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**SECURITIES AND EXCHANGE COMMISSION**  
WASHINGTON, D.C. 20549

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**FORM S-3**  
**REGISTRATION STATEMENT**  
*UNDER*  
**THE SECURITIES ACT OF 1933**

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**ON SEMICONDUCTOR CORPORATION**

**AND THE GUARANTORS IDENTIFIED IN FOOTNOTE (1) BELOW**

(Exact name of Registrant as specified in its charter)

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**Delaware**  
(State of incorporation)

**36-3840979**  
(I.R.S. Employer Identification Number)

**5005 E. McDowell Road**  
**Phoenix, Arizona 85008**  
**(602) 244-6600**

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

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**George H. Cave, Esq.**  
**Senior Vice President, Secretary and General Counsel**  
**ON Semiconductor Corporation**  
**5005 E. McDowell Road,**  
**Phoenix, Arizona 85008**  
**(602) 244-5226**

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

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*Copies to:*

**Stephen H. Shalen, Esq.**  
**Cleary, Gottlieb, Steen & Hamilton**  
**One Liberty Plaza**  
**New York, New York 10006**  
**(212) 225-2000**

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**Approximate date of commencement of proposed sale to the public:** From time to time after the effective date of this Registration Statement.

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

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

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

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

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

**Calculation of Registration Fee**

<b>Title of Securities to be Registered(1)</b>	<b>Amount to be Registered</b>	<b>Proposed Maximum Offering Price Per Security(2)</b>	<b>Proposed Maximum Aggregate Offering Price(2)</b>	<b>Amount of Registration Fee</b>
Zero Coupon Convertible Senior Subordinated Notes Due 2024	\$ 260,000,000	100%	\$ 260,000,000	\$ 32,942
Guarantees of Zero Coupon Convertible Senior Subordinated Notes Due 2024(3)	—	—	—	(5)
Common Stock, \$.01 par value per share	26,490,074(4)	—	—	(5)

- (1) The following domestic direct subsidiaries of ON Semiconductor Corporation, each of which is incorporated or organized in Delaware and has the I.R.S. employer identification number indicated, are guarantors of the notes and are co-registrants: Semiconductor Components Industries, LLC (36-4292817), SCG (Malaysia SMP) Holding Corporation (36-4307329), SCG (China) Holding Corporation (36-4265717) and SCG (Czech) Holding Corporation(36-4292303). The following domestic direct subsidiaries of Semiconductor Components Industries, LLC, each of which is incorporated or organized in Delaware and has the I.R.S. employer identification number indicated, are also guarantors of the notes and are co-registrants: Semiconductor Components Industries Puerto Rico, Inc. (36-4304551) and SCG International Development LLC (36-4292819). The following domestic direct subsidiaries of Semiconductor Components Industries, LLC, each of which is incorporated in Rhode Island and has the I.R.S. employer identification number indicated, are also guarantors of the notes and are co-registrants: Semiconductor Components Industries of Rhode Island, Inc. (05-0347660) and Semiconductor Components Industries International of Rhode Island, Inc. (05-0492494).
- (2) This estimate is made pursuant to Rule 457(a) under the Securities Act solely for the purpose of determining the registration fee. The above calculation is based on a bona fide estimate of the maximum offering price.
- (3) No separate consideration is receivable in connection with the note guarantees.
- (4) The number of shares of common stock registered hereunder is based upon the number of shares of common stock issuable upon conversion of the notes at the initial conversion rate of 101.8849 shares of Common Stock for each \$1,000 principal amount of the notes. Pursuant to Rule 416 under the Securities Act, the number of shares of common stock registered hereby shall include an indeterminate number of additional shares of common stock that may be issuable as a result of antidilution adjustments. Any shares of common stock issued upon conversion of the notes will be issued for no additional consideration.
- (5) Pursuant to Rule 457(i), there is no additional filing fee with respect to the note guarantees or the shares of common stock issuable upon conversion of the notes because no additional consideration will be received in connection with note guarantees or the exercise of the conversion privilege.

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

**The information in this prospectus is not complete and may be changed. The selling securityholders may not sell these securities until the registration statement filed with the SEC is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.**

**SUBJECT TO COMPLETION, DATED JUNE 30, 2004**

**PROSPECTUS**

**\$260,000,000**



**ON Semiconductor®**

**Zero Coupon Convertible Senior Subordinated Notes Due 2024,  
the Related Note Guarantees, and  
Common Stock Issuable upon Conversion of the Notes**

This prospectus relates to the offer and sale from time to time by the persons listed under “Selling Securityholders” in this prospectus of up to \$260,000,000 principal amount of our Zero Coupon Convertible Senior Subordinated Notes Due 2024 (and the related note guarantees as described herein), and shares of our common stock issuable upon conversion of the notes. We will not receive any of the proceeds from the sale of the notes or the sale of the underlying common stock by the selling securityholders.

The notes will not bear interest and the principal amount will not accrete. The notes will mature on April 15, 2024. The notes will be fully and unconditionally guaranteed on an unsecured senior subordinated basis by certain of our existing and future subsidiaries.

Holders may convert the notes into shares of our common stock at a conversion rate of 101.8849 shares per \$1,000 principal amount of notes, subject to adjustment, before the close of business on April 14, 2024 only under the following circumstances: (1) during any fiscal quarter commencing after June 30, 2004 through maturity, if the closing sale price of the Company’s common stock exceeds 120% of the conversion price for at least 20 trading days in the 30 consecutive trading-day period ending on the last trading day of the preceding fiscal quarter; (2) during the five business-day period after any five consecutive trading-day period in which the trading price per \$1,000 principal amount of notes for each day of that period was less than 98% of the product of the closing sale price of our common stock and the conversion rate; (3) if the notes have been called for redemption; (4) after the date, if ever, on which either Moody’s Investors Service, Inc. or Standard & Poor’s Rating Services assigns an initial credit rating to the notes, during any period in which the credit rating assigned to the notes by either Moody’s or S&P is three or more rating subcategories below the initial credit rating assigned by Moody’s or S&P, as the case may be, or any period in which the notes are no longer rated by either Moody’s or S&P, as the case may be, if such ratings agency had previously rated the notes; or (5) upon the occurrence of certain corporate events.

Beginning April 15, 2010, we may redeem any of the notes at a redemption price equal to the principal amount of such notes. Holders may require us to repurchase the notes for cash at a repurchase price equal to the principal amount of such notes on April 15 of 2010, 2014 and 2019.

Upon the occurrence of certain corporate events, each holder may require us to purchase all or a portion of such holder’s notes for cash at a price equal to the principal amount of such notes.

The notes are subordinated in right of payment to all of our senior indebtedness and pari passu in right of payment with our 12% senior subordinated notes due 2009 (which have been called for redemption on August 2, 2004). As of April 2, 2004, we had approximately \$635.2 million of senior indebtedness outstanding.

For a more detailed description of the notes, see “Description of Notes”.

Our common stock is quoted on the Nasdaq National Market under the symbol “ONNN.” On June 28, 2004, the last reported sale price of our common stock on the Nasdaq National Market was \$5.10 per share.

Investing in the notes and the underlying common stock involves risks. See “[Risk Factors](#)”.

**Neither the Securities and Exchange Commission, any state securities commission nor any other United States regulatory authority has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.**

The date of this prospectus is \_\_\_\_\_, 2004

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As used in this prospectus, the “Company,” “we,” “us,” “our” or “our company” refer, as the context requires, to:

- ON Semiconductor Corporation, together with its wholly owned direct subsidiaries, including Semiconductor Components Industries, LLC, and its wholly owned indirect subsidiaries;
- Solely in the context of our historical operations or results prior to our becoming an independent company as a result of our August 4, 1999 recapitalization, the Semiconductor Components Group of the Semiconductor Products Sector of Motorola, Inc.; and
- ON Semiconductor Corporation as the issuer of the notes offered hereby.

The ON Semiconductor logo is a registered trademark of Semiconductor Components Industries, LLC.

**We have not authorized anyone to give any information or make any representation about the offering that is different from, or in addition to, that contained in this prospectus, the related registration statement or in any of the materials that we have incorporated by reference into this prospectus. Therefore, if anyone does give you information of this type, you should not rely on it. If you are in a jurisdiction where offers to sell, or solicitations of offers to purchase, the securities offered by this document are unlawful, or if you are a person to whom it is unlawful to direct these types of activities, then the offer presented in this document does not extend to you. The information contained in this document speaks only as of the date of this document unless the information specifically indicates that another date applies.**

## NOTICE TO UNITED KINGDOM RESIDENTS

This prospectus is only being distributed to and is only directed at (1) persons who are outside the United Kingdom or (2) investment professionals falling within article 19(s) of the financial services and markets act 2000 (financial promotion) order 2001 (the “order”) or (3) high net worth entities, and other persons to whom it may lawfully be communicated, falling within article 49(2)(a) of the order (all such persons together being referred to as “relevant persons”). The notes and the underlying common stock are only available to, and any invitation, offer or agreement to subscribe, purchase or otherwise acquire such notes or the underlying common stock will be engaged in only with, relevant persons. Any person who is not a relevant person should not act or rely on this prospectus or any of its contents.

## INFORMATION REGARDING OUR INDUSTRY

In this prospectus, we rely on and refer to information regarding the semiconductor industry and our competitors that has been prepared by industry research firms, including World Semiconductor Trade Statistics and VLSI Research, or compiled from market research reports, analyst reports and other publicly available information. All industry and total addressable market data that are not cited as being from a specified source are from World Semiconductor Trade Statistics.

All of our market share information presented in this prospectus refers to our total product revenues in our total addressable market, which comprises the following specific World Semiconductor Trade Statistics product categories: (1) discrete products (all discrete semiconductors other than sensors, RF and microwave power transistors/modules, RF and microwave diodes, RF and microwave SS transistors, power FET modules, IGBT modules and optoelectronics); (2) standard analog products (amplifiers, voltage regulators and references, comparators, ASSP consumer, ASSP computer, ASSP automotive and ASSP industrial and others); and (3) standard logic products (general purpose logic and MOS general purpose logic only). We believe that this information is reliable, but we have not independently verified it.

## WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and current reports, proxy statements and other information with the Securities and Exchange Commission, which we refer to as the SEC. You may read and copy any document we file at the SEC’s Public Reference Room located at 450 Fifth Street N.W., Washington, D.C. 20549.

You may also obtain copies of our SEC filings by mail from the Office of Investor Education and Assistance of the SEC at 450 Fifth Street N.W., Washington, D.C. 20549 or by telephone at 1-800-SEC-0330. You may obtain information on the operation of the Public Reference Room and the Office of Investor Education and Assistance by calling the SEC at 1-800-SEC-0330. Our SEC filings are also available to the public from commercial document retrieval services and at the SEC’s Internet site (<http://www.sec.gov>).

You may request a copy of any of our filings with the SEC, or any of the agreements or other documents that are exhibits to those filings, at no cost, by writing, emailing or telephoning us at the following address, email address or phone number:

Secretary  
ON Semiconductor Corporation  
5005 East McDowell Road  
Phoenix, AZ 85008  
Email: [investor@onsemi.com](mailto:investor@onsemi.com)  
Telephone: 602-244-6600

## FORWARD-LOOKING STATEMENTS

This prospectus contains “forward-looking statements.” All statements, other than statements of historical facts, included in this prospectus are forward-looking statements, particularly statements about our plans, strategies and prospects under the headings “Summary”, “Management’s Discussion and Analysis of Financial Condition and Results of Operations” (which is incorporated by reference into this prospectus from our annual report on Form 10-K for the year ended December 31, 2003, as amended, and our quarterly report on Form 10-Q for the fiscal quarter ended April 2, 2004). Forward-looking statements are often characterized by the use of words such as “believes,” “estimates,” “expects,” “projects,” “may,” “will,” “intends,” “plans” or “anticipates,” or by discussions of strategy, plans or intentions. All forward-looking statements in this prospectus are made based on our current expectations and estimates, which involve risks, uncertainties and other factors that could cause results or events to differ materially from those expressed in forward-looking statements. Among these factors are changes in overall economic conditions, the cyclical nature of the semiconductor industry, changes in demand for our products, changes in inventories at our customers and distributors, technological and product development risks, availability of raw materials, competitors’ actions, loss of key customers, order cancellations or reduced bookings, changes in manufacturing yields, control of costs and expenses, significant litigation, risks associated with acquisitions and dispositions, risks associated with our substantial leverage and restrictive covenants in our debt instruments, risks associated with our international operations, the threat or occurrence of international armed conflict and terrorist activities both in the United States and internationally and risks involving environmental or other governmental regulation. Additional factors that could affect our future results or events are described in “Management’s Discussion and Analysis of Financial Condition and Results of Operations”, and other factors are described from time to time in our other SEC filings. See in particular the “Risk Factors” section of this prospectus. Readers are cautioned not to place undue reliance on forward-looking statements. We assume no obligation to update such information.

You should carefully consider the trends, risks and uncertainties described in the “Risk Factors” section of this prospectus and other reports filed by us with the SEC before making any investment decision with respect to the notes. If any of the trends, risks or uncertainties set forth below in the “Risk Factors” section of this prospectus actually occurs or continues, our business, financial condition or operating results could be materially adversely affected, the trading prices of our common stock could decline and you could lose all or part of your investment. All forward-looking statements attributable to us or persons acting on our behalf are expressly qualified in their entirety by this cautionary statement.

## INCORPORATION OF CERTAIN INFORMATION BY REFERENCE

The SEC allows us to “incorporate by reference” information we file with it into this prospectus, which means that:

- incorporated documents are considered part of this prospectus, and
- we can disclose to you important business and financial information about us that is not included in or delivered with this prospectus, by referring you to those other documents.

We incorporate by reference into this prospectus the documents listed below, as amended and supplemented, and all documents filed by us with the SEC under Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended, after the date of this prospectus and prior to the termination of this offering:

- Annual Report on Form 10-K for the year ended December 31, 2003 filed with the SEC on March 10, 2004 and the amendment thereto filed with the SEC on March 22, 2004;
- Quarterly Report on Form 10-Q for the quarter ended April 2, 2004, filed with the SEC on May 10, 2004;

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- Proxy Statement filed with the SEC on April 13, 2004; and
- Current Reports on Form 8-K that were filed on January 2, 2004, January 5, 2004 (two separate Current Reports), January 27, 2004, February 4, 2004, February 10, 2004, March 31, 2004 (two separate Current Reports), April 1, 2004, April 7, 2004, April 20, 2004, April 26, 2004, May 5, 2004 and May 12, 2004.

Any statement made in this prospectus concerning the contents of any contract, agreement or other document is qualified in its entirety by reference to that contract, agreement or document. If we have filed any of those contracts, agreements or other documents with the SEC, you should read such document for a more complete understanding of the document or matter involved. Information contained in this prospectus modifies or supersedes, as applicable, the information contained in earlier-dated documents incorporated by reference. Information that we file with the SEC after the date of this prospectus will automatically supersede the information in this prospectus and any earlier filed information incorporated by reference in this prospectus.

You can obtain any of the filings incorporated by reference into this document through us or from the SEC through the SEC's web site or at the addresses listed above under "Where You Can Find More Information."

## SUMMARY

*The following summary includes basic information about our company and this offering. It may not contain all of the information that is important to you. For a more complete understanding of our company and this offering, we encourage you to read this entire prospectus, including the section entitled “Risk Factors” and our consolidated financial statements and the notes thereto incorporated by reference into this prospectus.*

### **ON Semiconductor Corporation**

We are a global supplier of power and data management semiconductors and standard semiconductor components. We design, manufacture and market an extensive portfolio of semiconductor components that addresses the design needs of sophisticated electronic systems and products. Our power management semiconductor components distribute and monitor the supply of power to the different elements within a wide variety of electronic devices. Our data management semiconductor components provide high-performance clock management and data flow management for precision computing and communications systems. Our standard semiconductor components serve as “building block” components within virtually all electronic devices.

We serve a broad base of end-user markets including computing, automotive electronics, consumer electronics, industrial electronics, wireless communications and networking. Applications for our products in these markets include portable electronics, computers, game stations, servers, automotive and industrial automation control systems, routers, switches, storage-area networks and automated test equipment.

We have four main product lines: power management and standard analog devices, metal oxide semiconductor (MOS) power devices, high frequency clock and data management devices and standard components. Our extensive portfolio of devices enables us to offer advanced integrated circuits and the “building block” components that deliver system level functionality and design solutions. Our product portfolio currently comprises approximately 17,000 products and we shipped approximately 25.4 billion units in 2003. We specialize in micro packages, which offer increased performance characteristics while reducing the critical board space inside today’s ever shrinking electronic devices. We believe that our ability to offer a broad range of products provides our customers with single source purchasing on a cost-effective and timely basis.

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Our headquarters are located at 5005 E. McDowell Road, Phoenix, Arizona 85008, and our telephone number is (602) 244-6600.



**THE OFFERING**

Issuer	ON Semiconductor Corporation.
Securities Offered	\$260,000,000 principal amount of Zero Coupon Convertible Senior Subordinated Notes due 2024.
Maturity Date	April 15, 2024, unless earlier redeemed, repurchased or converted.
Conversion Rights	<p>You may convert the notes into shares of our common stock at an initial conversion rate of 101.8849 shares per \$1,000 principal amount of notes (representing an initial conversion price of \$9.815), subject to adjustment, prior to the close of business on the day before the final maturity date under any of the following circumstances:</p> <ul style="list-style-type: none"><li>• during any fiscal quarter commencing after June 30, 2004, if the closing sale price of our common stock exceeds 120% of the then-effective conversion price for at least 20 trading days in the 30 consecutive trading-day period ending on the last trading day of the preceding fiscal quarter, provided that if the notes become convertible under the foregoing provision during any fiscal quarter, then the notes will remain convertible at all times thereafter until the maturity date; or</li><li>• during the five business-day period after any five consecutive trading-day period in which the trading price per \$1,000 principal amount of notes for each day of such period was less than 98% of the product of the closing sale price of our common stock and the number of shares issuable upon conversion of \$1,000 principal amount of the notes; or</li><li>• if the notes have been called for redemption; or</li><li>• after the date, if ever, on which either Moody’s Investors Service, Inc. or Standard &amp; Poor’s Ratings Services assigns an initial credit rating to the notes, during any period in which the credit rating assigned to the notes by either Moody’s or S&amp;P is three or more rating subcategories below the initial credit rating assigned by Moody’s or S&amp;P, as the case may be, or in any period in which the notes are no longer rated by either Moody’s or S&amp;P, as the case may be, if such ratings agency had previously rated the notes; or</li><li>• upon the occurrence of specified corporate events described under “Description of Notes—Conversion of Notes—Conversion Upon Specified Corporate Transactions”.</li></ul> <p>Upon conversion, we have a right to deliver cash in lieu of shares of our common stock.</p>
Note Guarantees	The notes are fully and unconditionally guaranteed (each such guarantee, a “Note Guarantee”) on an unsecured senior subordinated basis by certain existing and future subsidiaries of the Company (collectively, the “Note Guarantors”).

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Ranking	<p>The notes are unsecured and subordinated in right of payment to all of our existing and future senior indebtedness. The notes rank equal in right of payment with all of our existing and future senior subordinated indebtedness and senior to all of our existing and future subordinated obligations.</p> <p>The Note Guarantees are unsecured and subordinated in right of payment to all existing and future senior indebtedness of the Note Guarantors, including all guarantees of the Note Guarantors under senior indebtedness. The Note Guarantees rank equal in right of payment with all of the existing and future senior subordinated indebtedness of the Note Guarantors and are senior to all of the existing and future subordinated obligations of the Note Guarantors.</p>
Sinking Fund	None.
Optional Redemption	We may redeem any of the notes beginning April 15, 2010, by giving you at least 30 days' notice. We may redeem the notes either in whole or in part at a cash redemption price of 100% of their principal amount. See "Description of Notes—Optional Redemption by the Company."
Repurchase at Option of the Holder upon a Designated Event	If a designated event (as described under "Description of Notes—Repurchase at Option of the Holder Upon a Designated Event") occurs prior to maturity of the notes, you may require us to repurchase all or part of your notes at a repurchase price equal to 100% of their principal amount.
Repurchase at Option of the Holder	You have the right to require us to repurchase all or part of your notes on April 15 of 2010, 2014 and 2019 at a cash repurchase price equal to 100% of their principal amount. See "Description of Notes—Repurchase at Option of the Holder."
Use of Proceeds	We will not receive any of the proceeds from the sale by any selling securityholder of the notes or the shares of common stock issuable upon conversion of the notes.
Nasdaq National Market Symbol	ONNN.

## RISK FACTORS

*You should carefully consider the risks and uncertainties described below before purchasing the notes or the underlying common stock.*

### **Risks Relating to Our Company**

***We have experienced declines in revenues and operating losses, and we may experience additional declines in revenues and operating losses in the future.***

Our historical financial results have been, and our future financial results are anticipated to be, subject to substantial fluctuations. Our revenue for the quarter ended April 2, 2004 was \$308.2 million, compared to \$269.5 million for the quarter ended April 4, 2003. Our revenues for 2003 were \$1,069.1 million, compared to \$1,093.7 million for 2002 and \$1,223.2 million in 2001. This decline was due primarily to declines in the average selling prices for our products. We incurred a net loss of \$47.6 million for the quarter ended April 2, 2004, compared to a net loss of \$50.5 million for the quarter ended April 4, 2003. We incurred net losses of \$166.7 million, \$141.9 million and \$831.4 million in 2003, 2002 and 2001, respectively. The most recent downturn in our business has been most pronounced with respect to our high frequency clock and data management products. Revenues from high frequency clock and data management products represented \$80.5 million, \$72.0 million and \$118.5 million, or 7.5%, 6.6% and 9.7% of the total revenues in 2003, 2002 and 2001, respectively.

Reduced end-user demand, continued price declines, excess inventory, underutilization of our manufacturing capacity and other factors could adversely affect our business in the near term and we may experience additional declines in revenue and operating losses in the future. In order to return to profitability, we must successfully implement our business plan, including our cost reduction initiatives. However, we also currently face an environment of uncertain demand and pricing pressure in the markets our products address. We cannot assure you that we will be able to return to profitability or that we will be able to sustain our profitability, if achieved.

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

The semiconductor industry is highly cyclical. The industry has experienced significant downturns, often in connection with, or in anticipation of, maturing product cycles (for semiconductors and for the end-user products in which they are used) and declines in general economic conditions. These downturns have been characterized by diminished product demand, production overcapacity, high inventory levels and accelerated erosion of average selling prices. We have experienced these conditions in our business in the past and may experience such downturns in the future. The most recent downturn, which began in the fourth quarter of 2000, was severe and prolonged, and it is uncertain whether recent improvements in semiconductor industry performance will continue or whether such improvements will benefit us to the same extent as they benefit other industry participants. Future downturns in the semiconductor industry may also be severe and prolonged. Future downturns in the semiconductor industry, or any failure of the industry to fully recover from its recent downturn, could seriously impact our revenues and harm our business, financial condition and results of operations.

During the 1990s and continuing into 2000, the semiconductor industry enjoyed unprecedented growth, benefiting from the rapid expansion of the internet and other computing and communications technologies. During 2001, we—like many of our customers and competitors—were adversely affected by a general economic slowdown and an abrupt decline in demand for many of the end-user products that incorporate our integrated circuits and standard semiconductors. The terrorist attacks of September 11, 2001 also further depressed economic activity and demand for end-user products. The impact of slowing end-customer demand was compounded by higher than normal levels of equipment and component inventories among our original equipment manufacturer, subcontractor and distributor customers, resulting in increasing pricing pressure. We expect that factors including, but not limited to, economic uncertainty and downturns relating to the threat or

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actual occurrence of armed international conflict or terrorist attacks, reduced demand for end-user products, underutilization of our manufacturing capacity and changes in our revenue mix could adversely impact our operating results in the near term.

***Our gross margin is dependent on a number of factors, including our level of capacity utilization.***

Semiconductor manufacturing requires significant capital investment, leading to high fixed costs, including depreciation expense. If we are unable to utilize our manufacturing and testing facilities at a high level, the fixed costs associated with these facilities will not be fully absorbed, resulting in higher average unit costs and lower gross margins. The decline in product orders and shipments in 2001 resulted in reduced capacity utilization of our facilities as we have attempted to match production with anticipated customer demand. As a percentage of revenues, gross margin was 31.1% for the quarter ended April 2, 2004, as compared to 28.2% for 2003, 27.3% for 2002 and 18.4% in 2001. Despite the recent improvement in gross margin, increased competition and other factors may lead to further price erosion, lower revenues and lower margins for us in the future.

***The failure to implement, as well as the completion and impact of, our profitability enhancement programs and cost reductions could adversely affect our business.***

Between 2000 and the end of 2003, we implemented a number of cost reduction initiatives in response to the significant downturn in our industry. These initiatives have included accelerating our manufacturing moves into lower cost regions, transitioning external supply to internal manufacturing and vice versa, outsourcing information technology and other services, working with our material suppliers to further lower costs, personnel reductions, reductions in employee compensation, temporary shutdowns of facilities with mandatory vacation and aggressively streamlining our overhead. However, we cannot assure you that these cost reduction initiatives will, in and of themselves, return us to profitability.

We recorded restructuring charges of \$150.4 million in 2001, \$27.7 million in 2002, \$61.2 million in 2003 and \$13.1 million during the first quarter of 2004 to cover costs associated with our cost reduction initiatives. These costs were primarily comprised of employee separation costs and asset impairments. The impact of these restructuring actions on our ability to compete effectively is subject to risks and uncertainties. Because our restructuring activities involve changes to many aspects of our business, the cost reductions could adversely impact productivity and sales to an extent we have not anticipated. In addition, the outsourcing of certain functions, such as information technology services, could adversely affect our business if our service providers are unable to, or otherwise do not, comply with the agreements relating thereto.

Even if we fully execute and implement these activities and they generate the anticipated cost savings, there may be other unforeseeable factors that could adversely impact our profitability and business.

***If we are unable to implement our business strategy, our revenues and profitability may be adversely affected.***

Our future financial performance and success are largely dependent on our ability to implement our business strategy successfully. Our present business strategy to build upon our position as a global supplier of power and data management semiconductors and standard semiconductor components includes, without limitation, plans to: (1) maintain and refine our product portfolio; (2) continue to develop leading edge customer support services; (3) expand further our just-in-time delivery capabilities; (4) increase our die manufacturing capacity in a cost-effective manner; (5) reduce further the number of our product platforms and process flows; (6) continue to manage our existing portfolio of products aggressively; (7) rationalize our manufacturing operations; (8) relocate manufacturing operations or outsource to lower cost regions; (9) reduce selling and administrative expenses; (10) more productively use our capital expenditure dollars; (11) actively manage working capital; (12) develop new products in a more efficient manner; and (13) focus on the development of power management and standard analog and high frequency clock and data management products. We cannot assure you that we will successfully implement our business strategy or that implementing our strategy will sustain or improve our results of

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operations. In particular, we cannot assure you that we will be able to build our position in markets with high growth potential, increase our volume or revenue, rationalize our manufacturing operations or reduce our costs and expenses.

Our business strategy is based on our assumptions about the future demand for our current products and the new products and applications that we are developing and on our ability to produce our products profitably. Each of these factors depends on our ability, among other things, to finance our operating and product development activities, maintain high quality and efficient manufacturing operations, relocate and close manufacturing facilities and reduce operating expenses as part of our ongoing cost restructuring with minimal disruption to our operations, access quality raw materials and contract manufacturing services in a cost-effective and timely manner, protect our intellectual property portfolio and attract and retain highly-skilled technical, managerial, marketing and finance personnel. Several of these and other factors that could affect our ability to implement our business strategy, such as risks associated with international operations, the threat or occurrence of armed international conflict and terrorist activities, increased competition, legal developments and general economic conditions, are beyond our control. In addition, circumstances beyond our control and changes in our business or industry may require us to change our business strategy.

***We may require additional capital in the future, and additional funds may not be available on terms acceptable to us.***

We believe that our existing cash and cash equivalents, together with the cash that we expect to generate from our operations and sales of assets in the ordinary course of business, will be sufficient to meet our planned capital needs for the next twelve months. However, it is possible that we may need to raise additional capital to fund our future activities or to consummate acquisitions of other businesses, products or technologies. As of April 2, 2004, we have \$12.4 million of borrowing capacity available under our revolving credit facility. As of January 9, 2003, we amended our primary foreign exchange hedging agreement to provide for termination if at any time the amount available under our revolving credit facility is less than \$2.5 million. Subject to the restrictions contained in our senior bank facilities and the indentures governing our first lien senior secured notes due 2010, our second lien senior secured notes due 2008 and our senior subordinated notes due 2009, we may be able to raise these funds by selling securities to the public or selected investors, or by borrowing money. We may not be able to obtain additional funds on favorable terms, or at all. If adequate funds are not available, we may be required to curtail our operations significantly, reduce planned capital expenditures and research and development, make selective dispositions of our assets or obtain funds through arrangements with strategic partners or others that may require us to relinquish rights to certain technologies or potential markets, or otherwise impair our ability to remain competitive.

***We may be unable to make the substantial research and development investments required to remain competitive in our business.***

The semiconductor industry requires substantial investment in research and development in order to develop and bring to market new and enhanced technologies and products. We are committed to maintaining spending on new product development in order to stay competitive in our markets. We cannot assure you that we will have sufficient resources to maintain the level of investment in research and development that is required to remain competitive. The primary emphasis of our new product development is in the power management and standard analog and high frequency clock and data management solutions, with over 70% of our overall research and development investment targeted in these areas.

***Uncertainties involving the ordering and shipment of, and payment for, our products could adversely affect our business.***

Our sales are typically made pursuant to individual purchase orders and we generally do not have long-term supply arrangements with our customers. Generally, our customers may cancel orders 30 days prior to shipment without incurring a significant penalty. We routinely purchase inventory based on customers' estimates of demand for their products, which is difficult to predict. This difficulty may be compounded when we sell to original equipment manufacturers indirectly through distributors or contract manufacturers, or both, as our

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forecasts for demand are then based on estimates provided by multiple parties. In addition, our customers may change their inventory practices on short notice for any reason. The cancellation or deferral of product orders, the return of previously sold products or overproduction due to failure of anticipated orders to materialize could result in excess obsolete inventory, which could result in write-downs of inventory or the incurrence of significant cancellation penalties under our arrangements with our raw materials and equipment suppliers.

During 2001, the markets in which our customers operate were characterized by a dramatic decline in end-user demand and continued high levels of channel inventories, which reduced visibility of future demand for our products and, in some cases, led to delays or defaults in payments for our products. In 2002 and the first half of 2003, short customer lead times prevailed given the over-capacity in the industry. These and other factors adversely affected our revenues during this period.

***An inability to introduce new products could adversely affect us, and changing technologies or consumption patterns could reduce the demand for our products.***

Rapidly changing technologies and industry standards, along with frequent new product introductions, characterize the industries that are currently the primary end-users of semiconductors. As these industries evolve and introduce new products, our success will depend on our ability to predict and adapt to these changes in a timely and cost-effective manner by designing, developing, manufacturing, marketing and providing customer support for our own new products and technologies.

We cannot assure you that we will be able to identify changes in the product markets and requirements of our customers and end-users and adapt to such changes in a timely and cost-effective manner. Nor can we assure you that products or technologies that may be developed in the future by our competitors and others will not render our products or technologies obsolete or noncompetitive. A fundamental shift in technologies or consumption patterns in our existing product markets or the product markets of our customers or end-users could have a material adverse effect on our business or prospects.

***Competition in our industry could prevent us from maintaining our revenues and from raising prices to offset increases in costs.***

The semiconductor industry, particularly the market for semiconductor components, is highly competitive. As a result of the recent economic downturn, competition in the markets in which we operate has intensified as manufacturers of semiconductor components have offered reduced prices in order to combat production overcapacity and high inventory levels. Although only a few companies compete with us in all of our product lines, we face significant competition within each of our product lines from major international semiconductor companies as well as smaller companies focused on specific market niches. In addition, companies not currently in direct competition with us may introduce competing products in the future. The semiconductor components industry has also been undergoing significant restructuring and consolidations that could adversely affect our competitiveness.

Many of our competitors may have certain advantages over us, including substantially greater financial and other resources with which to withstand adverse economic or market conditions and pursue development, engineering, manufacturing, marketing and distribution of their products; longer independent operating histories and presence in key markets; patent protection and greater name recognition.

Because our components are often building block semiconductors that in some cases can be integrated into more complex integrated circuits, we also face competition from manufacturers of integrated circuits, application-specific integrated circuits and fully customized integrated circuits, as well as customers who develop their own integrated circuit products.

We compete in different product lines to various degrees on the basis of price, quality, technical performance, product features, product system compatibility, customized design, strategic relationships with

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customers, new product innovation, availability, delivery timing and reliability and customer sales and technical support. Gross margins in the industry vary by geographic region depending on local demand for the products in which semiconductors are used, such as personal computers, industrial and telecommunications equipment, consumer electronics and automotive goods. Our ability to compete successfully depends on elements both within and outside of our control, including industry and general economic trends.

***Unless we maintain manufacturing efficiency, our future profitability could be adversely affected.***

Manufacturing semiconductor components involves highly complex processes that require advanced equipment. We and our competitors continuously modify these processes in an effort to improve yields and product performance. Impurities or other difficulties in the manufacturing process can lower yields. Our manufacturing efficiency will be an important factor in our future profitability, and we cannot assure you that we will be able to maintain our manufacturing efficiency or increase manufacturing efficiency to the same extent as our competitors.

From time to time, we have experienced difficulty in beginning production at new facilities, transferring production to other facilities or in effecting transitions to new manufacturing processes that have caused us to suffer delays in product deliveries or reduced yields. We cannot assure you that we will not experience manufacturing problems in achieving acceptable yields or experience product delivery delays in the future as a result of, among other things, capacity constraints, construction delays, transferring production to other facilities, upgrading or expanding existing facilities or changing our process technologies, any of which could result in a loss of future revenues. Our results of operations could also be adversely affected by the increase in fixed costs and operating expenses related to increases in production capacity if revenues do not increase proportionately.

***We could be required to incur significant capital expenditures for manufacturing technology and equipment to remain competitive.***

In view of industry conditions in recent years, we reduced our capital expenditures from \$149.0 million in 2001 to \$40.5 million in 2002. In 2003, however, our capital expenditures totaled \$59.8 million and in the quarter ended April 2, 2004 our capital expenditures were \$30.6 million. We may be required to increase our future capital expenditures to meet increased demand.

Semiconductor manufacturing has historically required, and in the future is likely to continue to require, a constant upgrading of process technology to remain competitive, as new and enhanced semiconductor processes are developed which permit smaller, more efficient and more powerful semiconductor devices. We maintain certain of our own manufacturing, assembly and test facilities, which have required and will continue to require significant investments in manufacturing technology and equipment. We have made substantial capital expenditures and installed significant production capacity to support new technologies and increased production volume.

We cannot assure you that we will have sufficient capital resources to make necessary investments in manufacturing technology and equipment. In addition, our principal credit agreement limits the amount of our capital expenditures.

***If we were to lose one of our large customers, our revenues and profitability could be adversely affected.***

Product sales to our ten largest customers accounted in the aggregate for approximately 54% of our total revenues for the quarter ended April 2, 2004 and 54%, 52% and 46% of our total revenues in 2003, 2002 and 2001, respectively. Many of our customers operate in cyclical industries, and in the past we have experienced significant fluctuations from period to period in the volume of our products ordered. Generally, our agreements with our customers impose no minimum or continuing obligations to purchase our products. We cannot assure you that any of our customers will not significantly reduce orders or seek price reductions in the future or that the loss of one or more of our customers would not have a material adverse effect on our business or prospects.

***The loss of our sources of raw materials or manufacturing or other services, or increases in the prices of such goods or services, could adversely affect our operations and productivity.***

Our results of operations could be adversely affected if we are unable to obtain adequate supplies of raw materials in a timely manner or if the costs of our raw materials increase significantly or their quality deteriorates. Our manufacturing processes rely on many raw materials, including silicon wafers, copper lead frames, mold compound, ceramic packages and various chemicals and gases. Generally, our agreements with suppliers impose no minimum or continuing supply obligations, and we obtain our raw materials and supplies from a large number of sources on a just-in-time basis. From time to time, suppliers may extend lead times, limit supplies or increase prices due to capacity constraints or other factors. Although we believe that our current supplies of raw materials are adequate, shortages could occur in various essential materials due to interruption of supply or increased demand in the industry.

In addition, for some of our products, such as our new Silicon Germanium (SiGe) technology, we are dependent upon a limited number of highly specialized suppliers for required components and materials. The number of qualified alternative suppliers for these kinds of technologies is extremely limited. We cannot assure you that we will not lose our suppliers for these key technologies or that our suppliers will be able to meet performance and quality specifications or delivery schedules. Disruption or termination of our limited supply sources for these components and materials could delay our shipments of products utilizing these technologies and damage relationships with current and prospective customers.

We also use third-party contractors for some of our manufacturing activities, primarily for wafer fabrication and the assembly and testing of final goods. These contract manufacturers, including Amkor, PSI, AIT, ASE, KEC, Hynix, Liteon, Chartered and Phenitec, accounted for approximately 26%, 30% and 31% of our cost of sales in 2003, 2002 and 2001, respectively. Our agreements with these manufacturers typically require us to forecast product needs and commit to purchase services consistent with these forecasts, and in some cases require longer-term commitments in the early stages of the relationship. Our operations could be adversely affected if these contractual relationships were disrupted or terminated, the cost of such services increased significantly, the quality of the services provided deteriorated or our forecasts proved to be materially incorrect.

Furthermore, we recently entered into a five-year agreement with respect to the outsourcing of information technology infrastructure, messaging, data center network, help desk and onsite management services. The outsourcing of these and other functions could adversely affect our business if our service providers are unable to, or otherwise do not, comply with the agreements relating thereto.

***Acquisitions and strategic alliances may harm our operating results or cause us to incur debt or assume contingent liabilities or dilute our stockholders.***

We may in the future acquire and form strategic alliances relating to other businesses, products and technologies. Successful acquisitions and alliances in the semiconductor industry are difficult to accomplish because they require, among other things, efficient integration and aligning of product offerings and manufacturing operations and coordination of sales and marketing and research and development efforts. The difficulties of integration and alignment may be increased by the necessity of coordinating geographically separated organizations, the complexity of the technologies being integrated and aligned and the necessity of integrating personnel with disparate business backgrounds and combining different corporate cultures. The integration and alignment of operations following an acquisition or alliance requires the dedication of management resources that may distract attention from the day-to-day business, and may disrupt key research and development, marketing or sales efforts. In addition, we may issue equity securities to pay for future acquisitions or alliances, which could be dilutive to existing stockholders. We may also incur debt or assume contingent liabilities in connection with acquisitions and alliances, which could harm our operating results. Without strategic acquisitions and alliances we may have difficulty meeting future customer product and service requirements.



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***Our international operations subject us to risks inherent in doing business on an international level that could adversely impact our results of operations.***

Approximately 37%, 44% and 19% of our total revenues in 2002 and 30%, 52% and 18% of our total revenues in 2003 and 31%, 52% and 17% of our total revenue for the quarter ended April 2, 2004 were derived from the Americas, the Asia/Pacific region and Europe (including the Middle East), respectively. We maintain significant operations in Seremban, Malaysia; Carmona, the Philippines; Aizu, Japan; Leshan, China; Roznov, the Czech Republic; and Piestany, the Slovak Republic. In addition, we rely on a number of contract manufacturers whose operations are primarily located in the Asia/Pacific region.

We cannot assure you that we will be successful in overcoming the risks that relate to or arise from operating in international markets. Risks inherent in doing business on an international level include, among others, the following:

- economic and political instability (including as a result of the threat or occurrence of armed international conflict or terrorist attacks);
- changes in regulatory requirements, tariffs, customs, duties and other trade barriers;
- transportation delays;
- power supply shortages and shutdowns;
- difficulties in staffing and managing foreign operations and other labor problems;
- currency convertibility and repatriation;
- taxation of our earnings and the earnings of our personnel; and
- other risks relating to the administration of or changes in, or new interpretations of, the laws, regulations and policies of the jurisdictions in which we conduct our business.

Our activities outside the United States are subject to additional risks associated with fluctuating currency values and exchange rates, hard currency shortages and controls on currency exchange. While our sales are primarily denominated in U.S. dollars, worldwide semiconductor pricing is influenced by currency rate fluctuations.

***If we fail to attract and retain highly-skilled personnel, our results of operations and competitive position could deteriorate.***

Our success depends upon our ability to attract and retain highly-skilled technical, managerial, marketing and finance personnel. The market for personnel with such qualifications is highly competitive. For example, analog component designers are difficult to attract and retain, and the failure to attract and retain analog component designers could compromise our ability to keep pace with our competitors in the market for analog components. We have not entered into employment agreements with all of our key personnel. As employee incentives, we issue common stock options that generally have exercise prices at the market value at time of the grant and that are subject to vesting. At times, our stock price has declined substantially, reducing the effectiveness of these incentives. Loss of the services of, or failure to effectively recruit, qualified personnel, including senior managers and design engineers, could have a material adverse effect on our business.

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***We use a significant amount of intellectual property in our business. Some of that intellectual property is currently subject to disputes with third parties, and litigation could arise in the future. If we are unable to protect the intellectual property we use, our business could be adversely affected.***

We rely on patents, trade secrets, trademarks, mask works and copyrights to protect our products and technologies. Some of our products and technologies are not covered by any patents or pending patent applications, and we cannot assure you that:

- any of the substantial number of U.S. and foreign patents and pending patent applications that we employ in our business, including those that Motorola assigned, licensed or sublicensed to us in connection with our 1999 recapitalization, will not lapse or be invalidated, circumvented, challenged, abandoned or licensed to others;
- the license rights granted by Motorola in connection with our recapitalization will provide competitive advantages to us;
- any of our pending or future patent applications will be issued or have the coverage originally sought;
- any of the trademarks, copyrights, trade secrets, know-how or mask works that Motorola has assigned, licensed or sublicensed to us in connection with our recapitalization will not lapse or be invalidated, circumvented, challenged, abandoned or licensed to others; or
- any of our pending or future trademark, copyright, or mask work applications will be issued or have the coverage originally sought.

In addition, our competitors or others may develop products or technologies that are similar or superior to our products or technologies, duplicate our products or technologies or design around our protected technologies. Effective patent, trademark, copyright and trade secret protection may be unavailable, limited or not applied for in the United States and in foreign countries.

Also, we may from time to time in the future be notified of claims that we may be infringing third-party patents or other intellectual property rights. Motorola has agreed to indemnify us for a limited period of time with respect to some claims that our activities infringe on the intellectual property rights of others. If necessary or desirable, we may seek licenses under such patents or intellectual property rights. However, we cannot assure you that we will obtain such licenses or that the terms of any offered licenses will be acceptable to us. The failure to obtain a license from a third party for technologies we use could cause us to incur substantial liabilities or to suspend the manufacture or shipment of products or our use of processes requiring the technologies. Litigation could cause us to incur significant expense, by adversely affecting sales of the challenged product or technologies and diverting the efforts of our technical and management personnel, whether or not such litigation is resolved in our favor. In the event of an adverse outcome in any such litigation, we may be required to:

- pay substantial damages;
- cease the manufacture, use, sale or importation of infringing products;
- expend significant resources to develop or acquire non-infringing technologies;
- discontinue the use of processes; or
- obtain licenses to the infringing technologies.

We cannot assure you that we would be successful in any such development or acquisition or that any such licenses would be available to us on reasonable terms. Any such development, acquisition or license could require the expenditure of substantial time and other resources.

We will also seek to protect our proprietary technologies, including technologies that may not be patented or patentable, in part by confidentiality agreements and, if applicable, inventors' rights agreements with our collaborators, advisors, employees and consultants. We cannot assure you that these agreements will not be

breached, that we will have adequate remedies for any breach or that persons or institutions will not assert rights to intellectual property arising out of our research.

***We are party to securities class action litigation which may be costly to defend and the outcome of which is uncertain.***

In July 2001, three stockholder class action lawsuits were filed in the United States District Court for the Southern District of New York against us, certain of our former officers, current and former directors and various investment banking firms who acted as underwriters in connection with our initial public offering in May 2000. In April 2002, the plaintiffs filed a consolidated, amended complaint that supercedes the individual complaints originally filed. The amended complaint generally alleges that our offering documents failed to disclose certain underwriting fees and commissions and underwriter tie-ins and other arrangements with certain customers of the underwriters that impacted the price of our common stock in the after-market. The plaintiffs are seeking unspecified damages. On July 15, 2002, together with other issuer defendants, we filed a collective motion to dismiss the class action lawsuit. On February 19, 2003, as to the claims brought against us under the antifraud provisions of the securities laws, the Court dismissed these claims with prejudice. As to the claims brought under the registration provisions of the securities laws, the Court denied the motion to dismiss these claims. In addition, the parties have stipulated to the voluntary dismissal without prejudice of the current and former directors and officers who were named as individual defendants in the litigation. In June 2003, upon the determination of a special independent committee of our Board of Directors, we elected to participate in a proposed settlement with the plaintiffs in this litigation. The parties to the proposed settlement have drafted formal settlement documents, and it is expected that a motion for preliminary Court approval of those documents will be filed shortly. If preliminary Court approval is obtained, notice of proposed settlement will be sent to the plaintiff class members, and a motion will then be made for final Court approval of the proposed settlement. If this proposed settlement is ultimately submitted to and approved by the Court, it would result in a dismissal, with prejudice, of all claims in the litigation against us and against any of the other issuer defendants who elect to participate in the proposed settlement, together with the current or former officers and directors of participating issuers who were named as individual defendants.

We can provide no assurance as to the outcome of this securities litigation. Any conclusion of this litigation in a manner adverse to us could have a material adverse effect on our business, financial condition, results of operations and cash flows. In addition, the cost to us of defending the litigation, even if resolved in our favor, could be substantial. Such litigation could also substantially divert the attention of our management and our resources in general. Uncertainties resulting from the initiation and continuation of this litigation could harm our ability to compete in the marketplace. Because the price of our common stock has been, and may continue to be, volatile, we can provide no assurance that additional securities litigation will not be filed against us in the future.

***Environmental and other regulatory matters could adversely affect our ability to conduct our business and could require expenditures that could have a material adverse effect on our results of operations and financial condition.***

Our manufacturing operations are subject to various environmental laws and regulations relating to the management, disposal and remediation of hazardous substances and the emission and discharge of pollutants into the air and water. Our operations are also subject to laws and regulations relating to workplace safety and worker health, which, among other things, regulate employee exposure to hazardous substances. Motorola has agreed to indemnify us for environmental and health and safety liabilities related to the conduct or operations of our business or Motorola's ownership, occupancy or use of real property occurring prior to the closing of our 1999 recapitalization. We also have purchased environmental insurance to cover certain claims related to historical contamination and future releases of hazardous substances. However, we cannot assure you that such indemnification arrangements and insurance policy will cover all material environmental costs. In addition, the nature of our operations exposes us to the continuing risk of environmental and health and safety liabilities related to events or activities occurring after our recapitalization.

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Based on information currently available to us, we believe that the future cost of compliance with existing environmental and health and safety laws and regulations, and any liability for currently known environmental conditions, will not have a material adverse effect on our business or prospects. However, we cannot predict:

- changes in environmental or health and safety laws or regulations;
- the manner in which environmental or health and safety laws or regulations will be enforced, administered or interpreted;
- our ability to enforce and collect under indemnity agreements and insurance policies relating to environmental liabilities; or
- the cost of compliance with future environmental or health and safety laws or regulations or the costs associated with any future environmental claims, including the cost of clean-up of currently unknown environmental conditions.

***Terrorist attacks, such as the attacks that occurred in New York and Washington D.C. on September 11, 2001, or threats or occurrences of international armed conflict or other terrorist activities both in the United States and internationally may affect the markets in which our common stock trades, the markets in which we operate and our profitability.***

On September 11, 2001 the United States was the target of terrorist attacks of unprecedented scope. The threat or occurrences of international armed conflict or other terrorist activities both in the United States and internationally may affect the markets in which our common stock trades, the market in which we operate and our profitability. The terrorist attacks have caused instability in the global financial markets and future or threatened terrorist attacks or occurrences of international armed conflict could result in greater economic instability.

***Warranty claims, product liability claims and product recalls could harm our business, results of operations and financial condition.***

We face an inherent business risk of exposure to warranty and product liability claims in the event that our products fail to perform as expected or such failure of our products results, or is alleged to result, in bodily injury or property damage (or both). In addition, if any of our designed products are or are alleged to be defective, we may be required to participate in their recall. As suppliers become more integrally involved in the electrical design, original equipment manufacturers are increasingly expecting them to warrant their products and are increasingly looking to them for contributions when faced with product liability claims or recalls. A successful warranty or product liability claim against us in excess of our available insurance coverage and established reserves, or a requirement that we participate in a product recall, would have adverse effects (that could be material) on our business, results of operations and financial condition.

### **Risks Relating to Our Indebtedness, the Notes and the Underlying Common Stock**

***Our substantial debt could impair our financial condition and adversely affect our ability to operate our business.***

We are highly leveraged and have substantial debt service obligations. As of April 2, 2004, we had total long-term indebtedness of \$1,141.2 million (including current maturities, but excluding unused commitments) and interest expense of \$34.3 million for the quarter ended April 2, 2004 and \$151.1 million for the year ended December 31, 2003. Also, we may incur additional debt in the future, subject to certain limitations contained in our debt instruments.

The degree to which we are leveraged could have important consequences to you, including:

- our ability to obtain additional financing in the future for working capital, capital expenditures, acquisitions, general corporate purposes or other purposes may be impaired;

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- a significant portion of our cash flow from operations must be dedicated to the payment of interest and principal on our debt, which reduces the funds available to us for our operations;
- some of our debt is and will continue to be at variable rates of interest, which may result in higher interest expense in the event of increases in market interest rates;
- our debt agreements contain, and any agreements to refinance our debt likely will contain, financial and restrictive covenants, and our failure to comply with them may result in an event of default which, if not cured or waived, could have a material adverse effect on us;
- our level of indebtedness will increase our vulnerability to general economic downturns and adverse industry conditions;
- our debt service obligations could limit our flexibility in planning for, or reacting to, changes in our business and the semiconductor industry; and
- our substantial leverage could place us at a competitive disadvantage vis-à-vis our competitors who have less leverage relative to their overall capital structures.

***We may incur more debt, which could exacerbate the risks described above.***

We and our subsidiaries may be able to incur substantial additional indebtedness in the future. The agreements relating to our outstanding indebtedness restrict us from incurring additional indebtedness, but do not fully prohibit us or our subsidiaries from doing so. If new debt is added to our and our subsidiaries' current debt levels, the related risks that we and they now face could intensify. Some of the debt we may incur may be secured by the same collateral securing certain of our existing indebtedness.

***The agreements relating to our indebtedness may restrict our current and future operations, particularly our ability to respond to changes or to take some actions.***

Our debt agreements contain, and any future debt agreements may include a number of restrictive covenants that impose significant operating and financial restrictions on among other things, our ability to:

- incur additional debt, including guarantees;
- incur liens;
- sell or otherwise dispose of assets;
- make investments, loans or advances;
- make some acquisitions;
- engage in mergers or consolidations;
- make capital expenditures;
- pay dividends, redeem capital stock or make certain other restricted payments or investments;
- pay dividends from Semiconductor Components Industries, LLC to ON Semiconductor Corporation;
- engage in sale and leaseback transactions;
- enter into new lines of business;
- issue some types of preferred stock; and
- enter into transactions with our affiliates.

In addition, our senior bank facilities require that we maintain or achieve a minimum consolidated EBITDA and a minimum amount of cash and cash equivalents. Any future debt could contain financial and other covenants more restrictive than those that are currently applicable.

***Our failure to comply with the agreements relating to our outstanding indebtedness, including as a result of events beyond our control, could result in an event of default that could materially and adversely affect our operating results and our financial condition.***

If there were an event of default under any of the agreements relating to our outstanding indebtedness the holders of the defaulted debt could cause all amounts outstanding with respect to that debt to be due and payable immediately. We cannot assure you that our assets or cash flow would be sufficient to fully repay borrowings under our outstanding debt instruments, either upon maturity or if accelerated upon an event of default or, if we were required to repurchase any of our debt securities upon a change of control, that we would be able to refinance or restructure the payments on those debt securities. Further, if we are unable to repay, refinance or restructure our indebtedness under our secured debt, the holders of such debt could proceed against the collateral securing that indebtedness. In addition, any event of default or declaration of acceleration under one debt instrument could also result in an event of default under one or more of our other debt instruments, including the notes.

***We may not be able to generate sufficient cash flow to meet our debt service obligations.***

Our ability to generate sufficient cash flow from operations to make scheduled payments on our debt obligations will depend on our future financial performance, which will be affected by a range of economic, competitive and business factors, many of which are outside of our control. If we do not generate sufficient cash flow from operations and proceeds from sales of assets in the ordinary course of business to satisfy our debt obligations, we may have to undertake alternative financing plans, such as refinancing or restructuring our debt, selling additional assets, reducing or delaying capital investments or seeking to raise additional capital. The terms of our financing agreements contain limitations on our ability to incur additional indebtedness. As of April 2, 2004, we had \$12.4 million of borrowing capacity available under our revolving credit facility. As of January 9, 2003, we amended our primary foreign exchange hedging agreement to provide for termination if at any time the amount available under our revolving credit facility is less than \$2.5 million. We cannot assure you that any refinancing would be possible, that any assets could be sold, or, if sold, of the timing of the sales and the amount of proceeds realized from those sales, or that additional financing could be obtained on acceptable terms, if at all, or would be permitted under the terms of our various debt instruments then in effect. Our inability to generate sufficient cash flow to satisfy our debt obligations, or to refinance our obligations on commercially reasonable terms, would have an adverse effect on our business, financial condition and results of operations, as well as on our ability to satisfy our debt obligations.

***The notes and the note guarantees are subordinated in right of payment to senior indebtedness.***

The notes are unsecured and subordinated in right of payment to our existing and future senior indebtedness. The indenture governing the notes does not limit the amount of additional indebtedness, including senior indebtedness, we or our subsidiaries can create, incur, assume or guarantee. As of April 2, 2004, we had approximately \$635.2 million of senior indebtedness outstanding (excluding unused commitments), all of which was secured. In addition, upon default in payment with respect to certain of our senior indebtedness or an event of default with respect to this indebtedness permitting the acceleration thereof, we may be blocked from making payments on the notes pursuant to the indenture. See "Description of Notes—Ranking."

Certain of our existing and future domestic subsidiaries have guaranteed, on a joint and several basis, our obligations under the notes on an unsecured and senior subordinated basis. However, the note guarantees are subordinated to the senior indebtedness of these note guarantors. As of April 2, 2004, our note guarantors had approximately \$670.3 million of senior indebtedness outstanding (including their guarantees of our senior secured notes and guarantees under the senior bank facilities), all of which was secured.

Because the notes and the note guarantees are subordinated to our senior indebtedness and the senior indebtedness of our note guarantors, respectively, in the event of our liquidation or insolvency or that of any note guarantor, as the case may be, and in certain other circumstances as described in "Description of Notes—Ranking," we or the note guarantors, as the case may be, will be permitted to make payment on the notes or the

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note guarantee, as applicable, only after our senior indebtedness or that of the note guarantor, as applicable, has been paid in full. Furthermore, because some of our senior indebtedness is secured by our and our subsidiaries' assets, in the event of our bankruptcy, liquidation, reorganization or other winding up, our assets that secure debt will be available to pay obligations on the notes only after all of our secured debt, as well as our senior indebtedness, have been repaid in full from such assets. After paying our secured debt and other senior indebtedness in full, we may not have sufficient assets remaining to pay any or all amounts due on the notes.

### ***The notes are structurally subordinated to all indebtedness and other liabilities of our subsidiaries other than the note guarantors.***

We are a holding company for the various subsidiaries that conduct our business on a worldwide basis. The notes are effectively subordinated to the liabilities, including trade payables, of our subsidiaries other than the note guarantors. If we or our non-guarantor subsidiaries were to incur additional debt or liabilities, our ability to pay our obligations on the notes could be adversely affected. As of April 2, 2004, our non-guarantor subsidiaries had liabilities of approximately \$579.0 million. Our non-guarantor subsidiaries may also from time to time incur other additional debt and liabilities.

### ***Your ability to enforce the guarantees of the notes may be limited.***

Although the notes are our obligations, they are unconditionally guaranteed on an unsecured senior subordinated basis by certain of our subsidiaries. The performance by each note guarantor of its obligations with respect to its note guarantee may be subject to review under relevant federal and state fraudulent conveyance and similar statutes in a bankruptcy or reorganization case or lawsuit by or on behalf of unpaid creditors of such note guarantor. Under these statutes, if a court were to find under relevant federal or state fraudulent conveyance statutes that a note guarantor did not receive fair consideration or reasonably equivalent value for incurring its guarantee of the notes, and that, at the time of such incurrence, the note guarantor: (i) was insolvent; (ii) was rendered insolvent by reason of such incurrence or grant; (iii) was engaged in a business or transaction for which the assets remaining with such note guarantor constituted unreasonably small capital; or (iv) intended to incur, or believed that it would incur, debts beyond its ability to pay such debts as they matured, then the court, subject to applicable statutes of limitation, could void the note guarantor's obligations under its note guarantee, recover payments made under the note guarantee, subordinate the note guarantee to other indebtedness of the note guarantor or take other action detrimental to the holders of the notes.

The measure of insolvency for these purposes will depend on the governing law of the relevant jurisdiction. Generally, however, a company will be considered insolvent for these purposes if the sum of that company's debts is greater than the fair value of all of that company's property or if the present fair salable value of that company's assets is less than the amount that will be required to pay its probable liability on its existing debts as they become absolute and matured or if a company is not able to pay its debts as they become due. Moreover, regardless of solvency, a court could void an incurrence of indebtedness, including the note guarantees, if it determined that such transaction was made with the intent to hinder, delay or defraud creditors. In addition, a court could subordinate the indebtedness, including the note guarantees, to the claims of all existing and future creditors on similar grounds. The note guarantees also could be subject to the claim that, since the note guarantees were incurred for our benefit and only indirectly for the benefit of the note guarantors, the obligations of the note guarantors under the note guarantees were incurred for less than reasonably equivalent value or fair consideration.

There can be no assurance as to what standard a court would apply in order to determine whether a note guarantor was "insolvent" upon the sale of the notes or that, regardless of the method of valuation, a court would not determine that the subsidiary guarantor was insolvent upon consummation of the sale of the notes.

### ***We are dependent upon our subsidiaries to service our debt.***

Our assets consist primarily of the capital stock or other equity interests of our operating subsidiaries. Consequently, our cash flow and ability to service debt obligations, including the notes, are dependent upon the

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earnings of our subsidiaries and the distribution of those earnings to us, or upon loans, advances or other payments made by the subsidiaries to us. The ability of our subsidiaries to pay dividends or make other payments or advances to us will depend upon their operating results and will be subject to applicable laws and contractual restrictions contained in any instruments governing their indebtedness.

