markets there is an increased likelihood that others might allege that our products infringe on their intellectual property rights. Litigation is inherently uncertain, and an adverse outcome could subject us to significant liability for damages or invalidate our proprietary rights. An adverse outcome also could force us to take specific actions, including causing us to:

cease selling products that are claimed to be infringing a third party's intellectual property;

pay royalties on past or future sales;

seek a license from the third party intellectual property owner to use their technology in our products, which license may not be available on reasonable terms, or at all; or

redesign those products that are claimed to be infringing a third party's intellectual property.

There is a limited pool of experienced technical personnel that we can draw upon to meet our hiring needs. As a result, a number of our existing employees have worked for our existing or potential competitors at some point during their careers, and we anticipate that a number of our future employees will have similar work histories. In the past, some of these competitors have claimed that our employees misappropriated their trade secrets or violated non-competition or non-solicitation agreements. Some of our competitors may threaten or bring legal action involving similar claims against us or our existing employees or make such claims in the future to prevent us from hiring qualified candidates. Lawsuits of this type

may be brought, even if there is no merit to the claim, simply as a strategy to drain our financial resources and divert management's attention away from our business.

We also may find it necessary to litigate against others, including our competitors, customers and former employees, to enforce our intellectual property and contractual and commercial rights including, in particular, our trade secrets, as well as to challenge the validity and scope of the proprietary rights of others. We could become subject to counterclaims or countersuits against us as a result of this litigation. Moreover, any legal disputes with customers could cause them to cease buying or using our products or delay their purchase of our products and could substantially damage our relationship with them.

Any litigation, regardless of its outcome, would be time consuming and costly to resolve, divert our management's time and attention and negatively impact our results of operations.

**If we are required to obtain licenses to use third party intellectual property and we fail to do so, our business could be harmed.**



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Although some of the components used in our final products contain the intellectual property of third parties, we believe that our suppliers bear the sole responsibility to obtain any rights and licenses to such third party intellectual property. While we have no knowledge that any third party licensor disputes our belief, we cannot assure you that disputes will not arise in the future. The operation of our business and our ability to compete successfully depends significantly on our continued operation without claims of infringement or demands resulting from such claims, including demands for payments of money in the form of, for example, ongoing licensing fees.

We are also developing products to enter new markets, such as the industrial flash market. Similar to our current products, we may use components in these new products that contain the intellectual property of third parties. While we will exercise necessary precautions to avoid infringing on the intellectual property rights of third parties, we cannot assure you that disputes will not arise.

If it is determined that we are required to obtain inbound licenses and we fail to obtain licenses, or if such licenses are not available on economically feasible terms, our business, operating results and financial condition could be significantly harmed.

**If our products do not meet the quality standards of our customers, we may be forced to stop shipments of products until the quality issues are resolved. If our products are defective or are used in defective systems, we may be subject to product recalls or product liability claims.**



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Our customers require our products to meet strict quality standards. Should our products not meet such standards, our customers may discontinue purchases from us until we are able to resolve the quality issues that are causing us to not meet the standards. Such quality holds could have a significant adverse impact on our revenues and operating results.

If our products are defectively manufactured, contain defective components or are used in defective or malfunctioning systems, we could be subject to product liability claims and product recalls, safety alerts or advisory notices. While we have product liability insurance coverage, it may not be adequate to satisfy claims made against us. We also may be unable to obtain insurance in the future at satisfactory rates or in adequate amounts. Product liability claims or product recalls, regardless of their ultimate outcome, could have an adverse effect on our business, financial condition and reputation, and on our ability to attract and retain customers. In addition, we may determine that it is in our best interest to accept product returns in circumstances where we are not contractually obligated to do so in order to maintain good relations with our customers. Accepting product returns may negatively impact our operating results.