***We may not have the funds necessary to finance the repurchase of the notes or may otherwise be restricted from making such repurchase if required by holders pursuant to the indenture.***

On April 15 of 2010, 2014 or 2019 or at any time prior to maturity following a “designated event” under the indenture, holders may require us to repurchase their notes at a price of 100% of the principal amount of the notes. However, it is possible that we will not have sufficient funds available at such time to make the required repurchase of notes. In addition, any future credit agreements or other agreements relating to our indebtedness could contain provisions prohibiting the repurchase of the notes under certain circumstances, or could provide that a designated event constitutes an event of default under that agreement. If any agreement governing our indebtedness prohibits or otherwise restricts us from repurchasing the notes when we become obligated to do so, we could seek the consent of the lenders to repurchase the notes or attempt to refinance this debt. If we do not obtain such a consent or refinance the indebtedness, we would not be permitted to repurchase tendered notes, which would constitute an event of default under the indenture and in turn would constitute a default under the terms of our other indebtedness.

***The conditional conversion feature of the notes could result in your not receiving the value of the common stock into which the notes are convertible.***

The notes are convertible into common stock only if specific conditions are met. If the specific conditions for conversion are not met, you may not be able to receive the value of the common stock into which your notes would otherwise be convertible.

***Our reported earnings per share may be more volatile because of the conversion contingency provision of the notes.***

Holders of the notes are entitled to convert the notes into shares of our common stock, among other circumstances, if the common stock price for the periods described in this prospectus is more than 120% of the conversion price. Unless and until this contingency or another conversion contingency is met, the shares of our common stock underlying the notes are not included in the calculation of our basic or fully diluted earnings per share. Should this contingency or another conversion contingency be met, fully diluted earnings per share would be expected to decrease as a result of the inclusion of the underlying shares in the fully diluted earnings per share calculation.

***We expect that the trading value of the notes will be significantly affected by the price of our common stock, which may be volatile.***

Our common stock has experienced significant price and volume fluctuations. The market price of the notes is expected to be significantly affected by the market price of our common stock as well as the general level of interest rates and our credit quality. This may result in a significantly greater volatility in the trading value of the notes than would be expected for nonconvertible debt securities we issue. For a discussion of the factors that may result in volatility in the market price of our common stock, see “Risks Relating to Our Company.”

***Our stock price may be volatile, which could result in substantial losses for investors in our securities.***

The stock markets in general, and the markets for high technology stocks in particular, have experienced extreme volatility that has often been unrelated to the operating performance of particular companies. These broad market fluctuations may adversely affect the trading price of our common stock.



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The market price of the common stock may also fluctuate significantly in response to the following factors, some of which are beyond our control:

- variations in our quarterly operating results;
- changes in securities analysts' estimates of our financial performance;
- changes in market valuations of similar companies;
- announcements by us or our competitors of significant contracts, acquisitions, strategic partnerships, joint ventures, capital commitments, new products or product enhancements;
- loss of a major customer or failure to complete significant transactions; and
- additions or departures of key personnel.

As of June 15, 2004, the trading price of our common stock since our initial public offering has ranged from a high of \$27.75 on May 1, 2000 to a low of \$0.89 on October 4, 2002.

### ***Fluctuations in our quarterly operating results may cause our stock price to decline.***

Given the nature of the markets in which we participate, we cannot reliably predict future revenues and profitability, and unexpected changes may cause us to adjust our operations. A large portion of our costs are fixed, due in part to our significant sales, research and development and manufacturing costs. Thus, small declines in revenues could negatively affect our operating results in any given quarter. Factors that could affect our quarterly operating results include:

- the timing and size of orders from our customers, including cancellations and reschedulings;
- the timing of introduction of new products;
- the gain or loss of significant customers, including as a result of industry consolidation;
- seasonality in some of our target markets;
- changes in the mix of products we sell;
- changes in demand by the end-users of our customers' products;
- market acceptance of our current and future products;
- variability of our customers' product life cycles;
- changes in manufacturing yields or other factors affecting the cost of goods sold, such as the cost and availability of raw materials and the extent of utilization of manufacturing capacity;
- changes in the prices of our products, which can be affected by the level of our customers' and end-users' demand, technological change, product obsolescence, competition or other factors;
- cancellations, changes or delays of deliveries to us by our third-party manufacturers, including as a result of the availability of manufacturing capacity and the proposed terms of manufacturing arrangements;
- our liquidity and access to capital; and
- our research and development activities and the funding thereof.

### ***The conversion rate of the notes may not be adjusted for all dilutive events.***

The conversion rate of the notes is subject to adjustment for certain events including, but not limited to, the issuance of stock dividends on our common stock, the issuance of certain rights or warrants, subdivisions or combinations of our common stock, certain distributions of assets, debt securities, capital stock or cash to holders

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of our common stock and certain issuer tender or exchange offers as described under “Description of Notes—Conversion of Notes—Conversion Rate Adjustments.” The conversion rate will not be adjusted for other events, such as an issuance of common stock for cash that may adversely affect the trading price of the notes or the common stock. There can be no assurance that an event that adversely affects the value of the notes, but does not result in an adjustment to the conversion rate, will not occur.

***The notes may not be rated or may receive a lower rating than anticipated.***

We do not intend to seek a rating on the notes. However, if one or more rating agencies rates the notes and assigns the notes a rating lower than the rating expected by the investors, or reduce their rating in the future, the market price of the notes and our common stock would be harmed.

***If you hold notes, you will not be entitled to any rights with respect to our common stock, but you will be subject to all changes made with respect to our common stock.***

If you hold notes, you will not be entitled to any rights with respect to our common stock (including, without limitation, voting rights and rights to receive any dividends or other distributions on our common stock), but you will be subject to all changes affecting the common stock. You will have rights with respect to our common stock only if and when we deliver shares of common stock to you upon conversion of your notes and, in limited cases, under the conversion rate adjustments applicable to the notes. For example, in the event that an amendment is proposed to our Certificate of Incorporation requiring shareholder approval and the record date for determining the shareholders of record entitled to vote on the amendment occurs prior to delivery of common stock to you, you will not be entitled to vote on the amendment, although you will nevertheless be subject to any changes in the powers, preferences or special rights of our common stock.

***Holders of our common stock may experience dilution.***

In September 2001, we sold 10,000 shares of our Series A Cumulative Convertible Redeemable Preferred Stock to TPG ON Holdings LLC, an affiliate of the Texas Pacific Group. Each share of preferred stock is convertible at the option of the holder into approximately 3,546 shares of our common stock as of the issue date, excluding shares into which the preferred stock is convertible due to accumulated and unpaid dividends and subject to customary anti-dilution adjustments. Under the anti-dilution provisions, the conversion price is subject to downward adjustment in the event we issue common stock, or derivative securities entitling the holder to subscribe for or acquire common stock, at a price below the then-current conversion price or market price. Holders of preferred stock are entitled to cumulative dividends, payable quarterly in cash, at a rate of 8% per annum (or if greater during the relevant quarterly period, in an amount equal to the value of the dividends that would be paid on our common stock then issuable upon conversion of the preferred stock), subject to applicable restrictions imposed by our principal credit facility. In the event dividends are not paid, the dividends will accumulate on a compounded basis and the number of shares of common stock into which the preferred stock is convertible will increase proportionately.

There is a possibility that the preferred stock will be converted at a price per share that is less than the then current market price of our common stock. If this were to occur, it may cause substantial dilution to our existing common stockholders.

***TPG, as our principal stockholder, controls our company, which will limit the ability of our other stockholders to influence the outcome of director elections and other matters submitted for a vote of the stockholders.***

Affiliates of Texas Pacific Group own 111,858,369 shares of our common stock and 10,000 shares of Series A Cumulative Convertible Redeemable Preferred Stock. The shares of preferred stock entitle the holder to vote with holders of common stock as a single class and carry 39,550,821 votes as of June 15, 2004, which includes common shares that may become issuable as the result of accrued and unpaid dividends on the preferred stock within 60 days of June 15, 2004. Such shares of preferred stock are convertible into 44,740,113 shares of

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common stock, which also includes common shares that may become issuable as the result of accrued and unpaid dividends on the preferred stock within 60 days of June 15, 2004. As of June 15, 2004, the shares of common stock and preferred stock owned by affiliates of Texas Pacific Group represented 51.7% of the total voting power of our outstanding capital stock (or 52.5% of the total voting power of our outstanding capital stock, if such shares of preferred stock had been converted as of such date), which includes common shares that may become issuable as the result of accrued and unpaid dividends on the preferred stock within 60 days of June 15, 2004. Both of these percentages are based on the number of shares of common stock outstanding as of June 15, 2004.

As a result, Texas Pacific Group, through its affiliates, will be able to:

- elect all of our directors and, as a result, control matters requiring board approval;
- control matters submitted to a stockholder vote, including mergers and consolidations with third parties and the sale of all or substantially all of our assets; and
- otherwise control or influence our business direction and policies.

In addition, our certificate of incorporation provides that the provisions of Section 203 of the Delaware General Corporation Law, which relate to business combinations with interested stockholders, do not apply to us.

***Our stock price could be affected because a substantial number of shares of our common stock will be available for sale in the future.***

Sales in the public market of a substantial number of shares of common stock, including shares of common stock issued upon conversion of the Series A preferred stock and shares of our common stock owned by affiliates of Texas Pacific Group, could depress the market price of the common stock and could impair our ability to raise capital through the sale of additional equity securities. A substantial number of shares of our common stock will be available for future sale, including the shares of our common stock issuable upon conversion of the Series A preferred stock and shares of our common stock owned by affiliates of Texas Pacific Group, all of which have been registered under the Securities Act under shelf registration statements.

***Provisions in our charter documents may delay or prevent the acquisition of our company, which could decrease the value of our stock.***

Our certificate of incorporation and bylaws contain provisions that could make it harder for a third party to acquire us without the consent of our board of directors. These provisions:

- create a board of directors with staggered terms;
- permit only our board of directors or the chairman on our board of directors to call special meetings of stockholders;
- establish advance notice requirements for submitting nominations for election to the board of directors and for proposing matters that can be acted upon by stockholders at a meeting;
- prohibit stockholder action by written consent;
- authorize the issuance of “blank check” preferred stock, which is preferred stock with voting or other rights or preferences that could impede a takeover attempt and that our board of directors can create and issue without prior stockholder approval; and
- require the approval by holders of at least 66 2/3% of our outstanding common stock to amend any of these provisions in our certificate of incorporation or bylaws.

Although we believe these provisions make a higher third-party bid more likely by requiring potential acquirors to negotiate with our board of directors, these provisions apply even if an initial offer may be considered beneficial by some stockholders.

**RATIO OF EARNINGS TO FIXED CHARGES**

Our ratio of earnings to fixed charges was as follows for each of the periods indicated:

	Quarter Ended April 2, 2004	Years Ended December 31,				August 4 through December 31, 1999	January 1 through August 3, 1999
		2003	2002	2001	2000		
Ratio of earnings to fixed charges	—	—	—	—	1.8	1.8	13.0

In calculating the ratio of earnings to fixed charges, earnings are the sum of earnings from continuing operations before income taxes, income applicable to minority interests and equity in net income (loss) of unconsolidated affiliates, plus fixed charges. Fixed charges are the sum of interest on indebtedness, amortization of debt discount and expense and that portion of net rental expense deemed representative of the interest component. The deficiencies for the quarter ended April 2, 2004 and for the years ended December 31, 2003, 2002 and 2001 were \$44.9 million and \$136.3 million, \$129.6 million and \$368.8 million, respectively.

**PRICE RANGE OF COMMON STOCK AND DIVIDEND POLICY**

Our common stock has traded under the symbol “ONNN” on the Nasdaq National Market since April 28, 2000, except for the period from October 25, 2002 until September 3, 2003 during which our common stock was quoted on the Nasdaq SmallCap Market. The following table sets forth the high and low closing sale prices for our common stock for the fiscal periods indicated as reported by the Nasdaq National Market or the Nasdaq SmallCap Market, as applicable.

	Common Stock Price	
	High	Low
Year Ended December 31, 2001		
First Quarter	\$ 8.2188	\$ 4.7500
Second Quarter	7.4800	4.0000
Third Quarter	4.7900	1.6800
Fourth Quarter	2.3599	1.3300
Year Ended December 31, 2002		
First Quarter	4.2000	2.2500
Second Quarter	5.9900	1.6000
Third Quarter	2.8100	1.1600
Fourth Quarter	2.6200	0.9100
Year Ended December 31, 2003		
First Quarter	1.9500	1.0400
Second Quarter	2.7100	1.0300
Third Quarter	5.4600	2.6900
Fourth Quarter	7.0500	4.1900
Year Ended December 31, 2004		
First Quarter	9.0000	6.3500
Second Quarter (through June 28, 2004)	7.8900	4.8400

As of June 15, 2004, there were approximately 244 holders of record of our common stock and 253,484,526 shares of common stock outstanding.

We have neither declared nor paid any cash dividends on our common stock since our initial public offering, and we do not presently intend to do so. Our future dividend policy with respect to our common stock will depend upon our earnings, capital requirements, financial condition, debt restrictions and other factors deemed relevant by our Board of Directors. Each of our senior bank facilities, senior secured first lien notes, senior secured second lien notes, senior subordinated notes and Series A cumulative convertible redeemable preferred stock restricts our ability to pay cash dividends to our common stockholders.

**USE OF PROCEEDS**

We will not receive any of the proceeds from the sale by any selling securityholder of the notes or the shares of common stock issuable upon conversion of the notes.

## DESCRIPTION OF NOTES

Definitions of certain terms used in this Description of Notes may be found under “—Certain Definitions.” For purposes of this section, the references to “Company,” “we,” “our” or “us” refers only to ON Semiconductor Corporation and not any of its subsidiaries.

The Notes were issued under an indenture among the Company, the Note Guarantors and Wells Fargo Bank, N.A., as Trustee (the “Indenture”). The Notes and the shares of the Company’s common stock issuable upon conversion of the Notes are covered by a registration rights agreement. You may request a copy of the Indenture and the registration rights agreement from the Trustee.

The following description is a summary of the material provisions of the Notes, the Indenture and the registration rights agreement. It does not purport to be complete. This summary is subject to and is qualified by reference to all the provisions of the Indenture, including the definitions of certain terms used in the Indenture, and to all provisions of the registration rights agreement. Wherever particular provisions or defined terms of the Indenture or form of note are referred to, these provisions or defined terms are incorporated in this prospectus by reference. We urge you to read the Indenture because it, and not this description, defines your rights as a holder of Notes.

### General

The Notes are:

- general unsecured debt of the Company;
- convertible into the Company’s common stock;
- subordinated in right of payment to all existing and future Senior Indebtedness of the Company;
- *pari passu* in right of payment with all existing and future Senior Subordinated Indebtedness of the Company;
- senior in right of payment to all existing and future Subordinated Obligations of the Company;
- effectively subordinated to all existing and future Secured Indebtedness of the Company and its subsidiaries to the extent of the value of the assets securing such Indebtedness; and
- effectively subordinated to all liabilities of the foreign subsidiaries of the Company, which are not Guaranteeing the Notes, and any other future subsidiaries of the Company that do not Guarantee the Notes.

The Notes are Guaranteed by each of the following subsidiaries of the Company:

- Semiconductor Components Industries, LLC,
- SCG (Malaysia SMP) Holding Corporation,
- SCG (Czech) Holding Corporation,
- SCG (China) Holding Corporation,
- Semiconductor Components Industries Puerto Rico, Inc.,
- Semiconductor Components Industries of Rhode Island, Inc.,
- SCG International Development LLC and,
- Semiconductor Components Industries International of Rhode Island, Inc.

The Note Guarantees are:

- general unsecured obligations of each Note Guarantor;
- subordinated in right of payment to all existing and future Senior Indebtedness of each Note Guarantor;

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- *pari passu* in right of payment with all existing and future Senior Subordinated Indebtedness of each Note Guarantor;
- senior in right of payment to all existing and future Subordinated Obligations of each Note Guarantor;
- effectively subordinated to all existing and future Secured Indebtedness of each Note Guarantor to the extent of the value of the assets securing such Indebtedness; and
- effectively subordinated to all liabilities of the foreign subsidiaries of the Company, which are not Guaranteeing the Notes, and any other future subsidiaries of the Company that do not Guarantee the Notes.

The Notes are issued only in denominations of \$1,000 and multiples of \$1,000. The Notes will mature on April 15, 2024 unless earlier converted, redeemed or repurchased. We will not pay interest on the Notes nor will the principal amount of the Notes accrete.

Neither we nor any of our subsidiaries are subject to any financial covenants under the Indenture. In addition, neither we nor any of our subsidiaries are restricted under the Indenture from paying dividends, incurring debt or issuing or repurchasing our securities.

You are not afforded protection under the Indenture in the event of a highly leveraged transaction or a change in control of us except to the extent described below under “—Repurchase at Option of the Holder upon a Designated Event.”

We will maintain an office in the Borough of Manhattan, The City of New York, where we will pay the principal on the Notes and you may present the Notes for conversion, registration of transfer or exchange for other denominations, which shall initially be an office or agency of the Trustee.

### **Conversion of Notes**

You may convert any of your Notes, in whole or in part, into shares of the Company’s common stock prior to the close of business on the day before the final maturity date of the Notes, subject to prior redemption or repurchase of the Notes, only under the following circumstances:

- upon satisfaction of a market price condition;
- subject to certain exceptions, upon satisfaction of a trading price condition;
- upon notice of redemption;
- after the date, if ever, on which either Moody’s Investors Service, Inc. or Standard & Poor’s Ratings Services assigns an initial credit rating to the Notes, during any period in which the credit rating assigned to the Notes by either Moody’s or S&P is three or more rating subcategories below the initial credit rating assigned by Moody’s or S&P, as the case may be, or any period in which the Notes are no longer rated by either Moody’s or S&P, as the case may be, if such ratings agency had previously rated the Notes; or
- upon the occurrence of specified corporate transactions.

The number of shares of common stock you will receive upon conversion of your Notes will be determined by multiplying the number of \$1,000 principal amount of Notes you convert by the conversion rate on the date of conversion. You may convert your Notes in part so long as such part is \$1,000 principal amount or an integral multiple of \$1,000. The initial conversion rate for the Notes is 101.8849 shares of common stock per \$1,000 principal amount of Notes, subject to adjustment as described below, which represents an initial conversion price of \$9.815 per share.

If we call Notes for redemption, you may convert the Notes only until the close of business on the second business day immediately preceding the redemption date unless we fail to pay the redemption price. If you have



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submitted your Notes for repurchase upon a designated event, you may convert your Notes only if you withdraw your repurchase election. Similarly, if you exercise your option to require us to repurchase your Notes other than upon a designated event, those Notes may be converted only if you withdraw your election to exercise your option in accordance with the terms of the Indenture. We will not issue fractional shares upon conversion of Notes. Instead, we will pay cash in lieu of fractional shares based on the closing sale price (as defined below) of the Company's common stock on the trading day prior to the conversion date. At the Company's option, the Company may issue one share of its common stock in lieu of paying cash for fractional shares. Delivery to the holder of the full number of shares of the Company's common stock into which a Note is convertible, together with any cash payment (or at the Company's option, the issuance of one share of its common stock) for such holder's fractional shares, will be deemed to satisfy our obligation to pay the principal amount of the Note.

For a discussion of your tax treatment upon receipt of the Company's common stock upon conversion, see "Material U.S. Federal Income Tax Considerations."

### ***Conversion Upon Satisfaction of Market Price Condition***

You may surrender your Notes for conversion into the Company's common stock during any fiscal quarter commencing after June 30, 2004, if the closing sale price of the Company's common stock exceeds 120% of the then-effective conversion price for at least 20 trading days in the 30 consecutive trading-day period ending on the last trading day of the preceding fiscal quarter, provided that if the Notes become convertible under the foregoing provision during any fiscal quarter, then the Notes will remain convertible at all times thereafter until the close of business on the day prior to the maturity date.

The "closing sale price" of the Company's common stock on any date means the closing per share sale price (or if no closing sale price is reported, the average of the closing bid and ask prices or, if more than one in either case, the average of the average closing bid and the average closing ask prices) as reported by the Nasdaq National Market, or if the Company's common stock is not quoted on the Nasdaq National Market, then as reported on such date in composite transactions for the principal United States national or regional securities exchange on which the Company's common stock is traded or, if the Company's common stock is not listed on a United States national or regional securities exchange or quoted on the Nasdaq National Market, then as reported by the National Quotation Bureau Incorporated. In the absence of such a quotation, we will determine the closing sale price on the basis we consider appropriate, and such determination shall be conclusive. The "conversion price" with respect to a Note as of any day will equal \$1,000 divided by the number of shares of common stock issuable upon the conversion of \$1,000 principal amount of Notes on such day.

### ***Conversion Upon Satisfaction of Trading Price Condition***

You may surrender your Notes for conversion into the Company's common stock during the five business-day period immediately following any five consecutive trading-day period in which the trading price per \$1,000 principal amount of Notes, as determined following a request by a holder of Notes in accordance with the procedures described below, for each day of that period was less than 98% of the product of the closing sale price of the Company's common stock and the number of shares of common stock issuable upon conversion of \$1,000 principal amount of the Notes at such time; *provided, however*, that you may not convert your Notes in reliance on this provision after April 15, 2019 if on any trading day during such measurement period the closing sale price of the Company's common stock was between 100% and 120% of the then-effective conversion price of the Notes.

The "trading price" of the Notes on any date of determination means the average of the secondary market bid quotations obtained by the Trustee for \$5,000,000 principal amount of the Notes at approximately 3:30 p.m., New York City time, on such determination date from three independent nationally recognized securities dealers we select; *provided* that if three such bids cannot reasonably be obtained by the Trustee, but two such bids are obtained, then the average of the two bids shall be used, and if only one such bid can reasonably be obtained by the Trustee, that one bid shall be used. If the Trustee cannot reasonably obtain at least one bid for \$5,000,000

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principal amount of the Notes from a nationally recognized securities dealer, then the trading price per \$1,000 principal amount of Notes will be deemed to be less than 98% of the product of the closing sale price of the Company's common stock and the number of shares issuable upon conversion of \$1,000 principal amount of the Notes.

In connection with any conversion upon satisfaction of the above trading price condition, the Trustee shall have no obligation to determine the trading price of the Notes unless we have requested such determination, and we shall have no obligation to make such request unless a holder provides us with reasonable evidence that the trading price per \$1,000 principal amount of Notes would be less than 98% of the product of the closing sale price of the Company's common stock and the number of shares of the Company's common stock issuable upon conversion of \$1,000 principal amount of the Notes at such time. At such time, we shall instruct the Trustee to determine the trading price of the Notes beginning on the next trading day and on each successive trading day until the trading price per \$1,000 principal amount of Notes is greater than or equal to 98% of the product of the closing sale price of the Company's common stock and the number of shares issuable upon conversion of \$1,000 principal amount of the Notes.

### ***Conversion Upon Notice of Redemption***

If we call Notes for redemption, you may convert the Notes until the close of business on the second business day immediately preceding the redemption date, after which time your right to convert will expire unless we default in the payment of the redemption price.

### ***Conversion upon Credit Ratings Event***

After the date, if ever, on which either Moody's Investors Service, Inc. or Standard & Poor's Rating Services assigns an initial credit rating to the Notes, you will have the right to surrender any or all of your Notes for conversion into shares of the Company's common stock during any period in which the credit rating assigned to the Notes by either Moody's or S&P is three or more rating subcategories below the initial credit rating assigned by Moody's or S&P, as the case may be, or any period in which the Notes are no longer rated by either Moody's or S&P, as the case may be, if such ratings agency had previously rated the Notes. The Notes have not been assigned a credit rating by any rating agency. The Company does not intend and has no obligation to obtain a credit rating for the Notes and there is no certainty that any such credit rating will be assigned to the Notes.

### ***Conversion Upon Specified Corporate Transactions***

If the Company elects to:

- distribute to all holders of the Company's common stock rights or warrants entitling them to purchase, for a period expiring within 45 days of the record date for such distribution, the Company's common stock at less than the average of the closing sale prices of the Company's common stock for the 10 trading days preceding the date such distribution is first publicly announced by us; or
- distribute to all holders of the Company's common stock, assets, debt securities or certain rights to purchase our securities, which distribution has a per share value exceeding 10% of the closing sale price of the Company's common stock on the trading day immediately preceding the date such distribution is first publicly announced by us;

we must notify you at least 20 days prior to the ex-dividend date for such distribution. Once we have given such notice, you may surrender your Notes for conversion at any time until the earlier of the close of business on the second business day prior to the ex-dividend date or any announcement by us that such distribution will not take place. No adjustment to the conversion rate will be made if you will otherwise participate in the distribution without conversion, nor will you have an ability to convert pursuant to this provision.

In addition, if the Company is a party to a consolidation, merger, binding share exchange or sale of all or substantially all of its assets, in each case pursuant to which the Company's common stock would be converted

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into cash, securities or other property, you may surrender your Notes for conversion at any time from and after the date which is 15 days prior to the anticipated effective date of the transaction until and including the date which is 15 days after the actual date of such transaction. If the Company is a party to a consolidation, merger, binding share exchange or sale of all or substantially all of its assets, in each case pursuant to which the Company's common stock is converted into cash, securities, or other property, then at the effective time of the transaction, your right to convert a Note into the Company's common stock will be changed into a right to convert it into the kind and amount of cash, securities and other property which you would have received if you had converted your Notes immediately prior to the transaction. If the transaction also constitutes a designated event, you can require us to repurchase all or a portion of your Notes as described under "—Repurchase at Option of the Holder Upon a Designated Event."

### ***Conversion Procedures***

To convert your Note into common stock you must:

- complete and manually sign the conversion notice on the back of the Note or a facsimile of the conversion notice and deliver this notice to the conversion agent;
- surrender the Note to the conversion agent;
- if required, furnish appropriate endorsements and transfer documents; and
- if required, pay all transfer or similar taxes.

The date you comply with these requirements is the "conversion date" under the Indenture. If your interest is a beneficial interest in a global note, to convert you must comply with the last three requirements listed above and comply with the depository's procedures for converting a beneficial interest in a global note.

### ***Conversion Rate Adjustments***

We will adjust the conversion rate if any of the following events occurs:

- the Company issues common stock as a dividend or distribution on the Company's common stock;
- the Company issues to all holders of common stock rights or warrants to purchase the Company's common stock entitling them to purchase, for a period expiring within 45 days of the record date for such distribution, the Company's common stock at a price less than the average of the closing sale prices of the Company's common stock for the 10 trading days preceding the date such distribution is first publicly announced by us;
- the Company subdivides or combines the Company's common stock;
- the Company distributes to all holders of the Company's common stock shares of the Company's capital stock, evidences of indebtedness or assets, including cash or securities but excluding:
  - rights or warrants specified above; and
  - dividends or distributions specified above.

If the Company distributes capital stock of, or similar equity interests in, a subsidiary or other business unit of the Company, then the conversion rate will be adjusted based on the market value of the securities so distributed relative to the market value of the Company's common stock, in each case based on the average closing sales prices of those securities (where such closing sales prices are available) for the 10 trading days commencing on and including the fifth trading day after the date on which "ex-dividend trading" commences for such distribution on the Nasdaq National Market or such other national or regional exchange or market on which the securities are then listed or quoted.

If the Company distributes cash, then the conversion rate shall be increased so that it equals the rate determined by multiplying the conversion rate in effect on the record date with respect to the cash distribution by a fraction, (1) the numerator of which shall be the current market price of a share of the

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Company's common stock on the record date and (2) the denominator of which shall be the same price of a share on the record date less the per share amount of the distribution. "Current market price" shall mean the average of the daily closing sale prices per share of the Company's common stock for the ten consecutive trading days ending on the earlier of the date of determination and the day before the "ex" date with respect to the distribution requiring such computation. For purpose of this paragraph, the term "ex" date, when used with respect to any distribution, means the first date on which the Company's common stock trades, regular way, on the relevant exchange or in the relevant market from which the closing sale price was obtained, without the right to receive such distribution.

- the Company or one of its subsidiaries makes a payment in respect of a tender offer or exchange offer for the Company's common stock to the extent that the cash and value of any other consideration included in the payment per share of common stock exceeds the closing sale price of the Company's common stock on the trading day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer.

To the extent that the Company has a rights plan in effect upon conversion of the Notes into common stock, you will receive, in addition to the Company's common stock, the rights under the rights plan unless the rights have separated from the common stock at the time of conversion, in which case the conversion rate will be adjusted as if the Company distributed to all holders of the Company's common stock, shares of the Company's capital stock, evidences of indebtedness or assets as described above, subject to readjustment in the event of the expiration, termination or redemption of such rights.

In the event of:

- any reclassification of the Company's common stock;
- a consolidation, merger or combination involving the Company; or
- a sale or conveyance to another person or entity of all or substantially all of the property and assets of the Company;

in which holders of the Company's common stock would be entitled to receive stock, other securities, other property, assets or cash for their common stock, upon conversion of your Notes you will be entitled to receive the same type of consideration which you would have been entitled to receive if you had converted the Notes into the Company's common stock immediately prior to any of these events.

We may, from time to time, to the extent permitted by law, increase the conversion rate if the board of directors of the Company has made a determination that this increase would be in the best interests of the Company. Any such determination will be conclusive (as permitted by Nasdaq Marketplace rules). In addition, we may increase the conversion rate if the Company's board of directors deems it advisable to avoid or diminish any income tax to holders of the Company's common stock resulting from any stock or rights distribution.

You may in certain situations be deemed to have received a distribution subject to United States federal income tax as a dividend in the event of any taxable distribution to holders of common stock or in certain other situations requiring a conversion rate adjustment. See "Material U.S. Federal Tax Considerations."

We will not be required to make an adjustment in the conversion rate unless the adjustment would require a change of at least 1% in the conversion rate. However, we will carry forward any adjustments that are less than 1% of the conversion rate. Except as described above in this section, we will not adjust the conversion rate for any issuance of the Company's common stock or convertible or exchangeable securities or rights to purchase the Company's common stock or convertible or exchangeable securities.

### **Payment Upon Conversion**

Upon conversion, we may choose to deliver either cash in lieu of shares of the Company's common stock or shares of the Company's common stock, as described below.

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At any time prior to maturity, the Company may at its option elect, by notice to the Trustee and the holders of the Notes, that upon conversion of the Notes at any time following the date of such notice, the Company shall be required to deliver cash in lieu of shares of the Company's common stock.

### ***Conversion On or Prior to the Final Notice Date***

In the event that we receive your notice of conversion on or prior to the day that is five days prior to maturity (the "final notice date"), and we choose to satisfy our obligation upon conversion (the "conversion obligation") by cash settlement, we will notify the holder electing to convert through the Trustee at any time on or before the date that is two business days following receipt of the holder's notice of conversion ("cash settlement notice period"). Share settlement will automatically apply if we do not notify you that we have chosen cash settlement.

If we timely elect cash settlement, the holder may retract the conversion notice at any time during the two business days after notice that we intend to satisfy the conversion price in cash (the "conversion retraction period"). No such retraction can be made (and a conversion notice shall be irrevocable) if we do not elect to deliver cash in lieu of shares of the Company's common stock (other than cash in lieu of fractional shares). If the conversion notice has not been retracted, then cash settlement will occur on the business day following the final trading day of the five trading-day period beginning on the first trading day after the final day of the conversion retraction period (the "cash settlement averaging period"), provided however, that the conversion shall be deemed to have occurred as described above under "—Conversion Procedures." Settlement amounts will be computed as follows:

- If we elect to satisfy the conversion obligation in shares of the Company's common stock, we will deliver to the electing holder a number of shares of the Company's common stock equal to (1) the aggregate principal amount of Notes to be converted divided by 1,000, multiplied by (2) the conversion rate.
- If we elect to satisfy the conversion obligation in cash, we will deliver to the electing holder cash in an amount equal to the product of:
  - a number equal to (1) the aggregate principal amount of Notes to be converted divided by 1,000, multiplied by (2) the conversion rate; and
  - the average sale price of shares of the Company's common stock during the cash settlement averaging period.

If a holder exercises its right to require us to repurchase its Notes as described under "Repurchase at Option of the Holder upon a Designated Event," such holder may convert its Notes as provided above only if it withdraws its repurchase notice and converts its Notes prior to the close of business on the business day immediately preceding the applicable repurchase date.

### ***Conversion After the Final Notice Date***

In the event that we receive your notice of conversion after the final notice date, and we choose to satisfy the conversion obligation by cash settlement, we will notify you through the Trustee. Share settlement will apply automatically if we do not notify you that we have chosen cash settlement. Settlement amounts will be computed and settlement dates will be determined in the same manner as set forth above under "Conversion On or Prior to the Final Notice Date" except that the cash settlement averaging period shall be the five trading-day period beginning on the first trading day after the final day of the conversion retraction period. If we timely elect cash settlement, the holder may retract the conversion notice at any time during the conversion retraction period. No such retraction can be made (and a conversion notice shall be irrevocable) if we do not elect cash settlement (other than cash in lieu of fractional shares). If the conversion notice has not been retracted, settlement will occur on the business day following the final day of such cash settlement averaging period.

### **Optional Redemption by the Company**

Beginning April 15, 2010, we may redeem the Notes, in whole or in part, for cash at a price of 100% of the principal amount. We are required to give notice of redemption by mail to holders not more than 60 but not less than 30 days prior to the redemption date.

If less than all of the outstanding Notes are to be redeemed, the Trustee will select the Notes to be redeemed in principal amounts of \$1,000 or multiples of \$1,000 by lot, pro rata or by another method the Trustee considers fair and appropriate. If a portion of your Notes is selected for partial redemption and you convert a portion of your Notes, the converted portion will be deemed to be of the portion selected for redemption.

### **Repurchase at Option of the Holder**

You have the right to require us to repurchase your Notes, in whole or in part, on April 15 of 2010, 2014 and 2019. We will be required to repurchase any outstanding Note for which you deliver a written repurchase notice to the paying agent, who will initially be the Trustee. This notice must be delivered during the period beginning at any time from the opening of business on the date that is 20 business days prior to the repurchase date until the close of business on the date two business days prior to the repurchase date. If a repurchase notice is given and withdrawn during that period, we will not be obligated to repurchase the Notes listed in the notice. Our repurchase obligation will be subject to certain additional conditions.

The repurchase price payable for a Note will be equal to 100% of the principal amount of the Notes to be repurchased.

Your right to require us to repurchase Notes is exercisable by delivering a written repurchase notice to the paying agent within 20 business days of the repurchase date. The paying agent is initially the Trustee.

The repurchase notice must state:

- (1) if certificated Notes have been issued, the note certificate numbers (or, if your Notes are not certificated, your repurchase notice must comply with appropriate DTC procedures);
- (2) the portion of the principal amount of Notes to be repurchased which must be in \$1,000 multiples; and
- (3) that the Notes are to be repurchased by us pursuant to the applicable provisions of the Notes and the Indenture.

You may withdraw any written repurchase notice by delivering a written notice of withdrawal to the paying agent prior to the close of business of the repurchase date. The withdrawal notice must state:

- the principal amount of the withdrawn Notes;
- if certificated Notes have been issued, the certificate numbers of the withdrawn Notes (or, if your Notes are not certificated, your withdrawal notice must comply with appropriate DTC procedures); and
- the principal amount, if any, which remains subject to the repurchase notice.

We must give notice of an upcoming repurchase date to all Note holders not less than 20 business days prior to the repurchase date at their addresses shown in the register of the registrar. We will also give notice to beneficial owners as required by applicable law.

Payment of the repurchase price for a Note for which a repurchase notice has been delivered and not withdrawn is conditioned upon book-entry transfer or delivery of the Note, together with necessary endorsements, to the paying agent at its office in the Borough of Manhattan, The City of New York, or any other office of the paying agent, at any time after delivery of the repurchase notice. Payment of the repurchase price for

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the Note will be made promptly following the later of the repurchase date and the time of book-entry transfer or delivery of the Note. If the paying agent holds money sufficient to pay the repurchase price of the Note on the business day following the repurchase date, then, on and after the date:

- the Note will cease to be outstanding; and
- all other rights of the holder will terminate, other than the right to receive the repurchase price upon delivery of the Note.

This will be the case whether or not book-entry transfer of the Note has been made or the Note has been delivered to the paying agent.

Our ability to repurchase Notes may be limited by the terms of our then-existing borrowing agreements. Even though we become obligated to repurchase any outstanding Note on a repurchase date, we may not have sufficient funds to pay the repurchase price on that repurchase date.

We will comply with the provisions of Rule 13e-4 and any other tender offer rules under the Securities Exchange Act of 1934, as amended, that may be applicable. We will file a Schedule TO or any other schedule required in connection with any offer by us to repurchase the Notes.

### **Repurchase at Option of the Holder Upon a Designated Event**

If a designated event occurs at any time prior to the maturity of the Notes, you may require us to repurchase your Notes, in whole or in part on a repurchase date that is 30 days after the date of our notice of the designated event. The Notes will be repurchased in integral multiples of \$1,000 principal amount.

We will repurchase the Notes at a price equal to 100% of the principal amount of the Notes to be repurchased.

We will mail to all record holders a notice of a designated event within 30 days after it has occurred. We are also required to deliver to the Trustee a copy of the designated event notice. If you elect to require us to repurchase your Notes, you must deliver to us or our designated agent, on or before the 30th day after the date of our designated event notice, your repurchase notice and any Notes to be repurchased, duly endorsed for transfer. We will promptly pay the repurchase price for Notes surrendered for repurchase following the repurchase date.

The repurchase notice from the holder must state:

- (1) if certificated Notes have been issued, the note certificate numbers (or, if your Notes are not certificated, your repurchase notice must comply with appropriate DTC procedures);
- (2) the portion of the principal amount of Notes to be repurchased, which must be in \$1,000 multiples; and
- (3) that the Notes are to be repurchased by us pursuant to the applicable provisions of the Notes and the Indenture.

You may withdraw any written repurchase notice by delivering a written notice of withdrawal to the paying agent prior to the close of business on the repurchase date. The withdrawal notice must state:

- the principal amount of the withdrawn Notes;
- if certificated Notes have been issued, the certificate numbers of the withdrawn Notes (or, if your Notes are not certificated, your withdrawal notice must comply with appropriate DTC procedures); and
- the principal amount, if any, which remains subject to the repurchase notice.

Payment of the repurchase price for a Note for which a repurchase notice has been delivered and not withdrawn is conditioned upon book-entry transfer or delivery of the Note, together with necessary endorsements,

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to the paying agent at its office in the Borough of Manhattan, The City of New York, or any other office of the paying agent, at any time after delivery of the repurchase notice. Payment of the repurchase price for the Note will be made promptly following the later of the repurchase date and the time of book-entry transfer or delivery of the Note. If the paying agent holds money sufficient to pay the repurchase price of the Note on the business day following the repurchase date, then, on and after the date:

- the Note will cease to be outstanding; and
- all other rights of the holder will terminate, other than the right to receive the repurchase price upon delivery of the Note.

This will be the case whether or not book-entry transfer of the Note has been made or the Note has been delivered to the paying agent.

A “designated event” will be deemed to have occurred upon a fundamental change or a termination of trading.

A “fundamental change” is any transaction or event (whether by means of an exchange offer, liquidation, tender offer, consolidation, merger, combination, reclassification, recapitalization or otherwise) in connection with which all or substantially all of the common stock of the Company is exchanged for, converted into, acquired for or constitutes solely the right to receive, consideration which is not all or substantially all common stock (or comparable equity security of a non-U.S. entity) that:

- is listed on or immediately after the transaction or event will be listed on, a United States national securities exchange; or
- is approved, or immediately after the transaction or event will be approved, for quotation on the Nasdaq National Market or any similar United States system of automated dissemination of quotations of securities prices.

A “termination of trading” will be deemed to have occurred if the Company’s common stock (or other common stock into which the Notes are then convertible) is neither listed for trading on a United States national securities exchange nor approved for trading on the Nasdaq Stock Market.

We will comply with the provisions of Rule 13e-4 and any other tender offer rules under the Securities Exchange Act of 1934, as amended, that may be applicable. We will file a Schedule TO or any other schedule required in connection with any offer by us to repurchase the Notes.

These designated event repurchase rights could discourage a potential acquirer of the Company. However, this designated event repurchase feature is not the result of knowledge of the Company’s management of any specific effort to obtain control of the Company by means of a merger, tender offer or solicitation, or part of a plan by the management of the Company to adopt a series of anti-takeover provisions. The term “designated event” is limited to specified transactions and may not include other events that might adversely affect the Company’s financial condition or business operations. Our obligation to offer to repurchase the Notes upon a designated event would not necessarily afford you protection in the event of a highly leveraged transaction, reorganization, merger or similar transaction involving the Company.

The occurrence of certain events which would constitute a designated event would constitute a default under the Credit Agreement. In addition, the Senior Secured Notes include similar provisions which would constitute a designated event and would require such Senior Secured Notes to be repurchased upon a designated event. Future Senior Indebtedness of the Company may contain similar restrictions, provisions or prohibitions of certain events which would constitute a designated event or require such Senior Indebtedness to be repurchased upon a designated event. Moreover, the exercise by the holders of their right to require the Company to repurchase the Notes could cause a default under such Senior Indebtedness, even if the designated event itself does not, due to the financial effect of such repurchase on the Company. Finally, the Company’s ability to pay cash to the holders



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upon a repurchase may be limited by the Company's then existing financial resources. There can be no assurance that the Company will have sufficient assets to satisfy its repurchase obligations under the Notes.

### **Ranking**

The Notes are unsecured obligations of the Company, are subordinated in right of payment to all existing and future Senior Indebtedness of the Company, rank *pari passu* in right of payment with all existing and future Senior Subordinated Indebtedness of the Company and are senior in right of payment to all existing and future Subordinated Obligations of the Company. The Notes also are effectively subordinated to any Secured Indebtedness of the Company and the subsidiaries of the Company to the extent of the value of the assets securing such Indebtedness.

The Company currently conducts all of its operations through its subsidiaries. The Note Guarantees are unsecured obligations of the applicable Note Guarantor, are subordinated in right of payment to all existing and future Senior Indebtedness of such Note Guarantor, rank *pari passu* in right of payment with all existing and future Senior Subordinated Indebtedness of such Note Guarantor and are senior in right of payment to all existing and future Subordinated Obligations of such Note Guarantor. The Note Guarantees also will be effectively subordinated to any Secured Indebtedness of the applicable Note Guarantor to the extent of the value of the assets securing such Secured Indebtedness.

None of the Company's existing and future foreign subsidiaries will Guarantee the Notes other than foreign subsidiaries which Guarantee any Indebtedness evidenced by the Senior Subordinated Notes or, if no Senior Subordinated Notes remain outstanding, by the Senior Secured Notes, or if no Senior Secured Notes remain outstanding, by any outstanding Designated Notes. Creditors of such foreign subsidiaries, including trade creditors, and preferred stockholders (if any) of such foreign subsidiaries generally will have priority with respect to the assets and earnings of such foreign subsidiaries over the claims of our creditors, including holders of the Notes. The Notes, therefore, will be effectively subordinated to creditors, including trade creditors, and preferred stockholders (if any) of the Company's foreign subsidiaries.

As of April 2, 2004, there were outstanding:

- (1) \$635.2 million of Senior Indebtedness of the Company, all of which was Secured Indebtedness;
- (2) \$260 million of Senior Subordinated Indebtedness of the Company (other than the Notes), all of which have been called for redemption on August 2, 2004;
- (3) \$143.4 million of Indebtedness of the Company that is subordinated or junior in right of payment to the Notes;
- (4) \$35.1 million of Senior Indebtedness of the Note Guarantors (exclusive of intercompany debt and Guarantees of, and in the case of Semiconductor Components Industries, LLC, direct obligations under, the Senior Indebtedness described in paragraph (1) above);
- (5) no Senior Subordinated Indebtedness of the Note Guarantors (other than the Note Guarantees); and
- (6) no Indebtedness of the Note Guarantors, other than \$143.4 million under the Junior Subordinated Note, that is subordinate or junior in right of payment to the Note Guarantees.

The Indenture does not limit the amount of additional Indebtedness, including Senior Indebtedness, that we can create, incur, assume or Guarantee, nor does the Indenture limit the amount of Indebtedness or other liabilities that any of our subsidiaries can create, incur, assume or Guarantee.

Only Indebtedness of the Company that is Senior Indebtedness will rank senior in right of payment to the Notes. The Notes rank *pari passu* in right of payment with all other Senior Subordinated Indebtedness of the Company. The Company will not incur, directly or indirectly, any Indebtedness that is subordinated or junior in

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right of payment to Senior Indebtedness unless such Indebtedness is Senior Subordinated Indebtedness or is expressly subordinated in right of payment to Senior Subordinated Indebtedness. Unsecured Indebtedness is not deemed to be subordinated or junior in right of payment to Secured Indebtedness merely because it is unsecured.

We are obligated to pay reasonable compensation to the Trustee and to indemnify the Trustee against certain losses, liabilities or expenses incurred by it in connection with its duties relating to the Notes. The Trustee's claims for these payments will generally be senior to those of the holders of the Notes in respect of all funds collected or held by the Trustee.

We may not pay principal, or premium (if any), on the Notes, or otherwise repurchase, redeem or otherwise retire the Notes if:

- (1) any Designated Senior Indebtedness is not paid when due, or
- (2) any other default on Designated Senior Indebtedness occurs and the maturity of such Designated Senior Indebtedness is accelerated in accordance with its terms

unless, in either case,

- (x) the default has been cured or waived and any such acceleration has been rescinded, or
- (y) such Designated Senior Indebtedness has been paid in full;

*provided, however*, that we may pay the Notes without regard to the foregoing if we and the Trustee receive written notice approving such payment from the representative of the Designated Senior Indebtedness with respect to which either of the events set forth in clause (1) or (2) above has occurred and is continuing.

During the continuance of any default (other than a default described in clause (1) or (2) above) with respect to any Designated Senior Indebtedness of the Company pursuant to which the maturity thereof may be accelerated immediately without further notice (except such notice as may be required to effect such acceleration) or the expiration of any applicable grace periods, we may not pay the Notes for a period (a "Payment Blockage Period") commencing upon the receipt by the Trustee (with a copy to us) of written notice (a "Blockage Notice") of such default from the representative of such Designated Senior Indebtedness specifying an election to effect a Payment Blockage Period and ending 179 days thereafter (or earlier if such Payment Blockage Period is terminated):

- (1) by written notice to the Trustee and the Company from the person or persons who gave such Blockage Notice,
- (2) by repayment in full of such Designated Senior Indebtedness, or
- (3) because no default with respect to any Designated Senior Indebtedness is continuing).

Notwithstanding the provisions described in the immediately preceding sentence (but subject to the provisions contained in the second preceding sentence), the Company may resume payments on the Notes after the end of such Payment Blockage Period, unless the holders of such Designated Senior Indebtedness or the representative of such holders have accelerated the maturity of such Designated Senior Indebtedness and such Designated Senior Indebtedness has not been repaid in full.

Not more than one Blockage Notice may be given in any period of 360 consecutive days, irrespective of the number of defaults with respect to Designated Senior Indebtedness during such period. However, if any Blockage Notice within such 360-day period is given by or on behalf of any holders of Designated Senior Indebtedness other than the Bank Indebtedness (as defined below), the representative of the Bank Indebtedness may give another Blockage Notice within such period. In no event, however, may the total number of days during which any Payment Blockage Period or Periods is in effect exceed 179 days in the aggregate during any period of 360 consecutive days. For purposes of this paragraph, no default or event of default that existed or was continuing on

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the date of the commencement of any Payment Blockage Period with respect to the Designated Senior Indebtedness initiating such Payment Blockage Period shall be, or be made, the basis of the commencement of a subsequent Payment Blockage Period by the representative of such Designated Senior Indebtedness, whether or not within a period of 360 consecutive days, unless such default or event of default shall have been cured or waived for a period of not less than 90 consecutive days.

Upon any payment or distribution of the assets of the Company to its creditors upon a total or partial liquidation or a total or partial dissolution of the Company or in a bankruptcy, reorganization, insolvency, receivership or similar proceeding relating to the Company or its property:

(1) the holders of Senior Indebtedness of the Company will be entitled to receive payment in full of such Senior Indebtedness before the holders are entitled to receive any payment of principal on the Notes; and

(2) until such Senior Indebtedness is paid in full, any payment or distribution to which holders would be entitled but for the subordination provisions of the Indenture will be made to the holders of such Senior Indebtedness as their interests may appear, except that holders may receive shares of stock and any debt securities that are subordinated to such Senior Indebtedness to at least the same extent as the Notes; if a distribution is made to holders that due to the subordination provisions of the Indenture should not have been made to them, such holders will be required to hold it in trust for the holders of Senior Indebtedness of the Company, and pay it over to them as their interests may appear.

If payment of the Notes is accelerated because of an event of default, the Company or the Trustee (*provided*, that the Trustee shall have received written notice from the Company or a representative identifying the Designated Senior Indebtedness for which such representative is so designated, on which notice the Trustee shall be entitled to rely conclusively) shall promptly notify the holders of the Company's Designated Senior Indebtedness (or their representative) of the acceleration. If any such Designated Senior Indebtedness is outstanding, the Company may not pay the Notes until five business days after such holders or the representative of such Designated Senior Indebtedness receive notice of such acceleration and, thereafter, may pay the Notes only if the subordination provisions of the Indenture otherwise permit payment at that time.

By reason of the subordination provisions of the Indenture, in the event of insolvency, creditors of the Company who are holders of Senior Indebtedness may recover more, ratably, than the holders of the Notes, and creditors of the Company who are not holders of Senior Indebtedness or holders of Senior Subordinated Indebtedness (including the Notes) may recover less, ratably, than holders of Senior Indebtedness.

### **Note Guarantees**

Semiconductor Components Industries, LLC, SCG (Malaysia SMP) Holding Corporation, SCG (Czech) Holding Corporation, SCG (China) Holding Corporation, Semiconductor Components Industries Puerto Rico, Inc., Semiconductor Components Industries of Rhode Island, Inc., SCG International Development LLC and Semiconductor Components Industries International of Rhode Island, Inc. and certain future subsidiaries of the Company (as described below), as primary obligors and not merely as sureties, have jointly and severally irrevocably and unconditionally Guaranteed on an unsecured senior subordinated basis full and punctual payment when due, whether at Stated Maturity, by acceleration or otherwise, all obligations of the Company under the Indenture (including obligations to the Trustee) and the Notes, whether for payment of principal in respect of the Notes, expenses, indemnification or otherwise (all such obligations Guaranteed by such Note Guarantors being herein called the "Guaranteed Obligations"). Such Note Guarantors have agreed to pay, in addition to the amount stated above, any and all reasonable costs and expenses (including reasonable counsel fees and expenses) incurred by the Trustee or the holders in enforcing any rights under the Note Guarantees. Each Note Guarantee is limited in amount to an amount not to exceed the maximum amount that can be Guaranteed by the applicable Note Guarantor without rendering the Note Guarantee, as it relates to such Note Guarantor, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer or similar laws affecting the rights of creditors generally. If a Note Guarantee were to be rendered voidable, it could be subordinated by a court to all

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other Indebtedness (including guarantees and contingent liabilities) of the applicable Note Guarantor, and, depending on the amount of such indebtedness, a Note Guarantor's liability in respect of its Note Guarantee could be reduced to zero. The Indenture provides that, so long as any Notes remain outstanding, if any subsidiary enters into or has an outstanding Guarantee of any Indebtedness evidenced by the Senior Subordinated Notes or, if no Senior Subordinated Notes remain outstanding, by the Senior Secured Notes, or if no Senior Secured Notes remain outstanding, by any outstanding Designated Notes, the Company will cause such subsidiary to become a Note Guarantor, and, if applicable, execute and deliver to the Trustee a supplemental indenture in the form set forth in the Indenture pursuant to which such subsidiary will Guarantee the payment of Notes. See "—Future Note Guarantors" below.

Each Note Guarantor that makes a payment under its Note Guarantee will be entitled to a contribution from each other Note Guarantor in an amount equal to such other Note Guarantor's pro rata portion of such payment based on the respective net assets of all Note Guarantors at the time of such payment, as determined in accordance with GAAP.

The obligations of a Note Guarantor under its Note Guarantee are senior subordinated obligations. As such, the rights of holders to receive payment by a Note Guarantor pursuant to its Note Guarantee will be subordinated in right of payment to the rights of holders of Senior Indebtedness of such Note Guarantor. The terms of the subordination provisions described above with respect to the Company's obligations under the Notes apply equally to a Note Guarantor and the obligations of such Note Guarantor under its Note Guarantee.

Each Note Guarantee is a continuing Guarantee and shall (1) remain in full force and effect until payment in full of all the Guaranteed Obligations or until released as described in the following paragraph, (2) be binding upon each Note Guarantor and its successors and (3) inure to the benefit of, and be enforceable by, the Trustee, the holders and their successors, transferees and assigns. Each Note Guarantee shall be a Guarantee of payment and not of collection.

A Note Guarantee as to any Note Guarantor shall terminate and be of no further force or effect and such Note Guarantor shall be deemed to be released from all obligations under its Note Guarantee if such Note Guarantor ceases to Guarantee Indebtedness of the Company evidenced by the Senior Subordinated Notes or, if no Senior Subordinated Notes remain outstanding, by the Senior Secured Notes, or if no Senior Secured Notes remain outstanding, by any outstanding Designated Notes. At the request of the Company, the Trustee shall execute and deliver an appropriate instrument evidencing such release (in the form provided by the Company). Notwithstanding the foregoing, if the Credit Agreement so requires, any Note Guarantor that has Guaranteed Indebtedness under the Credit Agreement and is being released from its Guarantee thereunder will be simultaneously released from its Note Guarantee hereunder unless an event of default has occurred and is continuing.

### **Limitation on Liens**

The Indenture provides that the Company may not incur any Secured Indebtedness that is not Senior Indebtedness unless contemporaneously therewith effective provision is made to secure the Notes equally and ratably with (or on a senior basis to, in case of Indebtedness subordinated in right of payment to the Notes) such Secured Indebtedness for so long as such Secured Indebtedness is secured by a Lien.

### **Future Note Guarantors**

The Indenture provides that, so long as any Notes remain outstanding, if any subsidiary of the Company enters into or has an outstanding Guarantee of any Indebtedness evidenced by the Senior Subordinated Notes or, if no Senior Subordinated Notes remain outstanding, by the Senior Secured Notes, or if no Senior Secured Notes remain outstanding, by any outstanding Designated Notes, the Company will cause such subsidiary to become a Note Guarantor, and, if applicable, execute and deliver to the Trustee a supplemental indenture in the form set forth in the Indenture pursuant to which such subsidiary will Guarantee the payment of Notes. Each Note

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Guarantee will be limited to an amount not to exceed the maximum amount that can be Guaranteed by that Note Guarantor, without rendering the Note Guarantee, as it relates to such Note Guarantor, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer or similar laws affecting the rights of creditors generally.

### **Merger and Sale of Assets**

The Indenture provides that the Company may not consolidate with or merge with or into any other person or convey, transfer or lease its properties and assets substantially as an entirety to another person, unless among other items:

- the Company is the surviving person, or the resulting, surviving or transferee person, if other than the Company, is organized and existing under the laws of the United States, any state thereof or the District of Columbia;
- the successor person assumes all of the obligations of the Company under the Notes and the Indenture;
- immediately after giving affect to such transaction (and treating any Indebtedness which becomes an obligation of the surviving person as a result of such transaction as having been incurred by such person at the time of such transactions), no default shall have occurred and be continuing; and
- the Company shall have delivered to the Trustee an officers' certificate and an opinion of counsel each stating that such transaction and such supplemental indenture (if any) complies with the Indenture.

When such person assumes the obligations of the Company in such circumstances, subject to certain exceptions, the Company shall be discharged from all obligations under the Notes and the Indenture.

The Indenture provides that the Company will not permit any Note Guarantor to consolidate with or merge with or into any other person or convey, transfer or lease its properties and assets substantially as an entirety to another person, unless among other items:

- in the case of any Note Guarantor that is a domestic subsidiary, such Note Guarantor is the surviving person, or the resulting, surviving or transferee person, if other than such Note Guarantor, is organized and existing under the laws of the United States, any state thereof or the District of Columbia;
- the successor person assumes all of the obligations of the applicable Note Guarantor, as the case may be, under the Note Guarantee;
- immediately after giving affect to such transaction (and treating any Indebtedness which becomes an obligation of the surviving person as a result of such transaction as having been incurred by such person at the time of such transactions), no default shall have occurred and be continuing; and
- the Company shall have delivered to the Trustee an officers' certificate and an opinion of counsel each stating that such transaction and such supplemental indenture (if any) complies with the Indenture;

*provided, however*, that the foregoing shall not apply to any Note Guarantor which ceases to Guarantee any Indebtedness of the Company evidenced by the Senior Subordinated Notes or, if no Senior Subordinated Notes remain outstanding, by the Senior Secured Notes, or if no Senior Secured Notes remain outstanding, by any outstanding Designated Notes.

### **Events or Default; Notice and Waiver**

The following are events of default under the Indenture:

- (1) we fail to pay principal when due upon maturity, redemption, repurchase or otherwise on the Notes whether or not prohibited by the provisions described under “—Ranking” above;
- (2) we fail to provide timely notice of a designated event;

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(3) the failure of the Company or any Note Guarantor to comply with its obligations under the covenant described under “—Merger and Sale of Assets” above;

(4) the failure by the Company or any Restricted Subsidiary to pay any Indebtedness within the applicable grace period after final maturity or the acceleration of any such Indebtedness by the holders thereof because of a default if the total amount of such Indebtedness unpaid or accelerated exceeds \$25 million or its foreign currency equivalent and such failure continues for 10 days after receipt of the notice specified in the Indenture;

(5) we fail to deliver shares of the Company’s common stock upon conversion of the Notes within the time period required by the Indenture, and such failure continues for a period of 5 days after receipt of the notice specified in the Indenture;

(6) the failure of the Company or any Note Guarantor to perform or observe any of the other covenants in the Indenture for 60 days after notice;

(7) the failure by the Company or any Note Guarantor to perform or observe any of the covenants described under “—Limitation on Liens” and “—Future Note Guarantors” above for 30 days after notice (in each case, other than a failure to provide timely notice of a designated event);

(8) certain events involving the bankruptcy, insolvency or reorganization of the Company or any Significant Subsidiary;

(9) with respect to any judgment of money in excess of \$25 million or its foreign currency equivalent against the Company or any Restricted Subsidiary:

a. the commencement of an enforcement proceeding thereon by any creditor if such judgment or decree is final and nonappealable and the failure by the Company or such Restricted Subsidiary, as applicable, to stay such proceeding within 10 days thereafter or

b. the failure of the Company or such Restricted Subsidiary, as applicable, to pay such judgment or decree, which judgment or decree has remained outstanding for a period of 60 days following such judgment or decree without being paid, discharged, waived or stayed; or

(10) Any Note Guarantee of any Significant Subsidiary ceases to be in full force and effect (except as contemplated by the terms hereof) or any Significant Subsidiary that is a Note Guarantor or person acting by or on behalf of such Significant Subsidiary denies or disaffirms such Significant Subsidiary’s obligations under the Indenture or any Note Guarantee and such default continues for 10 days after receipt of the notice specified in the Indenture.

The Trustee may withhold notice to the holders of the Notes of any default, except defaults in payment of principal on the Notes. However, the Trustee must consider it to be in the interest of the holders of the Notes to withhold this notice.

If an event of default occurs and continues, the Trustee or the holders of at least 25% in principal amount of the outstanding Notes may declare the principal on the outstanding Notes to be immediately due and payable. In case of certain events of bankruptcy or insolvency involving us, the principal on the Notes will automatically become due and payable. However, if we cure all defaults, except the nonpayment of principal that became due as a result of the acceleration, and meet certain other conditions, with certain exceptions, this declaration may be cancelled and the holders of a majority of the principal amount of outstanding Notes may waive these past defaults.

Payments of principal on the Notes that are not made when due will accrue interest at the annual rate of 1% from the required payment date.

The holders of a majority of outstanding Notes will have the right to direct the time, method and place of any proceedings for any remedy available to the Trustee, subject to limitations specified in the Indenture.

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No holder of the Notes may pursue any remedy under the Indenture, except in the case of a default in the payment of principal on the Notes, unless:

- the holder has given the Trustee written notice of an event of default;
- the holders of at least 25% in principal amount of outstanding Notes make a written request, and offer reasonable indemnity, to the Trustee to pursue the remedy;
- the Trustee does not receive an inconsistent direction from the holders of a majority in principal amount of the Notes;
- the holder or holders have offered reasonable security or indemnity to the Trustee against any costs, liability or expense of the Trustee; and
- the Trustee fails to comply with the request within 60 days after receipt of the request and offer of indemnity.

### **Modification and Waiver**

The consent of the holders of a majority in principal amount of the outstanding Notes is required to modify or amend the Indenture. However, a modification or amendment requires the consent of the holder of each outstanding Note if it would:

- extend the fixed maturity of any Note;
- reduce the principal amount or premium of any Note or change the time at which any Note may be redeemed as described under “—Optional Redemption by the Company”;
- reduce any amount payable upon redemption or repurchase of any Note;
- adversely change our obligation to repurchase any Note at the option of a holder or upon a designated event;
- impair the right of a holder to receive payment of principal of such holder’s Notes on or after the due dates therefor or to institute suit for payment on any Note;
- change the currency in which any Note is payable;
- make any change to the subordination provisions of the Indenture that adversely affects the rights of any holder;
- impair the right of a holder to convert any Note or reduce the number of shares of the Company’s common stock receivable upon conversion;
- reduce the quorum or voting requirements under the Indenture;
  - change any obligation of ours to maintain an office or agency in the places and for the purposes specified in the Indenture;
  - modify the Note Guarantees in a manner adverse to the holders;
  - subject to specified exceptions, modify certain of the provisions of the Indenture relating to modification or waiver of provisions of the Indenture; or
  - reduce the percentage of Notes required for consent to any modification of the Indenture.

We are permitted to modify certain provisions of the Indenture without the consent of the holders of the Notes.

### **Form, Denomination and Registration**

The Notes were issued:

- in fully registered form; and
- in denominations of \$1,000 principal amount and integral multiples of \$1,000.

### **Resales Under This Prospectus**

Notes resold under the registration statement of which this prospectus forms a part will be represented by one or more permanent global notes in definitive, fully registered form, which will be deposited with the trustee as custodian for DTC and registered in the name of DTC in New York, New York for the accounts of participants in DTC. The notes issued in the private placement of the notes in April 2004 are represented by one or more permanent global notes in definitive, fully-registered form without interest coupons, bearing legends relating to certain restrictions on the transfer of the notes. Those global notes have been deposited with the trustee as custodian for DTC and registered in the name of a nominee of DTC in New York, New York for the accounts of participants in DTC.

Upon each sale by a selling securityholder of notes (or shares of our common stock into which the notes may be converted) offered hereby, such selling securityholder will be required to deliver a notice of such sale to the trustee and to us. The notice will, among other things, identify the sale as a sale pursuant to the registration statement of which this prospectus forms a part and certify that the selling securityholder and the principal amount of notes and/or the number shares of common stock, as the case may be, are identified in this prospectus in accordance with applicable rules and regulations under the Securities Act of 1933, as amended, which we refer to as the Securities Act.

Upon receipt by the trustee of the notice relating to such sale of notes, an appropriate adjustment will be made to reflect a decrease in the principal amount of the global notes issued in the private placement, and a corresponding increase in the principal amount of the global notes issued under this prospectus.

### **Global Note, Book-Entry Form**

Beneficial interests in a global note may be held through organizations that are participants in DTC (called “participants”). Transfers between participants will be affected in the ordinary way in accordance with DTC rules and will be settled in clearing house funds. The laws of some states require that certain persons take physical delivery of securities in definitive form. As a result, the ability to transfer beneficial interests in the global note to such persons may be limited.

Beneficial interests in a global note held by DTC may be held only through participants, or certain banks, brokers, dealers, trust companies and other parties that clear through or maintain a custodial relationship with a participant, either directly or indirectly (called “indirect participants”). So long as Cede & Co., as the nominee of DTC, is the registered owner of a global note, Cede & Co. for all purposes will be considered the sole holder of such global note. Except as provided below, owners of beneficial interests in a global note will:

- not be entitled to have certificates registered in their names;
- not receive physical delivery of certificates in definitive registered form; and
- not be considered holders of the global note.

We will pay the redemption price and the repurchase price of a global note to Cede & Co., as the registered owner of the global note, by wire transfer of immediately available funds on each redemption or repurchase date, as the case may be. Neither we, the Trustee nor any paying agent will be responsible or liable:

- for the records relating to, or payments made on account of, beneficial ownership interests in a global note; or
- for maintaining, supervising or reviewing any records relating to the beneficial ownership interests.

Neither we, the Trustee, registrar, paying agent nor conversion agent will have any responsibility for the performance by DTC or its participants or indirect participants of their respective obligations under the rules and procedures governing their operations. DTC has advised us that it will take any action permitted to be taken by a holder of Notes, including the presentation of Notes for conversion, only at the direction of one or more



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participants to whose account with DTC interests in the global note are credited, and only in respect of the principal amount of the Notes represented by the global note as to which the participant or participants has or have given such direction.

DTC has advised us that it is:

- a limited purpose trust company organized under the laws of the State of New York, and a member of the Federal Reserve System;
- a “clearing corporation” within the meaning of the New York Uniform Commercial Code, as in effect from time to time; and
- a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934, as amended.

DTC was created to hold securities for its participants and to facilitate the clearance and settlement of securities transactions between participants through electronic book-entry changes to the accounts of its participants. Participants include securities brokers, dealers, banks, trust companies and clearing corporations and other organizations. Some of the participants or their representatives, together with other entities, own DTC. Indirect access to the DTC system is available to others such as banks, brokers, dealers and trust companies that clear through or maintain a custodial relationship with a participant, either directly or indirectly.

DTC has agreed to the foregoing procedures to facilitate transfers of interests in a global note among participants. However, DTC is under no obligation to perform or continue to perform these procedures, and may discontinue these procedures at any time.

We will issue Notes in definitive certificate form only if:

- DTC notifies us that it is unwilling or unable to continue as depository or DTC ceases to be a clearing agency registered under the Securities and Exchange Act of 1934, as amended, and a successor depository is not appointed by us within 90 days;
- an event of default shall have occurred and the maturity of the Notes shall have been accelerated in accordance with the terms of the Notes and any holder shall have requested in writing the issuance of definitive certificated Notes; or
- we have determined in our sole discretion that Notes shall no longer be represented by global notes.

### **Registration Rights of the Noteholders**

In connection with the private placement of the notes in April 2004 we entered into a registration rights agreement with the initial purchasers. Pursuant to the Registration Rights Agreement we agreed to use our reasonable best efforts to keep the shelf registration statement, of which this prospectus is a part, effective until the earlier of:

- such time as all of the registrable securities have been sold pursuant to the shelf registration statement or sold to the public pursuant to Rule 144 under the Securities Act or any other similar provision then in force (but not Rule 144A); or
- the expiration of the holding period applicable to such securities held by persons that are not affiliates of the Company under Rule 144(k) under the Securities Act or any successor provision.

When we use the term “registrable securities” in this section, we are referring to the Notes and the common stock issuable upon conversion of the Notes until the earliest of:

- the effective registration under the Securities Act and the resale of the securities in accordance with the registration statement;

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- the expiration of the holding period applicable to such securities held by persons that are not affiliates of the Company under Rule 144(k) under the Securities Act; and
- the sale to the public pursuant to Rule 144 under the Securities Act or any similar provision then in force, but not Rule 144A.

Notwithstanding the foregoing, if and so long as it is required by applicable securities laws to permit resales of shares of common stock received upon conversion of Notes on an unrestricted basis, we will use our reasonable best efforts to ensure that a shelf registration statement remains effective for that purpose.

We may suspend the use of the prospectus under certain circumstances relating to pending corporate developments, public filings with the SEC and similar events. Any suspension period shall not:

- exceed 30 days in any three-month period; or
- an aggregate of 90 days for all suspension periods in any 12-month period.

Notwithstanding the foregoing, we will be permitted to suspend the use of this prospectus for up to 60 days in any 3-month period under certain circumstances, relating to possible acquisitions, financings or other similar transactions or reviews by the SEC of our periodic reporting.

A holder who elects to sell registrable securities pursuant to the shelf registration statement will be required to:

- be named as a selling stockholder in the related prospectus;
- deliver a prospectus to purchasers; and
- be subject to the provisions of the registration rights agreement, including indemnification provisions.

Under the registration rights agreement we will:

- pay all customary expenses with respect to the shelf registration statement;
- provide each registered holder copies of the prospectus;
- notify holders when the shelf registration statement has become effective; and
- take other reasonable actions as are required to permit unrestricted resales of the registrable securities and issuances of shares of common stock on an unrestricted basis upon the conversion of Notes in accordance with the terms and conditions of the registration rights agreement.

The plan of distribution of the shelf registration statement will permit resales of registrable securities by selling security holders through brokers and dealers.

In order to be named as a selling stockholder in this prospectus, you must complete and deliver a notice and questionnaire to us, together with any other information we may reasonably request. After receipt of the required information, we will, within 15 business days, file any amendments to the shelf registration statement or supplements to the related prospectus as are necessary to permit you to deliver your prospectus to purchasers of registrable securities, subject to our right to suspend the use of the prospectus, and if such filing is a post-effective amendment to the shelf registration statement required to be declared effective under the Securities Act, we will use our reasonable best efforts to cause such filing to be declared effective within 45 days of filing. If you do not complete and deliver a questionnaire in the manner described above or provide the other information we may request, you will not be named as a selling stockholder in the prospectus and will not be permitted to sell your registrable securities pursuant to the shelf registration statement. This summary of the registration rights agreement is not complete. This summary is subject to, and is qualified in its entirety by reference to, all the provisions of the registration rights agreement.

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### **Information Concerning the Trustee**

We have appointed Wells Fargo Bank, N.A., the Trustee under the Indenture, as paying agent, conversion agent, note registrar and custodian for the Notes. The Trustee or its affiliates may provide banking and other services to us in the ordinary course of their business.

The Indenture contains certain limitations on the rights of the Trustee, if it or any of its affiliates is then our creditor, to obtain payment of claims in certain cases or to realize on certain property received on any claim as security or otherwise. The Trustee and its affiliates are permitted to engage in other transactions with us. However, if the Trustee or any affiliate continues to have any conflicting interest and a default occurs with respect to the Notes, the Trustee must eliminate such conflict or resign.

### **Governing Law**

The Notes and the Indenture are governed by, and construed in accordance with, the laws of the State of New York.

### **Certain Definitions**

“Average Life” means, as of the date of determination, with respect to any Indebtedness or Preferred Stock, the number of years obtained by dividing (a) the sum of the products of the numbers of years from the date of determination to the dates of each successive scheduled principal payment of such Indebtedness or scheduled redemption or similar payment with respect to such Preferred Stock multiplied by the amount of such payment by (b) the then outstanding sum of all such payments.

“Bank Indebtedness” means any and all amounts payable under or in respect of the Credit Agreement and any Refinancing Indebtedness with respect thereto, as amended from time to time, including principal, premium (if any), interest (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to the Company or Semiconductor Components Industries, LLC whether or not a claim for post-filing interest is allowed in such proceedings), fees, charges, expenses, reimbursement obligations, guarantees and all other amounts payable thereunder or in respect thereof. Refinancing Indebtedness in respect of the Credit Agreement may be Incurred from time to time after termination of the Credit Agreement.

“Capital Stock” means any and all shares, partnership, membership or other interests, participations or other equivalents of or interests in (however designated) equity of any person, including any Preferred Stock (but excluding any debt securities convertible into such equity) and any rights to purchase, warrants, options or similar interests with respect to the foregoing.

“Capitalized Lease Obligations” means an obligation that is required to be classified and accounted for as a capitalized lease for financial reporting purposes in accordance with GAAP, and the amount of Indebtedness represented by such obligation shall be the capitalized amount of such obligation determined in accordance with GAAP; and the Stated Maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be prepaid by the lessee without payment of a penalty.

“Closing Date” means the date of the Indenture.

“Credit Agreement” means the Amended and Restated Credit Agreement, dated as of August 4, 1999, as amended and restated as of November 25, 2003, and as further amended on January 16, 2004 and March 30, 2004, among ON Semiconductor Corporation, Semiconductor Components Industries, LLC, as borrower, the lenders party hereto, and JPMorgan Chase Bank as administrative agent, collateral agent and syndication agent, including any collateral documents, instruments and agreements executed in connection therewith, and any amendments, supplements, modifications, extensions, renewals, restatements or refundings thereof and any

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indentures or credit facilities or commercial paper facilities with banks or other institutional lenders that replace, refund or refinance any part of the loans, notes, other credit facilities or commitments thereunder, including any such replacement, refunding or refinancing facility or indenture that increases the amount borrowable thereunder or alters the maturity thereof.

“Currency Agreement” means with respect to any Person any foreign exchange contract, currency swap agreements or other similar agreement or arrangement to which such Person is a party.

“Designated Notes” means any indebtedness of the Company for borrowed money that (i) is in the form of, or represented by, bonds, notes, debentures or other securities (other than promissory notes or similar evidence of indebtedness under bank loans, reimbursement agreements or receivables facilities) or any guarantee thereof and (ii) is, or may be, quoted, listed or purchased and sold on any stock exchange, automated securities trading system or over-the-counter or other securities market (including, without prejudice to the generality of the foregoing, the market for securities eligible for resale pursuant to Rule 144A under the Securities Act).

“Designated Senior Indebtedness” means (a) the Bank Indebtedness and (b) any other Senior Indebtedness of the Company that, at the date of determination, has an aggregate principal amount outstanding of, or under which, at the date of determination, the holders thereof are committed to lend up to, at least \$25 million and is specifically designated by the Company, in the instrument evidencing or governing such Senior Indebtedness as “Designated Senior Indebtedness” for purposes of the Indenture. “Designated Senior Indebtedness” of a Note Guarantor has a correlative meaning.

“Disqualified Stock” means with respect to any person, any Capital Stock which by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable or exercisable) or upon the happening of any event (a) matures or is mandatorily redeemable pursuant to a sinking fund obligation or otherwise, (b) is convertible or exchangeable for Indebtedness or Disqualified Stock or (c) is redeemable at the option of the holder thereof, in whole or in part, in the case of clauses (a), (b) and (c) on or prior to 90 days after the Stated Maturity of the Notes; provided, however, that only the portion of Capital Stock that so matures or is mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to the Stated Maturity of the Notes shall be deemed Disqualified Stock; provided further, however, that Capital Stock issued to any plan for the benefit of employees shall not constitute Disqualified Stock solely because it may be required to be repurchased by the Company in order to satisfy applicable statutory or regulatory obligations.

“Fair Market Value” means with respect to any asset or property, the price which could be negotiated in an arm’s-length, free market transaction, for cash, between a willing seller and a willing and able buyer, neither of whom is under undue pressure or compulsion to complete the transaction. For all purposes of this Indenture, Fair Market Value will be determined in good faith by the board of directors, whose determination will be conclusive and evidenced by a resolution of the board of directors.

“First Lien Documents” means the First Lien Note Indenture and all other instruments, agreements and other documents evidencing or governing the First Lien Notes or providing for any Guarantee or other right in respect thereof.

“First Lien Notes” means the senior secured first lien notes co-issued by the Company and Semiconductor Components Industries, LLC pursuant to an indenture dated as of March 3, 2003 in aggregate principal amount of \$200,000,000.

“First Lien Note Indenture” means the indenture pursuant to which the First Lien Notes are issued.

“GAAP” means generally accepted accounting principles in the United States of America as in effect from time to time, including those set forth in (a) the opinions and pronouncements of the Accounting Principles

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Board of the American Institute of Certified Public Accountants, (b) statements and pronouncements of the Financial Accounting Standards Board, (c) such other statements by such other entities as approved by a significant segment of the accounting profession and (d) the rules and regulations of the Commission governing the inclusion of financial statements (including pro forma financial statements) in periodic reports required to be filed pursuant to Section 13 of the Securities Exchange Act of 1934, including opinions and pronouncements in staff accounting bulletins and similar written statements from the accounting staff of the Securities and Exchange Commission. All ratios and computations based on GAAP contained in this Indenture shall be computed in conformity with GAAP.

“Guarantee” means any obligation, contingent or otherwise, of any person directly or indirectly guaranteeing any Indebtedness of any other person and any obligation, direct or indirect, contingent or otherwise, of such person (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such other person (whether arising by virtue of partnership arrangements, or by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise) or (b) entered into for purposes of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part); provided, however, that the term “Guarantee” shall not include endorsements for collection or deposit in the ordinary course of business. The term “Guarantee” used as a verb has a corresponding meaning. The term “Guarantor” shall mean any person Guaranteeing any Indebtedness.

“Hedging Obligations” of any person means the obligations of such person pursuant to any Interest Rate Agreement or Currency Agreement.

“Indebtedness” means with respect to any person on any date of determination, without duplication, the following items if and to the extent that any of them (other than items specified under clauses (3), (8), (9) and (10) below) would appear as a liability or, in the case of clause (6) only, preferred stock on the balance sheet of such person, prepared in accordance with GAAP, on such date:

- (1) the principal amount of and premium (if any) in respect of indebtedness of such person for borrowed money;
- (2) the principal amount of and premium (if any) in respect of obligations of such person evidenced by bonds, debentures, notes or other similar instruments;
- (3) all obligations of such person in respect of letters of credit or other similar instruments (including reimbursement obligations with respect thereto but excluding obligations in respect of letters of credit issued in respect of trade payables);
- (4) all obligations of such person to pay the deferred and unpaid purchase price of property or services (except trade payables), which purchase price is due more than twelve months after the date of placing such property in service or taking delivery and title thereto or the completion of such services;
- (5) all Capitalized Lease Obligations and all certain debt attributable to sale and leaseback transactions of such person;
- (6) the amount of all obligations of such person with respect to the redemption, repayment or other repurchase of any Disqualified Stock or, with respect to any subsidiary of such person, any preferred stock (but excluding, in each case, any accrued dividends);
- (7) all Indebtedness of other persons secured by a Lien on any asset of such person, whether or not such Indebtedness is assumed by such person; provided, however, that the amount of Indebtedness of such person shall be the lesser of (i) the Fair Market Value of such asset at such date of determination and (ii) the amount of such Indebtedness of such other persons;
- (8) all obligations with respect to interest rates, swaps, caps, collar agreements, foreign currency hedges, exchanges and other similar agreements;

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(9) all obligations of such person in respect of a receivables facility; and

(10) all obligations of the type referred to in clauses (1) through (9) of other persons and all dividends of other persons for the payment of which, in either case, such person is responsible or liable, directly or indirectly, as obligor, guarantor or otherwise, including by means of any guarantee.

The amount of Indebtedness of any person at any date shall be the outstanding balance at such date of all unconditional obligations as described above and the maximum liability, upon the occurrence of the contingency giving rise to the obligation, of any contingent obligations described above, at such date; provided, however, that the amount outstanding at any time of any Indebtedness issued with original issue discount will be deemed to be the face amount of such Indebtedness less the remaining unaccrued portion of the original issue discount of such Indebtedness at such time, as determined in accordance with GAAP.

“Interest Rate Agreement” means with respect to any person any interest rate protection agreement, interest rate future agreement, interest rate option agreement, interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedge agreement or other similar agreement or arrangement as to which such person is party.

“Junior Subordinated Note” means the junior subordinated note of Semiconductor Components Industries, LLC due 2011 in the principal amount of \$91 million, which is subordinated to the Notes.

“Lien” means any mortgage, pledge, security interest, encumbrance, lien or charge of any kind (including any conditional sale or other title retention agreement or lease in the nature thereof).

“Note Guarantee” means each Guarantee of the obligations with respect to the Notes issued by a subsidiary of the Company pursuant to the terms of this Indenture.

“Note Guarantor” means any subsidiary of the Company that has issued a Note Guarantee.

“Notes” means the Notes issued under the Indenture.

“Preferred Stock”, as applied to the Capital Stock of any person, means Capital Stock of any class or classes (however designated) that is preferred as to the payment of dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such person, over shares of Capital Stock of any other class of such person.

“Receivables Facility” means one or more receivables financing facilities, as amended from time to time, pursuant to which the Company and/or any of its Restricted Subsidiaries sells its accounts receivable to a person that is not a Restricted Subsidiary pursuant to arrangements customary in the industry.

“Refinance” means, in respect of any Indebtedness, to refinance, extend, renew, refund, repay, prepay, redeem, defease or retire, or to issue other Indebtedness in exchange or replacement for, such Indebtedness “Refinanced” and “Refinancing” shall have correlative meanings.

“Refinancing Indebtedness” means Indebtedness that is incurred to refund, refinance, replace, renew, repay or extend (including pursuant to any defeasance or discharge mechanism) any Indebtedness of the Company or any Restricted Subsidiary (including Indebtedness of the Company that Refinances Refinancing Indebtedness); provided, however, that (a) the Refinancing Indebtedness has a Stated Maturity no earlier than the Stated Maturity of the Indebtedness being Refinanced, (b) the Refinancing Indebtedness has an Average Life at the time such Refinancing Indebtedness is incurred that is equal to or greater than the Average Life of the Indebtedness being refinanced, (c) such Refinancing Indebtedness is incurred in an aggregate principal amount (or if issued with original issue discount, an aggregate issue price) that is equal to or less than the aggregate principal amount (or if issued with original issue discount, the aggregate accreted value) then outstanding of the Indebtedness

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being Refinanced and (d) if the Indebtedness being refinanced is subordinated in right of payment to the Notes, such Refinancing Indebtedness is subordinated in right of payment to the Notes at least to the same extent as the Indebtedness being Refinanced; provided further, however, that Refinancing Indebtedness shall not include (i) Indebtedness of a Restricted Subsidiary that Refinances Indebtedness of the Company or (ii) Indebtedness of the Company or a Restricted Subsidiary that Refinances Indebtedness of an Unrestricted Subsidiary.

“Restricted Subsidiary” means any subsidiary of the Company that is a “Restricted Subsidiary” under the First Lien Note Indenture, the Second Lien Note Indenture, the Senior Subordinated Note Indenture, or any Designated Notes.

“Second Lien Documents” means the Second Lien Note Indenture, the Second Lien Security Documents and all other instruments, agreements and other documents evidencing or governing the Second Lien Notes or providing for any Guarantee or other right in respect thereof.

“Second Lien Notes” means the senior secured second lien notes co-issued by the Company and Semiconductor Components Industries, LLC pursuant to the Second Lien Note Indenture in an aggregate principal amount of \$300,000,000.

“Second Lien Note Indenture” means the indenture pursuant to which the Second Lien Notes were issued.

“Second Lien Security Documents” means any and all security agreements, pledge agreements, mortgages and other agreements and documents pursuant to which any Liens are granted to secure any Indebtedness or other obligations in respect of the Second Lien Notes.

“Secured Indebtedness” means any Indebtedness of the Company secured by a Lien. “Secured Indebtedness” of a Note Guarantor has a correlative meaning.

“Senior Indebtedness” of the Company means the principal of, premium (if any) and accrued and unpaid interest on (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization of the Company regardless of whether or not a claim for post-filing interest is allowed in such proceedings), and fees and other amounts owing in respect of, Bank Indebtedness and all other Indebtedness of the Company whether outstanding on the date of the Indenture or thereafter incurred, unless in the instrument creating or evidencing the same or pursuant to which the same is outstanding it is provided that such obligations are not superior in right of payment to the Notes or such Note Guarantor’s Guarantee; provided, however, that Senior Indebtedness shall not include:

- (1) any obligation of the Company to any subsidiary of the Company;
- (2) any liability for Federal, state, local or other taxes owed or owing by the Company;
- (3) any accounts payable or other liability to trade creditors arising in the ordinary course of business (including guarantees thereof or instruments evidencing such liabilities);
- (4) any Indebtedness or obligation of the Company (and any accrued and unpaid interest in respect thereof) that by its terms is subordinated or junior in right of payment to any other Indebtedness or obligation of the Company, including any Senior Subordinated Indebtedness and any Subordinated Obligations; or
- (5) any obligations with respect to capital stock.

“Senior Indebtedness” of a Note Guarantor has a correlative meaning.

“Senior Secured Notes” means the First Lien Notes and the Second Lien Notes.

“Senior Subordinated Notes” means the Senior Subordinated Notes due 2009 issued by the Company and Semiconductor Components Industries, LLC as co-issuers on August 4, 1999 in the aggregate principal amount

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of \$400,000,000 and the Indebtedness represented thereby (including the Note Guarantees, Exchange Notes (each as defined in Subordinated Debt Documents), guarantees of Exchange Notes and any replacement notes).

“Senior Subordinated Note Documents” means the Senior Subordinated Note Indenture and all other instruments, agreements and other documents evidencing or governing the Senior Subordinated Notes or providing for any Guarantee or other right in respect thereof.

“Senior Subordinated Note Indenture” means the indenture dated as of August 4, 1999 among the Company, Semiconductor Components Industries, LLC, the Note Guarantors named therein and State Street Bank and Trust Company, as trustee pursuant to which the Senior Subordinated were issued.

“Senior Subordinated Indebtedness” means the Notes, the senior subordinated notes due 2009 and any other Indebtedness of the Company that specifically provides that such Indebtedness is to rank *pari passu* with the Notes in right of payment and is not subordinated by its terms in right of payment to any Indebtedness or other obligation of the Company which is not Senior Indebtedness. “Senior Subordinated Indebtedness” of a Note Guarantor has a correlative meaning.

“Significant Subsidiary” means any Restricted Subsidiary that would be a “Significant Subsidiary” of the Company within the meaning of Rule 1-02 under Regulation S-X promulgated by the SEC.

“Stated Maturity” means, with respect to any security, the date specified in such security as the fixed date on which the final payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision (but excluding any provision providing for the repurchase of such security at the option of the holder thereof upon the happening of any contingency beyond the control of the issuer unless such contingency has occurred).

“Subordinated Obligation” means any Indebtedness of the Company (whether outstanding on the Closing Date or thereafter Incurred) that is subordinate or junior in right of payment to the Notes pursuant to a written agreement. “Subordinated Obligation” of a Note Guarantor has a correlative meaning.

“Trade Payables” means, with respect to any person, any accounts payable or any indebtedness or monetary obligation to trade creditors created, assumed or Guaranteed by such person arising in the ordinary course of business in connection with the acquisition of goods or services.

“Unrestricted Subsidiary” means any subsidiary of the Company that is an “Unrestricted Subsidiary” under the First Lien Note Indenture, the Second Lien Note Indenture, the Senior Subordinated Note Indenture, or any other notes, debentures, bonds or other similar instruments.



## DESCRIPTION OF CAPITAL STOCK

### Common Stock

The following summary does not purport to be complete. You should read the applicable provisions of the Delaware General Corporation Law, our restated certificate of incorporation and by-laws.

We are authorized to issue up to 500,000,000 shares of common stock, par value \$.01 each. At June 15, 2004, we had outstanding 253,484,526 shares of common stock (assuming no conversion of our Series A preferred stock) and had reserved for future issuance approximately 40,890,110 shares of common stock (including shares underlying options that are outstanding) with respect to our various employee benefit plans.

Subject to the prior dividend rights of the holders of shares of our Series A preferred stock and any other shares of preferred stock from time to time outstanding, holders of shares of common stock are entitled to receive dividends when, as and if declared by the Board of Directors out of funds legally available therefor. Each of our senior bank facilities, senior secured first lien notes, senior secured second lien notes, senior subordinated notes and Series A preferred stock restricts our ability to pay cash dividends to our common stockholders.

Each share of common stock is entitled to one vote on all matters submitted to a vote of stockholders. Holders of shares of common stock do not have cumulative voting rights. In the event of any liquidation, dissolution or winding up of ON Semiconductor, after the satisfaction in full of the liquidation preferences of holders of shares of our Series A preferred stock and any other shares of preferred stock then outstanding, holders of shares of common stock are entitled to ratable distribution of the remaining assets available for distribution to stockholders. The shares of common stock are not subject to redemption by operation of a sinking fund or otherwise. Holders of shares of common stock are not entitled to pre-emptive rights. The issued and outstanding shares of common stock are fully paid and nonassessable.

### Series A Preferred Stock

On September 7, 2001, TPG ON Holdings LLC purchased 10,000 shares of our Series A preferred stock for \$100.0 million in cash. The Series A preferred stock was sold to TPG ON Holdings LLC in a private offering exempt from registration under the Securities Act. Each share of Series A preferred stock is convertible at the option of the holder at any time into shares of common stock at a conversion price of \$2.82 per share of common stock, representing a \$0.37 discount from the closing price per share price of our common stock on the issuance date, subject to specified anti-dilution adjustments. As of June 15, 2004, the shares of Series A preferred stock were convertible into 44,740,113 shares of our common stock, including shares that may become issuable as a result of accrued and unpaid dividends within 60 days of June 15, 2004.

At any time on or after the eighth anniversary of the issuance date of the Series A preferred stock, the holders may require that we redeem their shares at a redemption price per share equal to the greater of (i) the stated value of the Series A preferred stock plus all accrued and unpaid dividends thereon or (ii) 20% of the then current market price of the common stock (based upon the average closing price of the common stock over the preceding 30 trading days) and other assets and property, if any, into which one share of Series A preferred stock is then convertible. Prior to June 15, 2004, the preceding percentage was 50%. Effective June 15, 2004, the certificate of designations of the Series A preferred stock was amended to change the percentage from 50% to 20%. Upon a change in control, the holders of the Series A preferred stock may "put" their shares to us at 101% of the stated value plus accumulated and unpaid dividends. TPG ON Holdings LLC was also granted registration rights in respect of the common stock underlying the Series A preferred stock. On November 14, 2001, we filed a registration statement to register for future resale the common stock that is issuable upon the future conversion by TPG ON Holdings LLC of the Series A preferred stock.

The holders of the Series A preferred stock are entitled to vote with the holders of the common stock as a single class. As of the issuance date, each share of Series A preferred stock was entitled to approximately 3,135

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votes, subject to certain adjustments for accumulated dividends and those made in accordance with the anti-dilution provisions. As the holder of our Series A preferred stock, TPG ON Holdings LLC is entitled to designate two Directors to serve on our Board of Directors for so long as TPG ON Holdings LLC and its affiliates beneficially own at least 50% of the Series A preferred stock. In connection with the Texas Pacific Group investment, the Board of Directors appointed a Special Independent Committee, which was comprised solely of independent Directors, to negotiate, consider and recommend approval or disapproval of the proposed investment transaction. The Special Independent Committee engaged an investment banker and independent legal counsel to assist in its negotiation and consideration of the Texas Pacific Group investment. The investment banker rendered an opinion that the Texas Pacific Group investment was fair, from a financial point of view, to holders of our common stock other than Texas Pacific Group. The Special Independent Committee unanimously recommended the approval and adoption of the Texas Pacific Group investment by the Board of Directors. For further information with respect to the Series A preferred stock, see our Form 8-K Current Report filed with the SEC on September 7, 2001.

## MATERIAL U.S. FEDERAL INCOME TAX CONSIDERATIONS

The following summary discusses the material U.S. federal income tax considerations relating to the purchase, ownership and disposition of the notes and the shares of common stock into which the notes may be converted. Except where noted, this summary deals only with notes and shares of common stock held as capital assets and is applicable only to investors who purchase notes at the initial offering price.

The following summary applies only to holders of notes or shares of common stock that are U.S. holders. For purposes of this summary, “U.S. holder” means a beneficial owner of a note that is for U.S. federal income tax purposes:

- a citizen or resident of the U.S.;
- a corporation or other entity taxable as a corporation created or organized in or under the laws of the U.S. or any political subdivision of the U.S.;
- an estate, the income of which is subject to U.S. federal income taxation regardless of its source; or
- a trust if (1) it is subject to the primary supervision of a court within the U.S. and one or more U.S. persons have the authority to control all substantial decisions of the trust, or (2) it has a valid election in effect under applicable U.S. treasury regulations to be treated as a U.S. person.

Additionally, this summary does not deal with special situations. For example, this summary does not address:

- tax consequences to holders who may be subject to special tax treatment, such as dealers in securities or currencies, financial institutions, tax-exempt entities, traders in securities that elect to use a mark-to-market method of accounting for their securities holdings or insurance companies;
- tax consequences to persons holding notes or shares of common stock as part of a hedging, integrated, constructive sale or conversion transaction or a straddle;
- tax consequences to U.S. holders of notes or shares of common stock whose “functional currency” is not the U.S. dollar;
- alternative minimum tax consequences, if any; or
- any state, local or foreign tax consequences.

The discussion below is based upon the provisions of the Internal Revenue Code of 1986, as amended (the “Code”), and regulations, rulings and judicial decisions as of the date hereof. Those authorities may be changed, perhaps retroactively, so as to result in U.S. federal income tax consequences different from those discussed below. If a partnership holds our notes or shares of common stock, the tax treatment of a partner in the partnership will generally depend upon the status of the partner and the activities of the partnership. If you are a partner of a partnership holding our notes or shares of common stock, you should consult your tax advisor. **If you are considering the purchase of notes, you are urged to consult your own tax advisors concerning the U.S. federal income and estate tax consequences to you and any consequences arising under the laws of any state, local, foreign or other taxing jurisdiction in light of your particular situation and circumstances.**

### Interest on the Notes

The notes will not pay or accrue any interest. U.S. Holders will therefore not include any amounts of interest as ordinary income.

### Constructive Dividend

The conversion ratio of the notes will be adjusted in certain circumstances. Under Section 305(c) of the Code, adjustments (or failures to make adjustments) that have the effect of increasing your proportionate interest

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in our assets or earnings may in some circumstances result in a deemed distribution to you. Any deemed distributions will be taxable as a dividend, return of capital or capital gain in accordance with the earnings and profits rules under the Code. In particular, any adjustment in the conversion rate to compensate the holders of notes for taxable distributions of cash on any of our outstanding common stock will be treated as a deemed distribution of stock to you, which will be taxable as a dividend to the extent of our current and accumulated earnings and profits (as calculated for U.S. federal income tax purposes). Any deemed dividend would not qualify as “qualified dividend income” and, therefore, would not be eligible for the preferential rates of U.S. federal income tax applicable in respect of such dividends under recently enacted legislation.

### **Sale, Exchange, Redemption or Other Taxable Disposition of Notes**

Except as provided below under “Exchange of Notes into Common Stock, or Cash or a Combination Thereof,” you will generally recognize gain or loss upon the sale, exchange, redemption or other taxable disposition of a note equal to the difference between the amount realized upon the sale, exchange, redemption or other taxable disposition and your adjusted tax basis in the note. Your adjusted tax basis in a note will generally be equal to the amount paid for the note. Any gain or loss recognized on a taxable disposition of the note will be capital gain or loss. If you are an individual and have held the note for more than one year, such capital gain will be subject to tax at preferential capital gains rates. The deductibility of net capital losses by individuals and corporations is subject to limitations.

### **Exchange of Notes into Common Stock, Cash or a Combination Thereof**

You will not recognize income, gain or loss upon the conversion or our repurchase of your notes solely for common stock. If you receive solely cash in exchange for your notes upon conversion or repurchase, your gain or loss will be determined in the same manner as if you disposed of the note in a taxable disposition (as described above under “Sale, Exchange, Redemption or Other Taxable Disposition of Notes”). If you receive a combination of cash and stock in exchange for your notes upon conversion or repurchase, the amount of gain realized will be equal to the excess of the sum of the fair market value of the common stock (as measured on the date of the exchange) and cash received over your adjusted tax basis in the note, but in no event should the amount recognized exceed the amount of cash received. You may not recognize any loss on the exchange. The amount of gain or loss recognized on the receipt of cash in lieu of a fractional share will be equal to the difference between the amount of cash you receive in respect of the fractional share and the portion of your adjusted tax basis in the note that is allocable to the fractional share. The tax basis of the shares of common stock received upon a conversion or repurchase will equal the adjusted tax basis of the note that was converted or repurchased (excluding the portion of the tax basis that is allocable to any fractional share), reduced by the amount of any cash received (other than cash received in lieu of a fractional share) and increased by the amount of gain, if any, recognized (other than with respect to a fractional share). Your holding period for these shares of common stock will include the period during which you held the notes. You are urged to contact your tax advisors concerning the ownership of common stock.

### **Information Reporting and Backup Withholding**

Payments of additional amounts on the notes, payments of dividends on the common stock, and the proceeds of the sale or other disposition of the notes or shares of common stock may be subject to information reporting and U.S. federal backup withholding tax if the recipient of such payment fails to supply an accurate taxpayer identification number or otherwise fails to comply with applicable U.S. information reporting or certification requirements. Any amounts withheld under the backup withholding rules will be allowed as a refund or a credit against your U.S. federal income tax liability provided the required information is furnished to the IRS.

## SELLING SECURITYHOLDERS

The notes were originally issued by us and sold to Morgan Stanley & Co. Incorporated, Credit Suisse First Boston LLC, J.P. Morgan Securities Inc., Citigroup Global Markets Inc. and Lehman Brothers Inc. (the “Initial Purchasers”) and resold by the Initial Purchasers in transactions exempt from the registration requirements of the Securities Act to persons reasonably believed by the Initial Purchasers to be “qualified institutional buyers” as defined by Rule 144A under the Securities Act. The selling securityholders, including their transferees, pledgees, donees, assignees or successors, may from time to time offer and sell pursuant to this prospectus any or all of the notes listed below and the shares of common stock issued upon conversion of the notes.

Selling securityholders may be deemed to be “underwriters” as defined in the Securities Act. Any profits realized by the selling securityholders may be deemed to be underwriting commissions.

The table below sets forth the name of each selling securityholder, the principal amount of notes that each selling securityholder owns and may offer pursuant to this prospectus and the numbers of shares of common stock into which those notes are convertible. Unless set forth below, to the best of our knowledge, none of the selling securityholders has, or within the past three years has had, any material relationship with us or any of our predecessors or affiliates or beneficially owns in excess of 1% of our outstanding common stock.

We have prepared the table below based on information received from the selling securityholders on or prior to June 28, 2004. However, any or all of the notes or shares of common stock listed below may be offered for sale pursuant to this prospectus by the selling securityholders from time to time. Accordingly, no estimate can be given as to the amounts of notes or number of shares of common stock that will be held by the selling securityholders upon consummation of any sales. In addition, the selling securityholders listed in the table below may have acquired, sold or transferred, in transactions exempt from the registration requirements of the Securities Act, some or all of their notes since the date as of which the information in the table is presented.

Information about the selling securityholders may change over time. Any changed information will be set forth in prospectus supplements to this prospectus. From time to time, additional information concerning ownership of the notes and shares of common stock may rest with certain holders of the notes not named in the table below and of whom we are unaware.

Name	Aggregate Principal Amount of Notes That Are Owned and May Be Sold	Percentage of Notes Outstanding	Number of Shares of Common Stock That May Be Sold(1)	Percentage of Common Stock Outstanding(2)
Arbitex Master Fund, L.P.(6)	\$ 9,800,000	3.77%	998,472	*
Argent Classic Convertible Arbitrage Fund (Bermuda) Ltd.	9,040,000	3.48%	921,039	*
Argent Classic Convertible Arbitrage Fund L.P.	1,910,000	*	194,600	*
Argent Classic Convertible Arbitrage Fund II, L.P.	330,000	*	33,622	*
Arkansas Teacher Retirement	3,300,000	1.27%	336,220	*
Baptist Health of South Florida	410,000	*	41,773	*
Basso Holdings Ltd.	2,270,000	*	231,279	*
Basso Multi-Strategy Holding Fund Ltd.	865,000	*	88,130	*
BNP Paribas Equity Strategies, SNC(6)	3,640,000	1.40%	370,861	*
Chrysler Corporation Master Retirement Trust	1,290,000	*	131,431	*
CooperNeff Convertible Strategies (Cayman) Master Fund, LP	3,930,000	1.51%	400,408	*
Delaware Dividend Income Fund, a series of Delaware Group Equity Funds V(6)	1,000,000	*	101,885	*

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Name	Aggregate Principal Amount of Notes That Are Owned and May Be Sold	Percentage of Notes Outstanding	Number of Shares of Common Stock That May Be Sold(1)	Percentage of Common Stock Outstanding(2)
Deutsche Bank Securities Inc.(5)	500,000	*	50,942	*
DKR Sound Shore Opportunity Holding Fund Ltd.	1,175,000	*	119,715	*
DKR Sound Shore Strategic Holding Fund Ltd.	690,000	*	70,301	*
Engineers Joint Pension Fund	285,000	*	29,037	*
F.M. Kirby Foundation, Inc.	1,075,000	*	109,526	*
Highbridge International LLC(6)	2,000,000	*	203,770	*
International Truck & Engine Corporation Non-Contributory Retirement Plan Trust	170,000	*	17,320	*
International Truck & Engine Corporation Retirement Plan for Salaried Employees Trust	165,000	*	16,811	*
International Truck & Engine Corporation Retiree Health Benefit Trust	70,000	*	7,132	*
KBC Financial Products USA(5)(6)	1,500,000	*	152,827	*
Lexington Vantage Fund c/o TQA Investors, LLC	14,000	*	1,426	*
Lyxor/Convertible Arbitrage Fund Limited	660,000	*	67,244	*
Lyxor Master Fund(6)	200,000	*	20,377	*
McMahon Securities Co. L.P.	500,000	*	50,942	*
Microsoft Corporation	1,185,000	*	120,734	*
Motion Picture Industry Health Plan—Active Member Fund	75,000	*	7,641	*
Motion Picture Industry Health Plan—Retiree Member Fund	55,000	*	5,604	*
Nicholas Applegate Capital Management U.S. Convertible & Income Mutual Fund	1,500,000	*	152,827	*
Nicholas Applegate Capital Management U.S. Convertible Income 2 Mutual Fund	1,500,000	*	152,827	*
Nicholas Applegate Capital Management U.S. Convertible Mutual Fund	485,000	*	49,414	*
OCM Convertible Trust	635,000	*	64,697	*
Oppenheimer Convertible Securities Fund(6)	2,500,000	*	254,712	*
Partner Reinsurance Company Ltd.	275,000	*	28,018	*
Piper Jaffray & Co.(5)	3,000,000	1.15%	305,655	*
Qwest Occupational Health Trust	200,000	*	20,377	*
RBC Alternative Assets Fund—Conv Arb	250,000	*	25,471	*
San Diego City Retirement	615,000	*	62,659	*
San Diego County Convertible	1,285,000	*	130,922	*
Satellite Asset Management, LP	15,000,000	5.77%	1,528,274	*
Satellite Convertible Arbitrage Master Fund, LLC	25,000,000	9.62%	2,547,123	*
Singlehedge US Convertible Arbitrage Fund	1,020,000	*	103,923	*
Sphinx Fund c/o TQA Investors, LLC	43,000	*	4,381	*
State Employees' Retirement Fund of the State of Delaware	370,000	*	37,697	*
Sturgeon Limited	750,000	*	76,414	*

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Name	Aggregate Principal Amount of Notes That Are Owned and May Be Sold	Percentage of Notes Outstanding	Number of Shares of Common Stock That May Be Sold(1)	Percentage of Common Stock Outstanding(2)
The St. Paul Travelers Companies, Inc.—Commercial Lines	40,000	*	4,075	*
The St. Paul Travelers Companies, Inc.—Personal Lines	35,000	*	3,566	*
TQA Master Fund, Ltd.	612,000	*	62,354	*
TQA Master Plus Fund, Ltd.	958,000	*	97,606	*
Univest Multi-Strategy—Conv Arb	150,000	*	15,282	*
UnumProvident Corporation	75,000	*	7,641	*
Vanguard Convertible Securities Fund, Inc.	14,785,000	5.69%	1,506,368	*
WPG Convertible Arbitrage Overseas Master Fund	550,000	*	56,037	*
WPG MSA Convertible Arbitrage Fund	50,000	*	5,094	*
Wyoming Staff Treasurer	620,000	*	63,169	*
Xavex-Convertible Arbitrage 7 Fund c/o TQA Investors, LLC	180,000	*	18,339	*
Xavex-Convertible Arbitrage 10 Fund	720,000	*	73,357	*
Zurich Institutional Benchmarks Master Fund Ltd. c/o TQA Investors, LLC	130,000	*	13,245	*
All other holders of notes or future transferees, pledges or successors of any holders(4)(7)	138,563,000	53.29%	14,117,477	
<b>Total</b>	<b>\$ 260,000,000</b>	<b>100.00%</b>	<b>26,490,074</b>	<b>9.46%</b>

\* Less than one percent (1%).

- (1) Assumes conversion of all of the holder's notes at a conversion rate of 101.8849 shares of common stock per \$1,000 principal amount of notes. This conversion rate is subject to adjustment, however, as described under "Description of the Notes—Conversion Rights." As a result, the number of shares of common stock issuable upon conversion of the notes may increase or decrease in the future.
- (2) Calculated based on Rule 13d-3(d)(1)(i) of the Exchange Act, using 253,484,526 shares of common stock outstanding as of June 15, 2004. In calculating this amount for each holder, we treated as outstanding the number of shares of common stock issuable upon conversion of all of that holder's notes, but we did not assume conversion of any other holder's notes.
- (3) Information about other selling securityholders will be set forth in prospectus supplements, if required.
- (4) Assumes that any other holders of notes, or any future pledgees, donees, assignees, transferees or successors of or from any other holders of notes, do not beneficially own any shares of common stock other than the common stock issuable upon conversion of the notes at the initial conversion rate.
- (5) This selling securityholder is a broker-dealer.
- (6) This selling securityholder is an affiliate of a broker-dealer.
- (7) Information about other selling securityholders will be set forth in prospectus supplements, if required.

## PLAN OF DISTRIBUTION

We are registering the notes and shares of common stock covered by this prospectus to permit holders to conduct public secondary trading of these securities from time to time after the date of this prospectus. We have agreed, among other things, to bear all expenses, other than underwriting discounts and selling commissions, in connection with the registration and sale of the notes and the shares of common stock covered by this prospectus.

We will not receive any of the proceeds from the offering of notes or the shares of common stock by the selling securityholders. We have been advised by the selling securityholders that the selling securityholders may sell all or a portion of the notes and shares of common stock beneficially owned by them and offered hereby from time to time:

- directly; or
- through underwriters, broker-dealers or agents, who may receive compensation in the form of underwriting discounts or commissions or agent's commissions from the selling securityholders or from the purchasers of the notes and common stock for whom they may act as agent.

The notes and the common stock may be sold from time to time in one or more transactions at:

- fixed prices;
- prevailing market prices at the time of sale;
- varying prices determined at the time of sale; or
- negotiated prices.

These prices will be determined by the holders of the securities or by agreement between these holders and underwriters or dealers who may receive fees or commissions in connection with the sale. The aggregate proceeds to the selling securityholders from the sale of the notes or shares of common stock offered by them hereby will be the purchase price of the notes or shares of common stock less discounts and commissions, if any.

The sales described in the preceding paragraph may be effected in transactions:

- on any national securities exchange or quotation service on which the notes and common stock may be listed or quoted at the time of sale, including Nasdaq in the case of the common stock;
- in the over-the-counter market;
- in transactions otherwise than on those exchanges or services or in the over-the-counter market; or
- through the writing of options.

These transactions may include block transactions or crosses. Crosses are transactions in which the same broker acts as an agent on both sides of the trade.

In connection with the sales of the notes and the shares of common stock or otherwise, the selling securityholders may enter into hedging transactions with broker-dealers, which may in turn engage in short sales of the notes and the shares of common stock, short and deliver notes and the shares of common stock to close out the short positions, or loan or pledge notes and the shares of common stock to broker-dealers that in turn may sell the notes and the shares of common stock.

To our knowledge, there are currently no plans, arrangements or understandings between any selling securityholders and any underwriter, broker-dealer or agent regarding the sale of the notes or the shares of common stock by the selling securityholders. Selling securityholders may decide not to sell any of the notes or the shares of common stock offered by them pursuant to this prospectus. In addition, we cannot assure you that a



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selling securityholder will not transfer, devise or gift the notes and the shares of common stock by other means not described in this prospectus. In addition, any securities covered by this prospectus which qualify for sale pursuant to Rule 144 or Rule 144A under the Securities Act may be sold under Rule 144 or Rule 144A rather than pursuant to this prospectus. Securities covered by this prospectus may also be sold to non-U.S. persons outside the United States in compliance with Regulation S under the Securities Act rather than pursuant to this prospectus.

The Company's common stock is quoted on the Nasdaq National Market under the symbol "ONNN."

The selling securityholders and any broker-dealers, agents or underwriters that participate with the selling securityholders in the distribution of the notes or the shares of common stock may be deemed to be "underwriters" within the meaning of the Securities Act. In this case, any commissions received by these broker-dealers, agents or underwriters and any profit on the resale of the notes or the shares of common stock purchased by them may be deemed to be underwriting commissions or discounts under the Securities Act. In addition, any profits realized by the selling securityholders may be deemed to be underwriting commissions.

Each of the selling securityholders that is a registered broker-dealer or an affiliate of a registered broker-dealer has represented to us, and by its use of this prospectus repeats such representation to you, that it purchased its notes in the ordinary course of business and at the time of such purchase had no direct or indirect agreements or understandings with any person to distribute such notes or common shares issuable upon conversion of such notes.

The notes were issued and sold in April 2004 in transactions exempt from the registration requirements of the Securities Act to persons reasonably believed by the Initial Purchasers to be "qualified institutional buyers," as defined by Rule 144A under the Securities Act. We have agreed to indemnify each selling securityholder (including the Initial Purchasers), and each selling securityholder's directors, officers, employees, affiliates, agents and each person, if any, who controls that selling securityholder within the meaning of either the Securities Act or the Exchange Act, against, or contribute to payments that may be required because of, specified liabilities arising under the Securities Act, the Exchange Act or other applicable law. Each selling securityholder (including the Initial Purchasers) has agreed to indemnify us, our directors, each of our officers who has signed this registration statement and each person, if any, who controls us within the meaning of either the Securities Act or the Exchange Act, against, or contribute to payments that may be required because of, specified liabilities arising under the Securities Act, the Exchange Act or other applicable law.

The selling securityholders and any other person participating in a distribution will be subject to the Exchange Act. The Exchange Act rules include, without limitation, Regulation M, which may limit the timing of purchases and sales of any of the notes and the underlying shares of common stock by the selling securityholders and any such other person. In addition, Regulation M of the Exchange Act may restrict the ability of any person engaged in the distribution of the notes and the underlying shares of common stock to engage in market-making activities with respect to the particular notes and the underlying shares of common stock being distributed for a period of up to five business days prior to the commencement of the distribution. This may affect the marketability of the notes and the underlying shares of common stock and the ability of any person or entity to engage in market-making activities with respect to the notes and the underlying shares of common stock.

We will use our reasonable efforts to keep the registration statement of which this prospectus is a part effective until the earlier of:

- such time as all of the registrable securities have been sold pursuant to the shelf registration statement or sold to the public pursuant to Rule 144 under the Securities Act or any other similar provision then in force (but not Rule 144A); or
- the expiration of the holding period applicable to such securities held by persons that are not affiliates of the Company under Rule 144(k) under the Securities Act or any successor provision.

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We may suspend the use of the prospectus under certain circumstances relating to pending corporate developments, public filings with the SEC and similar events. Any suspension period shall not exceed:

- 30 days in any three-month period; or
- an aggregate of 90 days for all suspension periods in any 12-month period.

Notwithstanding the foregoing, we will be permitted to suspend the use of this prospectus for up to 60 days in any 3-month period under certain circumstances, relating to possible acquisitions, financings or other similar transactions or reviews by the SEC of our periodic reporting.

Prior to the private placement, there was no trading market for the notes. Although the broker dealers that acted as initial purchasers when the notes were originally issued have advised us that they currently intend to make a market in the notes, they are not obligated to do so and may discontinue market-making activities at any time without notice. In addition, their market-making activities will be subject to limits imposed by the Securities Act and the Exchange Act and may be limited during the pendency of this shelf registration statement. Although the notes issued in the initial placement are eligible for trading on the PORTAL Market, notes sold using this prospectus will no longer be eligible for trading in the PORTAL system. We have not listed, and do not intend to list, the notes on any securities exchange or automated quotation system. We cannot assure you that any market for the notes will develop or be sustained. If an active market is not developed or sustained, the market price and liquidity of the notes may be adversely affected.

## **LEGAL MATTERS**

The validity of the notes offered hereby and the shares of the common stock issuable upon conversion of the notes has been passed upon us by Cleary, Gottlieb, Steen & Hamilton, New York, New York.

## **EXPERTS**

The consolidated financial statements and financial statement schedule of ON Semiconductor Corporation as of December 31, 2003 and 2002 and for each of the three years in the period ended December 31, 2003 incorporated in this prospectus by reference to ON Semiconductor Corporation's Annual Report on Form 10-K/A for the year ended December 31, 2003 filed March 22, 2004, have been so incorporated in reliance on the reports of PricewaterhouseCoopers LLP, independent registered public accounting firm, given on authority of said firm as experts in auditing and accounting. The separate financial statements of Semiconductor Components Industries, LLC, SCG Malaysia Holdings Sdn. Bhd., SCG Philippines, Incorporated, SCG (China) Holding Corporation, ON Semiconductor Japan Technology, Ltd. and ON Semiconductor Trading Ltd. as of December 31, 2003 and 2002 and for each of the three years in the period ended December 31, 2003 incorporated in this prospectus by reference to ON Semiconductor Corporation's Current Report on Form 8-K filed May 12, 2004, have been so incorporated in reliance on the reports of PricewaterhouseCoopers LLP, independent registered public accounting firm, given on authority of said firm as experts in auditing and accounting.

**PART II**  
**INFORMATION NOT REQUIRED IN PROSPECTUS**

**Item 14. Other Expenses of Issuance and Distribution.**

We are paying all of the selling securityholders' expenses related to this offering, except that the selling securityholders will pay any applicable underwriting and broker's commissions and expenses. The following table sets forth the approximate amount of fees and expenses payable by us in connection with this registration statement and the distribution of the notes and shares of common stock registered hereby. All of the amounts shown are estimates except the SEC registration fee.

SEC registration fee	\$ 32,942
Accounting Fees and Expenses	158,125
Legal Fees and Expenses	231,000
Printing and engraving expenses	254,500
NASDAQ Listing Fee	45,000
Miscellaneous	278,433
	<hr/>
Total	\$ 1,000,000

**Item 15. Indemnification of Directors and Officers.**

The registrant is a Delaware corporation. Section 145 of the Delaware General Corporation Law (the "DGCL") provides that a Delaware corporation has the power to indemnify its officers and directors in certain circumstances. Article Eleventh of the registrant's Restated Certificate of Incorporation provides that the registrant shall indemnify its directors and officers to the fullest extent permitted by Section 145 of the DGCL.

Subsection (a) of Section 145 of the DGCL empowers a corporation to indemnify any director or officer, or former director or officer, who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation) by reason of his service as director, officer, employee or agent of the corporation, or his service, at the corporation's request, as a director, officer, employee or agent of another corporation or enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding provided that such director or officer acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, provided that such director or officer had no reasonable cause to believe his conduct was unlawful.

Subsection (b) of Section 145 empowers a corporation to indemnify any director or officer, or former director or officer, who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that such person acted in any of the capacities set forth above, against expenses (including attorneys' fees) actually and reasonably incurred in connection with the defense or settlement of such action or suit provided that such director or officer acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification may be made in respect of any claim, issue or matter as to which such director or officer shall have been adjudged to be liable to the corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such director or officer is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

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Section 145 further provides that to the extent a director or officer of a corporation has been successful in the defense of any action, suit or proceeding referred to in subsections (a) or (b) or in the defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith, provided that indemnification provided for by Section 145 or granted pursuant thereto shall not be deemed exclusive of any other rights to which the indemnified party may be entitled, and empowers the corporation to purchase and maintain insurance on behalf of a director or officer of the corporation against any liability asserted against him or incurred by him in any such capacity or arising out of his status as such whether or not the corporation would have the power to indemnify him against such liabilities under Section 145.

In addition, Section 102(b)(7) of the DGCL permits Delaware corporations to include a provision in their certificates of incorporation eliminating or limiting the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided that such provisions shall not eliminate or limit the liability of a director (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (iii) for unlawful payment of dividends or other unlawful distributions, or (iv) for any transactions from which the director derived an improper personal benefit. Article Sixteenth of the registrant's Restated Certificate of Incorporation states that the personal liability of the directors of the registrant is eliminated to the fullest extent permitted by Section 102(b)(7). The registrant also carries liability insurance covering officers and directors.

As of September 7, 2001, we entered into an investment agreement with an affiliate of Texas Pacific Group in connection with the affiliate's acquisition of our Series A preferred stock. In connection with this transaction, the Board of Directors formed a Special Independent Committee to assist with our Series A preferred stock purchase. As part of the investment agreement, we agreed to indemnify and hold harmless each member of the Special Independent Committee from and against any and all losses, penalties, judgments, suits, costs, claims, liabilities, damages and expenses incurred by each member as a result of, or arising out of, any claim relating to breach of fiduciary duty or illegality (other than claims based upon fraud, embezzlement or any criminal violation of law), in each case, related to our Series A preferred stock purchase; provided, however, that such indemnification shall only be available to the extent that both (i) indemnification for these losses is not available from us under applicable law or as a result of our insolvency, and (ii) our insurers refuse to pay on our directors' and officers' liability insurance policies with respect to these losses.

The foregoing summaries are necessarily subject to the complete text of the DGCL, our Certificate of Incorporation, our insurance policies and the investment agreement referred to above and are qualified in their entirety by reference thereto.

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### **Item 16. Exhibits.**

The following is a list of all exhibits filed as a part of this registration statement on Form S-3, including those incorporated in this registration statement by reference.