**If we acquire other businesses or technologies in the future, these acquisitions could disrupt our business and harm our operating results and financial condition.**



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We will evaluate opportunities to acquire businesses or technologies that might complement our current product offerings or enhance our technical capabilities. We have no experience in acquiring other businesses or technologies. Acquisitions entail a number of risks that could adversely affect our business and operating results, including:

difficulties in integrating the operations, technologies or products of the acquired companies;

the diversion of management's time and attention from the normal daily operations of the business;



insufficient increases in net sales to offset increased expenses associated with acquisitions or acquired companies;

difficulties in retaining business relationships with suppliers and customers of the acquired companies;

the overestimation of potential synergies or a delay in realizing those synergies;

entering markets in which we have no or limited experience and in which competitors have stronger market positions; and

the potential loss of key employees of the acquired companies.

Future acquisitions also could cause us to incur debt or be subject to contingent liabilities. In addition, acquisitions could cause us to issue equity securities that could dilute the ownership percentages of our existing stockholders. Furthermore, acquisitions may result in material charges or adverse tax consequences, substantial depreciation, deferred compensation charges, in-process research and development charges, the amortization of amounts related to deferred stock-based compensation expense and identifiable purchased intangible assets or impairment of goodwill, any or all of which could negatively affect our results of operations.

**If we do not effectively manage our growth, our resources, systems and controls may be strained and our results of operations may suffer.**



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We have expanded, and plan to continue to expand, our operations, both domestically and internationally. Any future growth may strain our resources, management information and telecommunication systems, and operational and financial controls. To manage our growth effectively, including the development of our new manufacturing facility in the PRC, we must continue to improve and expand our systems and controls. We may not be able to do this in a timely or cost-effective manner, and our current systems and controls may not be adequate to support our future operations. In addition, our officers have relatively limited experience in managing a rapidly growing business or a public company. As a result, they may not be able to provide the guidance necessary to continue our growth or maintain our market position. Any failure to manage our growth or improve or expand our existing systems and controls, or unexpected difficulties in doing so, could harm our business.

**Our internal controls over financial reporting may not be effective, which could have a significant and adverse effect on our business.**



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We plan to evaluate our internal controls over financial reporting to allow management to report on those internal controls as required by Section 404 of the Sarbanes-Oxley Act of 2002 and the rules and regulations of the Securities and Exchange Commission, which we collectively refer to as Section 404. This will involve system and process evaluations and testing to comply with the management assessment requirements of Section 404, which will initially have to be made in our annual report on Form 10-K for our 2007 fiscal year. Effective internal controls are necessary for us to produce reliable financial reports and are important in our effort to prevent financial fraud. In the course of our Section 404 evaluations, we may identify conditions that may result in significant deficiencies or material weaknesses and we may conclude that enhancements, modifications or changes to our internal controls are necessary or desirable. Implementing any such matters would divert the attention of our management, could involve significant costs, and may negatively impact our results of operations.

We note that there are inherent limitations on the effectiveness of internal controls, as they cannot prevent collusion, management override or failure of human judgment. If we fail to maintain an effective system of internal controls or if management or our independent registered public accounting firm were to discover material weaknesses in our internal controls, we may be unable to produce reliable financial reports or prevent fraud, and it could harm our financial condition and results of operations, result in a loss of investor confidence and negatively impact our share price.

**If a standardized memory solution which addresses the demands of our customers is developed, our net sales and market share may decline.**



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Many of our memory subsystems are specifically designed for our OEM customers' high performance systems. Our business would be harmed if these high performance systems were to become standardized so that DRAM IC manufacturers or other companies could develop and manufacture a commodity memory module addressing the demands of some or all of these high performance applications. If DRAM IC manufacturers or other companies are able to develop a standardized

solution, our future business may be limited to identifying the next generation of high performance memory demands of OEM customers and developing a solution that addresses such demands. Until fully implemented, this next generation of products may constitute a much smaller market, which may reduce our net sales and market share.