<u>Exhibit Number</u>	<u>Description of Exhibits</u>
3.1	Amended and Restated Certificate of Incorporation of ON Semiconductor Corporation as of August 1, 2002 (incorporated by reference to Exhibit 3.1 to the Company's Quarterly Report on Form 10-Q filed with the Commission on August 9, 2002)
3.2	Amended and Restated Bylaws of ON Semiconductor Corporation (incorporated by reference from Exhibit 3.2 to the Company's Annual Report on Form 10-K filed with the Commission on March 10, 2004)
4.1	Specimen of share certificate of Common Stock, par value \$.01, ON Semiconductor Corporation (incorporated by reference to Exhibit 4.1 to the Company's Annual Report on Form 10-K filed with the Commission on March 10, 2004)
4.3*	Indenture, dated as of April 6, 2004, among ON Semiconductor Corporation, the guarantors listed herein and Wells Fargo Bank, N.A., as Trustee
4.4*	Form of Zero Coupon Convertible Senior Subordinated Notes due 2024 (included in Exhibit 4.3)
4.5*	Registration Rights Agreement, dated April 6, 2004, among ON Semiconductor Corporation and Morgan Stanley & Co. Incorporated, Credit Suisse First Boston LLC and J.P. Morgan Securities Inc., as representatives of the Initial Purchasers
5.1*	Opinion of Cleary, Gottlieb, Steen & Hamilton
12.1*	Statement of Computation of Ratio of Earnings to Fixed Charges
23.1*	Consent of Cleary, Gottlieb, Steen & Hamilton (included in Exhibit 5.1)
23.2*	Consent of PricewaterhouseCoopers LLP.
24.1*	Power of Attorney (included on signature pages of this Part II).
25.1*	Statement of Eligibility on Form T-1 under the Trust Indenture Act of 1939, as amended, of Wells Fargo Bank, N.A. under the Indenture.

\* Filed herewith.

### **Item 17. Undertakings.**

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of this registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

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(iii) To include any material information with respect to the plan of distribution not previously disclosed in this registration statement or any material change to the information in the registration statement;

*provided, however*, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the SEC by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, each post-effective amendment shall be deemed to be a new registration statement relating to the securities offered in this prospectus, and the offering of the securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) That, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered in this prospectus, and the offering of the securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(b) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to its articles, bylaws or otherwise, the Registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by the director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether the indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Phoenix, State of Arizona on June 30, 2004.

ON SEMICONDUCTOR CORPORATION

By: /s/ KEITH D. JACKSON

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Name: **Keith D. Jackson**  
Title: **President and Chief Executive Officer**



**POWER OF ATTORNEY**

KNOWN ALL MEN BY THESE PRESENTS that each person whose signature appears below constitutes and appoints Keith D. Jackson, Donald Colvin and George H. Cave, and each of them, his true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments to this Form S-3 registration statement and to sign any registration statement for the same offering that is to be effective upon filing pursuant to Rule 462(b) of the Securities Act of 1933, and to file the same, with all exhibits thereto, and all documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully and to all intents and purposes as he might or could do in person hereby ratifying and confirming that all said attorneys-in-fact and agents, or his substitutes, may lawfully do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed below by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
/s/ KEITH D. JACKSON <hr/> <b>(Keith D. Jackson)</b>	President, Chief Executive Officer and Director of the registrant	June 30, 2004
/s/ DONALD COLVIN <hr/> <b>(Donald Colvin)</b>	Senior Vice President, Chief Financial Officer and Treasurer of the registrant	June 30, 2004
/s/ J. DANIEL MCCRANIE <hr/> <b>(J. Daniel McCranie)</b>	Chairman of the Board of Directors of the registrant	June 30, 2004
/s/ RICHARD W. BOYCE <hr/> <b>(Richard W. Boyce)</b>	Director of the registrant	June 30, 2004
/s/ KEVIN R. BURNS <hr/> <b>(Kevin R. Burns)</b>	Director of the registrant	June 30, 2004
/s/ JUSTIN T. CHANG <hr/> <b>(Justin T. Chang)</b>	Director of the registrant	June 30, 2004
/s/ CURTIS J. CRAWFORD <hr/> <b>(Curtis J. Crawford)</b>	Director of the registrant	June 30, 2004
/s/ WILLIAM A. FRANKE <hr/> <b>(William A. Franke)</b>	Director of the registrant	June 30, 2004
/s/ JEROME N. GREGOIRE <hr/> <b>(Jerome N. Gregoire)</b>	Director of the registrant	June 30, 2004
/s/ EMMANUEL T. HERNANDEZ <hr/> <b>(Emmanuel T. Hernandez)</b>	Director of the registrant	June 30, 2004
/s/ JOHN W. MARREN <hr/> <b>(John W. Marren)</b>	Director of the registrant	June 30, 2004

**EXHIBIT INDEX**

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4.4*	Form of Zero Coupon Convertible Senior Subordinated Notes due 2024 (included in Exhibit 4.3)
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5.1*	Opinion of Cleary, Gottlieb, Steen & Hamilton
12.1*	Statement of Computation of Ratio of Earnings to Fixed Charges
23.1*	Consent of Cleary, Gottlieb, Steen & Hamilton (included in Exhibit 5.1)
23.2*	Consent of PricewaterhouseCoopers LLP.
24.1*	Power of Attorney (included on signature pages of this Part II).
25.1*	Statement of Eligibility on Form T-1 under the Trust Indenture Act of 1939, as amended, of Wells Fargo Bank, N.A. under the Indenture.

\* Filed herewith.

ON SEMICONDUCTOR CORPORATION,

the Guarantors listed herein

and

Wells Fargo Bank, N.A.,  
as Trustee

**Zero Coupon Convertible Senior Subordinated Notes due 2024**

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**INDENTURE**

Dated as of

April 6, 2004

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CROSS-REFERENCE TABLE

TIA Section	Indenture Section
310(a)(1)	8.09
(a)(2)	8.09
(a)(3)	N.A.
(a)(4)	N.A.
(a)(5)	8.09
(b)	8.8
(c)	N.A.
311(a)	8.13
(b)	8.13
(c)	N.A.
312(a)	6.01
(b)	6.02(b)
(c)	6.02(c)
313(a)	6.03
(b)(1)	N.A.
(b)(2)	6.03
(c)	6.03; 19.03
(d)	6.03(b)
314(a)	5.06; 6.04
(b)	N.A.
(c)(1)	19.05
(c)(2)	19.05
(c)(3)	N.A.
(d)	N.A.
(e)	19.05
(f)	N.A.
315(a)	8.01; 8.02
(b)	7.08; 19.03
(c)	8.01
(d)	8.01
(e)	7.09
316(a)(last sentence)	9.04
(a)(1)(A)	7.07
(a)(1)(B)	7.07
(a)(2)	N.A.
(b)	7.04
(c)	9.01
317(a)(1)	7.02; 7.05
(a)(2)	7.02
(b)	5.04
318(a)	19.07

N.A. means not applicable

Note: This Cross-Reference table shall not, for any purpose, be deemed to be part of this Indenture.

## INDENTURE

INDENTURE dated as of April 6, 2004, between ON Semiconductor Corporation, a Delaware corporation (hereinafter called the “**Company**”), having its principal office at 5005 E. McDowell Road, Phoenix, Arizona 85008, Semiconductor Components Industries, LLC, SCG (Malaysia SMP) Holding Corporation, SCG (Czech) Holding Corporation, SCG (China) Holding Corporation, Semiconductor Components Industries Puerto Rico, Inc., Semiconductor Components Industries of Rhode Island, Inc., SCG International Development LLC and Semiconductor Components Industries International of Rhode Island, Inc., as guarantors (collectively, the “**Note Guarantors**”) and Wells Fargo Bank, N.A., a national banking association, as trustee hereunder (hereinafter called the “**Trustee**”).

### WITNESSETH:

WHEREAS, for its lawful corporate purposes, the Company has duly authorized the issue of its Zero Coupon Convertible Senior Subordinated Notes due 2024 (hereinafter called the “**Notes**”), in an aggregate principal amount not to exceed \$290,000,000 and, to provide the terms and conditions upon which the Notes are to be authenticated, issued and delivered, the Company has duly authorized the execution and delivery of this Indenture; and

WHEREAS, the Notes, the certificate of authentication to be borne by the Notes, a form of assignment, a form of Designated Event repurchase notice, a form of repurchase notice and a form of conversion notice to be borne by the Notes are to be substantially in the forms hereinafter provided for; and

WHEREAS, all acts and things necessary to make the Notes, when executed by the Company and authenticated and delivered by the Trustee or a duly authorized authenticating agent, as in this Indenture provided, the valid, binding and legal obligations of the Company and the Note Guarantors, and to constitute this Indenture a valid agreement according to its terms, have been done and performed, and the execution of this Indenture and the issue hereunder of the Notes have in all respects been duly authorized,

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

That in order to declare the terms and conditions upon which the Notes are, and are to be, authenticated, issued and delivered, and in consideration of the premises and of the purchase and acceptance of the Notes by the holders thereof, each party agrees as follows for the benefit of the other parties and for the equal and proportionate benefit of the respective holders from time to time of the Notes (except as otherwise provided below), as follows:

ARTICLE 1  
DEFINITIONS

SECTION 1.01. Definitions. The terms defined in this Section 1.01 (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section 1.01. All other terms used in this Indenture that are defined in the Trust Indenture Act or which are by reference therein defined in the Securities Act of 1933, as amended (except as herein otherwise expressly provided or unless the context otherwise requires) shall have the meanings assigned to such terms in the Trust Indenture Act and in the Securities Act as in force at the date of the execution of this Indenture. The words “**herein**”, “**hereof**”, “**hereunder**” and words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other Subdivision. The terms defined in this Article include the plural as well as the singular.

“**Adjustment Event**” has the meaning specified in Section 15.05(l).

“**Affiliate**” of any specified Person means any other Person, directly or indirectly, controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control” when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“**Agent Members**” has the meaning specified in Section 2.05(b).

“**Attributable Debt**” in respect of a Sale/Leaseback Transaction means, as at the time of determination, the present value (discounted at the interest rate implicit in such transaction, determined in accordance with GAAP) of the total obligations of the lessee for net rental payments during the remaining term of the lease included in such Sale/Leaseback Transaction (including any period for which such lease has been extended or may be, at the option of the lessor, extended).

“**Average Life**” means, as of the date of determination, with respect to any Indebtedness or Preferred Stock, the number of years obtained by dividing (a) the sum of the products of the numbers of years from the date of determination to the dates of each successive scheduled principal payment of such Indebtedness or scheduled redemption or similar payment with respect to such Preferred Stock multiplied by the amount of such payment by (b) the then outstanding sum of all such payments.

“**Bank Indebtedness**” means any and all amounts payable under or in respect of the Credit Agreement and any Refinancing Indebtedness with respect

thereto, as amended from time to time, including principal, premium (if any), interest (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to the Company or Semiconductor Components Industries, LLC whether or not a claim for post-filing interest is allowed in such proceedings), fees, charges, expenses, reimbursement obligations, guarantees and all other amounts payable thereunder or in respect thereof. It is understood and agreed that Refinancing Indebtedness in respect of the Credit Agreement may be Incurred from time to time after termination of the Credit Agreement.

“**Blockage Notice**” has the meaning specified in Section 16.03.

“**Board of Directors**” means the Board of Directors of the Company or any committee thereof duly authorized to act on behalf of the Board of Directors of the Company.

“**Business Day**” means each day which is not a Legal Holiday.

“**Capital Stock**” of any Person means any and all shares, partnership, membership or other interests, participations or other equivalents of or interests in (however designated) equity of such Person, including any Preferred Stock (but excluding any debt securities convertible into such equity) and any rights to purchase, warrants, options or similar interests with respect to the foregoing.

“**Capitalized Lease Obligations**” means an obligation that is required to be classified and accounted for as a capitalized lease for financial reporting purposes in accordance with GAAP, and the amount of Indebtedness represented by such obligation shall be the capitalized amount of such obligation determined in accordance with GAAP; and the Stated Maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be prepaid by the lessee without payment of a penalty.

“**Cash Settlement Averaging Period**” has the meaning specified in Section 15.12.

“**Cash Settlement Notice Period**” has the meaning specified in Section 15.12.

“**Closing Date**” means the date of this Indenture.

“**Closing Sale Price**” of the shares of Common Stock on any date means the closing sale price per share (or, if no closing sale price is reported, the average of the closing bid and ask prices or, if more than one in either case, the average of the average closing bid and the average closing ask prices) as reported by the Nasdaq National Market, or if the Company’s common stock is not quoted on the Nasdaq National Market, then as reported on such date in composite transactions for the principal United States national or regional securities exchange on which

shares of Common Stock are traded or, if the shares of Common Stock are not listed on a United States national or regional securities exchange or quoted on the Nasdaq National Market, then as reported by the National Quotation Bureau Incorporated. In the absence of such quotations, the Company shall be entitled to determine the Closing Sale Price on the basis it considers appropriate, and such determination shall be conclusive. The Closing Sale Price shall be determined without reference to extended or after hours trading.

“**Commission**” means the Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act, or, if at any time after the execution of this Indenture such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

“**Common Stock**” means any stock of any class of the Company which has no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company and which is not subject to redemption by the Company. Subject to the provisions of Section 15.06, however, shares issuable on conversion of Notes shall include only shares of the class designated as common stock of the Company at the date of this Indenture (namely, the Common Stock, par value \$0.01) or shares of any class or classes resulting from any reclassification or reclassifications thereof and which have no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company and which are not subject to redemption by the Company; *provided* that if at any time there shall be more than one such resulting class, the shares of each such class then so issuable on conversion shall be substantially in the proportion which the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications.

“**Company**” means the corporation named as the “**Company**” in the first paragraph of this Indenture, and, subject to the provisions of Article 12 and Section 15.06, shall include its successors and assigns.

“**Company Repurchase Notice**” has the meaning specified in Section 3.07(b).

“**Company Repurchase Notice Date**” has the meaning specified in Section 3.07(b).

“**Conversion Date**” has the meaning specified in Section 15.02.

“**Conversion Notice**” has the meaning specified in Section 15.02.

“**Conversion Obligation**” has the meaning specified in Section 15.12.

“**Conversion Price**” as of any day will equal \$1,000 divided by the Conversion Rate as of such date.

“**Conversion Rate**” has the meaning specified in Section 15.04.

“**Conversion Rate Increase Amount**” has the meaning specified in the Registration Rights Agreement.

“**Conversion Retraction Period**” has the meaning specified in Section 15.12.

“**Corporate Trust Office**” or other similar term, means the designated office of the Trustee at which at any particular time its corporate trust business as it relates to this Indenture shall be administered, which office is, at the date as of which this Indenture is dated, located at 213 Court Street, Suite 703, Middletown, Connecticut 06457.

“**Credit Agreement**” means the Amended and Restated Credit Agreement dated as of August 4, 1999, as amended and restated as of November 25, 2003, and as further amended on January 16, 2004 and March 30, 2004 among Semiconductor Components Industries, LLC, the Company and the Subsidiaries of the Company named therein, the lenders named therein and The Chase Manhattan Bank, as administrative agent, collateral agent and syndication agent, DLJ Capital Funding, Inc., as co-documentation agent, Lehman Commercial Paper Inc., as co-documentation agent, and Credit Lyonnais New York Branch, as co-documentation agent, including any collateral documents, instruments and agreements executed in connection therewith, and any amendments, supplements, modifications, extensions, renewals, restatements or refundings thereof (except to the extent that any such amendment, supplement, modification, extension, renewal, restatement or refunding would be prohibited by the terms of this Indenture, unless otherwise agreed to by the Noteholders of at least a majority in aggregate principal amount of Notes at the time outstanding) and any indentures or credit facilities or commercial paper facilities with banks or other institutional lenders that replace, refund or refinance any part of the loans, notes, other credit facilities or commitments thereunder, including any such replacement, refunding or refinancing facility or indenture that increases the amount borrowable thereunder or alters the maturity thereof.

“**Currency Agreement**” means with respect to any Person any foreign exchange contract, currency swap agreements or other similar agreement or arrangement to which such Person is a party.

“**Current Market Price**” has the meaning specified in Section 15.05(h).

“**Custodian**” means Wells Fargo Bank, N.A., as custodian with respect to the Notes in global form, or any successor entity thereto.

**“Default”** means any event that is, or after notice or passage of time, or both, would be, an Event of Default.

**“Depositary”** means, the clearing agency registered under the Exchange Act that is designated to act as the Depositary for the Global Notes. The Depositary Trust Company shall be the initial Depositary, until a successor shall have been appointed and become such pursuant to the applicable provisions of this Indenture, and thereafter, **“Depositary”** shall mean or include such successor.

**“Designated Event”** shall mean any Fundamental Change or a Termination of Trading.

**“Designated Event Expiration Time”** has the meaning specified in Section 3.05(b).

**“Designated Event Notice”** has the meaning specified in Section 3.05(b).

**“Designated Event Repurchase Date”** has the meaning specified in Section 3.05(a).

**“Designated Event Repurchase Notice”** has the meaning specified in Section 3.05(a).

**“Designated Notes”** means any indebtedness of the Company for borrowed money that (i) is in the form of, or represented by, bonds, notes, debentures or other securities (other than promissory notes or similar evidence of indebtedness under bank loans, reimbursement agreements or receivables facilities) or any guarantee thereof and (ii) is, or may be, quoted, listed or purchased and sold on any stock exchange, automated securities trading system or over-the-counter or other securities market (including, without prejudice to the generality of the foregoing, the market for securities eligible for resale pursuant to Rule 144A under the Securities Act of 1933, as amended).

**“Designated Senior Indebtedness”** of the Company means (a) the Bank Indebtedness and (b) any other Senior Indebtedness of the Company that, at the date of determination, has an aggregate principal amount outstanding of, or under which, at the date of determination, the holders thereof are committed to lend up to, at least \$25 million and is specifically designated by the Company in the instrument evidencing or governing such Senior Indebtedness as “Designated Senior Indebtedness” for purposes of this Indenture. “Designated Senior Indebtedness” of a Note Guarantor has a correlative meaning.

**“Determination Date”** has the meaning specified in Section 15.05(l).

**“Disqualified Stock”** means, with respect to any Person, any Capital Stock which by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable or exercisable) or upon the happening of any event (a) matures or is mandatorily redeemable pursuant to a sinking fund

obligation or otherwise, (b) is convertible or exchangeable for Indebtedness or Disqualified Stock or (c) is redeemable at the option of the holder thereof, in whole or in part, in the case of clauses (a), (b) and (c) on or prior to 90 days after the Stated Maturity of the Notes; provided, however, that only the portion of Capital Stock that so matures or is mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to the Stated Maturity of the Notes shall be deemed Disqualified Stock; provided further, however, that Capital Stock issued to any plan for the benefit of employees shall not constitute Disqualified Stock solely because it may be required to be repurchased by the Company in order to satisfy applicable statutory or regulatory obligations.

“**Event of Default**” means any event specified in Section 7.01 as an Event of Default.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder, as in effect from time to time.

“**Ex-Dividend Time**” has the meaning specified in Section 15.01(b).

“**Expiration Time**” has the meaning specified in Section 15.05(f).

“**Fair Market Value**” means with respect to any asset or property, the price which could be negotiated in an arm’s length, free market transaction, for cash, between a willing seller and a willing and able buyer, neither of whom is under undue pressure or compulsion to complete the transaction. For all purposes of this Indenture, Fair Market Value will be determined in good faith by the Board of Directors, whose determination will be conclusive and evidenced by a resolution of the Board of Directors.

“**Final Notice Date**” has the meaning specified in Section 15.12.

“**First Lien Notes**” means the senior secured first lien notes co-issued by the Company and Semiconductor Components Industries, LLC pursuant to an indenture dated as of March 3, 2003.

“**First Lien Note Indenture**” means the indenture pursuant to which the First Lien Notes are issued.

“**Fiscal Quarter**” means, with respect to the Company, the first, second, third and fourth quarter of any fiscal year ending on March 31, June 30, September 30 and December 31, respectively.

“**Fundamental Change**” means the occurrence of any transaction or event (whether by means of an exchange offer, liquidation, tender offer, consolidation, merger, combination, reclassification, recapitalization or otherwise) in connection with which all or substantially all of the Common Stock shall be exchanged for,



converted into, acquired for or constitutes solely the right to receive, consideration which is not all or substantially all common stock (or comparable equity security of a non-U.S. entity) that is (or, upon consummation of or immediately following such transaction or event, which will be) listed on a United States national securities exchange or approved (or, upon consummation of or immediately following such transaction or event, which will be approved) for quotation on the Nasdaq National Market or any similar United States system of automated dissemination of quotations of securities prices.

“**GAAP**” means generally accepted accounting principles in the United States of America as in effect from time to time, including those set forth in (a) the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants, (b) statements and pronouncements of the Financial Accounting Standards Board, (c) such other statements by such other entities as approved by a significant segment of the accounting profession and (d) the rules and regulations of the Commission governing the inclusion of financial statements (including pro forma financial statements) in periodic reports required to be filed pursuant to Section 13 of the Exchange Act of 1934, as amended, including opinions and pronouncements in staff accounting bulletins and similar written statements from the accounting staff of the Commission. All ratios and computations based on GAAP contained in this Indenture shall be computed in conformity with GAAP.

“**Global Note**” has the meaning specified in Section 2.02.

“**Guarantee**” means any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness of any other Person and any obligation, direct or indirect, contingent or otherwise, of such Person (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness of such other Person (whether arising by virtue of partnership arrangements, or by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise) or (b) entered into for purposes of assuring in any other manner the obligee of such Indebtedness of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part); provided, however, that the term “Guarantee” shall not include endorsements for collection or deposit in the ordinary course of business. The term “Guarantee” used as a verb has a corresponding meaning. The term “Guarantor” shall mean any Person Guaranteeing any Indebtedness.

“**Guarantee Blockage Notice**” has the meaning specified in Section 18.03.

“**Guaranteed Payment Blockage Period**” has the meaning specified in Section 18.03.

“**Guarantee Obligations**” has the meaning specified in Section 18.03.

**“Hedging Obligations”** of any Person means the obligations of such Person pursuant to any Interest Rate Agreement or Currency Agreement.

**“Incur”** means, with respect to any Indebtedness or other obligation of any Person, to issue, assume, Guarantee, incur or otherwise become liable for; provided, however, that any Indebtedness or Capital Stock of a Person existing immediately after the time such Person becomes a Subsidiary (whether by merger, consolidation, acquisition or otherwise) shall be deemed to be Incurred by such Subsidiary at the time it becomes a Subsidiary. The term “Incurrence” when used as a noun shall have a correlative meaning. The accretion of principal of a non-interest bearing or other discount security shall not be deemed the Incurrence of Indebtedness.

**“Indebtedness”** means, with respect to any Person on any date of determination, without duplication, the following items if and to the extent that any of them (other than items specified under clauses (c), (h), (i) and (j) below) would appear as a liability or, in the case of clause (f) only, Preferred Stock on the balance sheet of such Person, prepared in accordance with GAAP, on such date:

- (a) the principal amount of and premium (if any) in respect of indebtedness of such Person for borrowed money;
- (b) the principal amount of and premium (if any) in respect of obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;
- (c) all obligations of such Person in respect of letters of credit or other similar instruments (including reimbursement obligations with respect thereto but excluding obligations in respect of letters of credit issued in respect of Trade Payables);
- (d) all obligations of such Person to pay the deferred and unpaid purchase price of property or services (except Trade Payables), which purchase price is due more than twelve months after the date of placing such property in service or taking delivery and title thereto or the completion of such services;
- (e) all Capitalized Lease Obligations and all Attributable Debt of such Person;
- (f) the amount of all obligations of such Person with respect to the redemption, repayment or other repurchase of any Disqualified Stock or, with respect to any Subsidiary of such Person, any Preferred Stock (but excluding, in each case, any accrued dividends);
- (g) all Indebtedness of other Persons secured by a Lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person; provided, however, that the amount of Indebtedness of such

Person shall be the lesser of (i) the Fair Market Value of such asset at such date of determination and (ii) the amount of such Indebtedness of such other Persons;

(h) Hedging Obligations of such Person;

(i) all obligations of such Person in respect of a Receivables Facility; and

(j) all obligations of the type referred to in clauses (a) through (i) of other Persons and all dividends of other Persons for the payment of which, in either case, such Person is responsible or liable, directly or indirectly, as obligor, guarantor or otherwise, including by means of any Guarantee.

The amount of Indebtedness of any Person at any date shall be the outstanding balance at such date of all unconditional obligations as described above and the maximum liability, upon the occurrence of the contingency giving rise to the obligation, of any contingent obligations described above, at such date; provided, however, that the amount outstanding at any time of any Indebtedness issued with original issue discount will be deemed to be the face amount of such Indebtedness less the remaining unaccreted portion of the original issue discount of such Indebtedness at such time, as determined in accordance with GAAP.

“**Indenture**” means this Indenture as amended or supplemented from time to time.

“**Initial Purchasers**” means each of Morgan Stanley & Co. Incorporated, Credit Suisse First Boston LLC, J.P. Morgan Securities Inc., Lehman Brothers Inc. and Citigroup Global Markets Inc. (each an “**Initial Purchaser**”).

“**Interest Rate Agreement**” means with respect to any Person any interest rate protection agreement, interest rate future agreement, interest rate option agreement, interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, interest rate hedge agreement or other similar agreement or arrangement as to which such Person is party.

“**Junior Subordinated Note**” means the junior subordinated note of Semiconductor Components Industries, LLC due 2011 issued in the original principal amount of \$91 million, which is subordinated to the Notes.

“**Lien**” means any mortgage, pledge, security interest, encumbrance, lien or charge of any kind (including any conditional sale or other title retention agreement or lease in the nature thereof).

“**Measurement Period**” has the meaning specified in Section 15.01(a).

“**Non-electing share**” has the meaning specified in Section 15.06.

“**Note Guarantee**” means each Guarantee of the obligations with respect to the Notes issued by a Subsidiary of the Company pursuant to the terms of this Indenture.

“**Note Guarantor**” means any Subsidiary that has issued a Note Guarantee.

“**Notes**” means the Notes issued under this Indenture.

“**Noteholder**” or “**holder**” as applied to any Note, or other similar terms (but excluding the term “**Beneficial Holder**”), means any Person in whose name at the time a particular Note is registered on the Note Registrar’s books.

“**Note Register**” has the meaning specified in Section 2.05.

“**Note Registrar**” has the meaning specified in Section 2.05.

“**Notice Date**” means the date of mailing of the notice of redemption pursuant to Section 3.02.

“**Officer**” means the Chairman of the Board, Chief Executive Officer, the Chief Financial Officer, President or any Vice President (whether or not designated by a number or numbers or word or words added before or after the title “Vice President”), the Treasurer or any Assistant Treasurer or the Secretary or Assistant Secretary of the Company.

“**Officers’ Certificate**”, means a certificate signed by two Officers of such Person issuing such certification.

“**Opinion of Counsel**” means an opinion in writing (subject to customary assumptions and exclusions) from a legal counsel who is reasonably acceptable to the Trustee, the counsel may be an employee of or counsel to the Company a Note Guarantor or the Trustee.

“**Outstanding**”, when used with reference to Notes and subject to the provisions of Section 9.04, means, as of any particular time, all Notes authenticated and delivered by the Trustee under this Indenture, except:

- (a) Notes theretofore canceled by the Trustee or delivered to the Trustee for cancellation;
- (b) Notes, or portions thereof, (i) for the redemption of which monies in the necessary amount shall have been deposited in trust with the Trustee or with any paying agent (other than the Company) or (ii) which shall have been otherwise discharged in accordance with Article 13;

(c) Notes in lieu of which, or in substitution for which, other Notes shall have been authenticated and delivered pursuant to the terms of Section 2.06; and

(d) Notes converted into Common Stock pursuant to Article 15 and Notes deemed not outstanding pursuant to Article 3.

“**Payment Blockage Period**” has the meaning specified in Section 16.03.

“**Person**” means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

“**Portal Market**” means The Portal Market operated by the NASD, Inc. or any successor thereto.

“**Predecessor Note**” of any particular Note means every previous Note evidencing all or a portion of the same debt as that evidenced by such particular Note, and, for the purposes of this definition, any Note authenticated and delivered under Section 2.06 in exchange for a mutilated Note or in lieu of a lost, destroyed or stolen Note shall be deemed to evidence the same debt as the mutilated lost, destroyed or stolen Note that it replaces.

“**Preferred Stock**”, as applied to the Capital Stock of any Person, means Capital Stock of any class or classes (however designated) that is preferred as to the payment of dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over shares of Capital Stock of any other class of such Person.

“**Purchased Shares**” has the meaning specified in Section 15.05(f).

“**Receivables Facility**” means one or more receivables financing facilities, as amended from time to time, pursuant to which the Company and/or any of its Restricted Subsidiaries sells its accounts receivable to a Person that is not a Restricted Subsidiary pursuant to arrangements customary in the industry.

“**Record Date**” has the meaning specified in Section 15.05(h).

“**Refinance**” means, in respect of any Indebtedness, to refinance, extend, renew, refund, repay, prepay, redeem, defease or retire, or to issue other Indebtedness in exchange or replacement for, such Indebtedness. “Refinanced” and “Refinancing” shall have correlative meanings.

“**Refinancing Indebtedness**” means Indebtedness that is Incurred to refund, refinance, replace, renew, repay or extend (including pursuant to any defeasance or discharge mechanism) any Indebtedness of the Company or any Restricted Subsidiary (including Indebtedness of the Company that Refinances

Refinancing Indebtedness); provided, however, that (a) the Refinancing Indebtedness has a Stated Maturity no earlier than the Stated Maturity of the Indebtedness being Refinanced, (b) the Refinancing Indebtedness has an Average Life at the time such Refinancing Indebtedness is Incurred that is equal to or greater than the Average Life of the Indebtedness being refinanced, (c) such Refinancing Indebtedness is Incurred in an aggregate principal amount (or if issued with original issue discount, an aggregate issue price) that is equal to or less than the aggregate principal amount (or if issued with original issue discount, the aggregate accreted value) then outstanding of the Indebtedness being Refinanced and (d) if the Indebtedness being refinanced is subordinated in right of payment to the Notes, such Refinancing Indebtedness is subordinated in right of payment to the Notes at least to the same extent as the Indebtedness being Refinanced; provided further, however, that Refinancing Indebtedness shall not include (i) Indebtedness of a Restricted Subsidiary that Refinances Indebtedness of the Company or (ii) Indebtedness of the Company or a Restricted Subsidiary that Refinances Indebtedness of an Unrestricted Subsidiary.

**“Registration Rights Agreement”** means the Registration Rights Agreement, dated as of April 6, 2004, between the Company, Morgan Stanley & Co. Incorporated, J. P. Morgan Securities Inc., Credit Suisse First Boston LLC and the Initial Purchasers, as amended from time to time in accordance with its terms.

**“Representative”** means the trustee, agent or representative (if any) for an issue of Senior Indebtedness as identified to the Trustee pursuant to a written notice from the Company or any Note Guarantor.

**“Repurchase Date”** has the meaning specified in Section 3.06.

**“Repurchase Notice”** has the meaning specified in Section 3.06.

**“Responsible Officer”** shall mean, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee with direct responsibility for the administration of this Indenture and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of such person’s knowledge of any familiarity with the particular subject.

**“Restricted Securities”** has the meaning specified in Section 2.05(c).

**“Restricted Subsidiary”** means any subsidiary of the Company that is a “Restricted Subsidiary” under the First Lien Note Indenture, the Second Lien Note Indenture, the Senior Subordinated Note Indenture or any Designated Notes.

**“Rule 144A”** means Rule 144A as promulgated under the Securities Act.

**“Sale/Leaseback Transaction”** means an arrangement relating to property now owned or hereafter acquired by the Company or a Restricted

Subsidiary whereby the Company or a Restricted Subsidiary transfers such property to a Person and the Company or such Restricted Subsidiary leases it from such Person, other than leases between the Company and a Wholly Owned Subsidiary or between wholly Owned Subsidiaries.

“**Second Lien Notes**” means the senior secured second lien notes co-issued by the Company and Semiconductor Components LLC pursuant to the Second Lien Note Indenture in an original aggregate principal amount of \$300,000,000.

“**Second Lien Note Indenture**” means the indenture pursuant to which the Second Lien Notes were issued.

“**Secured Indebtedness**” means any Indebtedness of the Company secured by a Lien. “Secured Indebtedness” of a Note Guarantor has a correlative meaning.

“**Securities**” has the meaning specified in Section 15.05(d).

“**Senior Indebtedness**” of the Company means the principal of, premium (if any) and accrued and unpaid interest on (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization of the Company, or any Note Guarantor, regardless of whether or not a claim for post-filing interest is allowed in such proceedings) and fees and other amounts owing in respect of, Bank Indebtedness and all other Indebtedness of the Company whether outstanding on the Closing Date or thereafter Incurred, unless in the instrument creating or evidencing the same or pursuant to which the same is outstanding it is provided that such obligations are not superior in right of payment to the Notes or such Note Guarantor’s Note Guarantee; provided, however, that Senior Indebtedness shall not include (a) any obligation of the Company to any Subsidiary of the Company, (b) any liability for Federal, state, local or other taxes owed or owing by the Company, (c) any accounts payable or other liability to trade creditors arising in the ordinary course of business (including Guarantees thereof or instruments evidencing such liabilities), (d) any Indebtedness or obligation of the Company (and any accrued and unpaid interest in respect thereof) that by its terms is subordinated or junior in right of payment to any other Indebtedness or obligation of the Company, including any Senior Subordinated Indebtedness and any Subordinated Obligations or (e) any obligations with respect to any Capital Stock.

“**Senior Indebtedness**” of a Note Guarantor has a correlative meaning.

“**Senior Secured Notes**” means the First Lien Notes and the Second Lien Notes.

“**Senior Subordinated Indebtedness**” means the Notes, the Senior Subordinated Notes due 2009 and any other Indebtedness of the Company that specifically provides that such Indebtedness is to rank *pari passu* with the Notes

in right of payment and is not subordinated by its terms in right of payment to any Indebtedness or other obligation of the Company which is not Senior Indebtedness. "Senior Subordinated Indebtedness" of a Note Guarantor has a correlative meaning.

**"Senior Subordinated Note Indenture"** means the indenture dated as of August 4, 1999 among the Company, Semiconductor Components Industries, LLC, the Note Guarantors named therein and State Street Bank and Trust Company, as trustee pursuant to which the Senior Subordinated were issued.

**"Senior Subordinated Notes"** means the Senior Subordinated Notes due 2009 issued by the Company and Semiconductor Components Industries, LLC as co-issuers on August 4, 1999 in the original aggregate principal amount of \$400,000,000 and the Indebtedness represented thereby (including the Note Guarantees, Exchange Notes (each as defined in Senior Subordinated Note Indenture), guarantees of Exchange Notes and any replacement notes).

**"Significant Subsidiary"** means any Restricted Subsidiary that would be a "Significant Subsidiary" of the Company within the meaning of Rule 1-02 under Regulation S-X promulgated by the Commission.

**"Stated Maturity"** means, with respect to any security, the date specified in such security as the fixed date on which the final payment of principal of such security is due and payable, including pursuant to any mandatory redemption provision (but excluding any provision providing for the repurchase of such security at the option of the holder thereof upon the happening of any contingency beyond the control of the issuer unless such contingency has occurred).

**"Subordinated Obligation"** means any Indebtedness of the Company (whether outstanding on the Closing Date or thereafter Incurred) that is subordinate or junior in right of payment to the Notes pursuant to a written agreement. "Subordinated Obligation" of a Note Guarantor has a correlative meaning.

**"Subsidiary"** of any Person means any corporation, association, partnership or other business entity of which more than 50% of the total Voting Stock is at the time owned or controlled, directly or indirectly, by (a) such Person, (b) such Person and one or more Subsidiaries of such Person or (c) one or more Subsidiaries of such Person. Notwithstanding the foregoing, with respect to the Company, the term "Subsidiary" also shall include the following Persons: Tesla Sezam, a.s., Terosil, a.s. and Leshan-Phoenix Semiconductor Co. Ltd, so long as the Company directly or indirectly owns more than 50% of the Voting Stock or economic interests of such Person.

**"Successor Company"** has the meaning specified in Section 12.01(a).

**"Termination of Trading"** will be deemed to have occurred if the Common Stock (or other common stock into which the Notes are then



convertible) is neither listed for trading on a United States national securities exchange nor approved for trading on the Nasdaq Stock Market.

“**Trade Payables**” means, with respect to any Person, any accounts payable or any indebtedness or monetary obligation to trade creditors created, assumed or Guaranteed by such Person arising in the ordinary course of business in connection with the acquisition of goods or services.

“**Trading Day**” has the meaning specified in Section 15.05(h).

“**Trading Price**” means, on any date, the average of the secondary market bid quotations per \$1,000 principal amount of Notes obtained by the Trustee for \$5,000,000 principal amount of Notes at approximately 3:30 p.m., New York City time, on such date from three independent nationally recognized securities dealers selected by the Company; *provided* that if at least three such bids cannot reasonably be obtained by the Trustee, but two bids are obtained, then the average of the two such bids shall be used, and if only one such bid can reasonably be obtained by the Trustee, one bid shall be used; *provided further* that if the Trustee cannot reasonably obtain at least one bid for \$5,000,000 principal amount of Notes from a nationally recognized securities dealer, then the Trading Price per \$1,000 principal amount of Notes on such date shall be deemed to be less than 98% of the product of (a) the number of shares of Common Stock issuable upon conversion of \$1,000 principal amount of Notes and (b) the Closing Sale Price on such date.

“**Trigger Event**” has the meaning specified in Section 15.05(d).

“**Trust Indenture Act**” means the Trust Indenture Act of 1939, as amended, as it was in force at the date of this Indenture, except as provided in Sections 11.03 and 15.06; *provided* that if the Trust Indenture Act of 1939 is amended after the date hereof, the term “**Trust Indenture Act**” shall mean, to the extent required by such amendment, the Trust Indenture Act of 1939 as so amended.

“**Trustee**” means the party named as such in this Indenture until a successor replaces it and, thereafter, means the successor.

“**Unrestricted Subsidiary**” means any subsidiary of the Company that is not a Restricted Subsidiary.

“**U.S. Government Obligations**” means direct obligations (or certificates representing an ownership interest in such obligations) of the United States of America (including any agency or instrumentality thereof) for the payment of which the full faith and credit of the United States of America is pledged and which are not callable or redeemable at the issuer’s option.

“**Voting Stock**” of a Person means all classes of Capital Stock or other interests (including partnership interests) of such Person then outstanding and

normally entitled at the time to vote in the election of directors, managers or trustees thereof.

“**Wholly Owned Subsidiary**” means a Restricted Subsidiary of the Company all the Capital Stock of which (other than directors’ qualifying shares) is owned by the Company or another Wholly Owned Subsidiary.

ARTICLE 2  
ISSUE, DESCRIPTION, EXECUTION, REGISTRATION AND EXCHANGE  
OF NOTES

SECTION 2.01. Designation Amount And Issue Of Notes. The Notes shall be designated as “**Zero Coupon Convertible Senior Subordinated Notes due 2024**”. Notes not to exceed the aggregate principal amount of \$290,000,000 (except pursuant to Sections 2.05, 2.06, 3.03, 3.05, 3.06, 3.10 and 15.02 hereof) upon the execution of this Indenture, or from time to time thereafter, may be executed by the Company and delivered to the Trustee for authentication, and the Trustee shall thereupon authenticate and deliver said Notes to or upon the written order of the Company, signed by one of its Chairman of the Board, Chief Executive Officer, the Chief Financial Officer, President or any Vice President (whether or not designated by a number or numbers or word or words added before or after the title “Vice President”), the Treasurer or any Assistant Treasurer or the Secretary or Assistant Secretary, without any further action by the Company hereunder.

SECTION 2.02. Form of Notes. The Notes and the Trustee’s certificate of authentication to be borne by such Notes shall be substantially in the form set forth in Exhibit A. The terms and provisions contained in the form of Note attached as Exhibit A hereto shall constitute, and are hereby expressly made, a part of this Indenture and, to the extent applicable, the Company and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby.

Any of the Notes may have such letters, numbers or other marks of identification and such notations, legends, endorsements or changes as the officers executing the same may approve (execution thereof to be conclusive evidence of such approval) and as are not inconsistent with the provisions of this Indenture, or as may be required by the Custodian, the Depositary or by the NASD, Inc. in order for the Notes to be tradable on The Portal Market or as may be required for the Notes to be tradable on any other market developed for trading of securities pursuant to Rule 144A or as may be required to comply with any applicable law or with any rule or regulation made pursuant thereto or with any rule or regulation of any securities exchange or automated quotation system on which the Notes may be listed, or to conform to usage, or to indicate any special limitations or restrictions to which any particular Notes are subject.

So long as the Notes are eligible for book-entry settlement with the Depository, or unless otherwise required by law, or otherwise contemplated by Section 2.05(a), all of the Notes will be represented by one or more Notes in global form registered in the name of the Depository or the nominee of the Depository (a “**Global Note**”). The transfer and exchange of beneficial interests in any such Global Note shall be effected through the Depository in accordance with this Indenture and the applicable procedures of the Depository. Except as provided in Section 2.05(a), beneficial owners of a Global Note shall not be entitled to have certificates registered in their names, will not receive or be entitled to receive physical delivery of certificates in definitive form and will not be considered holders of such Global Note.

Any Global Note shall represent such of the outstanding Notes as shall be specified therein and shall provide that it shall represent the aggregate amount of outstanding Notes from time to time endorsed thereon and that the aggregate amount of outstanding Notes represented thereby may from time to time be increased or reduced to reflect redemptions, repurchases, conversions, transfers or exchanges permitted hereby. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the amount of outstanding Notes represented thereby shall be made by the Trustee or the Custodian, at the direction of the Trustee, in such manner and upon instructions given by the holder of such Notes in accordance with this Indenture. Payment of principal of any Global Note shall be made to the holder of such Note.

**SECTION 2.03. Date And Denomination Of Notes.** The Notes shall be issuable in registered form without coupons in denominations of \$1,000 principal amount and integral multiples thereof. Each Note shall be dated the date of its authentication.

**SECTION 2.04. Execution of Notes.** The Notes shall be signed in the name and on behalf of the Company by the manual or facsimile signature of one of its Chairman of the Board, Chief Executive Officer, Chief Financial Officer, President or any Vice President (whether or not designated by a number or numbers or word or words added before or after the title “Vice President”) and attested by the manual or facsimile signature of its Secretary or any of its Assistant Secretaries or its Treasurer or any of its Assistant Treasurers (which may be printed, engraved or otherwise reproduced thereon, by facsimile or otherwise). Only such Notes as shall bear thereon a certificate of authentication substantially in the form set forth on the form of Note attached as Exhibit A hereto, manually executed by the Trustee (or an authenticating agent appointed by the Trustee as provided by Section 19.11), shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate by the Trustee (or such an authenticating agent) upon any Note executed by the Company shall be conclusive evidence that the Note so authenticated has been duly authenticated and delivered hereunder and that the holder is entitled to the benefits of this Indenture.

In case any officer of the Company who shall have signed any of the Notes shall cease to be such officer before the Notes so signed shall have been authenticated and delivered by the Trustee, or disposed of by the Company, such Notes nevertheless may be authenticated and delivered or disposed of as though the person who signed such Notes had not ceased to be such officer of the Company, and any Note may be signed on behalf of the Company by such persons as, at the actual date of the execution of such Note, shall be the proper officers of the Company, although at the date of the execution of this Indenture any such person was not such an officer.

**SECTION 2.05. Exchange and Registration of Transfer of Notes; Restrictions on Transfer.** (a) The Company shall cause to be kept at the Corporate Trust Office a register (the register maintained in such office and in any other office or agency of the Company designated pursuant to Section 5.02 being herein sometimes collectively referred to as the “**Note Register**”) in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Notes and of transfers of Notes. The Note Register shall be in written form or in any form capable of being converted into written form within a reasonably prompt period of time. The Trustee is hereby appointed “**Note Registrar**” for the purpose of registering Notes and transfers of Notes as herein provided. The Company may appoint one or more co-registrars in accordance with Section 5.02.

Upon surrender for registration of transfer of any Note to the Note Registrar or any co-registrar, and satisfaction of the requirements for such transfer set forth in this Section 2.05, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of any authorized denominations and of a like aggregate principal amount and bearing such restrictive legends as may be required by this Indenture.

Notes may be exchanged for other Notes of any authorized denominations and of a like aggregate principal amount, upon surrender of the Notes to be exchanged at any such office or agency maintained by the Company pursuant to Section 5.02. Whenever any Notes are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Notes which the Noteholder making the exchange is entitled to receive bearing registration numbers not contemporaneously outstanding.

All Notes issued upon any registration of transfer or exchange of Notes shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Notes surrendered upon such registration of transfer or exchange.

All Notes presented or surrendered for registration of transfer or for exchange, redemption, repurchase or conversion shall (if so required by the Company or the Note Registrar) be duly endorsed, or be accompanied by a

written instrument or instruments of transfer in form satisfactory to the Company, and the Notes shall be duly executed by the Noteholder thereof or his attorney duly authorized in writing.

No service charge shall be made to any holder for any registration of, transfer or exchange of Notes, but the Company may require payment by the holder of a sum sufficient to cover any tax, assessment or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Notes.

Neither the Company nor the Trustee nor any Note Registrar shall be required to exchange or register a transfer of (a) any Notes for a period of fifteen (15) days next preceding any selection of Notes to be redeemed, (b) any Notes or portions thereof called for redemption pursuant to Section 3.02, (c) any Notes or portions thereof surrendered for conversion pursuant to Article 15, (d) any Notes or portions thereof tendered for repurchase (and not withdrawn) pursuant to Section 3.05 or (e) any Notes or portions thereof tendered for repurchase (and not withdrawn) pursuant to Section 3.06.

(b) The following provisions shall apply only to Global Notes:

(i) Each Global Note authenticated under this Indenture shall be registered in the name of the Depositary or a nominee thereof and delivered to such Depositary or a nominee thereof or Custodian therefor, and each such Global Note shall constitute a single Note for all purposes of this Indenture.

(ii) Notwithstanding any other provision in this Indenture, no Global Note may be exchanged in whole or in part for Notes registered, and no transfer of a Global Note in whole or in part may be registered, in the name of any Person other than the Depositary or a nominee thereof unless (A) the Depositary (i) has notified the Company that it is unwilling or unable to continue as Depositary for such Global Note and a successor depositary has not been appointed by the Company within ninety days or (ii) has ceased to be a clearing agency registered under the Exchange Act and a successor depositary has not been appointed by the Company within ninety days, (B) an Event of Default has occurred and the maturity of the Notes shall have been accelerated in accordance with Section 7.01 and any Noteholder shall have given written notice to the Company requesting the issuance of definitive Notes or (C) the Company, in its sole discretion, notifies the Trustee in writing that it no longer wishes to have all the Notes represented by Global Notes. Any Global Note exchanged pursuant to clause (A) or (B) above shall be so exchanged in whole and not in part and any Global Note exchanged pursuant to clause (C) above may be exchanged in whole or from time to time in part as directed by the Company. Any Note issued in exchange for a Global Note or any portion thereof shall be a Global Note; *provided* that any such Note so issued that

is registered in the name of a Person other than the Depositary or a nominee thereof shall not be a Global Note.

(iii) Securities issued in exchange for a Global Note or any portion thereof pursuant to clause (ii) above shall be issued in definitive, fully registered form, without coupons, shall have an aggregate principal amount equal to that of such Global Note or portion thereof to be so exchanged, shall be registered in such names and be in such authorized denominations as the Depositary shall designate and shall bear any legends required hereunder. Any Global Note to be exchanged in whole shall be surrendered by the Depositary to the Trustee, as Note Registrar. With regard to any Global Note to be exchanged in part, either such Global Note shall be so surrendered for exchange or, if the Trustee is acting as Custodian for the Depositary or its nominee with respect to such Global Note, the principal amount thereof shall be reduced, by an amount equal to the portion thereof to be so exchanged, by means of an appropriate adjustment made on the records of the Trustee. Upon any such surrender or adjustment, the Trustee shall authenticate and make available for delivery the Note issuable on such exchange to or upon the written order of the Depositary or an authorized representative thereof.

(iv) In the event of the occurrence of any of the events specified in clause (ii) above, the Company will promptly make available to the Trustee a reasonable supply of certificated Notes in definitive, fully registered form, without coupons.

(v) Neither any members of, or participants in, the Depositary (“**Agent Members**”) nor any other Persons on whose behalf Agent Members may act shall have any rights under this Indenture with respect to any Global Note registered in the name of the Depositary or any nominee thereof, and the Depositary or such nominee, as the case may be, may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner and holder of such Global Note for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depositary or such nominee, as the case may be, or impair, as between the Depositary, its Agent Members and any other Person on whose behalf an Agent Member may act, the operation of customary practices of such Persons governing the exercise of the rights of a holder of any Note.

(vi) At such time as all interests in a Global Note have been redeemed, repurchased, converted, canceled or exchanged for Notes in certificated form, such Global Note shall, upon receipt thereof, be canceled by the Trustee in accordance with standing procedures and instructions existing between the Depositary and the Custodian. At any time prior to such

cancellation, if any interest in a Global Note is redeemed, repurchased, converted, canceled or exchanged for Notes in certificated form, the principal amount of such Global Note shall, in accordance with the standing procedures and instructions existing between the Depository and the Custodian, be appropriately reduced, and an endorsement shall be made on such Global Note, by the Trustee or the Custodian, at the direction of the Trustee, to reflect such reduction.

(c) Every Note that bears or is required under this Section 2.05(c) to bear the legend set forth in this Section 2.05(c) (together with any Common Stock issued upon conversion of the Notes and required to bear the legend set forth in Section 2.05(d), collectively, the “**Restricted Securities**”) shall be subject to the restrictions on transfer set forth in this Section 2.05(c) (including those set forth in the legend below) unless such restrictions on transfer shall be waived by written consent of the Company, and the holder of each such Restricted Security, by such holder’s acceptance thereof, agrees to be bound by all such restrictions on transfer. As used in this Section 2.05(c), the term “**transfer**” encompasses any sale, pledge, loan, transfer or other disposition whatsoever of any Restricted Security or any interest therein.

Until the expiration of the holding period applicable to sales thereof under Rule 144(k) under the Securities Act (or any successor provision), any certificate evidencing such Note (and all securities issued in exchange therefor or substitution thereof, other than Common Stock, if any, issued upon conversion thereof, which shall bear the legend set forth in Section 2.05(d)) shall bear a legend in substantially the following form, unless such Note has been sold pursuant to a registration statement that has been declared effective under the Securities Act (and which continues to be effective at the time of such transfer) or pursuant to Rule 144 under the Securities Act or any similar provision then in force, or unless otherwise agreed by the Company in writing, with written notice thereof to the Trustee:

THIS SECURITY AND THE COMMON STOCK (“COMMON STOCK”) OF ON SEMICONDUCTOR CORPORATION (THE “COMPANY”) ISSUABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR ANY STATE SECURITIES LAWS. NEITHER THIS SECURITY, THE COMMON STOCK ISSUABLE UPON CONVERSION OF THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN OR THEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, REGISTRATION.

THE HOLDER OF THIS SECURITY, BY ITS ACCEPTANCE HEREOF, AGREES TO OFFER, SELL OR OTHERWISE TRANSFER SUCH

SECURITY, PRIOR TO THE DATE (THE "RESALE RESTRICTION TERMINATION DATE") THAT IS TWO YEARS AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF AND THE LAST DATE ON WHICH THE COMPANY OR ANY AFFILIATE OF THE COMPANY WAS THE OWNER OF THIS SECURITY (OR ANY PREDECESSOR OF SUCH SECURITY) ONLY (A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, (B) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHICH NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (C) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, OR (D) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE RIGHTS OF THE COMPANY AND THE WITHIN MENTIONED TRUSTEE PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSE (D) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM, AND IN EACH OF THE FOREGOING CASES WHERE REGISTRATION OR TRANSFER OF THIS SECURITY IS REQUIRED, A CERTIFICATE OF TRANSFER IN THE FORM APPEARING ON THE OTHER SIDE OF THIS SECURITY COMPLETED AND DELIVERED BY THE TRANSFEROR TO THE TRUSTEE. THIS LEGEND WILL BE REMOVED AFTER THE RESALE RESTRICTION TERMINATION DATE UPON REQUEST OF THE HOLDER AND THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATES AND/OR OTHER INFORMATION SATISFACTORY TO THE COMPANY.

Any Note (or security issued in exchange or substitution therefor) as to which such restrictions on transfer shall have expired in accordance with their terms or as to conditions for removal of the foregoing legend set forth therein have been satisfied may, upon surrender of such Note for exchange to the Note Registrar in accordance with the provisions of this Section 2.05, be exchanged for a new Note or Notes, of like tenor and aggregate principal amount, which shall not bear the restrictive legend required by this Section 2.05(c). If the Restricted Security surrendered for exchange is represented by a Global Note bearing the legend set forth in this Section 2.05(c), the principal amount of the legended Global Note shall be reduced by the appropriate principal amount and the principal amount of a Global Note without the legend set forth in this Section 2.05(c) shall be increased by an equal principal amount. If a Global Note without the legend set forth in this Section 2.05(c) is not then outstanding, the Company shall execute and the Trustee shall authenticate and deliver an unlegended Global Note to the Depository.



(d) Until the expiration of the holding period applicable to sales thereof under Rule 144(k) under the Securities Act (or any successor provision), any stock certificate representing Common Stock issued upon conversion of any Note shall bear a legend in substantially the following form, unless such Common Stock has been sold pursuant to a registration statement that has been declared effective under the Securities Act (and which continues to be effective at the time of such transfer) or pursuant to Rule 144 under the Securities Act or any similar provision then in force, or such Common Stock has been issued upon conversion of Notes that have been transferred pursuant to a registration statement that has been declared effective under the Securities Act or pursuant to Rule 144 under the Securities Act or any similar provision then in force, or unless otherwise agreed by the Company in writing with written notice thereof to the transfer agent:

THE COMMON STOCK (“COMMON STOCK”) OF ON SEMICONDUCTOR CORPORATION (THE “COMPANY”) EVIDENCED HEREBY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR ANY STATE SECURITIES LAWS. NEITHER THIS COMMON STOCK NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, REGISTRATION.

THE HOLDER OF THIS COMMON STOCK, BY ITS ACCEPTANCE HEREOF, AGREES TO OFFER, SELL OR OTHERWISE TRANSFER SUCH COMMON STOCK PRIOR TO THE EXPIRATION OF THE HOLDING PERIOD APPLICABLE TO SALES OF THE COMMON STOCK EVIDENCED HEREBY UNDER RULE 144(k) UNDER THE SECURITIES ACT (OR ANY SUCCESSOR PROVISION) ONLY (A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, (B) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, TO A PERSON IT REASONABLY BELIEVES IS A “QUALIFIED INSTITUTIONAL BUYER” AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHICH NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (C) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, OR (D) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE RIGHTS OF THE COMPANY AND THE WITHIN MENTIONED TRUSTEE PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSE (D) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM, AND IN EACH OF

THE FOREGOING CASES WHERE REGISTRATION OR TRANSFER OF THIS SECURITY IS REQUIRED, A CERTIFICATE OF TRANSFER IN THE FORM APPEARING ON THE OTHER SIDE OF THIS SECURITY COMPLETED AND DELIVERED BY THE TRANSFEROR TO THE TRUSTEE. THIS LEGEND WILL BE REMOVED AFTER THE RESALE RESTRICTION TERMINATION DATE UPON REQUEST OF THE HOLDER AND THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATES AND/OR OTHER INFORMATION SATISFACTORY TO THE COMPANY.

(e) Any Note or Common Stock issued upon the conversion of a Note that, prior to the expiration of the holding period applicable to sales thereof under Rule 144(k) under the Securities Act (or any successor provision), is purchased or owned by the Company or any Affiliate thereof may not be resold by the Company or such Affiliate unless registered under the Securities Act or resold pursuant to an exemption from the registration requirements of the Securities Act in a transaction which results in such Notes or Common Stock, as the case may be, no longer being “**Restricted Securities**” (as defined under Rule 144).

(f) The Trustee shall have no responsibility or obligation to any Agent Members or any other Person with respect to the accuracy of the books or records, or the acts or omissions, of the Depository or its nominee or of any participant or member thereof, with respect to any ownership interest in the Notes or with respect to the delivery to any Agent Member or other Person (other than the Depository) of any notice (including any notice of redemption) or the payment of any amount, under or with respect to such Notes. All notices and communications to be given to the Noteholder and all payments to be made to Noteholders under the Notes shall be given or made only to or upon the order of the registered Noteholders (which shall be the Depository or its nominee in the case of a Global Note). The rights of beneficial owners in any Global Note shall be exercised only through the Depository subject to the customary procedures of the Depository. The Trustee may rely and shall be fully protected in relying upon information furnished by the Depository with respect to its Agent Members.

The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among Agent Members in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

SECTION 2.06. Mutilated, Destroyed, Lost or Stolen Notes. In case any Note shall become mutilated or be destroyed, lost or stolen, the Company in its

discretion may execute, and upon its written request the Trustee or an authenticating agent appointed by the Trustee shall authenticate and make available for delivery, a new Note, bearing a number not contemporaneously outstanding, in exchange and substitution for the mutilated Note, or in lieu of and in substitution for the Note so destroyed, lost or stolen, if the requirements of Section 8-405 of the Uniform Commercial Code are met, such that the Noteholder (a) satisfies the Company and the Trustee within a reasonable time after he has notice of such loss, destruction or wrongful taking and the Note Registrar does not register a transfer prior to receiving such notification, (b) makes such request to the Company or the Trustee prior to the Note being acquired by a protected purchaser as defined in Section 8-303 of the Uniform Commercial Code (a "protected purchaser") and (c) satisfies any other reasonable requirements of the Trustee. In every case, the applicant for a substituted Note shall furnish to the Company, to the Trustee and, if applicable, to such authenticating agent such security or indemnity as may be required by them to save each of them harmless for any loss, liability, cost or expense caused by or connected with such substitution, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Company, to the Trustee and, if applicable, to such authenticating agent evidence to their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.

Following receipt by the Trustee or such authenticating agent, as the case may be, of satisfactory security or indemnity and evidence, as described in the preceding paragraph, the Trustee or such authenticating agent may authenticate any such substituted Note and make available for delivery such Note. Upon the issuance of any substituted Note, the Company may require the payment by the holder of a sum sufficient to cover any tax, assessment or other governmental charge that may be imposed in relation thereto and any other expenses connected therewith. In case any Note which has matured or is about to mature or has been called for redemption or has been tendered for repurchase upon a Designated Event (and not withdrawn) or has been surrendered for repurchase on a Repurchase Date (and not withdrawn) or is to be converted into Common Stock shall become mutilated or be destroyed, lost or stolen, the Company may, instead of issuing a substitute Note, pay or authorize the payment of or convert or authorize the conversion of the same (without surrender thereof except in the case of a mutilated Note), as the case may be, if the applicant for such payment or conversion shall furnish to the Company, to the Trustee and, if applicable, to such authenticating agent such security or indemnity as may be required by them to save each of them harmless for any loss, liability, cost or expense caused by or in connection with such substitution, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Company, the Trustee and, if applicable, any paying agent or conversion agent evidence to their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.

Every substitute Note issued pursuant to the provisions of this Section 2.06 by virtue of the fact that any Note is destroyed, lost or stolen shall constitute an additional contractual obligation of the Company, whether or not the

destroyed, lost or stolen Note shall be found at any time, and shall be entitled to all the benefits of (but shall be subject to all the limitations set forth in) this Indenture equally and proportionately with any and all other Notes duly issued hereunder. To the extent permitted by law, all Notes shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement or payment or conversion or redemption or repurchase of mutilated, destroyed, lost or stolen Notes and shall preclude any and all other rights or remedies notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment or conversion or redemption or repurchase of negotiable instruments or other securities without their surrender.

SECTION 2.07. Temporary Notes. Pending the preparation of Notes in certificated form, the Company may execute and the Trustee or an authenticating agent appointed by the Trustee shall, upon the written request of the Company, authenticate and deliver temporary Notes (printed or lithographed). Temporary Notes shall be issuable in any authorized denomination, and substantially in the form of the Notes in certificated form, but with such omissions, insertions and variations as may be appropriate for temporary Notes, all as may be determined by the Company. Every such temporary Note shall be executed by the Company and authenticated by the Trustee or such authenticating agent upon the same conditions and in substantially the same manner, and with the same effect, as the Notes in certificated form. Without unreasonable delay, the Company will execute and deliver to the Trustee or such authenticating agent Notes in certificated form and thereupon any or all temporary Notes may be surrendered in exchange therefor, at each office or agency maintained by the Company pursuant to Section 5.02 and the Trustee or such authenticating agent shall authenticate and make available for delivery in exchange for such temporary Notes an equal aggregate principal amount of Notes in certificated form. Such exchange shall be made by the Company at its own expense and without any charge therefor. Until so exchanged, the temporary Notes shall in all respects be entitled to the same benefits and subject to the same limitations under this Indenture as Notes in certificated form authenticated and delivered hereunder.

SECTION 2.08. Cancellation of Notes. All Notes surrendered for the purpose of payment, redemption, repurchase, conversion, exchange or registration of transfer shall, if surrendered to the Company or any paying agent or any Note Registrar or any conversion agent, be surrendered to the Trustee and promptly canceled by it, or, if surrendered to the Trustee, shall be promptly canceled by it, and no Notes shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Indenture. The Trustee shall dispose of such canceled Notes in accordance with its customary procedures. If the Company shall acquire any of the Notes, such acquisition shall not operate as a redemption, repurchase or satisfaction of the indebtedness represented by such Notes unless and until the same are delivered to the Trustee for cancellation.

SECTION 2.09. CUSIP Numbers. The Company in issuing the Notes may use CUSIP numbers (if then generally in use), and, if so, the Trustee shall use CUSIP numbers in notices of redemption or repurchases as a convenience to Noteholders; provided that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice of a redemption or a repurchase and that reliance may be placed only on the other identification numbers printed on the Notes, and any such redemption or repurchase shall not be affected by any defect in or omission of such numbers. The Company will promptly notify the Trustee of any change in the CUSIP numbers.

ARTICLE 3  
REDEMPTION AND REPURCHASE OF NOTES

SECTION 3.01. Redemption of Notes. The Company may not redeem any Notes prior to April 15, 2010. At any time on or after April 15, 2010 and prior to maturity, the Notes may be redeemed at the option of the Company, in whole or in part, upon notice as set forth in Section 3.02, at a cash redemption price equal to 100% of the principal amount of the Notes being redeemed.

SECTION 3.02. Notice of Optional Redemption; Selection of Notes. In case the Company shall desire to exercise the right to redeem all or, as the case may be, any part of the Notes pursuant to Section 3.01, it shall fix a date for redemption and it or, at its written request received by the Trustee not fewer than forty-five (45) days prior (or such shorter period of time as may be acceptable to the Trustee) to the date fixed for redemption, the Trustee in the name of and at the expense of the Company, shall mail or cause to be mailed a notice of such redemption not fewer than thirty (30) nor more than sixty (60) days prior to the redemption date to each holder of Notes so to be redeemed as a whole or in part at its last address as the same appears on the Note Register; provided that if the Company shall give such notice, it shall also give written notice of the redemption date to the Trustee. Such mailing shall be by first class mail. The notice, if mailed in the manner herein provided, shall be conclusively presumed to have been duly given, whether or not the holder receives such notice. In any case, failure to give such notice by mail or any defect in the notice to the holder of any Note designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Note.

Each such notice of redemption shall specify the aggregate principal amount of Notes to be redeemed, the CUSIP number or numbers of the Notes being redeemed, the date fixed for redemption (which shall be a Business Day), the redemption price at which Notes are to be redeemed, the place or places of payment, and that payment will be made upon presentation and surrender of such Notes. Such notice shall also state the current Conversion Rate and the date on which the right to convert such Notes or portions thereof into Common Stock will expire. If fewer than all the Notes are to be redeemed, the notice of redemption shall identify the Notes to be redeemed (including CUSIP numbers, if any). In

case any Note is to be redeemed in part only, the notice of redemption shall state the portion of the principal amount thereof to be redeemed and shall state that, on and after the redemption date, upon surrender of such Note, a new Note or Notes in principal amount equal to the unredeemed portion thereof will be issued.

On or prior to the redemption date specified in the notice of redemption given as provided in this Section 3.02, the Company will deposit with the Trustee or with one or more paying agents (or, if the Company is acting as its own paying agent, set aside, segregate and hold in trust as provided in Section 5.04) an amount of money in immediately available funds sufficient to redeem on the redemption date all the Notes (or portions thereof) so called for redemption (other than those theretofore surrendered for conversion into Common Stock) at the appropriate redemption price; *provided* that if such payment is made on the redemption date it must be received by the Trustee or paying agent, as the case may be, by 10:00 a.m. New York City time on such date. The Company shall be entitled to retain any interest, yield or gain on amounts deposited with the Trustee or any paying agent pursuant to this Section 3.02 in excess of amounts required hereunder to pay the redemption price. If any Note called for redemption is converted pursuant hereto prior to such redemption date, any money deposited with the Trustee or any paying agent or so segregated and held in trust for the redemption of such Note shall be paid to the Company upon its written request, or, if then held by the Company, shall be discharged from such trust. Whenever any Notes are to be redeemed, the Company will give the Trustee written notice in the form of an Officers' Certificate not fewer than forty-five (45) days (or such shorter period of time as may be acceptable to the Trustee) prior to the redemption date as to the aggregate principal amount of Notes to be redeemed.

If less than all of the outstanding Notes are to be redeemed, the Trustee shall select the Notes or portions thereof of the Global Note or the Notes in certificated form to be redeemed (in principal amounts of \$1,000 or multiples thereof) by lot, on a pro rata basis or by another method the Trustee deems fair and appropriate. If any Note selected for partial redemption is submitted for conversion in part after such selection, the portion of such Note submitted for conversion shall be deemed (so far as may be possible) to be the portion to be selected for redemption. The Notes (or portions thereof) so selected shall be deemed duly selected for redemption for all purposes hereof, notwithstanding that any such Note is submitted for conversion in part before the mailing of the notice of redemption.

Upon any redemption of less than all of the outstanding Notes, the Company and the Trustee may (but need not), solely for purposes of determining the pro rata allocation among such Notes as are unconverted and outstanding at the time of redemption, treat as outstanding any Notes surrendered for conversion during the period of fifteen (15) days next preceding the mailing of a notice of redemption and may (but need not) treat as outstanding any Note authenticated and delivered during such period in exchange for the unconverted portion of any Note converted in part during such period.

**SECTION 3.03. Payment of Notes Called For Redemption by the Company.** If notice of redemption has been given as provided in Section 3.02, the Notes or portion of Notes with respect to which such notice has been given shall, unless converted into Common Stock pursuant to the terms hereof, become due and payable on the date fixed for redemption and at the place or places stated in such notice at the applicable redemption price, after the close of business on the Business Day immediately preceding the redemption date (unless the Company shall default in the payment of such Notes at the redemption price) such Notes shall cease to be convertible into Common Stock and, except as provided in Section 8.05 and Section 13.04, to be entitled to any benefit or security under this Indenture, and the holders thereof shall have no right in respect of such Notes except the right to receive the redemption price thereof. On presentation and surrender of such Notes at a place of payment in said notice specified, the said Notes or the specified portions thereof shall be paid and redeemed by the Company at the applicable redemption price.

Upon presentation of any Note redeemed in part only, the Company shall execute and the Trustee shall authenticate and make available for delivery to the holder thereof, at the expense of the Company, a new Note or Notes, of authorized denominations, in principal amount equal to the unredeemed portion of the Notes so presented.

If any Note called for redemption shall not be so paid upon surrender thereof for redemption, such Note shall remain convertible into Common Stock until the principal shall have been paid or duly provided for.

**SECTION 3.04. Conversion Arrangement on Call for Redemption.** In connection with any redemption of Notes, the Company may arrange for the purchase and conversion of any Notes by an agreement with one or more investment banks or other purchasers to purchase such Notes by paying to the Trustee in trust for the Noteholders, on or before the date fixed for redemption, an amount not less than the applicable redemption price of such Notes. Notwithstanding anything to the contrary contained in this Article 3, the obligation of the Company to pay the redemption price of such Notes shall be deemed to be satisfied and discharged to the extent such amount is so paid by such purchasers. If such an agreement is entered into, a copy of which will be filed with the Trustee prior to the date fixed for redemption, any Notes not duly surrendered for conversion by the holders thereof may, at the option of the Company, be deemed, to the fullest extent permitted by law, acquired by such purchasers from such holders and (notwithstanding anything to the contrary contained in Article 15) surrendered by such purchasers for conversion, all as of immediately prior to the close of business on the date fixed for redemption (and the right to convert any such Notes shall be extended through such time), subject to payment of the above amount as aforesaid. At the direction of the Company, the Trustee shall hold and dispose of any such amount paid to it in the same manner as it would monies deposited with it by the Company for the redemption of Notes. Without the Trustee's prior written consent, no arrangement between

the Company and such purchasers for the purchase and conversion of any Notes shall increase or otherwise affect any of the powers, duties, responsibilities or obligations of the Trustee as set forth in this Indenture.

SECTION 3.05. Repurchase at Option of Noteholders Upon a Designated Event. (a) If there shall occur a Designated Event at any time prior to maturity of the Notes, then each Noteholder shall have the right, at such holder's option, to require the Company to repurchase all of such holder's Notes, or any portion thereof that is a multiple of \$1,000 principal amount, on the date (the "**Designated Event Repurchase Date**") specified by the Company that is thirty (30) days after the date of the Designated Event Notice (as defined in Section 3.05(b)) of such Designated Event at a cash repurchase price equal to 100% of the principal amount thereof. Repurchases of Notes under this Section 3.05 shall be made, at the option of the holder thereof, upon:

- (i) delivery to the Trustee (or other paying agent appointed by the Company) by a holder of a duly completed notice (the "**Designated Event Repurchase Notice**") in the form set forth on the reverse of the Note prior to the close of business on the Designated Event Repurchase Date; and
- (ii) delivery or book-entry transfer of the Notes to the Trustee (or other paying agent appointed by the Company) at any time after delivery of the Designated Event Repurchase Notice (together with all necessary endorsements) at the Corporate Trust Office of the Trustee (or other paying agent appointed by the Company) in the Borough of Manhattan as provided in Section 5.02, such delivery being a condition to receipt by the holder of the repurchase price therefor; *provided* that such repurchase price shall be so paid pursuant to this Section 3.05 only if the Note so delivered to the Trustee (or other paying agent appointed by the Company) shall conform in all respects to the description thereof in the related Designated Event Repurchase Notice.

The Company shall purchase from the holder thereof, pursuant to this Section 3.05, a portion of a Note, if the principal amount of such portion is \$1,000 or a whole multiple of \$1,000. Provisions of this Indenture that apply to the purchase of all of a Note also apply to the purchase of such portion of such Note.

Any purchase by the Company contemplated pursuant to the provisions of this Section 3.05 shall be consummated by the delivery of the consideration to be received by the holder promptly following the later of the Designated Event Repurchase Date and the time of the book-entry transfer or delivery of the Note.

Notwithstanding anything herein to the contrary, any holder delivering to the Trustee (or other paying agent appointed by the Company) the Designated Event Repurchase Notice contemplated by this Section 3.05 shall have the right to withdraw such Designated Event Repurchase Notice at any time prior to the close of business on the Designated Event Repurchase Date by delivery of a written



notice of withdrawal to the Trustee (or other paying agent appointed by the Company) in accordance with Section 3.05(c) below.

The Trustee (or other paying agent appointed by the Company) shall promptly notify the Company of the receipt by it of any Designated Event Repurchase Notice or written notice of withdrawal thereof.

(b) On or before the 30th day after the occurrence of a Designated Event, the Company or at its written request (which must be received by the Trustee at least five (5) Business Days prior to the date the Trustee is requested to give notice as described below, unless the Trustee shall agree in writing to a shorter period), the Trustee, in the name of and at the expense of the Company, shall mail or cause to be mailed to all holders of record on the date of the Designated Event a notice (the “**Designated Event Notice**”) of the occurrence of such Designated Event and of the repurchase right at the option of the holders arising as a result thereof. Such notice shall be mailed in the manner and with the effect set forth in the first paragraph of Section 3.02 (without regard for the time limits set forth therein). If the Company shall give such notice, the Company shall also deliver a copy of the Designated Event Notice to the Trustee at such time as it is mailed to Noteholders.

Each Designated Event Notice shall specify the circumstances constituting the Designated Event, the Designated Event Repurchase Date, the price at which the Company shall be obligated to repurchase Notes, that the holder must exercise the repurchase right on or prior to the close of business on the Designated Event Repurchase Date (the “**Designated Event Expiration Time**”), that the holder shall have the right to withdraw any Notes surrendered prior to the Designated Event Expiration Time, a description of the procedure which a Noteholder must follow to exercise such repurchase right and to withdraw any surrendered Notes, the place or places where the holder is to surrender such holder’s Notes and the CUSIP number or numbers of the Notes (if then generally in use) and include a form of Designated Event Repurchase Notice.

No failure of the Company to give the foregoing notices and no defect therein shall limit the Noteholders’ repurchase rights or affect the validity of the proceedings for the repurchase of the Notes pursuant to this Section 3.05.

(c) A Designated Event Repurchase Notice may be withdrawn by means of a written notice of withdrawal delivered to the office of the Trustee (or other paying agent appointed by the Company) in accordance with the Designated Event Repurchase Notice at any time prior to the close of business on the Designated Event Repurchase Date, specifying:

(i) the certificate number, if any, of the Note in respect of which such notice of withdrawal is being submitted, or the appropriate Depository information if the Note in respect of which such notice of withdrawal is being submitted is represented by a Global Note,

(ii) the principal amount of the Note with respect to which such notice of withdrawal is being submitted, and

(iii) the principal amount, if any, of such Note which remains subject to the original Designated Event Repurchase Notice and which has been or will be delivered for purchase by the Company.

(d) On or prior to the Designated Event Repurchase Date, the Company will deposit with the Trustee (or other paying agent appointed by the Company or if the Company is acting as its own paying agent, set aside, segregate and hold in trust as provided in Section 5.04) an amount of money sufficient to repurchase on the Designated Event Repurchase Date all the Notes to be repurchased on such date at the appropriate repurchase price; *provided* that if such payment is made on the Designated Event Repurchase Date it must be received by the Trustee or paying agent, as the case may be, by 10:00 a.m. New York City time, on such date. Subject to receipt of funds and/or Notes by the Trustee (or other paying agent appointed by the Company), payment for Notes surrendered for repurchase (and not withdrawn) prior to the Designated Event Expiration Time will be made promptly (but in no event more than five (5) Business Days) following the later of (x) the Designated Event Repurchase Date with respect to such Note (*provided* the holder has satisfied the conditions in this Section 3.05) and (y) the time of delivery of such Note to the Trustee (or other paying agent appointed by the Company) by the holder thereof in the manner required by this Section 3.05) by mailing checks for the amount payable to the holders of such Notes entitled thereto as they shall appear in the Note Register.

If the Trustee (or other paying agent appointed by the Company) holds money sufficient to repurchase on the Designated Event Repurchase Date all the Notes or portions thereof that are to be purchased as of the Designated Event Repurchase Date, then on or after the Designated Event Repurchase Date (i) the Notes will cease to be outstanding, and (ii) all other rights of the holders of such Notes will terminate, whether or not book-entry transfer of the Notes has been made or the Notes have been delivered to the Trustee or paying agent, other than the right to receive the repurchase price upon delivery of the Notes.

(e) In the case of a reclassification, change, consolidation, merger, combination, sale or conveyance to which Section 15.06 applies, in which the Common Stock of the Company is changed or exchanged as a result into the right to receive stock, securities or other property or assets (including cash), which includes shares of Common Stock of the Company or shares of common stock of another Person that are, or upon issuance will be, traded on a United States national securities exchange or approved for trading on an established automated over-the-counter trading market in the United States and such shares constitute at the time such change or exchange becomes effective in excess of 50% of the aggregate Fair Market Value of such stock, securities or other property or assets (including cash), then the Person formed

by such consolidation or resulting from such merger or which acquires such assets, as the case may be, shall execute and deliver to the Trustee a supplemental indenture (accompanied by an Opinion of Counsel that such supplemental indenture complies with the Trust Indenture Act as in force at the date of execution of such supplemental indenture) modifying the provisions of this Indenture relating to the right of holders of the Notes to cause the Company to repurchase the Notes following a Designated Event, including without limitation the applicable provisions of this Section 3.05 and the definitions of Common Stock and Designated Event, as appropriate, as determined in good faith by the Company (which determination shall be conclusive and binding), to make such provisions apply to such other Person if different from the Company and the common stock issued by such Person (in lieu of the Company and the Common Stock of the Company).

(f) The Company will comply with the provisions of Rule 13e-4 and any other tender offer rules under the Exchange Act (including, without limitation, filing a Schedule TO or other schedule) to the extent then applicable in connection with the repurchase rights of the holders of Notes in the event of a Designated Event.

SECTION 3.06. Repurchase of Notes by the Company at Option of the Noteholder. Unless the Company has elected to redeem all of the Notes in accordance with Section 3.01, Notes shall be purchased by the Company pursuant to the terms of the Notes at the option of the holder on April 15 of 2010, 2014 and 2019 (each, a “**Repurchase Date**”), for cash, at a repurchase price of 100% of the principal amount, subject to the provisions of Section 3.07(a); provided that no Notes may be repurchased by the Company pursuant to this Section 3.06 if the principal amount of the Notes has been accelerated and such acceleration has not been rescinded on or prior to the Repurchase Date. Repurchases of Notes under this Section 3.06 shall be made, at the option of the holder thereof, upon:

(a) delivery to the Trustee (or other paying agent appointed by the Company) by a holder of a duly completed notice (the “**Repurchase Notice**”) in the form set forth on the reverse of the Note during the period beginning at any time from the opening of business on the date that is 20 Business Days prior to the Repurchase Date until the close of business on the date that is two Business Days prior to the Repurchase Date; and

(b) delivery or book-entry transfer of the Notes to the Trustee (or other paying agent appointed by the Company) at any time after delivery of the Repurchase Notice (together with all necessary endorsements) at the Corporate Trust Office of the Trustee (or other paying agent appointed by the Company) in the Borough of Manhattan as provided in Section 5.02, such delivery being a condition to receipt by the holder of the repurchase price therefor; *provided* that such repurchase price shall be so paid pursuant to this Section 3.06 only if the Note so delivered to the Trustee (or other paying

agent appointed by the Company) shall conform in all respects to the description thereof in the related Repurchase Notice.

The Company shall purchase from the holder thereof, pursuant to this Section 3.06, a portion of a Note, if the principal amount of such portion is \$1,000 or a whole multiple of \$1,000. Provisions of this Indenture that apply to the purchase of all of a Note also apply to the purchase of such portion of such Note.

Any purchase by the Company contemplated pursuant to the provisions of this Section 3.06 shall be consummated by the delivery of the consideration to be received by the holder promptly following the later of the Repurchase Date and the time of the book-entry transfer or delivery of the Note.

Notwithstanding anything herein to the contrary, any holder delivering to the Trustee (or other paying agent appointed by the Company) a Repurchase Notice contemplated by this Section 3.06 shall have the right to withdraw such Repurchase Notice at any time prior to the close of business on the Repurchase Date by delivery of a written notice of withdrawal to the Trustee (or other paying agent appointed by the Company) in accordance with Section 3.08.

The Trustee (or other paying agent appointed by the Company) shall promptly notify the Company of the receipt by it of any Repurchase Notice or written notice of withdrawal thereof.

SECTION 3.07. Company Repurchase Notice.

(a) The Notes to be repurchased on any Repurchase Date pursuant to Section 3.06 will be paid for in cash.

Unless the Company has elected to redeem all of the Notes in accordance with Section 3.01, at least three Business Days before the Company Repurchase Notice Date, the Company shall deliver an Officers' Certificate to the Trustee specifying:

- (i) the information required by Section 3.07(b) in the Company Repurchase Notice, and
- (ii) whether the Company desires the Trustee to give the Company Repurchase Notice required by Section 3.07(b).

(b) Unless the Company has elected to redeem all of the Notes in accordance with Section 3.01, in connection with any repurchase of Notes, the Company shall, no less than 20 Business Days prior to the Repurchase Date (the "**Company Repurchase Notice Date**"), give notice to holders at their addresses shown in the Note Register setting forth information specified in this Section 3.07(b) (the "**Company Repurchase Notice**"). The Company will also give notice to beneficial owners as required by applicable law.

The Company Repurchase Notice shall:

- (1) state the repurchase price and the Repurchase Date to which the Company Repurchase Notice relates;
- (2) include a form of Repurchase Notice;
- (3) state the name and address of the Trustee (or other paying agent appointed by the Company);
- (4) state that Notes must be surrendered to the Trustee (or other paying agent appointed by the Company) to collect the repurchase price;
- (5) if the Notes are then convertible, state that Notes as to which a Repurchase Notice has been given may be converted only if the Repurchase Notice is withdrawn in accordance with the terms of this Indenture; and
- (6) state the CUSIP number of the Notes.

The Company Repurchase Notice may be given by the Company or, at the Company's request, the Trustee shall give such Company Repurchase Notice in the Company's name and at the Company's expense.

(c) The Company will comply with the provisions of Rule 13e-4 and any other tender offer rules under the Exchange Act (including, without limitation, filing a Schedule TO or other schedule) to the extent then applicable in connection with the repurchase rights of the holders of Notes.

**SECTION 3.08. Effect of Repurchase Notice.** Upon receipt by the Trustee (or other paying agent appointed by the Company) of the Repurchase Notice specified in Section 3.06, the holder of the Note in respect of which such Repurchase Notice was given shall (unless such Repurchase Notice is validly withdrawn) thereafter be entitled to receive solely the repurchase price with respect to such Note. Such repurchase price shall be paid to such holder, subject to receipt of funds and/or Notes by the Trustee (or other paying agent appointed by the Company), promptly following the later of (x) the Repurchase Date with respect to such Note (provided the holder has satisfied the conditions in Section 3.06) and (y) the time of delivery of such Note to the Trustee (or other paying agent appointed by the Company) by the holder thereof in the manner required by Section 3.06. Notes in respect of which a Repurchase Notice has been given by the holder thereof may not be converted pursuant to Article 15 hereof on or after the date of the delivery of such Repurchase Notice unless such Repurchase Notice has first been validly withdrawn.

A Repurchase Notice may be withdrawn by means of a written notice of withdrawal delivered to the office of the Trustee (or other paying agent appointed

by the Company) in accordance with the Repurchase Notice at any time prior to the close of business on the Repurchase Date, specifying:

- (a) the certificate number, if any, of the Note in respect of which such notice of withdrawal is being submitted, or the appropriate Depository information if the Note in respect of which such notice of withdrawal is being submitted is represented by a Global Note,
- (b) the principal amount of the Note with respect to which such notice of withdrawal is being submitted, and
- (c) the principal amount, if any, of such Note which remains subject to the original Repurchase Notice and which has been or will be delivered for repurchase by the Company.

SECTION 3.09. Deposit of Repurchase Price. (a) Prior to 10:00 a.m. (New York City Time) on the Repurchase Date, the Company shall deposit with the Trustee (or other paying agent appointed by the Company; or, if the Company or a Subsidiary or an Affiliate of either of them is acting as the paying agent, shall segregate and hold in trust as provided in Section 5.04) an amount of cash (in immediately available funds if deposited on such Business Day), sufficient to pay the aggregate repurchase price of all the Notes or portions thereof that are to be purchased as of the Repurchase Date.

(b) If the Trustee or other paying agent appointed by the Company, or the Company or a Subsidiary or Affiliate of either of them, if such entity is acting as the paying agent, holds cash sufficient to pay the aggregate repurchase price of all the Notes, or portions thereof that are to be repurchased as of the Repurchase Date, on or after the Repurchase Date (i) the Notes will cease to be outstanding and (ii) all other rights of the holders of such Notes will terminate, whether or not book-entry transfer of the Notes has been made or the Notes have been delivered to the Trustee or paying agent, other than the right to receive the repurchase price upon delivery of the Notes.

SECTION 3.10. Notes Repurchased in Part. Upon presentation of any Note repurchased pursuant to Section 3.05 or 3.06, as the case may be, only in part, the Company shall execute and the Trustee shall authenticate and make available for delivery to the holder thereof, at the expense of the Company, a new Note or Notes, of any authorized denomination, in aggregate principal amount equal to the unrepurchased portion of the Notes presented.

SECTION 3.11. Repayment to the Company. The Trustee (or other paying agent appointed by the Company) shall return to the Company any cash or money that remains unclaimed as provided in Section 13.04 held by them for the payment of the repurchase price pursuant to Section 3.05 or 3.06, as the case may be; provided that to the extent that the aggregate amount of cash or money deposited by the Company pursuant to Section 3.05(d) or Section 3.09, as the case

may be, exceeds the aggregate repurchase price of the Notes or portions thereof which the Company is obligated to purchase as of the Designated Event Repurchase Date or the Repurchase Date, as the case may be, then, unless otherwise agreed in writing with the Company, promptly after the Business Day following the Designated Event Repurchase Date or the Repurchase Date, as the case may be, the Trustee shall return any such excess to the Company together with interest, if any, thereon.

ARTICLE 4  
[INTENTIONALLY OMITTED]

ARTICLE 5  
PARTICULAR COVENANTS OF THE COMPANY

SECTION 5.01. Payments. The Company covenants and agrees that it will duly and punctually pay or cause to be paid the principal of (including the redemption price upon redemption or the repurchase price upon repurchase, in each case pursuant to Article 3) each of the Notes at the places, at the respective times and in the manner provided herein and in the Notes. The Company shall, to the fullest extent permitted by law, pay interest on overdue payments of principal (whether at maturity or in connection with any redemption, repurchase or otherwise) at the rate of 1.00% per annum from the required payment date of such overdue payment.

SECTION 5.02. Maintenance of Office or Agency. The Company will maintain an office or agency in the Borough of Manhattan, The City of New York, where the Notes may be surrendered for registration of transfer or exchange or for presentation for payment or for conversion, redemption or repurchase and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency not designated or appointed by the Trustee. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office.

The Company may also from time to time designate co-registrars and one or more offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations. The Company will give prompt written notice of any such designation or rescission and of any change in the location of any such other office or agency.

The Company hereby initially designates the Trustee as paying agent, Note Registrar, Custodian and conversion agent and each of the Corporate Trust Office and the office of agency of the Trustee, shall be considered as one such office or agency of the Company for each of the aforesaid purposes.

So long as the Trustee is the Note Registrar, the Trustee agrees to mail, or cause to be mailed, the notices set forth in Section 8.10(a) and the third paragraph of Section 8.11. If co-registrars have been appointed in accordance with this Section, the Trustee shall mail such notices only to the Company and the holders of Notes it can identify from its records.

SECTION 5.03. Appointments to Fill Vacancies in Trustee's Office. The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, in the manner provided in Section 8.10, a Trustee, so that there shall at all times be a Trustee hereunder.

SECTION 5.04. Provisions as to Paying Agent. (a) If the Company shall appoint a paying agent other than the Trustee, or if the Trustee shall appoint such a paying agent, the Company will cause such paying agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section 5.04:

(1) that it will hold all sums held by it as such agent for the payment of the principal of the Notes (whether such sums have been paid to it by the Company or by any other obligor on the Notes) in trust for the benefit of the holders of the Notes;

(2) that it will give the Trustee notice of any failure by the Company (or by any other obligor on the Notes) to make any payment of the principal of the Notes when the same shall be due and payable; and

(3) that at any time during the continuance of an Event of Default, upon request of the Trustee, it will forthwith pay to the Trustee all sums so held in trust.

The Company shall, on or before each due date of the principal the Notes, deposit with the paying agent a sum (in funds which are immediately available on the due date for such payment) sufficient to pay such principal, and (unless such paying agent is the Trustee) the Company will promptly notify the Trustee of any failure to take such action; *provided* that if such deposit is made on the due date, such deposit shall be received by the paying agent by 10:00 a.m. New York City time, on such date.

(b) If the Company shall act as its own paying agent, it will, on or before each due date of the principal of the Notes, set aside, segregate and hold in trust for the benefit of the holders of the Notes a sum sufficient to pay such principal so becoming due and will promptly notify the Trustee of any failure to take such action and of any failure by the Company (or any other obligor under the Notes) to make any payment of the principal of the Notes when the same shall become due and payable.

(c) Anything in this Section 5.04 to the contrary notwithstanding, the Company may, at any time, for the purpose of obtaining a satisfaction and



discharge of this Indenture, or for any other reason, pay or cause to be paid to the Trustee all sums held in trust by the Company or any paying agent hereunder as required by this Section 5.04, such sums to be held by the Trustee upon the trusts herein contained and upon such payment by the Company or any paying agent to the Trustee, the Company or such paying agent shall be released from all further liability with respect to such sums.

(d) Anything in this Section 5.04 to the contrary notwithstanding, the agreement to hold sums in trust as provided in this Section 5.04 is subject to Sections 13.03 and 13.04.

(e) The Trustee shall not be responsible for the actions of any other paying agents (including the Company if acting as its own paying agent) and shall have no control of any funds held by such other paying agents.

SECTION 5.05. Rule 144A Information Requirement. Within the period prior to the expiration of the holding period applicable to sales thereof under Rule 144(k) under the Securities Act (or any successor provision), the Company covenants and agrees that it shall, during any period in which it is not subject to Section 13 or 15(d) under the Exchange Act, make available to any holder or beneficial holder of Notes or any Common Stock issued upon conversion thereof which continue to be Restricted Securities in connection with any sale thereof and any prospective purchaser of Notes or such Common Stock designated by such holder or beneficial holder, the information required pursuant to Rule 144A(d)(4) under the Securities Act upon the request of any holder or beneficial holder of the Notes or such Common Stock and it will take such further action as any holder or beneficial holder of such Notes or such Common Stock may reasonably request, all to the extent required from time to time to enable such holder or beneficial holder to sell its Notes or Common Stock without registration under the Securities Act within the limitation of the exemption provided by Rule 144A, as such Rule may be amended from time to time. Upon the request of any holder or any beneficial holder of the Notes or such Common Stock, the Company will deliver to such holder a written statement as to whether it has complied with such requirements.

SECTION 5.06. Compliance Certificate. The Company shall deliver to the Trustee within 120 days after the end of each fiscal year of the Company an Officers' Certificate stating that in the course of the performance by the signers of their duties as Officers of the Company they would normally have knowledge of any Default and whether or not the signers know of any Default that occurred during such period. If they do, the certificate shall describe the Default, its status and what action the Company is taking or propose to take with respect thereto. The Company also shall comply with Section 314(a)(4) of the Trust Indenture Act.

SECTION 5.07. Further Instruments and Acts. Upon request of the Trustee, the Company shall execute and deliver such further instruments and do

such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of this Indenture.

SECTION 5.08. Future Note Guarantors. So long as any Notes remain outstanding, if any Subsidiary of the Company enters into or has an outstanding Guarantee of any Indebtedness evidenced by the Senior Subordinated Notes or, if no Senior Subordinated Notes remain outstanding, by any of the Senior Secured Notes or, if no Senior Secured Notes remain outstanding, by any outstanding Designated Notes, then the Company shall cause such Subsidiary to become a Note Guarantor, and, if applicable, execute and deliver to the Trustee a supplemental indenture pursuant to which such Subsidiary will Guarantee payment of the Notes. Each Note Guarantee shall be limited to an amount not to exceed the maximum amount that can be Guaranteed by that Subsidiary without rendering the Note Guarantee, as it relates to such Subsidiary, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer or similar laws affecting the rights of creditors generally.

SECTION 5.09. Senior Subordinated Indebtedness; Limitations on Liens. The Company shall not Incur any Indebtedness if such Indebtedness is subordinated or junior in right of payment to any Senior Indebtedness unless such Indebtedness is Senior Subordinated Indebtedness or is expressly subordinated in right of payment to Senior Subordinated Indebtedness. In addition, the Company shall not Incur any Secured Indebtedness that is not Senior Indebtedness unless contemporaneously therewith effective provision is made to secure the Notes equally and ratably with (or on a senior basis to, in the case of Indebtedness subordinated in right of payment to the Notes) such Secured Indebtedness for so long as such Secured Indebtedness is secured by a Lien. A Note Guarantor shall not Incur any Indebtedness if such Indebtedness is by its terms expressly subordinated or junior in right of payment to any Senior Indebtedness of such Note Guarantor unless such Indebtedness is Senior Subordinated Indebtedness of such Note Guarantor or is expressly subordinated in right of payment to Senior Subordinated Indebtedness of such Note Guarantor. In addition, a Note Guarantor shall not Incur any Secured Indebtedness that is not Senior Indebtedness of such Note Guarantor unless contemporaneously therewith effective provision is made to secure the Note Guarantee of such Note Guarantor equally and ratably with (or on a senior basis to, in the case of Indebtedness subordinated in right of payment to such Note Guarantee) such Secured Indebtedness for as long as such Secured Indebtedness is secured by a Lien.

ARTICLE 6  
NOTEHOLDERS' LISTS AND REPORTS  
BY THE COMPANY AND THE TRUSTEE

SECTION 6.01. Noteholders' Lists. The Company covenants and agrees that it will furnish or cause to be furnished to the Trustee, semiannually, not more than fifteen (15) days after each February 1 and August 1 in each year beginning with August 1, 2004, and at such other times as the Trustee may request in

writing, a list in such form as the Trustee may reasonably require of the names and addresses of the holders of Notes, except that no such list need be furnished by the Company to the Trustee so long as the Trustee is acting as the sole Note Registrar.

SECTION 6.02. Preservation And Disclosure Of Lists. (a) The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the holders of Notes contained in the most recent list furnished to it as provided in Section 6.01 or maintained by the Trustee in its capacity as Note Registrar or co-registrar in respect of the Notes, if so acting. The Trustee may destroy any list furnished to it as provided in Section 6.01 upon receipt of a new list so furnished.

(b) The rights of Noteholders to communicate with other holders of Notes with respect to their rights under this Indenture or under the Notes, and the corresponding rights and duties of the Trustee, shall be as provided by the Trust Indenture Act.

(c) Every Noteholder, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any agent of either of them shall be held accountable by reason of any disclosure of information as to names and addresses of holders of Notes made pursuant to the Trust Indenture Act.

SECTION 6.03. Reports By Trustee. (a) Within sixty (60) days after May 15 of each year commencing with the year 2005, the Trustee shall transmit to holders of Notes such reports dated as of May 15 of the year in which such reports are made concerning the Trustee and its actions under this Indenture as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant thereto. In the event that no events have occurred under the applicable sections of the Trust Indenture Act the Trustee shall be under no duty or obligation to provide such reports.

(b) A copy of such report shall, at the time of such transmission to holders of Notes, be filed by the Trustee with each stock exchange and automated quotation system upon which the Notes are listed (if applicable) and with the Company. The Company will promptly notify the Trustee in writing when the Notes are listed on any stock exchange or automated quotation system or delisted therefrom.

SECTION 6.04. Reports by Company. If at any time the Company is no longer subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act of 1934, as amended, the Company shall provide the Trustee and Noteholders within 15 days after it files them with the Commission (or would be required to file with the Commission), copies of its annual report and the information, documents and other reports that are specified in Section 13 and 15(d) of the Exchange Act of 1934, as amended (collectively, the **“Required**

**Information”); provided, however,** that if any of the Required Information is filed with the Commission, the Company shall only be required to provide the Trustee copies of such Required Information. In addition, the Company shall furnish to the Trustee, promptly upon their becoming available, copies of the annual report to shareholders and any other information provided by the Company to its public shareholders generally. The Company also shall comply with the other provisions of Section 314(a) of the Trust Indenture Act.

ARTICLE 7  
REMEDIES OF THE TRUSTEE AND NOTEHOLDERS  
ON AN EVENT OF DEFAULT

SECTION 7.01. **Events Of Default.** In case one or more of the following Events of Default (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body) shall have occurred and be continuing:

(a) default in the payment of the principal of any of the Notes as and when the same shall become due and payable either at maturity or in connection with any redemption, repurchase or otherwise, in each case pursuant to Article 3 whether or not such payment, redemption or purchase shall be prohibited by Article 16; or

(b) default in the Company’s obligation to provide a Designated Event Notice upon a Designated Event as provided in Section 3.05 within the time period specified in Section 3.05(b); or

(c) the failure by the Company or any Note Guarantor to comply with Section 5.08 or 5.09 and such failure continues for 30 days after the notice specified below; or

(d) the failure of the Company or any Note Guarantor to comply with Article 12; or

(e) failure on the part of the Company or any Note Guarantor to comply with any of its agreements in the Notes or this Indenture (other than those referred to in (a), (b), (c) or (d) above) and such failure continues for 60 days after the notice specified below; or

(f) the failure by the Company to deliver shares of Common Stock (or cash, if the Company exercises its option pursuant to Section 15.12) upon conversion of the Notes within the time period specified in Section 15.02 or 15.12 and such failure continues for a period of 5 days after the notice specified below;

(g) Indebtedness of the Company or any Restricted Subsidiary is not paid within any applicable grace period after final maturity or the acceleration

by the holders thereof because of a default and the total amount of such Indebtedness unpaid or accelerated exceeds \$25 million or its foreign currency equivalent at the time and such failure continues for 10 days after the notice specified below;

(h) the Company or any Significant Subsidiary pursuant to or within the meaning of any Bankruptcy Law:

- (1) commences a voluntary case;
- (2) consents to the entry of an order for relief against it in an involuntary case;
- (3) consents to the appointment of a Custodian of it or for any substantial part of its property; or
- (4) makes a general assignment for the benefit of its creditors; or takes any comparable action under any foreign law relating to insolvency.

(i) A court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

- (1) is for relief against the Company or any Significant Subsidiary in an involuntary case;
- (2) appoints a Custodian of the Company or any Significant Subsidiary or for any substantial part of its property;
- (3) orders the winding up or liquidation of the Company or any Significant Subsidiary;

(j) with respect to any judgment or decree for the payment of money in excess of \$25 million or its foreign currency equivalent against the Company or any Restricted Subsidiary (i) an enforcement proceeding is commenced thereon by any creditor if such judgment or decree is final and nonappealable and the Company or such Restricted Subsidiary, as applicable, fails to stay such proceeding within 10 days thereafter or (ii) the Company or such Restricted Subsidiary, as applicable, fails to pay such judgment or decree, which judgment or decree has remained outstanding for a period of 60 days following the entry of such judgment or decree without being paid, discharged, waived or stayed; or

(k) any Note Guarantee of any Significant Subsidiary ceases to be in full force and effect (except as contemplated by the terms thereof) or any Significant Subsidiary that is a Note Guarantor or Person acting by or on behalf of such Significant Subsidiary denies or disaffirms such Significant Subsidiary's obligations under this Indenture or any Note Guarantee and such

Default continues for 10 days after receipt of the notice specified in this Indenture;

then, and in each and every such case (other than an Event of Default specified in Section 7.01(h) or 7.01(i)), unless the principal of all of the Notes shall have already become due and payable, either the Trustee or the holders of not less than twenty-five percent (25%) in aggregate principal amount of the Notes then outstanding hereunder determined in accordance with Section 9.04, by notice in writing to the Company (and to the Trustee if given by Noteholders), may declare the principal of on all the Notes, and upon any such declaration the same shall become and shall be immediately due and payable, anything in this Indenture or in the Notes contained to the contrary notwithstanding. If an Event of Default specified in Section 7.01(h) or 7.01(i) or occurs, the principal of all the Notes shall be immediately and automatically due and payable without necessity of further action. This provision, however, is subject to the conditions that if, at any time after the principal of the Notes shall have been so declared due and payable, and before any judgment or decree for the payment of the monies due shall have been obtained or entered as hereinafter provided, the Company shall pay or shall deposit with the Trustee a sum sufficient to pay the principal of any and all Notes which shall have become due otherwise than by acceleration and interest on any such amounts that are overdue at the rate of 1.00% per annum from the required payment date and amounts due to the Trustee pursuant to Section 8.06, and if any and all defaults under this Indenture, other than the nonpayment of principal of which shall have become due by acceleration, shall have been cured or waived pursuant to Section 7.07, then and in every such case the holders of a majority in aggregate principal amount of the Notes then outstanding, by written notice to the Company and to the Trustee, may waive all Defaults or Events of Default and rescind and annul such declaration and its consequences; but no such waiver or rescission and annulment shall extend to or shall affect any subsequent Default or Event of Default, or shall impair any right consequent thereon. A Default under (c), (e), (f), (g) or (k) above is not an Event of Default until the Trustee notifies the Company or the Noteholders of at least 25% in principal amount of the outstanding Notes notify the Company and the Trustee of the Default and the Company or the relevant Note Guarantor, as applicable, do not cure such Default within the time specified after receipt of such notice. Such notice must specify the Default, demand that it be remedied and state that such notice is a "Notice of Default". The Company shall notify in writing a Responsible Officer of the Trustee, promptly upon becoming aware thereof, of any Event of Default. The Company shall deliver to the Trustee, within 30 days after the occurrence thereof, written notice in the form of an Officers' Certificate of any event which with the giving of notice or the lapse of time would become an Event of Default under clauses (c), (d), (e), (g), (j) or (k), its status and what action the Issuers are taking or propose to take with respect thereto.

In case the Trustee shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned because of such waiver or rescission and annulment or for any other reason or

shall have been determined adversely to the Trustee, then and in every such case the Company, the holders of Notes, and the Trustee shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Company, the holders of Notes, and the Trustee shall continue as though no such proceeding had been taken.

**SECTION 7.02. Payments of Notes on Default; Suit Therefor.** The Company and each Note Guarantor covenants that in case default shall be made in the payment of the principal of any of the Notes as and when the same shall have become due and payable, whether at maturity of the Notes or in connection with any redemption or repurchase, by or under this Indenture declaration or otherwise, then, upon demand of the Trustee, the Company or such Note Guarantor, is applicable, will pay to the Trustee, for the benefit of the holders of the Notes, the whole amount that then shall have become due and payable on all such Notes for principal with interest upon the overdue principal at the rate of 1.00% per annum from the required payment date and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including reasonable compensation to the Trustee, its agents, attorneys and counsel, and all other amounts due the Trustee under Section 8.06. Until such demand by the Trustee, the Company may pay the principal of the Notes to the registered holders, whether or not the Notes are overdue.

In case the Company or any Note Guarantor shall fail forthwith to pay such amounts upon such demand, the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any actions or proceedings at law or in equity for the collection of the sums so due and unpaid, and may prosecute any such action or proceeding to judgment or final decree, and may enforce any such judgment or final decree against the Company, any Note Guarantor or any other obligor on the Notes and collect in the manner provided by law out of the property of the Company, any Note Guarantor or any other obligor on the Notes wherever situated the monies adjudged or decreed to be payable.

In case there shall be pending proceedings for the bankruptcy or for the reorganization of the Company, any Note Guarantor or any other obligor on the Notes under Title 11 of the United States Code, or any other applicable law, or in case a receiver, assignee or trustee in bankruptcy or reorganization, liquidator, sequestrator or similar official shall have been appointed for or taken possession of the Company, such Note Guarantor or such other obligor, the property of the Company, such Note Guarantor or such other obligor, or in the case of any other judicial proceedings relative to the Company, such Note Guarantor or such other obligor upon the Notes, or to the creditors or property of the Company, such Note Guarantor or such other obligor, the Trustee, irrespective of whether the principal of the Notes shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand pursuant to the provisions of this Section 7.02, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount of principal owing and unpaid in respect of the

Notes, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and of the Noteholders allowed in such judicial proceedings relative to the Company or any other obligor on the Notes, its or their creditors, or its or their property, and to collect and receive any monies or other property payable or deliverable on any such claims, and to distribute the same after the deduction of any amounts due the Trustee under Section 8.06, and to take any other action with respect to such claims, including participating as a member of any official committee of creditors, as it reasonably deems necessary or advisable, and, unless prohibited by law or applicable regulations, and any receiver, assignee or trustee in bankruptcy or reorganization, liquidator, custodian or similar official is hereby authorized by each of the Noteholders to make such payments to the Trustee, and, in the event that the Trustee shall consent to the making of such payments directly to the Noteholders, to pay to the Trustee any amount due it for reasonable compensation, expenses, advances and disbursements, including counsel fees and expenses incurred by it up to the date of such distribution. To the extent that such payment of reasonable compensation, expenses, advances and disbursements out of the estate in any such proceedings shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, monies, securities and other property which the holders of the Notes may be entitled to receive in such proceedings, whether in liquidation or under any plan of reorganization or arrangement or otherwise.

All rights of action and of asserting claims under this Indenture, or under any of the Notes, may be enforced by the Trustee without the possession of any of the Notes, or the production thereof at any trial or other proceeding relative thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the holders of the Notes.

In any proceedings brought by the Trustee (and in any proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the holders of the Notes, and it shall not be necessary to make any holders of the Notes parties to any such proceedings.

SECTION 7.03. Application of Monies Collected By Trustee. Any monies collected by the Trustee pursuant to this Article 7 shall be applied in the order following, at the date or dates fixed by the Trustee for the distribution of such monies, upon presentation of the several Notes, and stamping thereon the payment, if only partially paid, and upon surrender thereof, if fully paid:

FIRST: To the payment of all amounts due the Trustee under Section 8.06;



SECOND: To holders of Senior Indebtedness of the Company to the extent required by Article 16 and the holders of Senior Indebtedness of the Note Guarantors to the extent required by Article 18;

THIRD: In case the principal of the outstanding Notes shall have become due, by declaration or otherwise, and be unpaid to the payment of the whole amount then owing and unpaid upon the Notes for principal, with interest on overdue principal at a rate of 1.00% per annum from the required payment date, and in case such monies shall be insufficient to pay in full the whole amounts so due and unpaid upon the Notes, then to the payment of such principal and interest, if any, without preference or priority of any Note over any other Note, ratably to the aggregate of such principal; and

FOURTH: To the payment of the remainder, if any, to the Company.

SECTION 7.04. Proceedings by Noteholder. No holder of any Note shall have any right by virtue of or by reference to any provision of this Indenture to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Indenture, or for the appointment of a receiver, trustee, liquidator, custodian or other similar official, or for any other remedy hereunder, unless such holder previously shall have given to the Trustee written notice of an Event of Default and of the continuance thereof, as hereinbefore provided, and unless also the holders of not less than twenty-five percent (25%) in aggregate principal amount of the Notes then outstanding shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder and shall have offered to the Trustee such reasonable security or indemnity as it may require against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee for sixty (60) days after its receipt of such notice, request and offer of indemnity, shall have neglected or refused to institute any such action, suit or proceeding and no direction inconsistent with such written request shall have been given to the Trustee pursuant to Section 7.07; it being understood and intended, and being expressly covenanted by the taker and holder of every Note with every other taker and holder and the Trustee, that no one or more holders of Notes shall have any right in any manner whatever by virtue of or by reference to any provision of this Indenture to affect, disturb or prejudice the rights of any other holder of Notes, or to obtain or seek to obtain priority over or preference to any other such holder, or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all holders of Notes (except as otherwise provided herein). For the protection and enforcement of this Section 7.04 each and every Noteholder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

Notwithstanding any other provision of this Indenture and any provision of any Note, the right of any holder of any Note to receive payment of the principal of (including the redemption price upon redemption pursuant to Article 7), such Note, on or after the respective due dates expressed in such Note or in the

event of redemption, or to institute suit for the enforcement of any such payment on or after such respective dates against the Company shall not be impaired or affected without the consent of such holder.

Anything in this Indenture or the Notes to the contrary notwithstanding, the holder of any Note, without the consent of either the Trustee or the holder of any other Note, in its own behalf and for its own benefit, may enforce, and may institute and maintain any proceeding suitable to enforce, its rights of conversion as provided herein.

SECTION 7.05. Proceedings By Trustee. In case of an Event of Default, the Trustee may, in its discretion, proceed to protect and enforce the rights vested in it by this Indenture by such appropriate judicial proceedings as are necessary to protect and enforce any of such rights, either by suit in equity or by action at law or by proceeding in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law.

SECTION 7.06. Remedies Cumulative And Continuing. Except as provided in Section 2.06, all powers and remedies given by this Article 7 to the Trustee or to the Noteholders shall, to the extent permitted by law, be deemed cumulative and not exclusive of any thereof or of any other powers and remedies available to the Trustee or the holders of the Notes, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in this Indenture, and no delay or omission of the Trustee or of any holder of any of the Notes to exercise any right or power accruing upon any Default or Event of Default occurring and continuing as aforesaid shall impair any such right or power, or shall be construed to be a waiver of any such default or any acquiescence therein, and, subject to the provisions of Section 7.04, every power and remedy given by this Article 7 or by law to the Trustee or to the Noteholders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Noteholders.

SECTION 7.07. Direction of Proceedings and Waiver of Defaults By Majority of Noteholders. The holders of a majority in aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 9.04 shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee; provided that (a) such direction shall not be in conflict with any rule of law or with this Indenture, (b) the Trustee may take any other action which is not inconsistent with such direction, (c) the Trustee may decline to take any action that would benefit some Noteholder to the detriment of other Noteholders and (d) the Trustee may decline to take any action that would involve the Trustee in personal liability. The holders of a majority in aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 9.04 may, on behalf of the holders of all of the Notes, waive any past

Default or Event of Default hereunder and its consequences except (i) a default in the payment of the principal of the Notes, (ii) a default in the payment of the redemption price pursuant to Article 3, (iii) a default in the payment of the repurchase price pursuant to Article 3 or (iv) a default in respect of a covenant or provisions hereof which under Article 11 cannot be modified or amended without the consent of the holders of each or all Notes then outstanding or affected thereby. Upon any such waiver, the Company, the Trustee and the holders of the Notes shall be restored to their former positions and rights hereunder; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon. Whenever any Default or Event of Default hereunder shall have been waived as permitted by this Section 7.07, said Default or Event of Default shall for all purposes of the Notes and this Indenture be deemed to have been cured and to be not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon.

SECTION 7.08. Notice of Defaults. The Trustee shall, within the earlier of thirty (30) days after a Responsible Officer of the Trustee has actual knowledge of the occurrence of a default or ninety (90) days after it occurs, mail to all Noteholders, as the names and addresses of such holders appear upon the Note Register, notice of all defaults known to a Responsible Officer, unless such defaults shall have been cured or waived before the giving of such notice; provided that except in the case of default in the payment of the principal of any of the Notes, the Trustee shall be protected in withholding such notice if and so long as a trust committee of directors and/or Responsible Officers of the Trustee in good faith determines that the withholding of such notice is in the interests of the Noteholders.

SECTION 7.09. Undertaking To Pay Costs. All parties to this Indenture agree, and each holder of any Note by his acceptance thereof shall be deemed to have agreed, that any court may, in its discretion, require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; provided that the provisions of this Section 7.09 (to the extent permitted by law) shall not apply to any suit instituted by the Trustee, to any suit instituted by any Noteholder, or group of Noteholders, holding in the aggregate more than ten percent in principal amount of the Notes at the time outstanding determined in accordance with Section 9.04, or to any suit instituted by any Noteholder for the enforcement of the payment of the principal of or interest, if any, on any Note on or after the due date expressed in such Note or to any suit for the enforcement of the right to convert any Note in accordance with the provisions of Article 15.

ARTICLE 8  
THE TRUSTEE

SECTION 8.01. Duties and Responsibilities of Trustee. The Trustee, prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default has occurred (which has not been cured or waived), the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his own affairs.

No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(a) prior to the occurrence of an Event of Default and after the curing or waiving of all Events of Default which may have occurred:

(i) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture and the Trust Indenture Act, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture and no implied covenants, duties or obligations shall be read into this Indenture and the Trust Indenture Act against the Trustee; and

(ii) in the absence of bad faith and willful misconduct on the part of the Trustee, the Trustee may conclusively rely as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but, in the case of any such certificates or opinions which by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein;

(b) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer or Officers of the Trustee, unless the Trustee was negligent in ascertaining the pertinent facts;

(c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the written direction of the holders of not less than a majority in principal amount of the Notes at the time outstanding determined as provided in Section 9.04 relating to the time, method and place of conducting any proceeding for any remedy

available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture;

(d) whether or not therein provided, every provision of this Indenture relating to the conduct or affecting the liability of, or affording protection to, the Trustee shall be subject to the provisions of this Section;

(e) the Trustee shall not be liable in respect of any payment (as to the correctness of amount, entitlement to receive or any other matters relating to payment) or notice effected by the Company or any paying agent or any records maintained by any co-registrar with respect to the Notes;

(f) if any party fails to deliver a notice relating to an event the fact of which, pursuant to this Indenture, requires notice to be sent to the Trustee, the Trustee may conclusively rely on its failure to receive such notice as reason to act as if no such event occurred; and

(g) the Trustee shall not be deemed to have knowledge of any Event of Default hereunder unless it shall have been notified in writing of such Event of Default by the Company or the holders of at least 10% in aggregate principal amount of the Notes.

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if there is reasonable ground for believing that the repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

SECTION 8.02. Reliance on Documents, Opinions, Etc. Except as otherwise provided in Section 8.01:

(a) the Trustee may conclusively rely and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture, note, coupon or other paper or document (whether in its original or facsimile form) believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties;

(b) any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by an Officers' Certificate (unless other evidence in respect thereof be herein specifically prescribed); and any resolution of the Board of Directors may be evidenced to the Trustee by a copy thereof certified by the Secretary or an Assistant Secretary of the Company;

(c) the Trustee may consult with counsel of its own selection and any advice or Opinion of Counsel shall be full and complete authorization and

protection in respect of any action taken or omitted by it hereunder in good faith and in accordance with such advice or Opinion of Counsel;

(d) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Noteholders pursuant to the provisions of this Indenture, unless such Noteholders shall have offered to the Trustee reasonable security or indemnity satisfactory to it against the costs, expenses and liabilities which may be incurred therein or thereby;

(e) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture or other paper or document, but the Trustee may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney at the expense of the Company and shall incur no liability of any kind by reason of such inquiry or investigation;

(f) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed by it with due care hereunder;

(g) the Trustee shall not be liable for any action taken, suffered or omitted to be taken by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture;

(h) the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder;

(i) the Trustee may request that the Company deliver an Officers' Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officers' Certificate may be signed by any person authorized to sign an Officers' Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded; and

(j) any permissive right or authority granted to the Trustee shall not be construed as a mandatory duty.

SECTION 8.03. No Responsibility For Recitals, Etc. The recitals contained herein and in the Notes (except in the Trustee's certificate of authentication) shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Notes. The Trustee shall not be accountable for the use or application by the Company of any Notes or the proceeds of any Notes authenticated and delivered by the Trustee in conformity with the provisions of this Indenture.

SECTION 8.04. Trustee, Paying Agents, Conversion Agents or Note Registrar May Own Notes. The Trustee, any paying agent, any conversion agent or Note Registrar, in its individual or any other capacity, may become the owner or pledgee of Notes with the same rights it would have if it were not Trustee, paying agent, conversion agent or Note Registrar.

SECTION 8.05. Monies to Be Held in Trust. Subject to the provisions of Section 13.04, all monies received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received. Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as may be agreed in writing from time to time by the Company and the Trustee.

SECTION 8.06. Compensation and Expenses of Trustee. The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, such compensation for all services rendered by it hereunder in any capacity (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) as mutually agreed to from time to time in writing between the Company and the Trustee, and the Company will pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances reasonably incurred or made by the Trustee in accordance with any of the provisions of this Indenture (including the reasonable compensation and the expenses and disbursements of its counsel and of all Persons not regularly in its employ) except any such expense, disbursement or advance as shall be determined to have been caused by its own negligence or willful misconduct. The Company and each of the Note Guarantors, jointly and severally, covenants to indemnify the Trustee and any predecessor Trustee (or any officer, director or employee of the Trustee), in any capacity under this Indenture and its agents and any authenticating agent for, and to hold them harmless against, any and all loss, liability, damage, claim or expense including taxes (other than taxes based on the income of the Trustee) incurred without negligence or willful misconduct on the part of the Trustee or such officers, directors, employees and agent or authenticating agent, as the case may be, and arising out of or in connection with the acceptance or administration of this trust or in any other capacity hereunder, including the costs and expenses of defending themselves against any claim (whether asserted by the Company, a Note Guarantor, any holder or any other Person) of liability in the premises. The obligations of the

Company and the Note Guarantors under this Section 8.06 to compensate or indemnify the Trustee and to pay or reimburse the Trustee for expenses, disbursements and advances shall be secured by a lien prior to that of the Notes upon all property and funds held or collected by the Trustee as such, except funds held in trust for the benefit of the holders of particular Notes. The obligation of the Company and the Note Guarantors under this Section shall survive the satisfaction and discharge of this Indenture.

When the Trustee and its agents and any authenticating agent incur expenses or render services after an Event of Default specified in Section 7.01(h) or (i) with respect to the Company occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any bankruptcy, insolvency or similar laws.

**SECTION 8.07. Officers' Certificate As Evidence.** Except as otherwise provided in Section 8.01, whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of bad faith or willful misconduct on the part of the Trustee, be deemed to be conclusively proved and established by an Officers' Certificate delivered to the Trustee.

**SECTION 8.08. Conflicting Interests of Trustee.** If the Trustee has or shall acquire a conflicting interest within the meaning of the Trust Indenture Act, the Trustee shall (i) eliminate such interest within 90 days, (ii) apply to the Commission for permission to continue as trustee or (iii) resign, in each case to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Indenture.

**SECTION 8.09. Eligibility of Trustee.** There shall at all times be a Trustee hereunder which shall be a Person that is eligible pursuant to the Trust Indenture Act to act as such and has a combined capital and surplus of at least \$150,000,000 (or if such Person is a member of a bank holding company system, its bank holding company shall have a combined capital and surplus of at least \$150,000,000). If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority, then for the purposes of this Section the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 8.09, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.



SECTION 8.10. Resignation or Removal of Trustee.