**Our failure to comply with environmental laws and regulations could subject us to significant fines and liabilities or cause us to incur significant costs.**





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We are subject to various and frequently changing U.S. federal, state and local and foreign governmental laws and regulations relating to the protection of the environment, including those governing the discharge of pollutants into the air and water, the management and disposal of hazardous substances and wastes, the cleanup of contaminated sites and the maintenance of a safe workplace. In particular, some of our manufacturing processes may require us to handle and dispose of hazardous materials from time to time. For example, in the past our manufacturing operations have used lead-based solder in the assembly of our products. Today, we use lead-free soldering technologies in our manufacturing processes, as this is required for products entering the European Union. We could incur substantial costs, including clean-up costs, civil or criminal fines or sanctions and third-party claims for property damage or personal injury, as a result of violations of, or noncompliance with, environmental laws and regulations. These laws and regulations also could require us to incur significant costs to remain in compliance.

**Economic, political and other risks associated with international sales and operations could adversely affect our net sales.**



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Part of our growth strategy involves making sales to foreign corporations and delivering our products to facilities located in foreign countries. To facilitate this process and to meet the long-term projected demand for our products, we are planning to set up a new manufacturing facility in the PRC. Selling and manufacturing in foreign countries subjects us to additional risks not present with our domestic operations. We will begin operating in business and regulatory environments in which we have little or no previous experience. We will need to overcome language and cultural barriers to effectively conduct our operations in these new environments. In addition, the economies of the PRC and other countries have been highly volatile in the past, resulting in significant fluctuations in local currencies and other instabilities. These instabilities affect a number of our customers and suppliers in addition to our foreign operations and continue to exist or may occur again in the future. International turmoil and the threat of future terrorist attacks, both domestically and internationally, have contributed to an uncertain political and economic climate, both in the U.S. and globally, and have negatively impacted the worldwide economy. The occurrence of one or more of these instabilities could adversely affect our foreign operations and some of our customers or suppliers, each of which could adversely affect our net sales. In addition, our failure to meet applicable regulatory requirements or overcome cultural barriers could result in production delays and increased turn-around times, which would adversely affect our business.

**Our operations could be disrupted by power outages, natural disasters or other factors.**



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Our current manufacturing facilities are located in Irvine, California and Suzhou, PRC. Due to this geographic concentration, a disruption of our manufacturing operations, resulting from equipment failure, power failures, quality control issues, human error, government intervention or natural disasters, including earthquakes, fires or floods, could interrupt or interfere with our manufacturing operations and consequently harm our business, financial condition and results of operations. Such disruptions would cause significant delays in shipments of our products and adversely affect our operating results.

**Our principal stockholders have significant voting power and may take actions that may not be in the best interest of our other stockholders.**



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As of September 29, 2007, our executive officers, directors and 5% stockholders beneficially own, in total, approximately 50% of our outstanding common stock. As a result, these stockholders, acting together, have the ability to exert substantial influence over all matters requiring approval by our stockholders, including the election and removal of directors and any proposed merger, consolidation or sale of all or substantially all of our assets and other corporate transactions. This concentration of control could be disadvantageous to other stockholders with interests different from those of our executive officers, directors and principal stockholders. For example, our executive officers, directors and principal stockholders could delay or prevent an acquisition or merger even if the transaction would benefit other stockholders. In addition, this significant concentration of share ownership may adversely affect the trading price for our common stock because investors may perceive disadvantages in owning stock in companies with stockholders that have the ability to exercise significant control.



**Anti-takeover provisions under our charter documents and Delaware law could delay or prevent a change of control and could also limit the market price of our stock.**



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Our certificate of incorporation and bylaws contain provisions that could delay or prevent a change of control of our company or changes in our board of directors that our stockholders might consider favorable. In addition, these provisions could limit the price that investors would be willing to pay in the future for shares of our common stock. The following are examples of provisions which are included in our certificate of incorporation and bylaws, each as amended:

our board of directors is authorized, without prior stockholder approval, to designate and issue preferred stock, commonly referred to as blank check preferred stock, with rights senior to those of our common stock;

stockholder action by written consent is prohibited;

nominations for election to our board of directors and the submission of matters to be acted upon by stockholders at a meeting are subject to advance notice requirements; and

our board of directors is expressly authorized to make, alter or repeal our bylaws.