(a) The Trustee may at any time resign by giving written notice of such resignation to the Company and to the holders of Notes. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment sixty (60) days after the mailing of such notice of resignation to the Noteholders, the resigning Trustee may, upon ten (10) Business Days' notice to the Company and the Noteholders, petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor trustee, or, if any Noteholder who has been a bona fide holder of a Note or Notes for at least six (6) months may, subject to the provisions of Section 7.09, on behalf of himself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

(b) In case at any time any of the following shall occur:

(i) the Trustee shall fail to comply with Section 8.08 after written request therefor by the Company or by any Noteholder who has been a bona fide holder of a Note or Notes for at least six (6) months; or

(ii) the Trustee shall cease to be eligible in accordance with the provisions of Section 8.09 and shall fail to resign after written request therefor by the Company or by any such Noteholder; or

(iii) the Trustee shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation;

then, in any such case, the Company may remove the Trustee and appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 7.09, any Noteholder who has been a bona fide holder of a Note or Notes for at least six (6) months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee; *provided* that if no successor Trustee shall have been appointed and have accepted appointment sixty (60) days after either the Company or the Noteholders has removed the Trustee, or the Trustee resigns, the Trustee so removed may petition, at the expense of the Company, any court of competent jurisdiction for an appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(c) The holders of a majority in aggregate principal amount of the Notes at the time outstanding may at any time remove the Trustee and nominate a successor trustee which shall be deemed appointed as successor trustee unless, within ten (10) days after notice to the Company of such nomination, the Company objects thereto, in which case the Trustee so removed or any Noteholder, or if such Trustee so removed or any Noteholder fails to act, the Company, upon the terms and conditions and otherwise as in Section 8.10(a) provided, may petition any court of competent jurisdiction for an appointment of a successor trustee.

(d) Any resignation or removal of the Trustee and appointment of a successor trustee pursuant to any of the provisions of this Section 8.10 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 8.11.

(e) Notwithstanding the replacement of the Trustee pursuant to this Section, the Company's obligations under Section 8.06 shall continue for the benefit of the retiring Trustee.

SECTION 8.11. Acceptance by Successor Trustee. Any successor trustee appointed as provided in Section 8.10 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee, the trustee ceasing to act shall, upon payment of any amount then due it pursuant to the provisions of Section 8.06, execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a lien upon all property and funds held or collected by such trustee as such, except for funds held in trust for the benefit of holders of particular Notes, to secure any amounts then due it pursuant to the provisions of Section 8.06.

No successor trustee shall accept appointment as provided in this Section 8.11 unless, at the time of such acceptance, such successor trustee shall be qualified under the provisions of Section 8.08 and be eligible under the provisions of Section 8.09.

Upon acceptance of appointment by a successor trustee as provided in this Section 8.11, the Company (or the former trustee, at the written direction of the Company) shall mail or cause to be mailed notice of the succession of such trustee hereunder to the holders of Notes at their addresses as they shall appear on the

Note Register. If the Company fails to mail such notice within ten (10) days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be mailed at the expense of the Company.

SECTION 8.12. Succession By Merger. Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee (including any trust created by this Indenture), shall be the successor to the Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, provided that in the case of any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, such corporation shall be qualified under the provisions of Section 8.08 and eligible under the provisions of Section 8.09.

In case at the time such successor to the Trustee shall succeed to the trusts created by this Indenture, any of the Notes shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee or authenticating agent appointed by such predecessor trustee, and deliver such Notes so authenticated; and in case at that time any of the Notes shall not have been authenticated, any successor to the Trustee or any authenticating agent appointed by such successor trustee may authenticate such Notes in the name of the successor trustee; and in all such cases such certificates shall have the full force that is provided in the Notes or in this Indenture; *provided* that the right to adopt the certificate of authentication of any predecessor Trustee or authenticate Notes in the name of any predecessor Trustee shall apply only to its successor or successors by merger, conversion or consolidation.

SECTION 8.13. Preferential Collection of Claims. If and when the Trustee shall be or become a creditor of the Company (or any other obligor upon the Notes), the Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of the claims against the Company (or any such other obligor).

SECTION 8.14. Trustee's Application For Instructions From The Company. Any application by the Trustee for written instructions from the Company (other than with regard to any action proposed to be taken or omitted to be taken by the Trustee that affects the rights of the holders of the Notes under this Indenture) may, at the option of the Trustee, set forth in writing any action proposed to be taken or omitted by the Trustee under this Indenture and the date on and/or after which such action shall be taken or such omission shall be effective. The Trustee shall not be liable for any action taken by, or omission of, the Trustee in accordance with a proposal included in such application on or after the date specified in such application (which date shall not be less than three (3) Business Days after the date any officer of the Company actually receives

such application, unless any such officer shall have consented in writing to any earlier date) unless prior to taking any such action (or the effective date in the case of an omission), the Trustee shall have received written instructions in response to such application specifying the action to be taken or omitted.

ARTICLE 9  
THE NOTEHOLDERS

SECTION 9.01. Action By Noteholders. Whenever in this Indenture it is provided that the holders of a specified percentage in aggregate principal amount of the Notes may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action, the holders of such specified percentage have joined therein may be evidenced (a) by any instrument or any number of instruments of similar tenor executed by Noteholders in person or by agent or proxy appointed in writing, or (b) by the record of the holders of Notes voting in favor thereof at any meeting of Noteholders duly called and held in accordance with the provisions of Article 10, or (c) by a combination of such instrument or instruments and any such record of such a meeting of Noteholders. Whenever the Company or the Trustee solicits the taking of any action by the holders of the Notes, the Company or the Trustee may fix in advance of such solicitation, a date as the record date for determining holders entitled to take such action. The record date shall be not more than fifteen (15) days prior to the date of commencement of solicitation of such action.

SECTION 9.02. Proof of Execution by Noteholders. Subject to the provisions of Sections 8.01, 8.02 and 10.05, proof of the execution of any instrument by a Noteholder or its agent or proxy shall be sufficient if made in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in such manner as shall be satisfactory to the Trustee. The holding of Notes shall be proved by the registry of such Notes or by a certificate of the Note Registrar.

The record of any Noteholders' meeting shall be proved in the manner provided in Section 10.06.

SECTION 9.03. Who Are Deemed Absolute Owners. The Company, the Trustee, any paying agent, any conversion agent and any Note Registrar may deem the Person in whose name such Note shall be registered upon the Note Register to be, and may treat it as, the absolute owner of such Note (whether or not such Note shall be overdue and notwithstanding any notation of ownership or other writing thereon made by any Person other than the Company or any Note Registrar) for the purpose of receiving payment of or on account of the principal of and interest, if any, on such Note, for conversion of such Note and for all other purposes; and neither the Company nor the Trustee nor any paying agent nor any conversion agent nor any Note Registrar shall be affected by any notice to the contrary. All such payments so made to any holder for the time being, or upon his

order, shall be valid, and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for monies payable upon any such Note.

SECTION 9.04. Company-Owned Notes Disregarded. In determining whether the holders of the requisite aggregate principal amount of Notes have concurred in any direction, consent, waiver or other action under this Indenture, Notes which are owned by the Company or any other obligor on the Notes or any Affiliate of the Company or any other obligor on the Notes shall be disregarded and deemed not to be outstanding for the purpose of any such determination; provided that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, consent, waiver or other action, only Notes which a Responsible Officer knows are so owned shall be so disregarded. Notes so owned which have been pledged in good faith may be regarded as outstanding for the purposes of this Section 9.04 if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Notes and that the pledgee is not the Company, any other obligor on the Notes or any Affiliate of the Company or any such other obligor. In the case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee. Upon request of the Trustee, the Company shall furnish to the Trustee promptly an Officers' Certificate listing and identifying all Notes, if any, known by the Company to be owned or held by or for the account of any of the above described Persons, and, subject to Section 8.01, the Trustee shall be entitled to accept such Officers' Certificate as conclusive evidence of the facts therein set forth and of the fact that all Notes not listed therein are outstanding for the purpose of any such determination.

SECTION 9.05. Revocation Of Consents, Future Noteholders Bound. At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 9.01, of the taking of any action by the holders of the percentage in aggregate principal amount of the Notes specified in this Indenture in connection with such action, any holder of a Note which is shown by the evidence to be included in the Notes the holders of which have consented to such action may, by filing written notice with the Trustee at its Corporate Trust Office and upon proof of holding as provided in Section 9.02, revoke such action so far as concerns such Note. Except as aforesaid, any such action taken by the holder of any Note shall be conclusive and binding upon such holder and upon all future holders and owners of such Note and of any Notes issued in exchange or substitution therefor, irrespective of whether any notation in regard thereto is made upon such Note or any Note issued in exchange or substitution therefor.

ARTICLE 10  
MEETINGS OF NOTEHOLDERS

SECTION 10.01. Purpose Of Meetings. A meeting of Noteholders may be called at any time and from time to time pursuant to the provisions of this Article 10 for any of the following purposes:

- (1) to give any notice to the Company or to the Trustee or to give any directions to the Trustee permitted under this Indenture, or to consent to the waiving of any Default or Event of Default hereunder and its consequences, or to take any other action authorized to be taken by Noteholders pursuant to any of the provisions of Article 7;
- (2) to remove the Trustee and nominate a successor trustee pursuant to the provisions of Article 8;
- (3) to consent to the execution of an indenture or indentures supplemental hereto pursuant to the provisions of Section 11.02; or
- (4) to take any other action authorized to be taken by or on behalf of the holders of any specified aggregate principal amount of the Notes under any other provision of this Indenture or under applicable law.

SECTION 10.02. Call Of Meetings By Trustee. The Trustee may at any time call a meeting of Noteholders to take any action specified in Section 10.01, to be held at such time and at such place as the Trustee shall determine. Notice of every meeting of the Noteholders, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting and the establishment of any record date pursuant to Section 9.01, shall be mailed to holders of Notes at their addresses as they shall appear on the Note Register. Such notice shall also be mailed to the Company. Such notices shall be mailed not less than twenty (20) nor more than ninety (90) days prior to the date fixed for the meeting.

Any meeting of Noteholders shall be valid without notice if the holders of all Notes then outstanding are present in person or by proxy or if notice is waived before or after the meeting by the holders of all Notes outstanding, and if the Company and the Trustee are either present by duly authorized representatives or have, before or after the meeting, waived notice.

SECTION 10.03. Call Of Meetings By Company Or Noteholders. In case at any time the Company, pursuant to a resolution of its Board of Directors, or the holders of at least twenty-five percent (25%) in aggregate principal amount of the Notes then outstanding, shall have requested the Trustee to call a meeting of Noteholders, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have mailed the notice of such meeting within twenty (20) days after receipt of such request, then the Company or such Noteholders may determine the time and the place for such meeting and may call such meeting to take any action authorized in Section 10.01, by mailing notice thereof as provided in Section 10.02.

SECTION 10.04. Qualifications For Voting. To be entitled to vote at any meeting of Noteholders a person shall (a) be a holder of one or more Notes on the record date pertaining to such meeting or (b) be a person appointed by an

instrument in writing as proxy by a holder of one or more Notes on the record date pertaining to such meeting. The only persons who shall be entitled to be present or to speak at any meeting of Noteholders shall be the persons entitled to vote at such meeting and their counsel and any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

SECTION 10.05. Regulations. Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Noteholders, in regard to proof of the holding of Notes and of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall think fit.

The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Noteholders as provided in Section 10.03, in which case the Company or the Noteholders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the holders of a majority in principal amount of the Notes represented at the meeting and entitled to vote at the meeting.

Subject to the provisions of Section 9.04, at any meeting each Noteholder or proxyholder shall be entitled to one vote for each \$1,000 principal amount of Notes held or represented by him; *provided* that no vote shall be cast or counted at any meeting in respect of any Note challenged as not outstanding and ruled by the chairman of the meeting to be not outstanding. The chairman of the meeting shall have no right to vote other than by virtue of Notes held by him or instruments in writing as aforesaid duly designating him as the proxy to vote on behalf of other Noteholders. Any meeting of Noteholders duly called pursuant to the provisions of Section 10.02 or 10.03 may be adjourned from time to time by the holders of a majority of the aggregate principal amount of Notes represented at the meeting, whether or not constituting a quorum, and the meeting may be held as so adjourned without further notice.

SECTION 10.06. Voting. The vote upon any resolution submitted to any meeting of Noteholders shall be by written ballot on which shall be subscribed the signatures of the holders of Notes or of their representatives by proxy and the outstanding principal amount of the Notes held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of Noteholders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or

more persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was mailed as provided in Section 10.02. The record shall show the principal amount of the Notes voting in favor of or against any resolution. The record shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting.

Any record so signed and verified shall be conclusive evidence of the matters therein stated.

SECTION 10.07. No Delay Of Rights By Meeting. Nothing contained in this Article 10 shall be deemed or construed to authorize or permit, by reason of any call of a meeting of Noteholders or any rights expressly or impliedly conferred hereunder to make such call, any hindrance or delay in the exercise of any right or rights conferred upon or reserved to the Trustee or to the Noteholders under any of the provisions of this Indenture or of the Notes.

#### ARTICLE 11 AMENDMENTS; SUPPLEMENTAL INDENTURES

SECTION 11.01. Amendment or Supplemental Indentures Without Consent of Noteholders. The Company, when authorized by the resolutions of the Board of Directors, and the Trustee may, from time to time, and at any time amend this Indenture or enter into an indenture or indentures supplemental hereto for one or more of the following purposes:

- (a) make provision with respect to the conversion rights of the holders of Notes pursuant to the requirements of Section 15.06 and the repurchase obligations of the Company pursuant to the requirements of Section 3.05(e);
- (b) to convey, transfer, assign, mortgage or pledge to the Trustee as security for the Notes, any property or assets or to otherwise secure the Notes;
- (c) to evidence the succession of another Person to the Company, or successive successions, and the assumption by the successor Person of the covenants, agreements and obligations of the Company pursuant to Article 12;
- (d) to add to the covenants of the Company such further covenants, restrictions or conditions as the Board of Directors and the Trustee shall consider to be for the benefit of the holders of Notes, and to make the occurrence, or the occurrence and continuance, of a default in any such additional covenants, restrictions or conditions a default or an Event of Default permitting the enforcement of all or any of the several remedies provided in this Indenture as herein set forth; *provided* that in respect of any such additional covenant, restriction or condition, such amendment or supplemental indenture may provide for a particular period of grace after default (which period may be shorter or longer than that allowed in the case of



other defaults) or may provide for an immediate enforcement upon such default or may limit the remedies available to the Trustee upon such default;

(e) to add additional Note Guarantees with respect to the Notes;

(f) to make any change in Article 16 or Article 18 that would limit or terminate the benefits available to any holder of Senior Indebtedness of the Company or any Note Guarantor (or any Representatives therefor) under Article 16 or Article 18;

(g) to provide for the issuance under this Indenture of Notes and to provide for exchangeability of such Notes with the Notes issued hereunder in fully registered form and to make all appropriate changes for such purpose;

(h) to cure any ambiguity or to correct or supplement any provision contained herein or in any amendment or supplemental indenture that may be defective or inconsistent with any other provision contained herein or in any amendment or supplemental indenture, or to make such other provisions in regard to matters or questions arising under this Indenture that shall not adversely affect the interests of the holders of the Notes;

(i) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Notes; or

(j) to modify, eliminate or add to the provisions of this Indenture to such extent as shall be necessary to effect the qualifications of this Indenture under the Trust Indenture Act, or under any similar federal statute hereafter enacted.

An amendment under this Section 11.01 may not make any change that adversely affects the rights under Article 16 or Article 18 of any holder of Senior Indebtedness of the Company or any Note Guarantor unless the holders of such Senior Indebtedness (or any group or representative thereof authorized to give a consent) consent to such change.

Upon the written request of the Company, accompanied by a copy of the resolutions of the Board of Directors certified by its Secretary or Assistant Secretary authorizing the execution of any amendment or supplemental indenture, the Trustee is hereby authorized to join with the Company in the execution of any such amendment or supplemental indenture, to make any further appropriate agreements and stipulations that may be therein contained and to accept the conveyance, transfer and assignment of any property thereunder; provided that the Trustee shall not be obligated to, but may in its discretion, enter into any amendment or supplemental indenture that affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Any amendment or supplemental indenture authorized by the provisions of this Section 11.01 may be executed by the Company and the Trustee without

the consent of the holders of any of the Notes at the time outstanding, notwithstanding any of the provisions of Section 11.02.

SECTION 11.02. Amendment or Supplemental Indenture With Consent Of Noteholders. With the consent (evidenced as provided in Article 9) of the holders of at least a majority in aggregate principal amount of the Notes at the time outstanding, the Company, when authorized by the resolutions of the Board of Directors, and the Trustee may, from time to time and at any time, enter into an amendment to this Indenture or an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or any amendment or supplemental indenture or of modifying in any manner the rights of the holders of the Notes; provided that no such amendment or supplemental indenture shall not without the consent of each Noteholder so affected:

- (a) extend the fixed maturity of any Note;
- (b) reduce the principal amount or premium thereof or change the date on which any Note may be redeemed pursuant to Section 3.01(a) thereof;
- (c) reduce any amount payable on redemption or repurchase thereof;
- (d) change the obligation of the Company to repurchase any Note at the option of a Noteholder on a Repurchase Date in a manner adverse to the holders of Notes, or change the obligation of the Company to repurchase any Note upon the happening of a Designated Event in a manner adverse to the holders of Notes;
- (e) impair the right of any Noteholder to receive payment of principal of such holder's Notes on or after the due dates therefore or to institute suit for the payment thereof;
- (f) make the principal thereof payable in any coin or currency other than that provided in the Notes;
- (g) impair the right to convert the Notes into Common Stock or reduce the number of shares of Common Stock or any other property receivable by a Noteholder upon conversion subject to the terms set forth herein, including Section 15.06;
- (h) modify any of the provisions of this Section 11.02 or Section 7.07, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the holder of each Note so affected;
- (i) change any obligation of the Company to maintain an office or agency in the places and for the purposes set forth in Section 5.02;

(j) reduce the quorum or voting requirements set forth in Article 10 or modify or change Article 16, 17 or 18 in any manner adverse to the Noteholders' rights thereunder; or

(k) reduce the aforesaid percentage of Notes, the holders of which are required to consent to any such amendment or supplemental indenture, without the consent of the holders of all Notes then outstanding.

Upon the written request of the Company, accompanied by a copy of the resolutions of the Board of Directors certified by its Secretary or Assistant Secretary authorizing the execution of any such amendment or supplemental indenture, and upon the filing with the Trustee of evidence of the consent of Noteholders as aforesaid, the Trustee shall join with the Company in the execution of such amendment or supplemental indenture unless such amendment or supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such amendment or supplemental indenture.

It shall not be necessary for the consent of the Noteholders under this Section 11.02 to approve the particular form of any proposed amendment or supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof.

**SECTION 11.03. Effect Of Amendment or Supplemental Indenture.** Any amendment or supplemental indenture executed pursuant to the provisions of this Article 11 shall comply with the Trust Indenture Act, as then in effect, provided that this Section 11.03 shall not require such amendment or supplemental indenture or the Trustee to be qualified under the Trust Indenture Act prior to the time such qualification is in fact required under the terms of the Trust Indenture Act or the Indenture has been qualified under the Trust Indenture Act, nor shall it constitute any admission or acknowledgment by any party to such amendment or supplemental indenture that any such qualification is required prior to the time such qualification is in fact required under the terms of the Trust Indenture Act or the Indenture has been qualified under the Trust Indenture Act. Upon the execution of any amendment or supplemental indenture pursuant to the provisions of this Article 11, this Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitation of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company, the Note Guarantors and the holders of Notes shall thereafter be determined, exercised and enforced hereunder, subject in all respects to such modifications and amendments and all the terms and conditions of any such amendment or supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

**SECTION 11.04. Notation On Notes.** Notes authenticated and delivered after the execution of any amendment or supplemental indenture pursuant to the

provisions of this Article 11 may bear a notation in form approved by the Trustee as to any matter provided for in such amendment or supplemental indenture. If the Company or the Trustee shall so determine, new Notes so modified as to conform, in the opinion of the Trustee and the Board of Directors, to any modification of this Indenture contained in any such amendment or supplemental indenture may, at the Company's expense, be prepared and executed by the Company, authenticated by the Trustee (or an authenticating agent duly appointed by the Trustee pursuant to Section 19.11) and delivered in exchange for the Notes then outstanding, upon surrender of such Notes then outstanding.

SECTION 11.05. Evidence Of Compliance Of Amendment or Supplemental Indenture To Be Furnished To Trustee. Prior to entering into any amendment or supplemental indenture, the Trustee shall be provided with an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any amendment or supplemental indenture executed pursuant hereto complies with the requirements of this Article 11 and is otherwise authorized or permitted by this Indenture.

SECTION 11.06. Execution of Amendment or Supplemental Indenture for Future Note Guarantors. Each Subsidiary which is required to become a Note Guarantor pursuant to Section 5.08 shall promptly execute and deliver to the Trustee an amendment or supplemental indenture pursuant to which such Subsidiary shall become a Note Guarantor under this Section 11.06 and shall guarantee the Guaranteed Obligations. Concurrently with the execution and delivery of such amendment or supplemental indenture, the Company shall deliver to the Trustee an Opinion of Counsel and an Officers' Certificate to the effect that such amendment or supplemental indenture has been duly authorized, executed and delivered by such Subsidiary and that, subject to the application of bankruptcy, insolvency, moratorium, fraudulent conveyance or transfer and other similar laws relating to creditors' rights generally and to the principles of equity, whether considered in a proceeding at law or in equity, the Note Guarantee of such Note Guarantor is a legal, valid and binding obligation of such Note Guarantor, enforceable against such Note Guarantor in accordance with its terms and or to such other matters as the Trustee may reasonably request.

ARTICLE 12  
CONSOLIDATION, MERGER, SALE, CONVEYANCE AND LEASE

SECTION 12.01. When Company May Merge or Transfer Assets. (a) The Company shall not consolidate with or merge with or into, or convey, transfer or lease all or substantially all its assets to, any Person, unless:

(i) the resulting, surviving or transferee Person (the "Successor Company") shall be a corporation organized and existing under the laws of the United States of America, any State thereof or the District of Columbia and the Successor Company (if not the Company as the case may be) shall expressly assume, by a supplemental indenture hereto,

executed and delivered to the Trustee, in form reasonably satisfactory to the Trustee, all the obligations of the Company under the Notes and this Indenture;

(ii) immediately after giving effect to such transaction (and treating any Indebtedness which becomes an obligation of the Successor Company or any Restricted Subsidiary as a result of such transaction as having been Incurred by the Successor Company or such Restricted Subsidiary at the time of such transaction), no Default shall have occurred and be continuing; and

(iii) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indenture (if any) comply with this Indenture.

The Successor Company shall succeed to, and be substituted for, and may exercise every right and power of the Company under this Indenture.

(b) The Company shall not permit any Note Guarantor to consolidate with or merge with or into, or convey, transfer or lease all or substantially all of its assets to any Person unless:

(i) in the case of any Note Guarantor which is a Domestic Subsidiary, the resulting, surviving or transferee Person will be a corporation, partnership or limited liability company organized and existing under the laws of the United States of America, any State thereof or the District of Columbia, and such Person (if not such Note Guarantor) shall expressly assume, by a supplemental indenture, executed and delivered to the Trustee, in form satisfactory to the Trustee, all the obligations of such Note Guarantor under its Note Guarantee;

(ii) immediately after giving effect to such transaction (and treating any Indebtedness which becomes an obligation of the resulting, surviving or transferee Person as a result of such transaction as having been Incurred by such Person at the time of such transaction), no Default shall have occurred and be continuing; and

(iii) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger or transfer and such supplemental indenture (if any) comply with this Indenture; provided, however, that the foregoing shall not apply to any Note Guarantor which ceases to Guarantee any Indebtedness of the Company evidenced by the Senior Subordinated Notes or, if no Senior Subordinated Notes remain outstanding, by any of the Senior Secured Notes, or if no Senior Secured Notes remain outstanding, by any outstanding Designated Notes.

SECTION 12.02. Successor To Be Substituted. In case of any such consolidation, merger, sale, conveyance, transfer or lease and upon the assumption by the successor Person, by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of the due and punctual payment of the principal of all of the Notes and the due and punctual performance of all of the covenants and conditions of this Indenture to be performed by the Company, such successor Person shall succeed to and be substituted for the Company, with the same effect as if it had been named herein as the party of this first part. Such successor Person thereupon may cause to be signed, and may issue either in its own name or in the name of ON Semiconductor Corporation any or all of the Notes, issuable hereunder that theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such successor Person instead of the Company and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver, or cause to be authenticated and delivered, any Notes that previously shall have been signed and delivered by the officers of the Company to the Trustee for authentication, and any Notes that such successor Person thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the Notes so issued shall in all respects have the same legal rank and benefit under this Indenture as the Notes theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Notes had been issued at the date of the execution hereof. In the event of any such consolidation, merger, sale, conveyance, transfer or lease, the Person named as the “**Company**” in the first paragraph of this Indenture or any successor that shall thereafter have become such in the manner prescribed in this Article 12 may be dissolved, wound up and liquidated at any time thereafter and such Person shall be released from its liabilities as obligor and maker of the Notes and from its obligations under this Indenture.

In case of any such consolidation, merger, sale, conveyance, transfer or lease, such changes in phraseology and form (but not in substance) may be made in the Notes thereafter to be issued as may be appropriate.

ARTICLE 13  
SATISFACTION AND DISCHARGE OF INDENTURE

SECTION 13.01. Discharge Of Indenture. When (a) the Company shall deliver to the Trustee for cancellation all Notes theretofore authenticated (other than any Notes that have been destroyed, lost or stolen and in lieu of or in substitution for which other Notes shall have been authenticated and delivered) and not theretofore canceled, or (b) all the Notes not theretofore canceled or delivered to the Trustee for cancellation shall have become due and payable, or are by their terms to become due and payable within one year or are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption, and the Company shall deposit with the Trustee, in trust, funds or U.S. Government Obligations sufficient to pay at maturity or upon redemption of all of the Notes (other than any Notes that shall

have been mutilated, destroyed, lost or stolen and in lieu of or in substitution for which other Notes shall have been authenticated and delivered) not theretofore canceled or delivered to the Trustee for cancellation, including principal due or to become due to such date of maturity or redemption date, as the case may be, accompanied by a verification report, in the case of a deposit of U.S. Government Obligations, as to the sufficiency of the deposited amount, from an independent certified accountant or other financial professional satisfactory to the Trustee, and if the Company shall also pay or cause to be paid all other sums payable hereunder by the Company, then this Indenture shall cease to be of further effect (except as to (i) remaining rights of registration of transfer, substitution and exchange and conversion of Notes, (ii) rights hereunder of Noteholders to receive payments of principal of and interest, if any, on, the Notes and the other rights, duties and obligations of Noteholders, as beneficiaries hereof with respect to the amounts, if any, so deposited with the Trustee and (iii) the rights, obligations and immunities of the Trustee hereunder), and the Trustee, on written demand of the Company accompanied by an Officers' Certificate and an Opinion of Counsel as required by Section 19.05 and at the cost and expense of the Company, shall execute proper instruments acknowledging satisfaction of and discharging this Indenture; the Company, however, hereby agrees to reimburse the Trustee for any costs or expenses thereafter reasonably and properly incurred by the Trustee and to compensate the Trustee for any services thereafter reasonably and properly rendered by the Trustee in connection with this Indenture or the Notes.

SECTION 13.02. Deposited Monies To Be Held In Trust By Trustee. Subject to Section 13.04, all monies or securities deposited with the Trustee pursuant to Section 13.01, shall be held in trust for the sole benefit of the Noteholders, and such monies shall be applied by the Trustee to the payment, either directly or through any paying agent (including the Company if acting as its own paying agent), to the holders of the particular Notes for the payment or redemption of which such monies have been deposited with the Trustee, of all sums due and to become due thereon for principal.

SECTION 13.03. Paying Agent To Repay Monies Held. Upon the satisfaction and discharge of this Indenture, all monies then held by any paying agent of the Notes (other than the Trustee) shall, upon written request of the Company, be repaid to it or paid to the Trustee, and thereupon such paying agent shall be released from all further liability with respect to such monies.

SECTION 13.04. Return Of Unclaimed Monies. Subject to the requirements of applicable law, any monies deposited with or paid to the Trustee for payment of the principal on Notes and not applied but remaining unclaimed by the holders of Notes for two years after the date upon which the principal of such Notes, as the case may be, shall have become due and payable, shall be repaid to the Company by the Trustee on demand and all liability of the Trustee shall thereupon cease with respect to such monies; and the holder of any of the Notes shall thereafter look only to the Company for any payment that such holder may

be entitled to collect unless an applicable abandoned property law designates another Person.

SECTION 13.05. Reinstatement. If the Trustee or the paying agent is unable to apply any money in accordance with Section 13.02 by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 13.01 until such time as the Trustee or the paying agent is permitted to apply all such money in accordance with Section 13.02; provided that if the Company makes any payment of principal of any Note following the reinstatement of its obligations, the Company shall be subrogated to the rights of the holders of such Notes to receive such payment from the money held by the Trustee or paying agent.

ARTICLE 14  
IMMUNITY OF INCORPORATORS, STOCKHOLDERS,  
OFFICERS AND DIRECTORS

SECTION 14.01. Indenture And Notes Solely Corporate Obligations. No recourse for the payment of the principal of or interest, if any, on any Note, or for any claim based thereon or otherwise in respect thereof, and no recourse under or upon any obligation, covenant or agreement of the Company in this Indenture or in any amendment or supplemental indenture or in any Note, or because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, employee, agent, officer, director or subsidiary, as such, past, present or future, of the Company or of any successor corporation, either directly or through the Company or any successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that all such liability is hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issue of the Notes.



ARTICLE 15  
CONVERSION OF NOTES

SECTION 15.01. Right To Convert. (a) Subject to and upon compliance with the provisions of this Indenture, on or prior to April 14, 2024, the holder of any Note shall have the right, at such holder's option, to convert the principal amount of the Note, or any portion of such principal amount which is a multiple of \$1,000, into fully paid and non-assessable shares of Common Stock (as such shares shall then be constituted) at the Conversion Rate in effect at such time, by surrender of the Note so to be converted in whole or in part, together with any required funds, under the circumstances described in this Section 15.01 and in the manner provided in Section 15.02. The Notes shall be convertible only upon the occurrence of one of the following events:

(i) during any Fiscal Quarter commencing after June 30, 2004, if the Closing Sale Price of the Common Stock exceeds 120% of the then-effective Conversion Price for at least 20 Trading Days in the 30 consecutive Trading Day period ending on the last Trading Day of the immediately preceding Fiscal Quarter (it being understood for purposes of this Section 15.01(a)(i) that the Conversion Price in effect at the close of business on each of the 30 consecutive Trading Days should be used); provided, that if the Notes became convertible under this subclause (i) during any fiscal quarter, then the Notes will remain convertible at all times thereafter until the close of business on April 14, 2024;

(ii) during the five Business Day period immediately following any five consecutive Trading Day period (the "**Measurement Period**") in which the Trading Price per \$1,000 principal amount of the Notes for each day of such Measurement Period was less than 98% of the product of the Closing Sale Price and the number of shares of Common Stock issuable upon conversion of \$1,000 principal amount of the Notes; *provided* that no conversion pursuant to this clause (ii) may be made after April 15, 2019, if on any Trading Day during the Measurement Period, the Closing Sale Price is more than 100%, but less than 120% of the Conversion Price on such Trading Day;

(iii) if such Note has been called for redemption, at any time on or after the date the notice of redemption has been given until the close of business on the second Business Day immediately preceding the redemption date; or

(iv) after the date, if ever, on which either Moody's Investors Service, Inc. ("Moody's") or Standard & Poor's Ratings Services ("S&P") assigns an initial credit rating to the Notes (a) the credit rating assigned to the Notes by either Moody's or S&P is three or more rating subcategories below the initial credit rating assigned by Moody's or S&P, as the case may be, or (b) any period in which the Notes are no longer rated by either Moody's or S&P, as the case may be if such ratings agency had previously rated the Notes.

(v) as provided in Section (b) of this Section 15.01.

The Company (or other conversion agent appointed by the Company) shall determine on a daily basis during the time period specified in Section 15.01(a) (i) whether the Notes shall be convertible as a result of the occurrence of an event specified in clause (i) above and, if the Notes shall be so convertible, the Company (or other conversion agent appointed by the Company) shall promptly deliver to the Trustee written notice thereof. Whenever the Notes shall become convertible pursuant to this Section 15.01, the Company or, at the Company's request, the Trustee in the name and at the expense of the Company, shall notify the holders of the event triggering such convertibility in the manner provided in

Section 19.03. Any notice so given shall be conclusively presumed to have been duly given, whether or not the holder receives such notice.

Neither the conversion agent appointed by the Company nor the Trustee shall have an obligation to determine the Trading Price under this Section 15.01 unless the Company has requested such a determination; and the Company shall have no obligation to make such request unless a holder provides it with reasonable evidence that the Trading Price per \$1,000 principal amount of Notes would be less than 98% of the product of the Closing Sale Price and the number of shares of Common Stock issuable upon conversion of \$1,000 principal amount of Notes. If such evidence is provided, the Company shall instruct the Trustee (or conversion agent) to determine the Trading Price of the Notes beginning on the next Trading Day and on each successive Trading Day until the Trading Price per \$1,000 principal amount of Notes is greater than or equal to 98% of the product of the Closing Sale Price and the number of shares issuable upon conversion of \$1,000 principal amount of the Notes; *provided* that the Trustee shall be under no duty or obligation to make the calculations described in Section 15.01(a)(ii) hereof or to determine whether the Notes are convertible pursuant to such section. For the avoidance of doubt, the Company shall make the calculations described in Section 15.01(a)(ii), using the Trading Price provided by the Trustee.

The Trustee shall be entitled at its sole discretion to consult with the Company and to request the assistance of the Company in connection with the Trustee's duties and obligations pursuant to Section 15.01(a)(ii) hereof, and the Company agrees, if requested by the Trustee, to cooperate with, and provide assistance to, the Trustee in carrying out its duties under this Section 15.01; *provided* that nothing herein shall be construed to relieve the Trustee of its duties pursuant to Section 15.01(a)(ii) hereof.

(b) In addition, if:

(i) (A) the Company distributes to all holders of its Common Stock rights or warrants entitling them (for a period expiring within 45 days of the record date for the determination of the stockholders entitled to receive such distribution) to subscribe for or purchase shares of Common Stock, at a price per share less than the average of the Closing Sale Price for the ten Trading Days immediately preceding, but not including, the date such distribution is first publicly announced by the Company; (B) the Company distributes to all holders of its Common Stock, cash or other assets, debt securities or rights to purchase its securities, where the Fair Market Value of such distribution per share of Common Stock exceeds 10% of the Closing Sale Price on the Trading Day immediately preceding the date such distribution is first publicly announced by the Company, then, in either case, the Notes may be surrendered for conversion at any time on and after the date that the Company gives notice to the holders of such distribution, which shall be not less than 20 days prior to the Ex-Dividend Time for such distribution, until the earlier of the close of

business on the second Business Day immediately preceding, but not including, the Ex-Dividend Time or the date the Company publicly announces that such distribution will not take place; *provided* that no adjustment to the Conversion Rate will be made if the holder will otherwise participate in such distribution without conversion in which case a holder of a Note will not have the ability to convert pursuant to this Section 15.01(b); or

(ii) the Company consolidates with or merges with or into another Person or is a party to a binding share exchange or conveys, transfers, sells, leases or otherwise disposes of all or substantially all of its properties and assets in each case pursuant to which the Company's Common Stock is converted into cash, securities or other property, then the Notes may be surrendered for conversion at any time from and after the date fifteen (15) days prior to the anticipated effective date of the transaction and ending on and including the date fifteen (15) days after the consummation of the transaction. The Board of Directors shall determine the anticipated effective date of the transaction, and such determination shall be conclusive and binding on the holders. Beginning on the effective date of the transaction, the right to convert the Notes into Common Stock will convert into a right to convert the Notes into the kind and amount of cash, securities and other property that a Noteholder would have received if such holder had converted such holder's Notes immediately prior to the transaction. If such transaction also constitutes a Designated Event, a Noteholder may require the Company to repurchase all or a portion of such holder's Notes pursuant to Section 3.05.

**"Ex-Dividend Time"** means, with respect to any distribution on shares of Common Stock, the first date on which the shares of Common Stock trade regular way on the principal securities market on which the shares of Common Stock are then traded without the right to receive such distribution.

(c) A Note in respect of which a holder is electing to exercise its option to require the Company to repurchase such holder's Notes upon a Designated Event pursuant to Section 3.05, or at the option of the holder pursuant to Section 3.06, may be converted only if such holder withdraws its election in accordance with Section 3.05(c) or Section 3.08, respectively. A holder of Notes is not entitled to any rights of a holder of Common Stock until such holder has converted his Notes to Common Stock, and only to the extent such Notes are deemed to have been converted to Common Stock under this Article 15.

SECTION 15.02. Exercise Of Conversion Privilege; Issuance Of Common Stock On Conversion; No Adjustment For Dividends. In order to exercise the conversion privilege with respect to any Note in certificated form, the Company must receive at the office or agency of the Company maintained for that purpose or, at the option of such holder, the Corporate Trust Office, such Note

with the original or facsimile of the form entitled “**Conversion Notice**” on the reverse thereof, duly completed and manually signed, together with such Notes duly endorsed for transfer, accompanied by the funds, if any, required by the penultimate paragraph of this Section 15.02. Such notice shall also state the name or names (with address or addresses) in which the certificate or certificates for shares of Common Stock which shall be issuable on such conversion shall be issued, and shall be accompanied by transfer or similar taxes, if required pursuant to Section 15.07.

In order to exercise the conversion privilege with respect to any interest in a Global Note, the beneficial holder must complete, or cause to be completed, the appropriate instruction form for conversion pursuant to the Depository’s book-entry conversion program, deliver, or cause to be delivered, by book-entry delivery an interest in such Global Note, furnish appropriate endorsements and transfer documents if required by the Company or the Trustee or conversion agent, and pay the funds, if any, required by this Section 15.02 and any transfer taxes if required pursuant to Section 15.07.

As promptly as practicable after satisfaction of the requirements for conversion set forth above, subject to compliance with any restrictions on transfer if shares issuable on conversion are to be issued in a name other than that of the Noteholder (as if such transfer were a transfer of the Note or Notes (or portion thereof) so converted), the Company shall issue and shall deliver to such Noteholder at the office or agency maintained by the Company for such purpose pursuant to Section 5.02, a certificate or certificates for the number of full shares of Common Stock issuable upon the conversion of such Note or portion thereof as determined by the Company in accordance with the provisions of this Article 15 and a check or cash in respect of any fractional interest in respect of a share of Common Stock arising upon such conversion, calculated by the Company as provided in Section 15.03; provided that at the Company’s option the Company may issue one share of its Common Stock in lieu of paying for any fractional interest in respect of a share of Common Stock. In case any Note of a denomination greater than \$1,000 shall be surrendered for partial conversion, and subject to Section 2.03, the Company shall execute and the Trustee shall authenticate and deliver to the holder of the Note so surrendered, without charge to him, a new Note or Notes in authorized denominations in an aggregate principal amount equal to the unconverted portion of the surrendered Note.

Each conversion shall be deemed to have been effected as to any such Note (or portion thereof) on the date (the “**Conversion Date**”) on which the requirements set forth above in this Section 15.02 have been satisfied as to such Note (or portion thereof), and the Person in whose name any certificate or certificates for shares of Common Stock shall be issuable upon such conversion shall be deemed to have become on said date the holder of record of the shares represented thereby; *provided* that any such surrender on any date when the stock transfer books of the Company shall be closed shall constitute the Person in whose name the certificates are to be issued as the record holder thereof for all

purposes on the next succeeding day on which such stock transfer books are open, but such conversion shall be at the Conversion Rate in effect on the date upon which such Note shall be surrendered.

Upon the conversion of an interest in a Global Note, the Trustee (or other conversion agent appointed by the Company), or the Custodian at the direction of the Trustee (or other conversion agent appointed by the Company), shall make a notation on such Global Note as to the reduction in the principal amount represented thereby. The Company shall notify the Trustee in writing of any conversions of Notes effected through any conversion agent other than the Trustee.

SECTION 15.03. Cash Payments in Lieu of Fractional Shares. No fractional shares of Common Stock or scrip certificates representing fractional shares shall be issued upon conversion of Notes. If more than one Note shall be surrendered for conversion at one time by the same holder, the number of full shares that shall be issuable upon conversion shall be computed on the basis of the aggregate principal amount of the Notes (or specified portions thereof to the extent permitted hereby) so surrendered. If any fractional share of stock would be issuable upon the conversion of any Note or Notes, the Company shall make an adjustment and payment therefor in cash at the current market price thereof to the holder of Notes; provided that at the Company's option, the Company may issue one share of its Common Stock in lieu of paying cash for any fractional interest in respect of a share of Common Stock. The current market price of a share of Common Stock shall be the Closing Sale Price on the last Trading Day immediately preceding the Conversion Date.

SECTION 15.04. Conversion Rate. Each \$1,000 principal amount of the Notes shall be convertible into the number of shares of Common Stock specified in the form of Note (herein called the "**Conversion Rate**") attached as Exhibit A hereto, subject to adjustment as provided in this Article 15.

SECTION 15.05. Adjustment Of Conversion Rate. The Conversion Rate shall be adjusted from time to time by the Company as follows:

(a) In case the Company shall hereafter pay a dividend or make a distribution to all holders of the outstanding Common Stock in shares of Common Stock, the Conversion Rate shall be increased so that the same shall equal the rate determined by multiplying the Conversion Rate in effect at the opening of business on the date following the date fixed for the determination of stockholders entitled to receive such dividend or other distribution by a fraction,

(i) the numerator of which shall be the sum of the number of shares of Common Stock outstanding at the close of business on the date fixed for the determination of stockholders entitled to receive such dividend or

other distribution plus the total number of shares of Common Stock constituting such dividend or other distribution; and

(ii) the denominator of which shall be the number of shares of Common Stock outstanding at the close of business on the date fixed for such determination,

such increase to become effective immediately after the opening of business on the day following the date fixed for such determination. For the purpose of this paragraph (a), the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company. The Company will not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company. If any dividend or distribution of the type described in this Section 15.05(a) is declared but not so paid or made, the Conversion Rate shall again be adjusted to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(b) In case the Company shall issue rights or warrants to all holders of its outstanding shares of Common Stock entitling them (for a period expiring within forty-five (45) days after the date fixed for determination of stockholders entitled to receive such rights or warrants) to subscribe for or purchase shares of Common Stock at a price per share less than the average of the Closing Sale Prices of the Common Stock for the 10 Trading Days immediately preceding the date such distribution is first publicly announced by the Company, the Conversion Rate shall be increased so that the same shall equal the rate determined by multiplying the Conversion Rate in effect immediately prior to the date fixed for determination of stockholders entitled to receive such rights or warrants by a fraction,

(i) the numerator of which shall be the number of shares of Common Stock outstanding on the date fixed for determination of stockholders entitled to receive such rights or warrants plus the total number of additional shares of Common Stock offered for subscription or purchase, and

(ii) the denominator of which shall be the sum of the number of shares of Common Stock outstanding at the close of business on the date fixed for determination of stockholders entitled to receive such rights or warrants plus the number of shares that the aggregate offering price of the total number of shares so offered would purchase at a price equal to the average of the Closing Sale Prices of the Common Stock for the 10 Trading Days immediately preceding the date such distribution is first publicly announced by the Company,

such adjustment shall be successively made whenever any such rights or warrants are issued, and shall become effective immediately after the opening of business on the day following the date fixed for determination of stockholders entitled to

receive such rights or warrants. To the extent that shares of Common Stock are not delivered after the expiration of such rights or warrants, the Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect had the adjustments made upon the issuance of such rights or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights or warrants are not so issued, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such date fixed for the determination of stockholders entitled to receive such rights or warrants had not been fixed. In determining whether any rights or warrants entitle the holders to subscribe for or purchase shares of Common Stock at a price less than the average of the Closing Sale Prices of the Common Stock for the 10 Trading Days immediately preceding the date such distribution is first publicly announced by the Company, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received by the Company for such rights or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors.

(c) In case outstanding shares of Common Stock shall be subdivided into a greater number of shares of Common Stock, the Conversion Rate in effect at the opening of business on the day following the day upon which such subdivision becomes effective shall be proportionately increased, and conversely, in case outstanding shares of Common Stock shall be combined into a smaller number of shares of Common Stock, the Conversion Rate in effect at the opening of business on the day following the day upon which such combination becomes effective shall be proportionately reduced, such increase or reduction, as the case may be, to become effective immediately after the opening of business on the day following the day upon which such subdivision or combination becomes effective.

(d) In case the Company shall, by dividend or otherwise, distribute to all holders of its Common Stock shares of any class of capital stock of the Company or evidences of its indebtedness or assets (including securities, but excluding any rights or warrants referred to in Section 15.05(b), and excluding any dividend or distribution (x) paid exclusively in cash or (y) referred to in Section 15.05(a) (any of the foregoing hereinafter in this Section 15.05(d)) called the "**Securities**")), then, in each such case (unless the Company elects to reserve such Securities for distribution to the Noteholders upon the conversion of the Notes so that any such holder converting Notes will receive upon such conversion, in addition to the shares of Common Stock to which such holder is entitled, the amount and kind of such Securities which such holder would have received if such holder had converted its Notes into Common Stock immediately prior to the Record Date for such distribution of the Securities) the Conversion Rate shall be increased so that the same shall be equal to the rate determined by multiplying the Conversion Rate in effect on the Record Date with respect to such distribution by a fraction,

(i) the numerator of which shall be the Current Market Price on such Record Date; and

(ii) the denominator of which shall be the Current Market Price on such Record Date less the Fair Market Value (as determined by the Board of Directors, whose determination shall be conclusive, and described in a resolution of the Board of Directors) on the Record Date of the portion of the Securities so distributed applicable to one share of Common Stock,

such adjustment to become effective immediately prior to the opening of business on the day following such Record Date; *provided* that if the then Fair Market Value (as so determined) of the portion of the Securities so distributed applicable to one share of Common Stock is equal to or greater than the Current Market Price on the Record Date, in lieu of the foregoing adjustment, adequate provision shall be made so that each Noteholder shall have the right to receive upon conversion the amount of Securities such holder would have received had such holder converted each Note on the Record Date. If such dividend or distribution is not so paid or made, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. If the Board of Directors determines the Fair Market Value of any distribution for purposes of this Section 15.05(d) by reference to the actual or when issued trading market for any securities, it must in doing so consider the prices in such market over the same period used in computing the Current Market Price on the applicable Record Date. Notwithstanding the foregoing, if the Securities distributed by the Company to all holders of its Common Stock consist of capital stock of, or similar equity interests in, a Subsidiary or other business unit, the Conversion Rate shall be increased so that the same shall be equal to the rate determined by multiplying the Conversion Rate in effect on the Record Date with respect to such distribution by a fraction,

(i) the numerator of which shall be the sum of (A) the average of the Closing Sale Prices of the Common Stock for the ten (10) Trading Days commencing on and including the fifth Trading Day after the Ex-Dividend Time plus (B) the Fair Market Value of the securities distributed in respect of each share of Common Stock for which this Section 15.05(d) applies and shall equal the number of securities distributed in respect of each share of Common Stock multiplied by the average of the closing sale prices of those securities distributed (where such closing sale prices are available) for the ten (10) Trading Days commencing on and including the fifth Trading Day after the Ex-Dividend Time; and

(ii) the denominator of which shall be the average of the Closing Sale Prices of the Common Stock for the ten (10) Trading Days commencing on and including the fifth Trading Day after the Ex-Dividend Time,

such adjustment to become effective immediately prior to the opening of business on the day following such Record Date; *provided* that the Company may in lieu of



the foregoing adjustment make adequate provision so that each Noteholder shall have the right to receive upon conversion the amount of Securities such holder would have received had such holder converted each Note on the Record Date with respect to such distribution.

Rights or warrants distributed by the Company to all holders of Common Stock entitling the holders thereof to subscribe for or purchase shares of the Company's capital stock (either initially or under certain circumstances), which rights or warrants, until the occurrence of a specified event or events ("**Trigger Event**"): (i) are deemed to be transferred with such shares of Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of Common Stock, shall be deemed not to have been distributed for purposes of this Section 15.05 (and no adjustment to the Conversion Rate under this Section 15.05 will be required) until the occurrence of the earliest Trigger Event, whereupon such rights and warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 15.05(d). If any such right or warrant, including any such existing rights or warrants distributed prior to the date of this Indenture, are subject to events, upon the occurrence of which such rights or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and record date with respect to new rights or warrants with such rights (and a termination or expiration of the existing rights or warrants without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 15.05 was made, (1) in the case of any such rights or warrants that shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Rate shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or repurchase price received by a holder or holders of Common Stock with respect to such rights or warrants (assuming such holder had retained such rights or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase, and (2) in the case of such rights or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights and warrants had not been issued.

No adjustment of the Conversion Rate shall be made pursuant to this Section 15.05(d) in respect of rights or warrants distributed or deemed distributed on any Trigger Event to the extent that such rights or warrants are actually distributed, or reserved by the Company for distribution to holders of Notes upon conversion by such holders of Notes to Common Stock.

For purposes of this Section 15.05(d) and Section 15.05(a) and (b), any dividend or distribution to which this Section 15.05(d) is applicable that also includes shares of Common Stock, or rights or warrants to subscribe for or purchase shares of Common Stock (or both), shall be deemed instead to be (1) a dividend or distribution of the evidences of indebtedness, assets or shares of capital stock other than such shares of Common Stock or rights or warrants (and any Conversion Rate adjustment required by this Section 15.05(d) with respect to such dividend or distribution shall then be made) immediately followed by (2) a dividend or distribution of such shares of Common Stock or such rights or warrants (and any further Conversion Rate adjustment required by Sections 15.05(a) and 15.05(b) with respect to such dividend or distribution shall then be made), except (A) the Record Date of such dividend or distribution shall be substituted as “the date fixed for the determination of stockholders entitled to receive such dividend or other distribution”, “the date fixed for the determination of stockholders entitled to receive such rights or warrants” and “the date fixed for such determination” within the meaning of Section 15.05(a) and 15.05(b) and (B) any shares of Common Stock included in such dividend or distribution shall not be deemed “outstanding at the close of business on the date fixed for such determination” within the meaning of Section 15.05(a).

(e) In case the Company shall, by dividend or otherwise, distribute to all holders of its Common Stock cash (excluding any dividend or distribution in connection with the liquidation, dissolution or winding up of the Company, whether voluntary or involuntary), then, in such case, the Conversion Rate shall be increased so that the same shall equal the rate determined by multiplying the Conversion Rate in effect immediately prior to the close of business on such record date by a fraction,

(i) the numerator of which shall be the Current Market Price on such record date; and

(ii) the denominator of which shall be the Current Market Price on such record date less the amount of cash so distributed applicable to one share of Common Stock,

such adjustment to be effective immediately prior to the opening of business on the day following the record date; *provided* that if the portion of the cash so distributed applicable to one share of Common Stock is equal to or greater than the Current Market Price on the record date, in lieu of the foregoing adjustment, adequate provision shall be made so that each Noteholder shall have the right to receive upon conversion the amount of cash such holder would have received had such holder converted each Note on the record date. If such dividend or distribution is not so paid or made, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(f) In case a tender or exchange offer made by the Company or any Subsidiary for all or any portion of the Common Stock shall expire and such tender or exchange offer (as amended upon the expiration thereof) shall require the payment to stockholders of consideration per share of Common Stock having a Fair Market Value (as determined by the Board of Directors, whose determination shall be conclusive and described in a resolution of the Board of Directors) that as of the last time (the “**Expiration Time**”) tenders or exchanges may be made pursuant to such tender or exchange offer (as it may be amended) exceeds the Closing Sale Price of a share of Common Stock on the Trading Day next succeeding the Expiration Time, the Conversion Rate shall be increased so that the same shall equal the rate determined by multiplying the Conversion Rate in effect immediately prior to the Expiration Time by a fraction,

(i) the numerator of which shall be the sum of (x) the Fair Market Value (determined as aforesaid) of the aggregate consideration payable to stockholders based on the acceptance (up to any maximum specified in the terms of the tender or exchange offer) of all shares validly tendered or exchanged and not withdrawn as of the Expiration Time (the shares deemed so accepted up to any such maximum, being referred to as the “**Purchased Shares**”) and (y) the product of the number of shares of Common Stock outstanding (less any Purchased Shares) at the Expiration Time and the Closing Sale Price of a share of Common Stock on the Trading Day next succeeding the Expiration Time, and

(ii) the denominator of which shall be the number of shares of Common Stock outstanding (including the Purchased Shares) at the Expiration Time multiplied by the Closing Sale Price of a share of Common Stock on the Trading Day next succeeding the Expiration Time,

such adjustment to become effective immediately prior to the opening of business on the day following the Expiration Time. If the Company is obligated to purchase shares pursuant to any such tender or exchange offer, but the Company is permanently prevented by applicable law from effecting any such purchases or all such purchases are rescinded, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such tender or exchange offer had not been made.

(g) In addition, the Conversion Rate shall be adjusted to the extent required by Section 2(e) of the Registration Rights Agreement.

(h) For purposes of this Section 15.05, the following terms shall have the meaning indicated:

(i) “**Current Market Price**” shall mean the average of the daily Closing Sale Prices per share of Common Stock for the ten consecutive Trading Days ending on the earlier of such date of determination and the

day before the “**ex**” date with respect to the issuance, distribution, subdivision or combination requiring such computation immediately prior to the date in question. For purpose of this paragraph, the term “**ex**” date, (1) when used with respect to any issuance or distribution, means the first date on which the Common Stock trades, regular way, on the relevant exchange or in the relevant market from which the Closing Sale Price was obtained without the right to receive such issuance or distribution, and (2) when used with respect to any subdivision or combination of shares of Common Stock, means the first date on which the Common Stock trades, regular way, on such exchange or in such market after the time at which such subdivision or combination becomes effective.

If another issuance, distribution, subdivision or combination to which Section 15.05 applies occurs during the period applicable for calculating “Current Market Price” pursuant to the definition in the preceding paragraph, “Current Market Price” shall be calculated for such period in a manner determined by the Board of Directors to reflect the impact of such issuance, distribution, subdivision or combination on the Closing Sale Price of the Common Stock during such period.

(ii) “**Record Date**” shall mean, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock have the right to receive any cash, securities or other property or in which the Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of stockholders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract or otherwise).

(iii) “**Trading Day**” shall mean (x) if the applicable security is quoted on the Nasdaq Stock Market, a day on which trades may be made thereon or (y) if the applicable security is listed or admitted for trading on the American Stock Exchange, New York Stock Exchange or another national securities exchange, a day on which the American Stock Exchange, New York Stock Exchange or another national securities exchange is open for business or (z) if the applicable security is not so listed, admitted for trading or quoted, any day other than a Saturday or Sunday or a day on which banking institutions in the State of New York are authorized or obligated by law or executive order to close.

(i) The Company may make such increases in the Conversion Rate, in addition to those required by Section 15.05(a), (b), (c), (d), (e), or (f) as the Board of Directors considers to be advisable to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes.

To the extent permitted by applicable law and Nasdaq Marketplace rules, the Company from time to time may increase the Conversion Rate by any amount for any period of time if the Board of Directors shall have made a determination that such increase would be in the best interests of the Company, which determination shall be conclusive. Whenever the Conversion Rate is increased pursuant to the preceding sentence, the Company shall mail to holders of record of the Notes a notice of the increase, and such notice shall state the increased Conversion Rate and the period during which it will be in effect.

(j) No adjustment in the Conversion Rate shall be required unless such adjustment would require an increase or decrease of at least one percent (1.00%) in such rate; *provided* that any adjustments that by reason of this Section 15.05(j) are not required to be made shall be carried forward and taken into account in any subsequent adjustment; *provided* that this paragraph (j) shall not apply to any Conversion Rate Increase Amount required to be effected or paid in the Registration Rights Agreement. All calculations under this Article 15 shall be made by the Company and shall be made to the nearest cent or to the nearest one-ten thousandth (1/10,000) of a share, as the case may be. No adjustment need be made for rights to purchase Common Stock pursuant to a Company plan for reinvestment of dividends or interest or for any issuance of Common Stock or convertible or exchangeable securities or rights to purchase Common Stock or convertible or exchangeable securities. To the extent the Notes become convertible into cash, assets, property or securities (other than capital stock of the Company), no adjustment need be made thereafter as to the cash, assets, property or such securities. Interest will not accrue on any cash into which the Notes are convertible.

(k) Whenever the Conversion Rate is adjusted as herein provided, the Company shall promptly file with the Trustee and any conversion agent other than the Trustee an Officers' Certificate setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Unless and until a Responsible Officer of the Trustee shall have received such Officers' Certificate, the Trustee shall not be deemed to have knowledge of any adjustment of the Conversion Rate and may assume that the last Conversion Rate of which it has knowledge is still in effect. Promptly after delivery of such certificate, the Company shall prepare a notice of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which each adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Rate to the holder of each Note at his last address appearing on the Note Register provided for in Section 2.05 of this Indenture, within twenty (20) days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(l) In any case in which this Section 15.05 provides that an adjustment shall become effective immediately after (1) a record date or Record Date for an event, (2) the date fixed for the determination of stockholders entitled to

receive a dividend or distribution pursuant to Section 15.05(a), (3) a date fixed for the determination of stockholders entitled to receive rights or warrants pursuant to Section 15.05(b), or (4) the Expiration Time for any tender or exchange offer pursuant to Section 15.05(f), (a “**Determination Date**”), the Company may elect to defer until the occurrence of the applicable Adjustment Event (as hereinafter defined) (x) issuing to the holder of any Note converted after such Determination Date and before the occurrence of such Adjustment Event, the additional shares of Common Stock or other securities issuable upon such conversion by reason of the adjustment required by such Adjustment Event over and above the Common Stock issuable upon such conversion before giving effect to such adjustment and (y) paying to such holder any amount in cash in lieu of any fraction pursuant to Section 15.03. For purposes of this Section 15.05(1), the term “**Adjustment Event**” shall mean:

(i) in any case referred to in clause (1) hereof, the occurrence of such event,

(ii) in any case referred to in clause (2) hereof, the date any such dividend or distribution is paid or made,

(iii) in any case referred to in clause (3) hereof, the date of expiration of such rights or warrants, and

(iv) in any case referred to in clause (4) hereof, the date a sale or exchange of Common Stock pursuant to such tender or exchange offer is consummated and becomes irrevocable.

(m) For purposes of this Section 15.05, the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock. The Company will not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company.