In addition, we are governed by the provisions of Section 203 of the Delaware General Corporate Law, which may prohibit certain business combinations with stockholders owning 15% or more of our outstanding voting stock. These and other provisions in our certificate of incorporation and bylaws, and of Delaware law could make it more difficult for stockholders or potential acquirors to obtain control of our board of directors or initiate actions that are opposed by the then-current board of directors, including delaying or impeding a merger, tender offer, or proxy contest or other change of control transaction involving our company. Any delay or prevention of a change of control transaction or changes in our board of directors could prevent the consummation of a transaction in which our stockholders could receive a substantial premium over the then-current market price for their shares.

### **Item 2.** Unregistered Sales of Equity Securities and Use of Proceeds



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During the period from July 1, 2007 through September 29, 2007, we issued 22,909 shares of our common stock pursuant to an exercise of a warrant dated January 1, 2003, to purchase 42,000 shares of common stock. This exercise was made pursuant to a net issue election and the balance of the shares was forfeited.

We did not repurchase any of our outstanding equity securities during the quarter ended September 29, 2007.

### **Item 3.** Defaults Upon Senior Securities



None.

**Item 4.** Submission of Matters to a Vote of Security Holders





None.

**Item 5.** Other Information



None.

**Item 6.** Exhibits

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<b>Exhibit Number</b>	<b>Description of Document</b>
3.1(1)	Restated Certificate of Incorporation of Netlist, Inc.
3.2(1)	Amended and Restated Bylaws of Netlist, Inc.
10.1(2)	Offer Letter to Nita Moritz dated August 16, 2007

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- 10.2(3) Stock Option Agreement dated September 17, 2007 for options to purchase 200,000 shares of the Registrant's common stock awarded to Nita J. Moritz
- 31.1(4) Certification of Chief Executive Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act, as Amended.
- 31.2(4) Certification of Chief Financial Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act, as Amended.
- 32(5) Certification of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and furnished herewith pursuant to SEC Release No. 33-8238.
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- (1) Incorporated by reference to the corresponding exhibit number of the registration statement on Form S-1 of the registrant (No. 333-136735) filed with the Securities and Exchange Commission on October 23, 2006.
  
- (2) Incorporated by reference to the corresponding exhibit number of the current report on Form 8-K of the registrant filed with the Securities and Exchange Commission on September 18, 2007.
  
- (3) Incorporated by reference to exhibit number 4.3 of the registration statement on Form S-8 of the registrant (No. 333-146192) filed with the Securities and Exchange Commission on September 20, 2007.
  
- (4) Filed herewith.
  
- (5) The information in Exhibit 32 shall not be deemed filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, (the Exchange Act ), or otherwise subject to the liabilities of that section, nor shall they be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended, or the Exchange Act (including this Report), unless Netlist, Inc. specifically incorporates the foregoing information into those documents by reference.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Date: November 6, 2007

NETLIST, INC.  
a Delaware corporation  
(Registrant)

By: */s/ Chun K. Hong*  
**Chun K. Hong**  
**President, Chief Executive Officer and**  
**Chairman of the Board**  
**(Principal Executive Officer)**

By: */s/ Nita J. Moritz*  
**Nita J. Moritz**  
**Vice President and Chief Financial**  
**Officer**  
**(Principal Financial Officer)**

**EXHIBIT INDEX**

<b>Exhibit Number</b>	<b>Description of Document</b>
31.1	Certification of Chief Executive Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act, as Amended.
31.2	Certification of Chief Financial Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act, as Amended.
32	Certification of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and furnished herewith pursuant to SEC Release No. 33-8238.