SECTION 15.06. Effect Of Reclassification, Consolidation, Merger or Sale. If any of the following events occur, namely (i) any reclassification or change of the outstanding shares of Common Stock (other than a subdivision or combination to which Section 15.05(c) applies), (ii) any consolidation, merger or combination of the Company with another Person as a result of which holders of Common Stock shall be entitled to receive stock, other securities or other property or assets (including cash) with respect to or in exchange for such Common Stock, or (iii) any sale or conveyance of all or substantially all of the properties and assets of the Company to any other Person as a result of which holders of Common Stock shall be entitled to receive stock, other securities or other property or assets (including cash) with respect to or in exchange for such Common Stock, then the Company or the successor or purchasing Person, as the case may be, shall

execute with the Trustee a supplemental indenture (which shall comply with the Trust Indenture Act as in force at the date of execution of such supplemental indenture) providing that each Note shall be convertible into the kind and amount of shares of stock, other securities or other property or assets (including cash) receivable upon such reclassification, change, consolidation, merger, combination, sale or conveyance by a holder of a number of shares of Common Stock issuable upon conversion of such Notes (assuming, for such purposes, a sufficient number of authorized shares of Common Stock are available to convert all such Notes) immediately prior to such reclassification, change, consolidation, merger, combination, sale or conveyance assuming such holder of Common Stock did not exercise his rights of election, if any, as to the kind or amount of stock, other securities or other property or assets (including cash) receivable upon such reclassification, change, consolidation, merger, combination, sale or conveyance (provided that, if the kind or amount of stock, other securities or other property or assets (including cash) receivable upon such reclassification, change, consolidation, merger, combination, sale or conveyance is not the same for each share of Common Stock in respect of which such rights of election shall not have been exercised ("**Non-electing share**"), then for the purposes of this Section 15.06 the kind and amount of stock, other securities or other property or assets (including cash) receivable upon such reclassification, change, consolidation, merger, combination, sale or conveyance for each non-electing share shall be deemed to be the kind and amount so receivable per share by a plurality of the non-electing shares). Such supplemental indenture shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 15.

The Company shall cause notice of the execution of such supplemental indenture to be mailed to each holder of Notes, at its address appearing on the Note Register provided for in Section 2.05 of this Indenture, within twenty (20) days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture.

The above provisions of this Section shall similarly apply to successive reclassifications, changes, consolidations, mergers, combinations, sales and conveyances.

If this Section 15.06 applies to any event or occurrence, Section 15.05 shall not apply.

**SECTION 15.07. Taxes On Shares Issued.** The issue of stock certificates on conversions of Notes shall be made without charge to the converting Noteholder for any documentary, stamp or similar issue or transfer tax in respect of the issue thereof. The Company shall not, however, be required to pay any such tax which may be payable in respect of any transfer involved in the issue and delivery of stock in any name other than that of the holder of any Note converted, and the Company shall not be required to issue or deliver any such stock certificate unless and until the Person or Persons requesting the issue thereof shall

have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

SECTION 15.08. Reservation of Shares, Shares to Be Fully Paid; Listing of Common Stock. The Company shall provide, free from preemptive rights, out of its authorized but unissued shares or shares held in treasury, sufficient shares of Common Stock to provide for the conversion of the Notes from time to time as such Notes are presented for conversion.

Before taking any action which would cause an adjustment increasing the Conversion Rate to an amount that would cause the Conversion Price to be reduced below the then par value, if any, of the shares of Common Stock issuable upon conversion of the Notes, the Company will take all corporate action which may, in the opinion of its counsel, be necessary in order that the Company may validly and legally issue shares of such Common Stock at such adjusted Conversion Rate.

The Company covenants that all shares of Common Stock which may be issued upon conversion of Notes will upon issue be fully paid and non-assessable by the Company and free from all taxes, liens and charges with respect to the issue thereof.

The Company further covenants that it will, if permitted by the rules of such exchange or automated quotation system, list and keep listed, so long as the Common Stock shall be so listed on all Common Stock issuable upon conversion of the Notes; *provided* that if the rules of the Nasdaq National Market (or such other national securities exchange or automated quotation system) permit the Company to defer the listing of such Common Stock until the first conversion of the Notes into Common Stock in accordance with the provisions of this Indenture, the Company covenants to list such Common Stock issuable upon conversion of the Notes in accordance with the requirements of such exchange or automated quotation system at such time.

SECTION 15.09. Responsibility Of Trustee. The Trustee and any other conversion agent shall not at any time be under any duty or responsibility to any holder of Notes to determine the Conversion Rate or whether any facts exist which may require any adjustment of the Conversion Rate, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed, or herein or in any amendment or supplemental indenture provided to be employed, in making the same. The Trustee and any other conversion agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock, or of any securities or property, which may at any time be issued or delivered upon the conversion of any Note; and the Trustee and any other conversion agent make no representations with respect thereto. Neither the Trustee nor any conversion agent shall be responsible for any failure of the Company to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or property



or cash upon the surrender of any Note for the purpose of conversion or to comply with any of the duties, responsibilities or covenants of the Company contained in this Article 15. Without limiting the generality of the foregoing, neither the Trustee nor any conversion agent shall be under any responsibility to determine the correctness of any provisions contained in any amendment or supplemental indenture entered into pursuant to Section 15.06 relating either to the kind or amount of shares of stock or securities or property (including cash) receivable by Noteholders upon the conversion of their Notes after any event referred to in such Section 15.06 or to any adjustment to be made with respect thereto, but, subject to the provisions of Section 8.01, may accept as conclusive evidence of the correctness of any such provisions, and shall be protected in relying upon, the Officers' Certificate (which the Company shall be obligated to file with the Trustee prior to the execution of any such amendment or supplemental indenture) with respect thereto.

SECTION 15.10. Notice To Noteholders Prior To Certain Actions. In case:

- (a) the Company shall declare a dividend (or any other distribution) on its Common Stock that would require an adjustment in the Conversion Rate pursuant to Section 15.05; or
- (b) the Company shall authorize the granting to the holders of all or substantially all of its Common Stock of rights or warrants to subscribe for or purchase any share of any class or any other rights or warrants; or
- (c) of any reclassification or reorganization of the Common Stock of the Company (other than a subdivision or combination of its outstanding Common Stock, or a change in par value, or from par value to no par value, or from no par value to par value), or of any consolidation or merger to which the Company is a party and for which approval of any stockholders of the Company is required, or of the sale or transfer of all or substantially all of the assets of the Company; or
- (d) of the voluntary or involuntary dissolution, liquidation or winding up of the Company;

the Company shall cause to be filed with the Trustee and to be mailed to each holder of Notes at his address appearing on the Note Register provided for in Section 2.05 of this Indenture, as promptly as possible but in any event at least ten (10) days prior to the applicable date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution or rights or warrants, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution or rights are to be determined, or (y) the date on which such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding up is expected to become effective or occur, and the date as of which it is expected that

holders of Common Stock of record shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding up. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such dividend, distribution, reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding up.

SECTION 15.11. Shareholder Rights Plans. Each share of Common Stock issued upon conversion of Notes pursuant to this Article 15 shall be entitled to receive the appropriate number of rights, if any, and the certificates representing the Common Stock issued upon such conversion shall bear such legends, if any, in each case as may be provided by the terms of any shareholder rights plan adopted by the Company, as the same may be amended from time to time. If at the time of conversion, however, the rights have separated from the shares of Common Stock in accordance with the provisions of the applicable shareholder rights agreement so that the holders of the Notes would not be entitled to receive any rights in respect of Common Stock issuable upon conversion of the Notes, the conversion rate will be adjusted in accordance with Section 15.05(d) treating all rights previously issued as Securities for purposes of such adjustment, subject to readjustment in the event of the expiration, termination or redemption of the rights.

SECTION 15.12. Cash Conversion Option. (a) In the event that, on or prior to the date that is five days prior to the Stated Maturity of a Note (the “**Final Notice Date**”), a Noteholder elects to convert all or any portion of a Note into shares of Common Stock as set forth in Section 15.01, the Company may choose to satisfy all of its conversion obligation (the “**Conversion Obligation**”) in cash if the Company notifies such Noteholder through the Trustee at any time on or before the date that is two Business Days following receipt of written notice of conversion as specified in Section 15.02 (such period, the “**Cash Settlement Notice Period**”). If the Company timely elects to pay cash in lieu of shares of Common Stock otherwise issuable to the Noteholder, the Noteholder may retract the Conversion Notice at any time during the two Business Day period beginning on the day after the final day of the Cash Settlement Notice Period (a “**Conversion Retraction Period**”); no such retraction may be made (and a conversion notice shall be irrevocable) if the Company does not elect to deliver cash in lieu of the shares (other than cash in lieu of fractional shares). If the conversion notice has not been retracted, then cash settlement will occur on the Business Day following the final Trading Day of the five Trading Day period beginning on the first Trading Day after the final day of the Conversion Retraction Period (the “**Cash Settlement Averaging Period**”). Settlement amounts will be computed as follows:

(i) if the Company elects to satisfy the Conversion Obligation in shares of Common Stock, the Company will deliver to such Noteholder a number of shares of Common Stock equal to (1) the aggregate principal

amount of Notes to be converted divided by \$1,000, multiplied by (2) the Conversion Rate then in effect;

(ii) if the Company elects to satisfy the Conversion Obligation in cash, the Company will deliver to such Noteholder cash in an amount equal to the product of:

(A) a number equal to (1) the aggregate principal amount of Notes to be converted divided by \$1,000, multiplied by (2) the Conversion Rate then in effect, and

(B) the average Closing Sale Price of the Common Stock during the Cash Settlement Averaging Period;

(b) If a Noteholder elects to convert all or any portion of a Note into shares of Common Stock after the Final Notice Date, the Company may choose to satisfy all of the Conversion Obligation in cash provided that the Company notifies such Noteholder through the Trustee of the cash settlement at any time on or before the final day of the Cash Settlement Notice Period. Settlement amounts will be computed and settlement dates will be determined in the same manner as set forth in (a) above except that the "Cash Settlement Averaging Period" shall be the 5 Trading Day period beginning on the first Trading Day after the Conversion Retraction Period. If the Company timely elects to pay cash in lieu of the shares of Common Stock otherwise issuable to the Noteholder, the Noteholder may retract the Conversion Notice at any time during the Conversion Retraction Period; no such retraction may be made (and a conversion notice shall be irrevocable) if the Company does not elect to deliver cash in lieu of the shares (other than cash in lieu of fractional shares). If the conversion notice has not been retracted, then cash settlement will occur on the Business Day following the final day of such Cash Settlement Averaging Period, and, with respect to the Notes subject to such conversion, such Business Day shall constitute the final Maturity Date (notwithstanding anything herein to the contrary).

## ARTICLE 16 SUBORDINATION

SECTION 16.01. Agreement To Subordinate. The Company agrees, and each Noteholder by accepting a Note agrees, that the Indebtedness evidenced by the Notes is subordinated in right of payment, to the extent and in the manner provided in this Article 16, to the prior payment in full of all Senior Indebtedness of the Company and that the subordination is for the benefit of and enforceable by the holders of such Senior Indebtedness. The Notes shall in all respects rank *pari passu* in right of payment with all other Senior Subordinated Indebtedness of the Company and shall rank senior to all existing and future Subordinated Obligations of the Company; and only Indebtedness of the Company that is Senior

Indebtedness of the Company shall rank senior to the Notes in accordance with the provisions set forth herein. All provisions of this Article 16 shall be subject to Section 16.12.

SECTION 16.02. Liquidation, Dissolution, Bankruptcy. Upon any payment or distribution of the assets of the Company to its respective creditors upon a total or partial liquidation or a total or partial dissolution of the Company or in a bankruptcy, reorganization, insolvency, receivership or similar proceeding relating to the Company or its property:

(a) holders of Senior Indebtedness of the Company shall be entitled to receive payment in full of such Senior Indebtedness before Noteholders shall be entitled to receive any payment of principal of or interest, if any, on the Notes; and

(b) until the Senior Indebtedness of the Company is paid in full, any payment or distribution to which Noteholders would be entitled but for this Article 16 shall be made to holders of such Senior Indebtedness as their interests may appear, except that Noteholders may receive shares of stock and any debt securities that are subordinated to such Senior Indebtedness to at least the same extent as the Notes.

SECTION 16.03. Default on Senior Indebtedness. The Company may not pay the principal of, or premium (if any), on the Notes, make any deposit pursuant to Section 13.02 or otherwise repurchase, redeem or otherwise retire any Notes (collectively, "pay the Notes") if (a) any Designated Senior Indebtedness of the Company is not paid when due or (b) any other default on such Designated Senior Indebtedness occurs and the maturity of such Designated Senior Indebtedness is accelerated in accordance with its terms unless, in either case, (i) the default has been cured or waived and any such acceleration has been rescinded or (ii) such Designated Senior Indebtedness has been paid in full; provided, however, that the Company may pay the Notes without regard to the foregoing if the Company and the Trustee receive written notice approving such payment from the Representative of such Designated Senior Indebtedness with respect to which either of the events set forth in clause (a) or (b) of this sentence has occurred and is continuing.

During the continuance of any default (other than a default described in clause (a) or (b) of the preceding sentence) with respect to any Designated Senior Indebtedness of the Company pursuant to which the maturity thereof may be accelerated immediately without further notice (except such notice as may be required to effect such acceleration) or the expiration of any applicable grace periods, the Company may not pay the Notes for a period (a "**Payment Blockage Period**") commencing upon the receipt by the Trustee (with a copy to the Company) of written notice (a "**Blockage Notice**") of such default from the Representative of such Designated Senior Indebtedness specifying an election to effect a Payment Blockage Period and ending 179 days thereafter (or earlier if

such Payment Blockage Period is terminated (a) by written notice to the Trustee and the Company from the Person or Persons who gave such Blockage Notice, (b) by repayment in full of such Designated Senior Indebtedness or (c) because no default with respect to any Designated Senior Indebtedness is continuing). Notwithstanding the provisions described in the immediately preceding sentence (but subject to the provisions contained in the first sentence of this Section 16.03), the Company may resume payments on the Notes after the end of such Payment Blockage Period, unless the holders of such Designated Senior Indebtedness or the Representative of such holders shall have accelerated the maturity of such Designated Senior Indebtedness, and such Designated Senior Indebtedness has not been repaid in full.

Not more than one Blockage Notice may be given in any period of 360 consecutive days, irrespective of the number of defaults with respect to Designated Senior Indebtedness during such period; provided, however, that if any Blockage Notice within such 360-day period is given by or on behalf of any holders of Designated Senior Indebtedness other than the Bank Indebtedness, the Representative of the Bank Indebtedness may give another Blockage Notice within such period; provided further, however, that in no event may the total number of days during which any Payment Blockage Period or Periods is in effect exceed 179 days in the aggregate during any period of 360 consecutive days. For purposes of this Section 16.03, no default or event of default that existed or was continuing on the date of the commencement of any Payment Blockage Period with respect to the Designated Senior Indebtedness initiating such Payment Blockage Period shall be, or be made, the basis of the commencement of a subsequent Payment Blockage Period by the Representative of such Designated Senior Indebtedness, whether or not within a period of 360 consecutive days, unless such default or event of default shall have been cured or waived for a period of not less than 90 consecutive days.

SECTION 16.04. Acceleration of Payment of Notes. If payment of the Notes is accelerated because of an Event of Default, the Trustee (provided, that the Trustee shall have received written notice from the Company or a Representative identifying the Designated Senior Indebtedness for which such Representative is so designated, on which notice the Trustee shall be entitled to rely conclusively) shall promptly notify the holders of each Company's Designated Senior Indebtedness (or their Representative) of the acceleration. If any such Designated Senior Indebtedness of the Company is outstanding, the Company may not pay the Notes until five Business Days after such holders or the Representative of such Designated Senior Indebtedness receive notice of such acceleration and, thereafter, may pay the Notes only if this Article 10 otherwise permits payment at that time.

SECTION 16.05. When Distribution Must Be Paid Over. If a payment or distribution is made to Noteholders that because of this Article 10 should not have been made to them, the Noteholders who receive the payment or distribution shall

hold it in trust for holders of Senior Indebtedness of the Company and pay it over to them as their interests may appear.

SECTION 16.06. Subrogation. After all Senior Indebtedness of the Company is paid in full and until the Notes are paid in full, Noteholders shall be subrogated to the rights of holders of such Senior Indebtedness to receive distributions applicable to Senior Indebtedness. A distribution made under this Article 16 to holders of such Senior Indebtedness which otherwise would have been made to Noteholders is not, as between the Company and Noteholders, a payment by the Company on such Senior Indebtedness.

SECTION 16.07. Relative Rights. This Article 16 defines the relative rights of Noteholders and holders of Senior Indebtedness of the Company. Nothing in this Indenture shall:

(a) impair, as between the Company and Noteholders, the obligation of the Company, which is absolute and unconditional, to pay principal of and interest, if any, on the Notes in accordance with their terms; or

(b) prevent the Trustee or any Noteholder from exercising its available remedies upon a Default, subject to the rights of holders of Senior Indebtedness of the Company to receive distributions otherwise payable to Noteholders.

SECTION 16.08. Subordination May Not Be Impaired by Company. No right of any holder of Senior Indebtedness of the Company to enforce the subordination of the Indebtedness evidenced by the Notes shall be impaired by any act or failure to act by the Company or by its failure to comply with this Indenture.

SECTION 16.09. Rights of Trustee and Paying Agent. Notwithstanding Section 16.03, the Trustee or paying agent may continue to make payments on the Notes and shall not be charged with knowledge of the existence of facts that would prohibit the making of any such payments unless, not less than two Business Days prior to the date of such payment, a Responsible Officer of the Trustee receives written notice satisfactory to it that payments may not be made under this Article 16. The Company, the Note Registrar, the paying agent, a Representative or a holder of Senior Indebtedness of the Company may give the notice; provided, however, that, if an issue of Senior Indebtedness of the Company has a Representative, only the Representative may give the notice.

The Trustee in its individual or any other capacity may hold Senior Indebtedness of the Company with the same rights it would have if it were not Trustee. The Note Registrar and the paying agent may do the same with like rights. The Trustee shall be entitled to all the rights set forth in this Article 16 with respect to any Senior Indebtedness of the Company which may at any time be held by it, to the same extent as any other holder of such Senior Indebtedness;

and nothing in Article 8 shall deprive the Trustee of any of its rights as such holder. Nothing in this Article 16 shall apply to claims of, or payments to, the Trustee under or pursuant to Section 8.06 or any other Section of this Indenture.

SECTION 16.10. Distribution or Notice to Representative. Whenever a distribution is to be made or a notice given to holders of Senior Indebtedness of the Company, the distribution may be made and the notice given to their Representative (if any).

SECTION 16.11. Article 16 Not To Prevent Events of Default or Limit Right To Accelerate. The failure to make a payment pursuant to the Notes by reason of any provision in this Article 16 shall not be construed as preventing the occurrence of a Default. Nothing in this Article 16 shall have any effect on the right of the Noteholders or the Trustee to accelerate the maturity of the Notes.

SECTION 16.12. Trust Monies Not Subordinated. Notwithstanding anything contained herein to the contrary, payments from money or the proceeds of U.S. Government Obligations held in trust under Article 13 by the Trustee for the payment of principal of the Notes shall not be subordinated to the prior payment of any Senior Indebtedness of the Company or subject to the restrictions set forth in this Article 16, and none of the Noteholders shall be obligated to pay over any such amount to the Company or any holder of Senior Indebtedness of the Company or any other creditor of the Company.

SECTION 16.13. Trustee Entitled To Rely. Upon any payment or distribution pursuant to this Article 16, the Trustee and the Noteholders shall be entitled to rely (a) upon any order or decree of a court of competent jurisdiction in which any proceedings of the nature referred to in Section 16.02 are pending, (b) upon a certificate of the liquidating trustee or agent or other Person making such payment or distribution to the Trustee or to the Noteholders or (c) upon the Representatives for the holders of Senior Indebtedness of the Company for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, the holders of such Senior Indebtedness and other Indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article 16. In the event that the Trustee determines, in good faith, that evidence is required with respect to the right of any Person as a holder of Senior Indebtedness of the Company to participate in any payment or distribution pursuant to this Article 16, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of such Senior Indebtedness held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and other facts pertinent to the rights of such Person under this Article 16, and, if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment. The provisions of Sections 8.01 and 8.02 shall be applicable to all actions or omissions of actions by the Trustee pursuant to this Article 16.

SECTION 16.14. Trustee To Effectuate Subordination. Each Noteholder by accepting a Note authorizes and directs the Trustee on his behalf to take such action as may be necessary or appropriate to acknowledge or effectuate the subordination between the Noteholders and the holders of Senior Indebtedness of the Company as provided in this Article 16 and appoints the Trustee as attorney-in-fact for any and all such purposes.

SECTION 16.15. Trustee Not Fiduciary for Noteholders of Senior Indebtedness. The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Indebtedness of the Company and shall not be liable to any such holders if it shall mistakenly pay over or distribute to Noteholders or the Company or any other Person, money or assets to which any holders of Senior Indebtedness of the Company shall be entitled by virtue of this Article 16 or otherwise.

SECTION 16.16. Reliance by Noteholders of Senior Indebtedness on Subordination Provisions. Each Noteholder by accepting a Note acknowledges and agrees that the foregoing subordination provisions are, and are intended to be, an inducement and a consideration to each holder of any Senior Indebtedness of the Company, whether such Senior Indebtedness was created or acquired before or after the issuance of the Notes, to acquire and continue to hold, or to continue to hold, such Senior Indebtedness and such holder of such Senior Indebtedness shall be deemed conclusively to have relied on such subordination provisions in acquiring and continuing to hold, or in continuing to hold, such Senior Indebtedness.

#### ARTICLE 17 NOTE GUARANTEES

SECTION 17.01. Note Guarantees. (a) Each Note Guarantor hereby jointly and severally irrevocably and unconditionally Guarantees, as a primary obligor and not merely as a surety, to each Noteholder and to the Trustee and its successors and assigns the full and punctual payment when due, whether at Stated Maturity, by acceleration, by redemption or otherwise, of all obligations of the Company under this Indenture (including obligations to the Trustee) and the Notes, whether for payment of principal of the Notes and all other monetary obligations of the Company under this Indenture and the Notes, whether for fees, expenses, indemnification or otherwise (all the foregoing being hereinafter collectively called the “**Guaranteed Obligations**”). Each Note Guarantor further agrees that the Guaranteed Obligations may be extended or renewed, in whole or in part, without notice or further assent from each such Note Guarantor, and that each such Note Guarantor shall remain bound under this Article 17 notwithstanding any extension or renewal of any Guaranteed Obligation.

(b) Each Note Guarantor waives presentation to, demand of payment from and protest to the Company of any of the Guaranteed Obligations and also waives notice of protest for nonpayment. Each Note Guarantor waives



notice of any default under the Notes or the Guaranteed Obligations. The obligations of each Note Guarantor hereunder shall not be affected by (i) the failure of any Noteholder or the Trustee to assert any claim or demand or to enforce any right or remedy against the Company or any other Person under this Indenture, the Notes or any other agreement or otherwise; (ii) any extension or renewal of any thereof; (iii) any rescission, waiver, amendment or modification of any of the terms or provisions of this Indenture, the Notes or any other agreement; (iv) the release of any security held by any Noteholder or the Trustee for the Guaranteed Obligations or any of them; (v) the failure of any Noteholder or Trustee to exercise any right or remedy against any other Note Guarantor; or (vi) any change in the ownership of such Note Guarantor, except as provided in Section 17.02(b).

(c) Each Note Guarantor hereby waives any right to which it may be entitled to have its obligations hereunder divided among the Note Guarantors, such that such Note Guarantor's obligations would be less than the full amount claimed. Each Note Guarantor hereby waives any right to which it may be entitled to have the assets of the Company first be used and depleted as payment of the Company's or such Note Guarantor's obligations hereunder prior to any amounts being claimed from or paid by such Note Guarantor hereunder. Each Note Guarantor hereby waives any right to which it may be entitled to require that the Company be sued prior to an action being initiated against such Note Guarantor.

(d) Each Note Guarantor further agrees that its Note Guarantee herein constitutes a guarantee of payment when due (and not a guarantee of collection) and waives any right to require that any resort be had by any Noteholder or the Trustee to any security held for payment of the Guaranteed Obligations.

(e) The Note Guarantee of each Note Guarantor is, to the extent and in the manner set forth in Article 18, subordinated and subject in right of payment to the prior payment in full of the principal of and premium, if any, and interest on all Senior Indebtedness of the relevant Note Guarantor and is made subject to such provisions of this Indenture.

(f) Except as expressly set forth in Sections 17.02 and 17.06, the obligations of each Note Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason (other than payment of the Guaranteed Obligations in full), including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense of setoff, counterclaim, recoupment or termination whatsoever or by reason of the invalidity, illegality or unenforceability of the Guaranteed Obligations or otherwise. Without limiting the generality of the foregoing, the obligations of each Note Guarantor herein shall not be discharged or impaired or otherwise affected by the failure of any Noteholder or the Trustee to assert any claim or demand or to enforce any remedy under this Indenture, the Notes

or any other agreement, by any waiver or modification of any thereof, by any default, failure or delay, willful or otherwise, in the performance of the Guaranteed Obligations, or by any other act or thing or omission or delay to do any other act or thing which may or might in any manner or to any extent vary the risk of any Note Guarantor or would otherwise operate as a discharge of any Note Guarantor as a matter of law or equity.

(g) Each Note Guarantor agrees that its Note Guarantee shall remain in full force and effect until payment in full of all the Guaranteed Obligations. Each Note Guarantor further agrees that its Note Guarantee herein shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of principal of or interest, if any, on any Guaranteed Obligation is rescinded or must otherwise be restored by any Noteholder or the Trustee upon the bankruptcy or reorganization of the Company or otherwise.

(h) In furtherance of the foregoing and not in limitation of any other right which any Noteholder or the Trustee has at law or in equity against any Note Guarantor by virtue hereof, upon the failure of the Company to pay the Guaranteed Obligation when and as the same shall become due, whether at maturity, by acceleration, by redemption or otherwise, each Note Guarantor hereby promises to and shall, upon receipt of written demand by the Trustee, forthwith pay, or cause to be paid, in cash, to the Noteholders or the Trustee an amount equal to the unpaid amount of such Guaranteed Obligations and interest, if any, accrued thereon.

(i) Each Note Guarantor agrees that it shall not be entitled to any right of subrogation in relation to the Noteholders in respect of any Guaranteed Obligations guaranteed hereby until payment in full of all Guaranteed Obligations and all obligations to which the Guaranteed Obligations are subordinated as provided in Article 18. Each Note Guarantor further agrees that, as between it, on the one hand, and the Noteholders and the Trustee, on the other hand, (i) the maturity of the Guaranteed Obligations guaranteed hereby may be accelerated as provided in Article 7 for the purposes of any Note Guarantee herein, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Guaranteed Obligations guaranteed hereby, and (ii) in the event of any declaration of acceleration of such Guaranteed Obligations as provided in Article 7, such Guaranteed Obligations (whether or not due and payable) shall forthwith become due and payable by such Note Guarantor for the purposes of this Section 17.01.

(j) Each Note Guarantor also agrees to pay any and all costs and expenses (including reasonable attorneys' fees and expenses) incurred by the Trustee or any Noteholder in enforcing any rights under this Section 17.01.

(k) Upon request of the Trustee, each Note Guarantor shall execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of this Indenture.

SECTION 17.02. Limitation on Liability. (a) Any term or provision of this Indenture to the contrary notwithstanding, the maximum aggregate amount of the Guaranteed Obligations guaranteed hereunder by any Note Guarantor shall not exceed the maximum amount that can be hereby guaranteed without rendering this Indenture, as it relates to such Note Guarantor, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer or similar laws affecting the rights of creditors generally.

(b) A Note Guarantee as to any Note Guarantor shall terminate and be of no further force or effect and such Note Guarantor shall be deemed to be released from all obligations under this Article 17 upon (i) the merger or consolidation of such Note Guarantor with or into any Person other than the Company or a Subsidiary or Affiliate of the Company where such Note Guarantor is not the surviving entity of such consolidation or merger, (ii) the sale by the Company or any Subsidiary of the Company of the Capital Stock of such Note Guarantor (or by any other Person as a result of a foreclosure of any Lien on such Capital Stock securing Senior Indebtedness), where, after such sale, such Note Guarantor is no longer a Subsidiary of the Company, (iii) the sale, conveyance or transfer of all or substantially all the assets of such Note Guarantor to another Person other than the Company or a Subsidiary or Affiliate of the Company; provided, however, that each such merger, consolidation, sale, conveyance or transfer shall comply with Article 12. At the request of the Company, the Trustee shall execute and deliver an appropriate instrument evidencing such release (in the form provided by the Company). Notwithstanding the foregoing, if the Credit Agreement so requires, any Note Guarantor that has Guaranteed Indebtedness under the Credit Agreement and is being released from its Guarantee thereunder will be simultaneously released from its Note Guarantee hereunder unless an Event of Default has occurred and is continuing.

SECTION 17.03. Successors and Assigns. This Article 17 shall be binding upon each Note Guarantor and its successors and assigns and shall inure to the benefit of the successors and assigns of the Trustee and the Noteholders and, in the event of any transfer or assignment of rights by any Noteholder or the Trustee, the rights and privileges conferred upon that party in this Indenture and in the Notes shall automatically extend to and be vested in such transferee or assignee, all subject to the terms and conditions of this Indenture.

SECTION 17.04. No Waiver. Neither a failure nor a delay on the part of either the Trustee or the Noteholders in exercising any right, power or privilege under this Article 17 shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise of any right, power or

privilege. The rights, remedies and benefits of the Trustee and the Noteholders herein expressly specified are cumulative and not exclusive of any other rights, remedies or benefits which either may have under this Article 17 at law, in equity, by statute or otherwise.

SECTION 17.05. Modification. No modification, amendment or waiver of any provision of this Article 17, nor the consent to any departure by any Note Guarantor therefrom, shall in any event be effective unless the same shall be in writing and signed by the Trustee, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on any Note Guarantor in any case shall entitle such Note Guarantor to any other or further notice or demand in the same, similar or other circumstances.

SECTION 17.06. Execution of Amendment or Supplemental Indenture for Future Note Guarantors. Each Subsidiary which is required to become a Note Guarantor pursuant to Section 5.08 shall promptly execute and deliver to the Trustee an amendment or supplemental indenture pursuant to which such Subsidiary shall become a Note Guarantor under this Article 17 and shall guarantee the Guaranteed Obligations. Concurrently with the execution and delivery of such amendment or supplemental indenture, the Company shall deliver to the Trustee an Opinion of Counsel and an Officers' Certificate to the effect that such amendment or supplemental indenture has been duly authorized, executed and delivered by such Subsidiary and that, subject to the application of bankruptcy, insolvency, moratorium, fraudulent conveyance or transfer and other similar laws relating to creditors' rights generally and to the principles of equity, whether considered in a proceeding at law or in equity, the Note Guarantee of such Note Guarantor is a legal, valid and binding obligation of such Note Guarantor, enforceable against such Note Guarantor in accordance with its terms and or to such other matters as the Trustee may reasonably request.

SECTION 17.07. Non-Impairment. The failure to endorse a Note Guarantee on any Note shall not affect or impair the validity thereof.

#### ARTICLE 18 SUBORDINATION OF THE NOTE GUARANTEES

SECTION 18.01. Agreement To Subordinate. Each Note Guarantor agrees, and each Noteholder by accepting a Note agrees, that the obligations of a Note Guarantor hereunder are subordinated in right of payment, to the extent and in the manner provided in this Article 18, to the prior payment in full of all Senior Indebtedness of such Note Guarantor and that the subordination is for the benefit of and enforceable by the holders of such Senior Indebtedness of such Note Guarantor. The obligations hereunder with respect to a Note Guarantor shall in all respects rank *pari passu* in right of payment with all other Senior Subordinated Indebtedness of such Note Guarantor and shall rank senior to all existing and future Subordinated Obligations of such Note Guarantor; and only Indebtedness of such Note Guarantor that is Senior Indebtedness

of such Note Guarantor shall rank senior to the obligations of such Note Guarantor in accordance with the provisions set forth herein.

SECTION 18.02. Liquidation, Dissolution, Bankruptcy. Upon any payment or distribution of the assets of a Note Guarantor to creditors upon a total or partial liquidation or a total or partial dissolution of such Note Guarantor or in a bankruptcy, reorganization, insolvency, receivership or similar proceeding relating to such Note Guarantor and its property:

(a) holders of Senior Indebtedness of such Note Guarantor shall be entitled to receive payment in full of such Senior Indebtedness before Noteholders shall be entitled to receive any payment pursuant to any Guaranteed Obligations from such Note Guarantor; and

(b) until the Senior Indebtedness of such Note Guarantor is paid in full, any payment or distribution to which Noteholders would be entitled but for this Article 18 shall be made to holders of such Senior Indebtedness as their respective interests may appear, except that Noteholders may receive shares of stock and any debt securities that are subordinated to such Senior Indebtedness to at least the same extent as the Note Guarantees.

SECTION 18.03. Default on Designated Senior Indebtedness of a Note Guarantor. A Note Guarantor may not make any payment pursuant to any of the Guaranteed Obligations or repurchase, redeem or otherwise retire any Notes (collectively, “pay its Guarantee”) if (a) any Designated Senior Indebtedness of such Note Guarantor is not paid when due or (b) any other default on Designated Senior Indebtedness of such Note Guarantor occurs and the maturity of such Designated Senior Indebtedness is accelerated in accordance with its terms unless, in either case, (i) the default has been cured or waived and any such acceleration has been rescinded or (ii) such Designated Senior Indebtedness has been paid in full; provided, however, that such Note Guarantor may pay its Guarantee without regard to the foregoing if such Note Guarantor and the Trustee receive written notice approving such payment from the Representative of the holders of such Designated Senior Indebtedness with respect to which either of the events in clause (a) or (b) of this sentence has occurred and is continuing.

During the continuance of any default (other than a default described in clause (a) or (b) of the preceding sentence) with respect to any Designated Senior Indebtedness of a Note Guarantor pursuant to which the maturity thereof may be accelerated immediately without further notice (except such notice as may be required to effect such acceleration) or the expiration of any applicable grace periods, such Note Guarantor may not pay its Guarantee for a period (a “**Guarantee Payment Blockage Period**”) commencing upon the receipt by the Trustee (with a copy to such Note Guarantor and the Company) of written notice (a “**Guarantee Blockage Notice**”) of such default from the Representative of the holders of the Designated Senior Indebtedness of such Note Guarantor specifying

an election to effect a Guarantee Payment Blockage Period and ending 179 days thereafter (or earlier if such Guarantee Payment Blockage Period is terminated (a) by written notice to the Trustee (with a copy to such Note Guarantor and the Company) from the Person or Persons who gave such Guarantee Blockage Notice, (b) by repayment in full of such Designated Senior Indebtedness or (c) because no default with respect to any Designated Senior Indebtedness is continuing). Notwithstanding the provisions described in the immediately preceding sentence (but subject to the provisions contained in the first sentence of this Section 18.03), such Note Guarantor may resume payments with respect to its Note Guarantee after the end of such Guarantee Payment Blockage Period, unless the holders of such Designated Senior Indebtedness or the Representative of such holders shall have accelerated the maturity of such Designated Senior Indebtedness and such Designated Senior Indebtedness has not been repaid in full.

Not more than one Guarantee Blockage Notice may be given with respect to a Note Guarantor in any period of 360 consecutive days, irrespective of the number of defaults with respect to Designated Senior Indebtedness of such Note Guarantor during such period; provided, however, that if any Guarantee Blockage Notice within such 360-day period is given by or on behalf of any holders of Designated Senior Indebtedness of such Note Guarantor other than the Bank Indebtedness, the Representative of the Bank Indebtedness may give another Guarantee Blockage Notice within such period; provided further, however, that in no event may the total number of days during which any Guarantee Payment Blockage Period or Periods is in effect exceed 179 days in the aggregate during any period of 360 consecutive days. For purposes of this Section 18.03, no default or event of default that existed or was continuing on the date of the commencement of any Guarantee Payment Blockage Period with respect to the Designated Senior Indebtedness initiating such Guarantee Payment Blockage Period shall be, or be made, the basis of the commencement of a subsequent Guarantee Payment Blockage Period by the Representative of such Designated Senior Indebtedness, whether or not within a period of 360 consecutive days, unless such default or event of default shall have been cured or waived for a period of not less than 90 consecutive days.

SECTION 18.04. Demand for Payment. If payment of the Notes is accelerated because of an Event of Default and a demand for payment is made on a Note Guarantor pursuant to Article 17, the Trustee (provided that the Trustee shall have received written notice from the Company, such Note Guarantor or a Representative identifying such Designated Senior Indebtedness, on which notice the Trustee shall be entitled to rely conclusively) shall promptly notify the holders of the Designated Senior Indebtedness of such Note Guarantor (or the Representative of such holders) of such demand. If any Designated Senior Indebtedness of such Note Guarantor is outstanding, such Note Guarantor may not pay its Guarantee until five Business Days after such holders or the Representative of the holders of the Designated Senior Indebtedness of such Note Guarantor receive notice of such demand and, thereafter, may pay its Guarantee only if this Article 18 otherwise permits payment at that time.

SECTION 18.05. When Distribution Must Be Paid Over. If a payment or distribution is made to Noteholders that because of this Article 18 should not have been made to them, the Noteholders who receive the payment or distribution shall hold such payment or distribution in trust for holders of the Senior Indebtedness of the relevant Note Guarantor and pay it over to them as their respective interests may appear.

SECTION 18.06. Subrogation. After all Senior Indebtedness of a Note Guarantor is paid in full and until the Notes are paid in full, Noteholders shall be subrogated to the rights of holders of Senior Indebtedness of such Note Guarantor to receive distributions applicable to Designated Senior Indebtedness of such Note Guarantor. A distribution made under this Article 18 to holders of Senior Indebtedness of such Note Guarantor which otherwise would have been made to Noteholders is not, as between such Note Guarantor and Noteholders, a payment by such Note Guarantor on Senior Indebtedness of such Note Guarantor.

SECTION 18.07. Relative Rights. This Article 18 defines the relative rights of Noteholders and holders of Senior Indebtedness of a Note Guarantor. Nothing in this Indenture shall:

(a) impair, as between a Note Guarantor and Noteholders, the obligation of a Note Guarantor which is absolute and unconditional, to make payments with respect to the Guaranteed Obligations to the extent set forth in Article 17; or

(b) prevent the Trustee or any Noteholder from exercising its available remedies upon a default by a Note Guarantor under its obligations with respect to the Guaranteed Obligations, subject to the rights of holders of Senior Indebtedness of such Note Guarantor to receive distributions otherwise payable to Noteholders.

SECTION 18.08. Subordination May Not Be Impaired by a Note Guarantor. No right of any holder of Senior Indebtedness of a Note Guarantor to enforce the subordination of the obligations of such Note Guarantor hereunder shall be impaired by any act or failure to act by such Note Guarantor or by its failure to comply with this Indenture.

SECTION 18.09. Rights of Trustee and Paying Agent. Notwithstanding Section 18.03, the Trustee or the Paying Agent may continue to make payments on the Notes and shall not be charged with knowledge of the existence of facts that would prohibit the making of any such payments unless, not less than two Business Days prior to the date of such payment, a Responsible Officer of the Trustee receives written notice satisfactory to it that payments may not be made under this Article 18. A Note Guarantor, the Note Registrar or co-registrar, the Paying Agent, a Representative or a holder of Senior Indebtedness of a Note Guarantor may give the notice; provided, however, that if an issue of Senior

Indebtedness of a Note Guarantor has a Representative, only the Representative may give the notice.

The Trustee in its individual or any other capacity may hold Senior Indebtedness of a Note Guarantor with the same rights it would have if it were not Trustee. The Note Registrar and co-registrar and the Paying Agent may do the same with like rights. The Trustee shall be entitled to all the rights set forth in this Article 18 with respect to any Senior Indebtedness of a Note Guarantor which may at any time be held by it, to the same extent as any other holder of Senior Indebtedness of such Note Guarantor; and nothing in Article 8 shall deprive the Trustee of any of its rights as such holder. Nothing in this Article 18 shall apply to claims of, or payments to, the Trustee under or pursuant to Section 8.06 or any other Section of this Indenture.

SECTION 18.10. Distribution or Notice to Representative. Whenever a distribution is to be made or a notice given to holders of Senior Indebtedness of a Note Guarantor, the distribution may be made and the notice given to their Representative (if any).

SECTION 18.11. Article 18 Not To Prevent Events of Default or Limit Right To Accelerate. The failure of a Note Guarantor to make a payment on any of the Guaranteed Obligations by reason of any provision in this Article 18 shall not be construed as preventing the occurrence of a default by such Note Guarantor under such obligations. Nothing in this Article 18 shall have any effect on the right of the Noteholders or the Trustee to make a demand for payment on a Note Guarantor pursuant to Article 17.

SECTION 18.12. Trustee Entitled To Rely. Upon any payment or distribution pursuant to this Article 18, the Trustee and the Noteholders shall be entitled to rely (a) upon any order or decree of a court of competent jurisdiction in which any proceedings of the nature referred to in Section 18.02 are pending, (b) upon a certificate of the liquidating trustee or agent or other Person making such payment or distribution to the Trustee or to the Noteholders or (c) upon the Representatives for the holders of Senior Indebtedness of a Note Guarantor for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, the holders of the Senior Indebtedness of a Note Guarantor and other Indebtedness of a Note Guarantor, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article 18. In the event that the Trustee determines, in good faith, that evidence is required with respect to the right of any Person as a holder of Senior Indebtedness of a Note Guarantor to participate in any payment or distribution pursuant to this Article 18, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Indebtedness of such Note Guarantor held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and other facts pertinent to the rights of such Person under this Article 18, and, if such evidence is not furnished, the Trustee may defer any payment to such Person



pending judicial determination as to the right of such Person to receive such payment. The provisions of Sections 8.01 and 8.02 shall be applicable to all actions or omissions of actions by the Trustee pursuant to this Article 18.

SECTION 18.13. Trustee To Effectuate Subordination. Each Noteholder by accepting a Note authorizes and directs the Trustee on his or her behalf to take such action as may be necessary or appropriate to acknowledge or effectuate the subordination between the Noteholders and the holders of Senior Indebtedness of each of the Note Guarantors as provided in this Article 18 and appoints the Trustee as attorney-in-fact for any and all such purposes.

SECTION 18.14. Trustee Not Fiduciary for Noteholders of Senior Indebtedness of a Note Guarantor. The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Indebtedness of a Note Guarantor and shall not be liable to any such holders if it shall mistakenly pay over or distribute to Noteholders or the relevant Note Guarantor or any other Person, money or assets to which any holders of Senior Indebtedness of such Note Guarantor shall be entitled by virtue of this Article 18 or otherwise.

SECTION 18.15. Reliance by Noteholders of Senior Indebtedness of a Note Guarantor on Subordination Provisions. Each Noteholder by accepting a Note acknowledges and agrees that the foregoing subordination provisions are, and are intended to be, an inducement and a consideration to each holder of any Senior Indebtedness of a Note Guarantor, whether such Senior Indebtedness was created or acquired before or after the issuance of the Notes, to acquire and continue to hold, or to continue to hold, such Senior Indebtedness and such holder of Senior Indebtedness shall be deemed conclusively to have relied on such subordination provisions in acquiring and continuing to hold, or in continuing to hold, such Senior Indebtedness.

SECTION 18.16. Defeasance. The terms of this Article 18 shall not apply to payments from money or the proceeds of U.S. Government Obligations held in trust by the Trustee for the payment of principal of and interest, if any, on the Notes pursuant to the provisions described in Article 13.

#### ARTICLE 19 MISCELLANEOUS PROVISIONS

SECTION 19.01. Provisions Binding On Company's Successors. All the covenants, stipulations, promises and agreements by the Company and each Note Guarantor contained in this Indenture shall bind their respective successors and assigns whether so expressed or not.

SECTION 19.02. Official Acts By Successor Corporation. Any act or proceeding by any provision of this Indenture authorized or required to be done or performed by any board, committee or officer of the Company shall and may be done and performed with like force and effect by the like board, committee or

officer of any Person that shall at the time be the lawful sole successor of the Company.

SECTION 19.03. Addresses For Notices, Etc. Any notice or demand which by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the holders of Notes on the Company shall be deemed to have been sufficiently given or made, for all purposes, if given or served by being deposited postage prepaid by registered or certified mail in a post office letter box or sent by telecopier transmission addressed as follows: to ON Semiconductor Corporation, 5005 E. McDowell Road, Phoenix, Arizona 85008, Attention: President. Any notice, direction, request or demand hereunder to or upon the Trustee shall be deemed to have been sufficiently given or made, for all purposes, if given or served by being deposited, postage prepaid, by registered or certified mail in a post office letter box or sent by telecopier transmission addressed as follows: Wells Fargo Bank, N.A. 213 Court Street, Suite 703, Middletown, Connecticut 06457.

The Trustee, by notice to the Company, may designate additional or different addresses for subsequent notices or communications.

Any notice or communication mailed to a Noteholder shall be mailed to him by first-class mail, postage prepaid, at his address as it appears on the Note Register and shall be sufficiently given to him if so mailed within the time prescribed.

Failure to mail a notice or communication to a Noteholder or any defect in it shall not affect its sufficiency with respect to other Noteholders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

SECTION 19.04. Governing Law. This Indenture and each Note shall be deemed to be a contract made under the laws of the State of New York, and for all purposes shall be construed in accordance with the laws of the State of New York, without regard to conflicts of laws principles thereof.

SECTION 19.05. Evidence Of Compliance With Conditions Precedent, Certificates To Trustee. Upon any application or demand by the Company to the Trustee to take any action under any of the provisions of this Indenture, the Company shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with, and an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

Each certificate or opinion provided for in this Indenture and delivered to the Trustee with respect to compliance with a condition or covenant provided for in this Indenture shall include: (1) a statement that the person making such

certificate or opinion has read such covenant or condition; (2) a brief statement as to the nature and scope of the examination or investigation upon which the statement or opinion contained in such certificate or opinion is based; (3) a statement that, in the opinion of such person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and (4) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with.

SECTION 19.06. Legal Holidays. In any case in which the date of maturity of principal of the Notes or the redemption date of any Note will not be a Business Day, then payment of such principal of the Notes need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the redemption date.

SECTION 19.07. Trust Indenture Act. This Indenture is hereby made subject to, and shall be governed by, the provisions of the Trust Indenture Act required to be part of and to govern indentures qualified under the Trust Indenture Act; provided that unless otherwise required by law, notwithstanding the foregoing, this Indenture and the Notes issued hereunder shall not be subject to the provisions of subsections (a)(1), (a)(2), and (a)(3) of Section 314 of the Trust Indenture Act as now in effect or as hereafter amended or modified; provided further that this Section 19.07 shall not require this Indenture or the Trustee to be qualified under the Trust Indenture Act prior to the time such qualification is in fact required under the terms of the Trust Indenture Act, nor shall it constitute any admission or acknowledgment by any party to the Indenture that any such qualification is required prior to the time such qualification is in fact required under the terms of the Trust Indenture Act. If any provision hereof limits, qualifies or conflicts with another provision hereof which is required to be included in an indenture qualified under the Trust Indenture Act, such required provision shall control.

SECTION 19.08. No Security Interest Created. Nothing in this Indenture or in the Notes, expressed or implied, shall be construed to constitute a security interest under the Uniform Commercial Code or similar legislation, as now or hereafter enacted and in effect, in any jurisdiction in which property of the Company or its subsidiaries is located.

SECTION 19.09. Benefits Of Indenture. Nothing in this Indenture or in the Notes, express or implied, shall give to any Person, other than the parties hereto, any paying agent, any authenticating agent, any Note Registrar and their successors hereunder and the holders of Notes any benefit or any legal or equitable right, remedy or claim under this Indenture.

SECTION 19.10. Table Of Contents, Headings, Etc. The table of contents and the titles and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a

part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

SECTION 19.11. Authenticating Agent. The Trustee may appoint an authenticating agent that shall be authorized to act on its behalf, and subject to its direction, in the authentication and delivery of Notes in connection with the original issuance thereof and transfers and exchanges of Notes hereunder, including under Sections 2.04, 2.05, 2.06, 2.07, 3.03, 3.05, 3.06, 3.10 and 15.02, as fully to all intents and purposes as though the authenticating agent had been expressly authorized by this Indenture and those Sections to authenticate and deliver Notes. For all purposes of this Indenture, the authentication and delivery of Notes by the authenticating agent shall be deemed to be authentication and delivery of such Notes “by the Trustee” and a certificate of authentication executed on behalf of the Trustee by an authenticating agent shall be deemed to satisfy any requirement hereunder or in the Notes for the Trustee’s certificate of authentication. Such authenticating agent shall at all times be a Person eligible to serve as trustee hereunder pursuant to Section 8.09.

Any corporation into which any authenticating agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, consolidation or conversion to which any authenticating agent shall be a party, or any corporation succeeding to the corporate trust business of any authenticating agent, shall be the successor of the authenticating agent hereunder, if such successor corporation is otherwise eligible under this Section 19.11, without the execution or filing of any paper or any further act on the part of the parties hereto or the authenticating agent or such successor corporation.

Any authenticating agent may at any time resign by giving written notice of resignation to the Trustee and to the Company. The Trustee may at any time terminate the agency of any authenticating agent by giving written notice of termination to such authenticating agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time any authenticating agent shall cease to be eligible under this Section, the Trustee shall either promptly appoint a successor authenticating agent or itself assume the duties and obligations of the former authenticating agent under this Indenture and, upon such appointment of a successor authenticating agent, if made, shall give written notice of such appointment of a successor authenticating agent to the Company and shall mail notice of such appointment of a successor authenticating agent to all holders of Notes as the names and addresses of such holders appear on the Note Register.

The Company agrees to pay to the authenticating agent from time to time such reasonable compensation for its services as shall be agreed upon in writing between the Company and the authenticating agent.

The provisions of Sections 8.02, 8.03, 8.04 and 9.03 and this Section 19.11 shall be applicable to any authenticating agent.

SECTION 19.12. Execution In Counterparts. This Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

SECTION 19.13. Severability. In case any provision in this Indenture or in the Notes shall be invalid, illegal or unenforceable, then (to the extent permitted by law) the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Wells Fargo Bank, N.A. hereby accepts the trusts in this Indenture declared and provided, upon the terms and conditions herein above set forth.

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed.

ON SEMICONDUCTOR CORPORATION,  
SEMICONDUCTOR COMPONENTS INDUSTRIES, LLC,  
SCG (MALAYSIA SMP) HOLDING CORPORATION, SCG  
(CZECH) HOLDING CORPORATION, SCG (CHINA)  
HOLDING CORPORATION, SEMICONDUCTOR  
COMPONENTS INDUSTRIES PUERTO RICO, INC.,  
SEMICONDUCTOR COMPONENTS INDUSTRIES OF  
RHODE ISLAND, INC., SCG INTERNATIONAL  
DEVELOPMENT LLC, and SEMICONDUCTOR  
COMPONENTS INDUSTRIES INTERNATIONAL OF  
RHODE ISLAND, INC.

By: /s/ DONALD COLVIN

Name: Donald Colvin

Title: Senior Vice President, Chief Financial Officer and  
Treasurer

WELLS FARGO BANK, N.A., as Trustee

By: /s/ JOSEPH P. O'DONNELL

Name: Joseph P. O'Donnell

Title: Assistant Vice President

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (55 WATER STREET, NEW YORK, NEW YORK) (THE “**DEPOSITARY**”, WHICH TERM INCLUDES ANY SUCCESSOR DEPOSITORY FOR THE CERTIFICATES) TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY (AND ANY PAYMENT HEREIN IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

THIS SECURITY AND THE COMMON STOCK (“COMMON STOCK”) OF ON SEMICONDUCTOR CORPORATION (THE “COMPANY”) ISSUABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR ANY STATE SECURITIES LAWS. NEITHER THIS SECURITY, THE COMMON STOCK ISSUABLE UPON CONVERSION OF THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN OR THEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, REGISTRATION.

THE HOLDER OF THIS SECURITY, BY ITS ACCEPTANCE HEREOF, AGREES TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY, PRIOR TO THE DATE (THE “RESALE RESTRICTION TERMINATION DATE”) THAT IS TWO YEARS AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF AND THE LAST DATE ON WHICH THE COMPANY OR ANY AFFILIATE OF THE COMPANY WAS THE OWNER OF THIS SECURITY (OR ANY PREDECESSOR OF SUCH SECURITY) ONLY (A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, (B) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, TO A PERSON IT REASONABLY BELIEVES IS A “QUALIFIED INSTITUTIONAL BUYER” AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHICH NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (C) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT, OR

(D) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE RIGHTS OF THE COMPANY AND THE WITHIN MENTIONED TRUSTEE PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSE (D) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM, AND IN EACH OF THE FOREGOING CASES WHERE REGISTRATION OR TRANSFER OF THIS SECURITY IS REQUIRED, A CERTIFICATE OF TRANSFER IN THE FORM APPEARING ON THE OTHER SIDE OF THIS SECURITY COMPLETED AND DELIVERED BY THE TRANSFEROR TO THE TRUSTEE. THIS LEGEND WILL BE REMOVED AFTER THE RESALE RESTRICTION TERMINATION DATE UPON REQUEST OF THE HOLDER AND THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATES AND/OR OTHER INFORMATION SATISFACTORY TO THE COMPANY.



ON SEMICONDUCTOR CORPORATION

ZERO COUPON CONVERTIBLE SENIOR SUBORDINATED NOTES DUE 2024

No. 1

\$260,000,000

Zero Coupon Convertible Senior Subordinated Notes due 2024

CUSIP No. 682189AA3  
ISIN No. US682189AA3

ON Semiconductor Corporation, a corporation duly organized and validly existing under the laws of the State of Delaware (herein called the “**Company**”, which term includes any successor corporation under the Indenture referred to on the reverse hereof), for value received hereby promises to pay to CEDE & CO. or its registered assigns, the principal sum as set forth on Schedule I hereto on April 15, 2024, at the office or agency of the Company maintained for that purpose in accordance with the terms of the Indenture, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

This Note shall not bear interest (except as provided by the following paragraph) and the principal amount of this Note shall not accrete.

To the extent that payment of such interest is enforceable under applicable law, the Company promises to pay interest on overdue payments of principal (whether at maturity or in connection with any redemption, repurchase or otherwise) at the rate of 1.00% per annum.

Reference is made to the further provisions of this Note set forth on the reverse hereof, including, without limitation, provisions giving the holder of this Note the right to convert this Note into Common Stock of the Company on the terms and subject to the limitations referred to on the reverse hereof and as more fully specified in the Indenture. Such further provisions shall for all purposes have the same effect as though fully set forth at this place.

This Note shall be deemed to be a contract made under the laws of the State of New York, and for all purposes shall be construed in accordance with and governed by the laws of the State of New York, without regard to conflicts of laws principles thereof.

This Note shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been manually signed by the Trustee or a duly authorized authenticating agent under the Indenture.

Additional provisions of this Note are set forth on the other side of this Note.

IN WITNESS WHEREOF, the parties have caused this instrument to be duly executed.

ON SEMICONDUCTOR CORPORATION,

by \_\_\_\_\_  
Name:  
Title:

Dated: April 6, 2004

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

WELLS FARGO BANK MINNESOTA,  
NATIONAL ASSOCIATION

as Trustee, certifies that this is one of the Note referred to  
in the Indenture.

by \_\_\_\_\_  
**Authorized Signatory**

ZERO COUPON CONVERTIBLE  
SENIOR SUBORDINATED  
NOTES DUE 2024

This Note is one of a duly authorized issue of Notes of the Company, designated as its Zero Coupon Convertible Senior Subordinated Notes Due 2024 (herein called the “**Notes**”), limited in aggregate principal amount to \$290,000,000, issued and to be issued under and pursuant to an Indenture dated as of April 6, 2004 (herein called the “**Indenture**”), between the Company, Semiconductor Components Industries, LLC, SCG (Malaysia SMP) Holding Corporation, SCG (Czech) Holding Corporation, SCG (China) Holding Corporation, Semiconductor Components Industries Puerto Rico, Inc., Semiconductor Components Industries of Rhode Island, Inc., SCG International Development LLC and Semiconductor Components Industries International of Rhode Island, Inc., as guarantors (collectively, the “**Note Guarantors**”) and Wells Fargo Bank, N.A., as trustee (herein called the “**Trustee**”), to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Company, the Note Guarantors and the holders of the Notes.

To guarantee the due and punctual payment of the principal and interest, if any, on the Notes and all other amounts payable by the Company under the Indenture and the Notes when and as the same shall be due and payable, whether at maturity, by acceleration or otherwise, according to the terms of the Notes and the Indenture, the Note Guarantors have, jointly and severally, unconditionally guaranteed the Guaranteed Obligations on a senior subordinated basis pursuant to the terms of the Indenture.

The Notes are subordinated in right of payment to Senior Indebtedness, as defined in the Indenture. To the extent provided in the Indenture, Senior Indebtedness must be paid before the Notes may be paid. Each of the Issuers and each Note Guarantor agrees, and each Noteholder by accepting a Note agrees, to the subordination provisions contained in the Indenture and authorizes the Trustee to give it effect and appoints the Trustee as attorney-in-fact for such purpose.

In case an Event of Default shall have occurred and be continuing, the principal of all Notes may be declared by either the Trustee or the holders of not less than 25% in aggregate principal amount of the Notes then outstanding, and upon said declaration shall become, due and payable, in the manner, with the effect and subject to the conditions provided in the Indenture.

The Indenture contains provisions permitting the Company and the Trustee, with the consent of the holders of at least a majority in aggregate principal amount of the Notes at the time outstanding, to execute supplemental indentures adding any provisions to or changing in any manner or eliminating any of the provisions of the Indenture or of any supplemental indenture or modifying in any manner the rights of the holders of the Notes; *provided* that no such supplemental indenture shall, without the consent of each Noteholder so affected: (a) extend the fixed maturity of any Note; (b) reduce the principal amount or premium thereof or change the date on which any Note may be redeemed pursuant to Section 3.01(a) of the Indenture; (c) reduce any amount payable on redemption or repurchase of the Notes; (d) change the obligation of the Company to repurchase any Note at the option of a Noteholder on a Repurchase Date in a manner adverse to the holders of Notes, or change the obligation of the Company to repurchase any Note upon the happening of a Designated Event in a manner adverse to the holders of Notes; (e) impair the right of any Noteholder to receive payment of principal of such holder's Notes on or after the due dates therefore or to institute suit for the payment thereof; (f) make the principal thereof payable in any coin or currency other than that provided in the Notes; (g) impair the right to convert the Notes into Common Stock or reduce the number of shares of Common Stock or any other property receivable by a Noteholder upon conversion subject to the terms set forth in the Indenture, including Section 15.06 thereof; (h) modify any of the provisions of Section 11.02 or Section 7.07 of the Indenture, except to increase any such percentage or to provide that certain other provisions of the Indenture cannot be modified or waived without the consent of the holder of each Note so affected; (i) change any obligation of the Company to maintain an office or agency in the places and for the purposes set forth in Section 5.02 of the Indenture; (j) reduce the quorum or voting requirements set forth in Article 10 or modify or change Article 16, 17 or 18 in any manner adverse to the Noteholders' rights thereunder; or (k) reduce the aforesaid percentage of Notes, the holders of which are required to consent to any such amendment or supplemental indenture, without the consent of the holders of all Notes then outstanding. Subject to the provisions of the Indenture, the holders of a majority in aggregate principal amount of the Notes at the time outstanding may on behalf of the holders of all of the Notes waive any past Default or Event of Default under the Indenture and its consequences except (A) a default in the payment of the principal of any of the Notes, (B) a default in the payment of the redemption price pursuant to Article 3 of the Indenture, (C) a default in the payment of the repurchase price pursuant to Article 3 of the Indenture, or (D) a default in respect of a covenant or provisions of the Indenture which under Article 11 of the Indenture cannot be modified or amended without the consent of the holders of each or all Notes then outstanding or affected thereby. Any such consent or waiver by the holder of this Note (unless revoked as provided in the Indenture) shall be conclusive and binding upon such holder and upon all future holders and owners of this Note and any Notes which may be issued in exchange or substitution hereof, irrespective of whether or not any notation thereof is made upon this Note or such other Notes.

No reference herein to the Indenture and no provision of this Note or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of this Note at the place, at the respective times, at the rate and in the coin or currency herein prescribed.

The Notes are issuable in fully registered form, without coupons, in denominations of \$1,000 principal amount and any multiple of \$1,000. At the office or agency of the Company referred to on the face hereof, and in the manner and subject to the limitations provided in the Indenture, without payment of any service charge but with payment of a sum sufficient to cover any tax, assessment or other governmental charge that may be imposed in connection with any registration or exchange of Notes, Notes may be exchanged for a like aggregate principal amount of Notes of any other authorized denominations.

At any time on or after April 15, 2010 and prior to maturity, the Notes may be redeemed at the option of the Company, in whole or in part, upon mailing a notice of such redemption not less than 30 days but not more than 60 days before the redemption date to the holders of Notes at their last registered addresses, all as provided in the Indenture, at a redemption price equal to 100% of the principal amount of the Notes being redeemed.

The Notes are not subject to redemption through the operation of any sinking fund.

If a Designated Event occurs at any time prior to maturity of the Notes, the Company shall become obligated to purchase, at the option of the holder, all or any portion of the Notes held by such holder, on a date specified by the Company that is thirty (30) days after notice thereof at a price of 100% of the principal amount. The Notes will be subject to repurchase in multiples of \$1,000 principal amount. The Company shall mail to all holders of record of the Notes a notice of the occurrence of a Designated Event and of the repurchase right arising as a result thereof on or before the 30<sup>th</sup> day after the occurrence of such Designated Event. To exercise such right, a holder shall deliver to the Company such Note with the form entitled “**Designated Event Repurchase Notice**” on the reverse thereof duly completed, together with the Note, duly endorsed for transfer, at any time prior to the close of business on the Designated Event Repurchase Date, and shall deliver the Notes to the Trustee (or other paying agent appointed by the Company) as set forth in the Indenture.

Subject to the terms and conditions of the Indenture, the Company shall become obligated to purchase, at the option of the holder, all or any portion of the Notes held by such holder on April 15 of 2010, 2014 and 2019 in whole multiples of \$1,000 at a repurchase price of 100% of the principal amount. To exercise such right, a holder shall deliver to the Company such Note with the form entitled “**Repurchase Notice**” on the reverse thereof duly completed, together with the Note, duly endorsed for transfer, at any time from the opening of business on the date that is 20 Business Days prior to such Repurchase Date until the close of business on the date that is two Business Days prior to the Repurchase Date, and shall deliver the Notes to the Trustee (or other paying agent appointed by the Company) as set forth in the Indenture.

Holders have the right to withdraw any Designated Event Repurchase Notice or the Repurchase Notice, as the case may be, by delivering to the Trustee (or other paying agent appointed by the Company) a written notice of withdrawal up to the close of business on the Designated Event Repurchase Date or the Repurchase Date, as the case may be, all as provided in the Indenture.

If money or cash, sufficient to pay the repurchase price of all Notes or portions thereof to be purchased as of the Designated Event Repurchase Date or the Repurchase Date, as the case may be, is deposited with the Trustee (or other paying agent appointed by the Company), on the Designated Event

Repurchase Date or the Repurchase Date, as the case may be, the holder thereof shall have no other rights as such other than the right to receive the repurchase price upon surrender of such Note.

Subject to the occurrence of certain events and in compliance with the provisions of the Indenture, prior to the final maturity date of the Notes, the holder hereof has the right, at its option, to convert each \$1,000 principal amount of the Notes into 101.8849 shares of the Company's Common Stock (a conversion price of approximately \$9.8150 per share), as such shares shall be constituted at the date of conversion and subject to adjustment from time to time as provided in the Indenture, upon surrender of this Note with the form entitled "**Conversion Notice**" on the reverse thereof duly completed, to the Company at the office or agency of the Company maintained for that purpose in accordance with the terms of the Indenture, or at the option of such holder, the Corporate Trust Office, and, unless the shares issuable on conversion are to be issued in the same name as this Note, duly endorsed by, or accompanied by instruments of transfer in form satisfactory to the Company duly executed by, the holder or by his duly authorized attorney. Upon conversion, the Company may choose to deliver cash in lieu of shares of Common Stock or shares of Common Stock in accordance with the Indenture. The Company will notify the holder thereof of any event triggering the right to convert the Notes as specified above in accordance with the Indenture.

No fractional shares will be issued upon any conversion, but an adjustment and payment in cash will be made, as provided in the Indenture, in respect of any fraction of a share which would otherwise be issuable upon the surrender of any Note or Notes for conversion. At the Company's option, the Company may issue one share of its Common Stock in lieu of paying cash for fractional shares.

A Note in respect of which a holder is exercising its right to require repurchase upon a Designated Event or repurchase on a Repurchase Date may be converted only if such holder withdraws its election to exercise either such right in accordance with the terms of the Indenture.

Any Notes called for redemption, unless surrendered for conversion by the holders thereof on or before the close of business on the Business Day preceding the redemption date, may be deemed to be redeemed from the holders of such Notes for an amount equal to the applicable redemption price, by one or more investment banks or other purchasers who may agree with the Company (i) to purchase such Notes from the holders thereof and convert them into shares of the Company's Common Stock and (ii) to make payment for such Notes as aforesaid to the Trustee in trust for the holders.

Upon due presentment for registration of transfer of this Note at the office or agency of the Company maintained for that purpose in accordance with the terms of the Indenture, a new Note or Notes of authorized denominations

for an equal aggregate principal amount will be issued to the transferee in exchange thereof, subject to the limitations provided in the Indenture, without charge except for any tax, assessment or other governmental charge imposed in connection therewith.

The Company, the Trustee, any authenticating agent, any paying agent, any conversion agent and any Note Registrar may deem and treat the registered holder hereof as the absolute owner of this Note (whether or not this Note shall be overdue and notwithstanding any notation of ownership or other writing hereon made by anyone other than the Company or any Note Registrar) for the purpose of receiving payment hereof, or on account hereof, for the conversion hereof and for all other purposes, and neither the Company nor the Trustee nor any other authenticating agent nor any paying agent nor other conversion agent nor any Note Registrar shall be affected by any notice to the contrary. All payments made to or upon the order of such registered holder shall, to the extent of the sum or sums paid, satisfy and discharge liability for monies payable on this Note.

No recourse for the payment of the principal of this Note, or for any claim based hereon or otherwise in respect hereof, and no recourse under or upon any obligation, covenant or agreement of the Company in the Indenture or any supplemental indenture or in any Note, or because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, employee, agent, officer or director or subsidiary, as such, past, present or future, of the Company or of any successor corporation, either directly or through the Company or any successor corporation, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty or otherwise, all such liability being, by acceptance hereof and as part of the consideration for the issue hereof, expressly waived and released.

This Note shall be deemed to be a contract made under the laws of New York, and for all purposes shall be construed in accordance with the laws of New York, without regard to conflicts of laws principles thereof.

Terms used in this Note and defined in the Indenture are used herein as therein defined.



ABBREVIATIONS

The following abbreviations, when used in the inscription of the face of this Note, shall be construed as though they were written out in full according to applicable laws or regulations.

TEN COM - as tenants in common  
TEN ENT - as tenant by the entireties  
JT TEN - as joint tenants with right of survivorship and not as tenants in common

UNIF GIFT MIN ACT - \_\_\_\_ Custodian \_\_\_\_  
(Cust) (Minor)  
under Uniform Gifts to Minors Act  
\_\_\_\_\_  
(State)

Additional abbreviations may also be used though not in the above list.

**CONVERSION NOTICE**

TO: ON SEMICONDUCTOR CORPORATION  
WELLS FARGO BANK, N.A.

The undersigned registered owner of this Note hereby irrevocably exercises the option to convert this Note, or the portion thereof (which is \$1,000 or a multiple thereof) below designated, into shares of Common Stock of ON Semiconductor Corporation in accordance with the terms of the Indenture referred to in this Note, and directs that the shares issuable and deliverable upon such conversion, together with any check in payment for fractional shares and any Notes representing any unconverted principal amount hereof, be issued and delivered to the registered holder hereof unless a different name has been indicated below; provided that the Company may at its option issue one share of Common Stock in lieu of paying cash for any fractional shares. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture. If shares or any portion of this Note not converted are to be issued in the name of a person other than the undersigned, the undersigned will provide the appropriate information below and pay all transfer taxes payable with respect thereto.

Dated: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Signature(s)

Signature(s) must be guaranteed by an “**eligible guarantor institution**” meeting the requirements of the Note Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program (“**STAMP**”) or such other “**signature guarantee program**” as may be determined by the Note Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

\_\_\_\_\_

Signature Guarantee

Fill in the registration of shares of Common Stock if to be issued, and Notes if to be delivered, other than to and in the name of the registered holder:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(City, State and Zip Code)

\_\_\_\_\_  
Please print name and address

\_\_\_\_\_  
Principal amount to be converted  
(if less than all):

\$ \_\_\_\_\_

\_\_\_\_\_  
Social Security or Other Taxpayer  
Identification Number:

\_\_\_\_\_

**DESIGNATED EVENT REPURCHASE NOTICE**

TO:

ON SEMICONDUCTOR  
CORPORATION  
WELLS FARGO BANK, N.A.

The undersigned registered owner of this Note hereby irrevocably acknowledges receipt of a notice from ON Semiconductor Corporation (the “**Company**”) regarding the right of holders to elect to require the Company to repurchase the Notes upon the occurrence of a Designated Event with respect to the Company and requests and instructs the Company to repay the entire principal amount of this Note, or the portion thereof (which is \$1,000 or an integral multiple thereof) below designated, in accordance with the terms of the Indenture at the price of 100% of such entire principal amount or portion thereof, to the registered holder hereof. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture. The Notes shall be repurchased by the Company as of the portion thereof, pursuant to the terms and conditions specified in the Indenture.

\$ principal amount of the Notes to which this Designated Event Repurchase Notice relates (if less than entire principal amount)

Dated:

Signature(s):

NOTICE: The above signatures of the holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

Note Certificate Number (if applicable):

Principal amount to be repurchased (if less than all):

Social Security or Other Taxpayer Identification Number:

**REPURCHASE NOTICE**

TO:

ON SEMICONDUCTOR  
CORPORATION  
WELLS FARGO BANK, N.A.

The undersigned registered owner of this Note hereby irrevocably acknowledges receipt of a notice from ON Semiconductor Corporation (the “**Company**”) regarding the right of holders to elect to require the Company to repurchase the Notes and requests and instructs the Company to repay the entire principal amount of this Note, or the portion thereof (which is \$1,000 or an integral multiple thereof) below designated, in accordance with the terms of the Indenture at the price of 100% of such entire principal amount or portion thereof, to the registered holder hereof. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture. The Notes shall be repurchased by the Company as of the Repurchase Date pursuant to the terms and conditions specified in the Indenture.

\$ principal amount of the Notes to which this Repurchase Notice relates (if less than entire principal amount)

Dated:

Signature(s):

NOTICE: The above signatures of the holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

Note Certificate Number (if applicable):

Principal amount to be repurchased (if less than all):

Social Security or Other Taxpayer Identification Number:

**ASSIGNMENT**

For value received \_\_\_\_\_ hereby sell(s) assign(s) and transfer(s) unto \_\_\_\_\_ (Please insert social security or other Taxpayer Identification Number of assignee) the within Note, and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer said Note on the books of the Company, with full power of substitution in the premises.

In connection with any transfer of the Note prior to the expiration of the holding period applicable to sales thereof under Rule 144(k) under the Securities Act (or any successor provision) (other than any transfer pursuant to a registration statement that has been declared effective under the Securities Act), the undersigned confirms that such Note is being transferred:  
continues to be effective at the time of transfer;

- To ON Semiconductor Corporation or a subsidiary thereof; or
- To a **“qualified institutional buyer”** in compliance with Rule 144A under the Securities Act of 1933, as amended; or
- Pursuant to in compliance with Rule 144A under the Securities Act of 1933, as amended; or a
- Pursuant to a Registration Statement which has been declared effective under the Securities Act of 1933, as amended, and which continues to be effective at the time of transfer;

and unless the Note has been transferred to ON Semiconductor Corporation or a subsidiary thereof, the undersigned confirms that such Note is not being transferred to an **“affiliate”** of the Company as defined in Rule 144 under the Securities Act of 1933, as amended.

*Unless one of the boxes is checked, the Trustee will refuse to register any of the Notes evidenced by this certificate in the name of any person other than the registered holder thereof.*

Dated: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
Signature(s)

Signature(s) must be guaranteed by an **“eligible guarantor institution”** meeting the requirements of the Note Registrar, which requirements

include membership or participation in the Security Transfer Agent Medallion Program (“**STAMP**”) or such other “**signature guarantee program**” as may be determined by the Note Registrar in addition to, or in substitution for, STAMP, al in accordance with the Securities Exchange Act of 1934, as amended.

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Signature Guarantee

NOTICE: The signature on the Conversion Notice, the Designated Event Repurchase Notice, the Repurchase Notice or the Assignment must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

ON SEMICONDUCTOR CORPORATION  
Zero Coupon Convertible Senior Subordinated Notes Due 2024

No. \_\_\_\_\_

The original principal amount of this Note is \$260 MILLION DOLLARS (\$260,000,000). The principal amount has been adjusted in accordance with the terms of the Indenture as set forth below:

<u>Date</u>	<u>Principal Amount</u>	<u>Notation Explaining Principal Amount Recorded</u>	<u>Authorized Signature of Trustee or Custodian</u>
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**REGISTRATION RIGHTS AGREEMENT**

**between**

**ON SEMICONDUCTOR CORPORATION**

**as Issuer,**

**and**

**MORGAN STANLEY & CO. INCORPORATED  
CREDIT SUISSE FIRST BOSTON LLC  
J.P. MORGAN SECURITIES INC.**

**as Representatives of the Initial Purchasers**

**Dated as of April 6, 2004**

REGISTRATION RIGHTS AGREEMENT dated as of April 6, 2004, between ON Semiconductor Corporation, a Delaware corporation (the “**Company**”), and Morgan Stanley & Co. Incorporated, Credit Suisse First Boston LLC and J.P. Morgan Securities Inc., as representatives of the initial purchasers (the “**Initial Purchasers**”), pursuant to the Purchase Agreement dated March 31, 2004 (the “**Purchase Agreement**”), among the Company, the guarantors listed therein (the “**Guarantors**”) and the Initial Purchasers. In order to induce the Initial Purchasers to enter into the Purchase Agreement, the Company has agreed to provide (including by causing the Guarantors to take such actions as may be required to provide) the registration rights set forth in this Agreement. The execution of this Agreement is a condition to the closing under the Purchase Agreement.

The Company agrees with the Initial Purchasers, (i) for their benefit as Initial Purchasers and (ii) for the benefit of the beneficial owners (including the Initial Purchasers) from time to time of the Notes (as defined herein) and the beneficial owners from time to time of the Underlying Common Stock (as defined herein) issued upon conversion of the Notes (each of the foregoing a “**Holder**” and together the “**Holders**”), as follows:

SECTION 1. *Definitions.* Capitalized terms used herein without definition shall have their respective meanings set forth in the Purchase Agreement. As used in this Agreement, the following terms shall have the following meanings:

“**Additional Share Amount**” has the meaning set forth in Section 2(e) hereof.

“**Additional Share Amount Payment Date**” means each April 15 and October 15.

“**Affiliate**” means with respect to any specified person, an “affiliate,” as defined in Rule 144, of such person.

“**Amendment Effectiveness Deadline Date**” has the meaning set forth in Section 2(d) hereof.

“**Business Day**” means each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which banking institutions in The City of New York are authorized or obligated by law or executive order to close.

“**Common Stock**” means the shares of common stock, par value \$0.01 per share, of the Company and any other shares of common stock as may constitute “Common Stock” for purposes of the Indenture, including the Underlying Common Stock.

“**Conversion Rate**” has the meaning assigned such term in the Indenture.

“**Conversion Rate Increase Amount**” has the meaning set forth in Section 2(e) hereof.

“**Deferral Notice**” has the meaning set forth in Section 3(h) hereof.

“**Deferral Period**” has the meaning set forth in Section 3(h) hereof.

“**Effectiveness Deadline Date**” has the meaning set forth in Section 2(a) hereof.

**“Effectiveness Period”** means the period commencing on the date hereof and ending on the date that all Registrable Securities have ceased to be Registrable Securities.

**“Event”** has the meaning set forth in Section 2(e) hereof.

**“Exchange Act”** means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

**“Filing Deadline Date”** has the meaning set forth in Section 2(a) hereof.

**“Holder”** has the meaning set forth in the second paragraph of this Agreement.

**“Indenture”** means the Indenture, dated as of the Issue Date, among the Company, the Guarantors and Wells Fargo Bank, N.A., as trustee, pursuant to which the Notes are being issued.

**“Initial Purchasers”** means Morgan Stanley & Co. Incorporated, Credit Suisse First Boston LLC, J.P. Morgan Securities Inc., Citigroup Global Markets Inc. and Lehman Brothers Inc.

**“Initial Shelf Registration Statement”** has the meaning set forth in Section 2(a) hereof.

**“Issue Date”** means April 6, 2004.

**“Liquidated Damages Period”** has the meaning set forth in Section 2(e) hereof.

**“Material Event”** has the meaning set forth in Section 3(h) hereof.

**“Notes”** means the Zero Coupon Convertible Senior Subordinated Notes due 2024 of the Company to be purchased pursuant to the Purchase Agreement.

**“Notice and Questionnaire”** means a written notice delivered to the Company containing substantially the information called for by the Selling Securityholder Notice and Questionnaire attached as Annex A to the Offering Memorandum of the Company dated March 31, 2004, relating to the Notes.

**“Notice Holder”** means, on any date, any Holder that has delivered a Notice and Questionnaire to the Company on or prior to such date.

**“Purchase Agreement”** has the meaning set forth in the preamble hereof.

**“Prospectus”** means the prospectus included in any Registration Statement (including, without limitation, a prospectus that discloses information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated under the Securities Act), as amended or supplemented by any amendment or prospectus supplement, including post-effective amendments, and all materials incorporated by reference or explicitly deemed to be incorporated by reference in such Prospectus.

**“Record Holder”** means with respect to any Additional Share Amount Payment Date relating to any Underlying Common Stock as to which any Additional Share Amount has accrued, the registered holder of such Underlying Common Stock on the April 1 immediately preceding an Additional Share Amount Payment Date occurring on an April 15, and on the October 1 immediately preceding an Additional Share Amount Payment Date occurring on an October 15.

**“Registrable Securities”** means (w) the Notes until such Notes have been converted into or exchanged for the Underlying Common Stock, (x) at all times subsequent to any such conversion, the Underlying Common Stock and any securities into or for which such Underlying Common Stock has been converted or exchanged, (y) to the extent provided in Section 2(a) hereof, such Underlying Common Stock issuable upon conversion of the Notes if and to the extent registration of such conversion under the Securities Act is required to permit the issuance of such Underlying Common Stock to any Holder upon conversion of the Notes on an unrestricted basis under the Securities Act, and (z) any security issued with respect to the Underlying Common Stock referred to in clauses (x) or (y) upon any stock dividend, split or similar event until, in the case of any such security referred to in clauses (w)-(z) above (A) such security may be sold on an unrestricted basis under the Securities Act by reason of the occurrence of one of the following: (i) its effective registration under the Securities Act and resale in accordance with the Registration Statement covering it, (ii) expiration of the holding period that would be applicable thereto under Rule 144(k) (without regard to any Affiliate status of the Holder) or (iii) its sale to the public pursuant to Rule 144 (or any similar provision then in force, but not Rule 144A) under the Securities Act, and (B) as a result of the event or circumstance described in any of the foregoing clauses (i) through (iii), the legend with respect to transfer restrictions required under the Indenture with respect to such security is removed or removable in accordance with the terms of the Indenture or such legend, as the case may be (without regard to any Affiliate status of the Holder). For the avoidance of doubt, it is agreed that if, upon the conversion of any Note by any Holder, the Underlying Common Stock received by such Holder may not be resold on an unrestricted basis under the Securities Act (other than by reason of such Holder’s Affiliate status), then such Underlying Common Stock shall remain a Registrable Security.

**“Registration Statement”** means any registration statement of the Company that covers any of the Registrable Securities pursuant to the provisions of this Agreement, including the Prospectus, amendments and supplements to such registration statement, including post-effective amendments, all exhibits and all materials incorporated by reference or explicitly deemed to be incorporated by reference in such registration statement.

**“Restricted Securities”** means “Restricted Securities” as defined in Rule 144.

**“Rule 144”** means Rule 144 under the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC.

**“Rule 144A”** means Rule 144A under the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC.

**“SEC”** means the Securities and Exchange Commission.

“**Securities Act**” means the Securities Act of 1933, as amended, and the rules and regulations promulgated by the SEC thereunder.

“**Shelf Registration Statement**” has the meaning set forth in Section 2(a) hereof.

“**Special Counsel**” means Cravath, Swaine & Moore LLP or one such other successor counsel as shall be specified by the Holders of a majority of all Registrable Securities, but which may, with the written consent of the Initial Purchasers (which shall not be unreasonably withheld), be another law firm experienced in securities law matters designated by the Company, the reasonable fees and expenses of which will be paid by the Company pursuant to Section 5 hereof. Throughout this Agreement, for purposes of determining the holders of a majority of Registrable Securities in this definition, Holders of Notes shall be deemed to be the Holders of the number of shares of Underlying Common Stock into which such Notes are or would be convertible as of the date the consent is requested.

“**Subsequent Shelf Registration Statement**” has the meaning set forth in Section 2(b) hereof.

“**TIA**” means the Trust Indenture Act of 1939, as amended.

“**Trustee**” means Wells Fargo Bank, N.A., the Trustee under the Indenture.

“**Underlying Common Stock**” means the Common Stock into which the Notes are convertible or issued upon any such conversion.

## SECTION 2. *Shelf Registration.*

(a) The Company shall use its reasonable best efforts to prepare and file or cause to be prepared and filed with the SEC, as soon as practicable but in any event by the date (the “**Filing Deadline Date**”) ninety (90) days after the Issue Date, a Registration Statement for an offering to be made on a delayed or continuous basis pursuant to Rule 415 of the Securities Act (a “**Shelf Registration Statement**”) registering (i) the resale from time to time by Holders thereof of all of the Registrable Securities and (ii) if and to the extent required by applicable securities laws to permit the issuance of Underlying Common Stock upon conversion of the Notes on an unrestricted basis under the Securities Act, the issuance by the Company of Underlying Common Stock upon conversion of the Notes by any Holders who acquired the Notes in registered resales pursuant to the Initial Shelf Registration Statement or any Subsequent Shelf Registration Statement or in resales pursuant to Rule 144; provided, however, that the Company shall not be required to register the issuance of Underlying Common Stock upon conversion of the Notes with respect to any Holder if and to the extent the Company is not permitted to effect such registration under the Securities Act after using its reasonable best efforts to do so (the “**Initial Shelf Registration Statement**”). The Initial Shelf Registration Statement shall be on Form S-1, Form S-3 or another appropriate form permitting registration of such Registrable Securities for (x) resale by such Holders in accordance with the methods of distribution elected by the Holders and set forth in the Initial Shelf Registration Statement and (y) issuance upon conversion of the Notes as provided in clause (ii) of the immediately preceding sentence. The Company shall use its reasonable best efforts to cause the Initial Shelf Registration Statement to be declared effective under the Securities Act as promptly as is practicable but in any event by

the date (the “**Effectiveness Deadline Date**”) that is two hundred and ten (210) days after the Issue Date, and to keep the Initial Shelf Registration Statement (or any Subsequent Shelf Registration Statement) continuously effective under the Securities Act until the expiration of the Effectiveness Period. At the time the Initial Shelf Registration Statement is declared effective, each Holder that became a Notice Holder on or prior to the date ten (10) Business Days prior to such time of effectiveness shall be named as a selling securityholder in the Initial Shelf Registration Statement and the related Prospectus in such a manner as to permit such Holder to deliver such Prospectus to purchasers of Registrable Securities in accordance with applicable law. None of the Company’s securityholders (other than the Holders of Registrable Securities) shall have the right to include any of the Company’s securities in the Shelf Registration Statement.

(b) If the Initial Shelf Registration Statement or any Subsequent Shelf Registration Statement ceases to be effective for any reason at any time during the Effectiveness Period (other than because all Registrable Securities registered thereunder shall have been resold pursuant thereto or shall have otherwise ceased to be Registrable Securities), the Company shall use its reasonable best efforts to obtain the prompt withdrawal of any order suspending the effectiveness thereof, and in any event shall within thirty (30) days of such cessation of effectiveness amend the Shelf Registration Statement in a manner reasonably expected to obtain the withdrawal of the order suspending the effectiveness thereof, or file an additional Shelf Registration Statement covering all of the securities that as of the date of such filing are Registrable Securities (a “**Subsequent Shelf Registration Statement**”). If a Subsequent Shelf Registration Statement is filed, the Company shall use its reasonable best efforts to cause the Subsequent Shelf Registration Statement to become effective as promptly as is practicable after such filing and to keep such Registration Statement (or subsequent Shelf Registration Statement) continuously effective until the end of the Effectiveness Period.

(c) The Company shall supplement and amend the Shelf Registration Statement or Subsequent Shelf Registration Statement, as the case may be, if required by the rules, regulations or instructions applicable to the registration form used by the Company for such Shelf Registration Statement or Subsequent Shelf Registration Statement, as the case may be, if required by the Securities Act or as necessary to name a Notice Holder as a selling securityholder pursuant to Section (d) below.

(d) Each Holder agrees that if such Holder wishes to sell Registrable Securities pursuant to a Shelf Registration Statement and related Prospectus, it will do so only in accordance with this Section 2(d) and Section 3(h). Each Holder wishing to sell Registrable Securities pursuant to a Shelf Registration Statement and related Prospectus agrees to deliver a Notice and Questionnaire to the Company at least ten (10) Business Days prior to the effectiveness of the Shelf Registration Statement. Each holder who elects to sell Registrable Securities pursuant to a Shelf Registration Statement agrees, by submitting a Notice and Questionnaire to the Company, that it will be bound by the terms and conditions of the Notice and Questionnaire and this Agreement. From and after the date the Initial Shelf Registration Statement is declared effective, the Company shall, as promptly as practicable after the date a Notice and Questionnaire is delivered pursuant to Section 8(c) hereof, and in any event upon the later of (x) fifteen (15) Business Days after such date or (y) fifteen (15) Business Days after the expiration of any

Deferral Period in effect when the Notice and Questionnaire is delivered or put into effect within fifteen (15) Business Days of such delivery date:

(i) if required by applicable law, file with the SEC a post-effective amendment to the Shelf Registration Statement or prepare and, if required by applicable law, file a supplement to the related Prospectus or a supplement or amendment to any document incorporated therein by reference or file any other required document so that the Holder delivering such Notice and Questionnaire is named as a selling securityholder in the Shelf Registration Statement and the related Prospectus in such a manner as to permit such Holder to deliver such Prospectus to purchasers of the Registrable Securities in accordance with applicable law and, if the Company shall file a post-effective amendment to the Shelf Registration Statement, use its reasonable best efforts to cause such post-effective amendment to be declared effective under the Securities Act as promptly as is practicable, but in any event by the date (the “**Amendment Effectiveness Deadline Date**”) that is forty-five (45) days after the date such post-effective amendment is required by this clause to be filed;

(ii) provide such Holder copies of any documents filed pursuant to Section 2(d)(i); and

(iii) notify such Holder as promptly as practicable after the effectiveness under the Securities Act of any post-effective amendment filed pursuant to Section 2(d)(i);

*provided*, that if such Notice and Questionnaire is delivered during a Deferral Period, the Company shall so inform the Holder delivering such Notice and Questionnaire and shall take the actions set forth in clauses (i), (ii) and (iii) above upon expiration of the Deferral Period in accordance with Section 3(h). Notwithstanding anything contained herein to the contrary, (i) the Company shall be under no obligation to name any Holder that is not a Notice Holder as a selling securityholder in any Registration Statement or related Prospectus and (ii) the Amendment Effectiveness Deadline Date shall be extended by up to ten (10) Business Days from the expiration of a Deferral Period if such Deferral Period shall be in effect on the Amendment Effectiveness Deadline Date.

(e) If, other than as permitted hereunder,

(i) the Initial Shelf Registration Statement has not been filed on or prior to the Filing Deadline Date, or

(ii) the Initial Shelf Registration Statement has not been declared effective under the Securities Act on or prior to the Effectiveness Deadline Date,

the parties hereto agree that the Holders of Registrable Securities will be entitled to receive liquidated damages as provided for in this Section 2(e). Each event described in any of the foregoing clauses (i) or (ii) is individually referred to herein as an “**Event**”; *provided, however*, that the Company’s failure after using its reasonable best efforts to register under the Securities Act the issuance of Underlying Common Stock upon conversion of the Notes with respect to any Holder because the Company is not permitted to effect such registration under the Securities Act

shall not constitute an Event for purposes of this Agreement. For purposes of this Agreement, each Event set forth above shall begin and end on the dates set forth in the table set forth below:

<u>Type of Event by Clause</u>	<u>Beginning Date</u>	<u>Ending Date</u>
(i)	Filing Deadline Date	the date the Initial Shelf Registration Statement is filed
(ii)	Effectiveness Deadline Date	the date the Initial Shelf Registration Statement becomes effective under the Securities Act

For purposes of this Agreement, Events shall begin on the dates set forth in the table above and shall continue until the ending dates set forth in the table above.

Commencing on (and including) any date that an Event has begun and ending on (but excluding) the next date on which there are no Events that have occurred and are continuing (a “**Liquidated Damages Period**”), the Company shall, as liquidated damages and not as a penalty, increase the Conversion Rate for Holders of Notes or issue additional shares of Underlying Common Stock to Holders of Underlying Common Stock as follows: (i) in respect of Holders of Notes that are Registrable Securities, the Company shall increase the Conversion Rate of such Notes by an amount (the “**Conversion Rate Increase Amount**”), accruing for each day in the Liquidated Damages Period, equal to 0.08125% of the Conversion Rate for the first ninety (90) day period immediately following the occurrence of such Event and 0.1625% of the Conversion Rate for each subsequent ninety (90) day period following the occurrence of such Event (or a pro rata portion of such amounts in the case of Events lasting less than the full relevant ninety (90) day period calculated as described below), and (ii) in respect of Record Holders of shares of Underlying Common Stock that are Registrable Securities, the Company shall issue to such Holders additional shares of Underlying Common Stock in an amount accruing, for each day in the Liquidated Damages Period, that is equal to the additional shares of Common Stock that would be issuable as a result of the relevant Conversion Rate Increase Amount that would apply on each such date if the Holder of such Underlying Common Stock held Notes convertible into the number of shares of Underlying Common Stock held by such Holder at the Conversion Rate effective on the date that the relevant Event began (the “**Additional Share Amount**”). In calculating the Additional Share Amount on any date on which no Notes are outstanding, the Additional Share Amount shall be calculated as if the Notes were still outstanding. Notwithstanding the foregoing, no Conversion Rate Increase Amount or Additional Share Amount shall apply as to any Registrable Security from and after the earlier of (x) the date such security is no longer a Registrable Security and (y) expiration of the Effectiveness Period. The Conversion Rate Increase Amount and Additional Share Amount with respect to any period shall not exceed the amount provided for in this paragraph notwithstanding the occurrence of multiple concurrent Events. The pro rata amount of any Conversion Rate



Increase Amount or Additional Share Amount for any portion of a relevant 90 day period referred to above shall be an amount equal to the applicable amount referred to above for a full 90 day period multiplied by a fraction, the numerator of which shall be the number of days in the relevant 90 day period that are included in the Liquidated Damages Period and the denominator of which shall be 90.

Conversion Rate Increase Amounts shall accrue daily from the first day of the applicable Liquidated Damages Period and shall be effective immediately. Additional Share Amounts shall accrue from the first day of the applicable Liquidated Damages Period, and shall be payable on each Additional Share Amount Payment Date during the Liquidated Damages Period (and on the Additional Share Amount Payment Date next succeeding the end of the Liquidated Damages Period if the Liquidated Damages Period does not end on an Additional Share Amount Payment Date) to the Record Holders of the Registrable Securities entitled thereto.

The Trustee shall be entitled, on behalf of registered holders of Notes or Underlying Common Stock, to seek any available remedy for the enforcement of this Agreement, including, but not limited to, for the enforcement of any required Conversion Rate Increase Amount or Additional Share Amount. Notwithstanding the foregoing, the parties agree that the sole damages payable for a violation of the terms of this Agreement with respect to which a Conversion Rate Increase Amount or Additional Share Amount is expressly provided shall be such Conversion Rate Increase Amount or Additional Share Amount. Nothing shall preclude any Holder from pursuing or obtaining (i) specific performance or other equitable relief with respect to this Agreement or (ii) any damages or other available remedy with respect to any breach by the Company of its obligations hereunder, other than damages in excess of the liquidated damages for breaches for which liquidated damages are expressly provided above.

All of the Company's obligations set forth in this Section 2(e) that are outstanding with respect to any Registrable Security at the time such security ceases to be a Registrable Security shall survive until such time as all such obligations with respect to such security have been satisfied in full (notwithstanding termination of this Agreement pursuant to Section 8(k)).

The parties hereto agree that the Conversion Rate Increase Amount and Additional Share Amount provided for in this Section 2(e) constitute a reasonable estimate of the damages that may be incurred by Holders of Registrable Securities by reason of the failure of the Shelf Registration Statement to be filed or declared effective in accordance with the provisions hereof.

SECTION 3. *Registration Procedures.* In connection with the registration obligations of the Company under Section 2 hereof, during the Effectiveness Period, the Company shall:

- (a) Prepare and file with the SEC a Registration Statement or Registration Statements referred to in Section 2(a) hereof, and use its reasonable best efforts to cause each such Registration Statement to become effective and remain effective as provided herein; *provided* that before filing any Registration Statement or Prospectus or any amendments or supplements thereto with the SEC (but excluding reports filed with the SEC under the Exchange Act), furnish to the Initial Purchasers and the Special Counsel of such offering, if any, copies of all such documents proposed to be filed at least three

(3) Business Days prior to the filing of such Registration Statement or amendment thereto or Prospectus or supplement thereto.

(b) Subject to Section 3(h), prepare and file with the SEC such amendments and post-effective amendments to each Registration Statement as may be necessary to keep a Registration Statement continuously effective for the applicable period specified in Section 2(a); cause the related Prospectus to be supplemented by any required prospectus supplement, and as so supplemented to be filed pursuant to Rule 424 (or any similar provisions then in force) under the Securities Act; and use its reasonable best efforts to comply with the provisions of the Securities Act applicable to it with respect to (i) the disposition of all securities covered by such Registration Statement during the Effectiveness Period in accordance with the intended methods of disposition by the sellers thereof and (ii) the issuance of Underlying Common Stock upon conversion of the Notes, in each case as set forth in such Registration Statement as so amended or such Prospectus as so supplemented.

(c) As promptly as practicable give notice to the Notice Holders, the Initial Purchasers and the Special Counsel, (i) when any Prospectus, prospectus supplement, Registration Statement or post-effective amendment to a Registration Statement has been filed with the SEC and, with respect to a Registration Statement or any post-effective amendment, when the same has been declared effective, (ii) of any request, following the effectiveness of the Initial Shelf Registration Statement under the Securities Act, by the SEC or any other federal or state governmental authority for amendments or supplements to any Registration Statement or related Prospectus or for additional information relating to the Shelf Registration Statement, (iii) of the issuance by the SEC or any other federal or state governmental authority of any stop order suspending the effectiveness of any Registration Statement or the initiation or threatening of any proceedings for that purpose, (iv) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose, and (v) of the determination by the Company that a post-effective amendment to a Registration Statement or a supplement to the related Prospectus will need to be filed with the SEC, which notice may, at the discretion of the Company (or as required pursuant to Section 3(h)), state that it constitutes a Deferral Notice, in which event the provisions of Section 3(h) shall apply.

(d) Use its reasonable best efforts to obtain the withdrawal of any order suspending the effectiveness of a Registration Statement or the lifting of any suspension of the qualification (or exemption from qualification) of any of the Registrable Securities for sale in any jurisdiction in which they have been qualified for sale, in either case at the earliest possible moment, and provide immediate notice to each Notice Holder and the Initial Purchasers of the withdrawal of any such order.

(e) As promptly as practicable furnish to each Notice Holder, the Special Counsel and the Initial Purchasers, upon request and without charge, at least one (1) conformed copy of the Registration Statement and any amendment thereto, including

exhibits and if requested, all documents incorporated or deemed to be incorporated therein by reference.

(f) Deliver to each Notice Holder, the Special Counsel, if any, and the Initial Purchasers, in connection with any sale of Registrable Securities pursuant to a Registration Statement, without charge, as many copies of the Prospectus or Prospectuses relating to such Registrable Securities (including each preliminary prospectus) and any amendment or supplement thereto as such Notice Holder may reasonably request; and the Company hereby consents (except during such periods that a Deferral Notice is outstanding and has not been revoked) to the use of such Prospectus or each amendment or supplement thereto by each Notice Holder in connection with any offering and sale of the Registrable Securities covered by such Prospectus or any amendment or supplement thereto in the manner set forth therein.

(g) Prior to any public offering of the Registrable Securities pursuant to a Registration Statement, use its reasonable best efforts to register or qualify or cooperate with the Notice Holders and the Special Counsel in connection with the registration or qualification (or exemption from such registration or qualification) of such Registrable Securities for offer and sale under the securities or Blue Sky laws of such jurisdictions within the United States as any Notice Holder reasonably requests in writing (which request may be included in the Notice and Questionnaire); prior to any public offering of the Registrable Securities pursuant to the Shelf Registration Statement, use its reasonable best efforts to keep each such registration or qualification (or exemption therefrom) effective during the Effectiveness Period in connection with such Notice Holder's offer and sale of Registrable Securities pursuant to such registration or qualification (or exemption therefrom) and do any and all other acts or things reasonably necessary or advisable to enable the disposition in such jurisdictions of such Registrable Securities in the manner set forth in the relevant Registration Statement and the related Prospectus; *provided* that the Company will not be required to (i) qualify as a foreign corporation or as a dealer in securities in any jurisdiction where it would not otherwise be required to qualify but for this Agreement or (ii) take any action that would subject it to general service of process in suits or to taxation in any such jurisdiction where it is not then so subject.

(h) Upon (A) the issuance by the SEC of a stop order suspending the effectiveness of the Shelf Registration Statement, the initiation of proceedings with respect to the Shelf Registration Statement under Section 8(d) or 8(e) of the Securities Act, the filing of a post-effective amendment during any period when the Company is not eligible to use Form S-3 or the initiation of an SEC review of the Company's filings under the Exchange Act, (B) the occurrence of any event or the existence of any fact (a "**Material Event**") as a result of which any Registration Statement shall contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, or any Prospectus shall contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, or (C) the occurrence or existence of any pending corporate development that, in the reasonable discretion of the

Company, makes it appropriate to suspend the availability of the Shelf Registration Statement and the related Prospectus:

(i) in the case of clause (B) above, subject to the next sentence, as promptly as practicable prepare and file, if necessary pursuant to applicable law, a post-effective amendment to such Registration Statement or a supplement to the related Prospectus or any document incorporated therein by reference or file any other required document that would be incorporated by reference into such Registration Statement and Prospectus so that such Registration Statement does not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and such Prospectus does not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, as thereafter delivered to the purchasers of the Registrable Securities being sold thereunder, and, in the case of a post-effective amendment to a Registration Statement, subject to the next sentence, use its reasonable best efforts to cause it to be declared effective as promptly as is practicable, and

(ii) give notice to the Notice Holders, and the Special Counsel, if any, that the availability of the Shelf Registration Statement is suspended (a “**Deferral Notice**”) and, upon receipt of any Deferral Notice, each Notice Holder agrees not to sell any Registrable Securities pursuant to the Registration Statement until such Notice Holder’s receipt of copies of the supplemented or amended Prospectus provided for in clause (i) above, or until it is advised in writing by the Company that the Prospectus may be used, and has received copies of any additional or supplemental filings that are incorporated or deemed incorporated by reference in such Prospectus.

The Company will use its reasonable best efforts to ensure that the use of the Prospectus may be resumed (x) in the case of clause (A) above, as promptly as is practicable, (y) in the case of clause (B) above, as soon as, in the sole judgment of the Company, public disclosure of such Material Event would not be prejudicial to or contrary to the interests of the Company or, if necessary to avoid unreasonable burden or expense, as soon as practicable thereafter and (z) in the case of clause (C) above, as soon as in the reasonable discretion of the Company, such suspension is no longer appropriate. The Company shall be entitled to exercise its right under this Section 3(h) to suspend the availability of the Shelf Registration Statement or any Prospectus (the “**Deferral Period**”); *provided* that the aggregate duration of any Deferral Periods shall not exceed thirty (30) days in any three month period (or sixty (60) days in any three month period in the event of a Material Event pursuant to which the Company has delivered a second notice as required below) or ninety (90) days in any twelve month period; *provided* that in the case of a Material Event relating to an acquisition or a probable acquisition or financing, recapitalization, business combination or other similar transaction, the Company may deliver to Notice Holders a second notice to the effect set forth above, which shall have

the effect of extending the Deferral Period by up to an additional thirty (30) days, or such shorter period of time as is specified in such second notice.

(i) If reasonably requested in writing in connection with a disposition of Registrable Securities pursuant to a Registration Statement, make reasonably available for inspection during normal business hours by one representative for the Notice Holders of such Registrable Securities, any broker-dealers, underwriters, attorneys and accountants retained by such representative for the Notice Holders, and any attorneys or other agents retained by a broker-dealer or underwriter engaged by such representative for the Notice Holders, all relevant financial and other records and pertinent corporate documents and properties of the Company and its subsidiaries, and cause the appropriate officers, directors and employees of the Company and its subsidiaries to make reasonably available for inspection during normal business hours on reasonable notice all relevant information reasonably requested by such representative for the Notice Holders, or any such broker-dealers, underwriters, attorneys or accountants in connection with such disposition, in each case as is customary for similar "due diligence" examinations; *provided* that such persons shall first agree in writing with the Company that any non-public information shall be kept confidential by such persons and shall be used solely for the purposes of exercising rights under this Agreement, unless (i) disclosure of such information is required by court or administrative order or is necessary to respond to inquiries of regulatory authorities, (ii) disclosure of such information is required by law, (iii) such information becomes generally available to the public other than as a result of a disclosure or failure to safeguard by any such person or (iv) such information becomes available to any such person from a source other than the Company and such source is not bound by a confidentiality agreement, and *provided further* that the foregoing inspection and information gathering shall, to the greatest extent possible, be coordinated on behalf of all the Notice Holders and the other parties entitled thereto by Special Counsel. Any person legally compelled to disclose any such confidential information made available for inspection shall provide the Company with prompt prior written notice of such requirement so that the Company may seek a protective order or other appropriate remedy.

(ii) Comply with all applicable rules and regulations of the SEC and make generally available to its securityholders earning statements (which need not be audited) satisfying the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder (or any similar rule promulgated under the Securities Act) for a twelve month period commencing on the first day of the first fiscal quarter of the Company commencing after the effective date of a Registration Statement, which statements shall be made available no later than forty-five (45) days after the end of the twelve month period or ninety (90) days if the twelve month period coincides with the fiscal year of the Company.

(i) Cooperate with each Notice Holder to facilitate the timely preparation and delivery of certificates representing Registrable Securities sold or to be sold pursuant to a Registration Statement, which certificates shall not bear any restrictive legends, and

cause such Registrable Securities to be in such denominations as are permitted by the Indenture and registered in such names as such Notice Holder may request in writing at least two (2) Business Day prior to any sale of such Registrable Securities.

(j) Provide a CUSIP number for all Registrable Securities covered by each Registration Statement not later than the effective date of such Registration Statement and provide the Trustee and the transfer agent for the Common Stock with printed certificates for the Registrable Securities that are in a form eligible for deposit with The Depository Trust Company.

(k) Cooperate and assist in any filings required to be made with the National Association of Securities Dealers, Inc.

(l) Upon (i) the filing of the Initial Shelf Registration Statement and (ii) the effectiveness of the Initial Shelf Registration Statement, announce the same, in each case by publicly disseminating such information through its website or by issuing a press release.

(m) Take all other reasonable actions as are required to permit unrestricted resales of the Registrable Securities and issuances of Underlying Common Stock on an unrestricted basis upon conversion of Notes in accordance with the terms and conditions of this Agreement.

SECTION 4. *Holder's Obligations.* Each Holder agrees, by acquisition of the Registrable Securities, that no Holder shall be entitled to sell any of such Registrable Securities pursuant to a Registration Statement or to receive a Prospectus relating thereto, unless such Holder has furnished the Company with a Notice and Questionnaire as required pursuant to Section 2(d) hereof (including the information required to be included in such Notice and Questionnaire) and the information set forth in the next sentence. Each Notice Holder agrees promptly to furnish to the Company all information required to be disclosed in order to make the information previously furnished to the Company by such Notice Holder not misleading and any other information regarding such Notice Holder and the distribution of such Registrable Securities as the Company may from time to time reasonably request. Any sale of any Registrable Securities by any Holder shall constitute a representation and warranty by such Holder that the information relating to such Holder and its plan of distribution is as set forth in the Prospectus delivered by such Holder in connection with such disposition, that such Prospectus does not as of the time of such sale contain any untrue statement of a material fact relating to or provided by such Holder or its plan of distribution and that such Prospectus does not as of the time of such sale omit to state any material fact relating to or provided by such Holder or its plan of distribution necessary to make the statements in such Prospectus, in the light of the circumstances under which they were made, not misleading.

SECTION 5. *Registration Expenses.* The Company shall bear all fees and expenses incurred in connection with the performance by the Company of its obligations under Sections 2 and 3 of this Agreement whether or not any Registration Statement is declared effective. Such fees and expenses shall include, without limitation, (i) all registration and filing fees (including, without limitation, fees and expenses (x) with respect to filings required to be made with the

NASD, Inc. and (y) of compliance with federal and state securities or Blue Sky laws (including, without limitation, reasonable fees and disbursements of the Special Counsel in connection with Blue Sky qualifications of the Registrable Securities under the laws of such jurisdictions as Notice Holders of a majority of the Registrable Securities being sold pursuant to a Registration Statement may designate), (ii) printing expenses (including, without limitation, expenses of printing certificates for Registrable Securities in a form eligible for deposit with The Depository Trust Company), (iii) duplication expenses relating to copies of any Registration Statement or Prospectus delivered to any Holders hereunder, (iv) fees and disbursements of counsel for the Company in connection with the Shelf Registration Statement, (v) reasonable fees and disbursements of the Trustee and its counsel and of the registrar and transfer agent for the Common Stock and (vi) any Securities Act liability insurance obtained by the Company in its sole discretion. In addition, the Company shall pay the internal expenses of the Company (including, without limitation, all salaries and expenses of officers and employees performing legal or accounting duties), the expense of any annual audit, the fees and expenses incurred in connection with the listing by the Company of the Registrable Securities on any securities exchange on which similar securities of the Company are then listed and the fees and expenses of any person, including special experts, retained by the Company. Notwithstanding the provisions of this Section 5, each seller of Registrable Securities shall pay selling expenses, including any underwriting discount and commissions, and all registration expenses to the extent required by applicable law.

SECTION 6. *Indemnification and Contribution.*

(a) *Indemnification by the Company.* The Company agrees to indemnify and hold harmless each Notice Holder, each person, if any, who controls any Notice Holder within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, from and against any and all losses, claims, damages and liabilities (including, without limitation, any legal or other expenses reasonably incurred in connection with defending or investigating any such action or claim) caused by any untrue statement or alleged untrue statement of a material fact contained in any Registration Statement or any amendment thereof, any preliminary prospectus or the Prospectus (as amended or supplemented if the Company shall have furnished any amendments or supplements thereto), caused by any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as such losses, claims, damages or liabilities are caused by any such untrue statement or omission or alleged untrue statement or omission based upon information relating to any Holder furnished to the Company in writing by such Holder expressly for use therein; *provided* that the indemnification contained in this paragraph shall not inure to the benefit of any Holder (or to the benefit of any person controlling such Holder) on account of any such losses, claims, damages or liabilities caused by any untrue statement or alleged untrue statement or omission or alleged omission made in any preliminary prospectus provided in each case the Company has performed its obligations under Section 3(f) hereof if either (A) (x) such Holder failed to send or deliver a copy of the Prospectus with or prior to the delivery of written confirmation of the sale by such Holder to the person asserting the claim from which such losses, claims, damages or liabilities arise and (y) the Prospectus would have corrected such untrue statement or alleged untrue statement or such omission or alleged omission, or (B) (x) such untrue statement or alleged untrue statement, omission or alleged omission is corrected in an amendment or supplement to the Prospectus and (y) having previously been furnished by or on

behalf of the Company with copies of the Prospectus as so amended or supplemented, such Holder thereafter fails to deliver such Prospectus as so amended or supplemented, with or prior to the delivery of written confirmation of the sale of a Registrable Security to the person asserting the claim from which such losses, claims, damages or liabilities arise.

(b) *Indemnification by Holders.* Each Holder agrees severally and not jointly to indemnify and hold harmless the Company and its directors, its officers and each person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, or any other Holder, to the same extent as the foregoing indemnity from the Company to such Holder, but only with reference to information relating to such Holder furnished to the Company in writing by such Holder expressly for use in such Registration Statement or Prospectus or amendment or supplement thereto.

(c) *Conduct of Indemnification Proceedings.* In case any proceeding (including any governmental investigation) shall be instituted involving any person in respect of which indemnity may be sought pursuant to Section 6(a) or 6(b) hereof, such person (the “**indemnified party**”) shall promptly notify the person against whom such indemnity may be sought (the “**indemnifying party**”) in writing, but the omission so to notify the indemnifying party will not, in any event, relieve the indemnifying party from any obligation to any indemnified party otherwise than as provided in (a) or (b) above. The indemnifying party, upon request of the indemnified party, shall retain counsel reasonably satisfactory to the indemnified party to represent the indemnified party and any others the indemnifying party may designate in such proceeding and shall pay the reasonable fees and disbursements of such counsel related to such proceeding. In any such proceeding, any indemnified party shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such indemnified party unless (i) the indemnifying party and the indemnified party shall have mutually agreed to the retention of such counsel or (ii) the named parties to any such proceeding (including any impleaded parties) include both the indemnifying party and the indemnified party and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. It is understood that the indemnifying party shall not, in respect of the legal expenses of any indemnified party in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any local counsel) for all such indemnified parties and that all such fees and expenses shall be reimbursed as they are incurred. Such firm shall be designated in writing by, in the case of parties indemnified pursuant to Section 6(a), the Holders of a majority (with Holders of Notes deemed to be the Holders, for purposes of determining such majority, of the number of shares of Underlying Common Stock into which such Notes are or would be convertible as of the date on which such designation is made) of the Registrable Securities covered by the Registration Statement held by Holders that are indemnified parties pursuant to Section 6(a) and, in the case of parties indemnified pursuant to Section 6(b), the Company. The indemnifying party shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party from and against any loss or liability by reason of such settlement or judgment. No indemnifying party shall, without the prior written consent of the indemnified party (such consent not to be unreasonably withheld), effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder



by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding.

(d) *Contribution.* To the extent that the indemnification provided for in Section 6(a) or 6(b) is unavailable to an indemnified party or insufficient in respect of any losses, claims, damages or liabilities referred to therein, then each indemnifying party under such paragraph, in lieu of indemnifying such indemnified party thereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (i) in such proportion as is appropriate to reflect the relative benefits received by the indemnifying party or parties on the one hand and the indemnified party or parties on the other hand or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the indemnifying party or parties on the one hand and of the indemnified party or parties on the other hand in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative benefits received by the Company shall be deemed to be equal to the total net proceeds from the initial placement pursuant to the Purchase Agreement (before deducting expenses) of the Registrable Securities to which such losses, claims, damages or liabilities relate. The relative benefits received by any Holder shall be deemed to be equal to the value of receiving Registrable Securities that are registered under the Securities Act. The relative fault of the Holders on the one hand and the Company on the other hand shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Holders or by the Company, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Holders' respective obligations to contribute pursuant to this Section 6(d) are several in proportion to the respective number of Registrable Securities they have sold pursuant to a Registration Statement, and not joint.

The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 6(d) were determined by *pro rata* allocation or by any other method of allocation that does not take into account the equitable considerations referred to in the immediately preceding paragraph. The amount paid or payable by an indemnified party as a result of the losses, claims, damages or liabilities referred to in the immediately preceding paragraph shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding this Section 6, no indemnifying party that is a selling Holder shall be required to contribute any amount in excess of the amount by which the total price at which the Registrable Securities sold by it and distributed to the public were offered to the public exceeds the amount of any damages that such indemnifying party has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

(e) The remedies provided for in this Section 6 are not exclusive and shall not limit any rights or remedies which may otherwise be available to an indemnified party at law or in equity, hereunder, under the Purchase Agreement or otherwise.

(f) The indemnity and contribution provisions contained in this Section 6 shall remain operative and in full force and effect regardless of (i) any termination of this Agreement, (ii) any investigation made by or on behalf of any Holder, any person controlling any Holder or any affiliate of any Holder or by or on behalf of the Company, its officers or directors or any person controlling the Company and (iii) the sale of any Registrable Securities by any Holder.

**SECTION 7. *Information Requirements.*** The Company covenants that, if at any time before the end of the Effectiveness Period the Company is not subject to the reporting requirements of the Exchange Act, it will cooperate with any Holder and take such further action as any Holder may reasonably request in writing (including, without limitation, making such representations as any such Holder may reasonably request), all to the extent required from time to time to enable such Holder to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by Rule 144 and Rule 144A under the Securities Act and customarily taken in connection with sales pursuant to such exemptions. Upon the written request of any Holder, the Company shall deliver to such Holder a written statement as to whether it has complied with such filing requirements, unless such a statement has been included in the Company's most recent report filed pursuant to Section 13 or Section 15(d) of Exchange Act. Notwithstanding the foregoing, nothing in this Section 7 shall be deemed to require the Company to register any of its securities (other than the Common Stock) under any section of the Exchange Act.

**SECTION 8. *Miscellaneous.***

(a) *No Conflicting Agreements.* The Company is not, as of the date hereof, a party to, nor shall it, on or after the date of this Agreement, enter into, any agreement with respect to its securities that conflicts with the rights granted to the Holders in this Agreement. The Company represents and warrants that the rights granted to the Holders hereunder do not in any way conflict with the rights granted to the holders of the Company's securities under any other agreements.

(b) *Amendments and Waivers.* The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, unless the Company has obtained the written consent of Holders of a majority of the then outstanding Underlying Common Stock constituting Registrable Securities (with Holders of Notes deemed to be the Holders, for purposes of this Section, of the number of outstanding shares of Underlying Common Stock into which such Notes are or would be convertible as of the date on which such consent is requested). Notwithstanding the foregoing, a waiver or consent to depart from the provisions hereof with respect to a matter that relates exclusively to the rights of Holders whose securities are being sold pursuant to a Registration Statement and that does not directly or indirectly affect the rights of other Holders may be given by Holders of at least a majority of the Registrable Securities being sold by such Holders pursuant to such Registration Statement; *provided* that the provisions of this sentence may not be amended, modified or supplemented except in accordance with the provisions of the immediately preceding sentence. Notwithstanding the foregoing sentence, (i) this Agreement may be amended by written agreement signed by the Company and Morgan Stanley & Co. Incorporated, Credit Suisse First Boston LLC and J.P. Morgan Securities Inc., as representatives of the Initial Purchasers, without

the consent of the Holders of Registrable Securities, to cure any ambiguity or to correct or supplement any provision contained herein that may be defective or inconsistent with any other provision contained herein, or to make such other provisions in regard to matters or questions arising under this Agreement that shall not adversely affect the interests of the Holders of Registrable Securities. Each Holder of Registrable Securities outstanding at the time of any such amendment, modification, supplement, waiver or consent or thereafter shall be bound by any such amendment, modification, supplement, waiver or consent effected pursuant to this Section 8(b), whether or not any notice, writing or marking indicating such amendment, modification, supplement, waiver or consent appears on the Registrable Securities or is delivered to such Holder.

(c) *Notices.* All notices and other communications provided for or permitted hereunder shall be made in writing by hand delivery, by telecopier, by courier guaranteeing overnight delivery or by first-class mail, return receipt requested, and shall be deemed given (i) when made, if made by hand delivery, (ii) upon confirmation, if made by telecopier, (iii) one (1) Business Day after being deposited with such courier, if made by overnight courier, or (iv) on the date indicated on the notice of receipt, if made by first-class mail, to the parties as follows:

(i) if to a Holder, at the most current address given by such Holder to the Company in a Notice and Questionnaire or any amendment thereto;

(ii) if to the Company, to:

ON Semiconductor Corporation  
5005 E. McDowell Road  
Phoenix, AZ 85008  
Attention: General Counsel  
Telecopy : (602) 244-5601

and

Cleary, Gottlieb, Steen & Hamilton  
One Liberty Plaza  
New York, NY 10006  
Attention: Stephen H. Shalen, Esq.  
Telecopy: (212) 225-3999

(iii) if to the Initial Purchasers, to:

Morgan Stanley & Co. Incorporated  
1585 Broadway  
New York, New York  
Attention:  
Telecopy:

or to such other address as such person may have furnished to the other persons identified in this Section 8(c) in writing in accordance herewith.

(d) *Approval of Holders.* Whenever the consent or approval of Holders of a specified percentage of Registrable Securities is required hereunder, Registrable Securities held by the Company or its affiliates (as such term is defined in Rule 405 under the Securities Act) (other than the Initial Purchaser or subsequent Holders if such subsequent Holders are deemed to be such affiliates solely by reason of their holdings of such Registrable Securities) shall not be counted in determining whether such consent or approval was given by the Holders of such required percentage.

(e) *Successors and Assigns.* Any person who purchases any Registrable Securities from the Initial Purchasers shall be deemed, for purposes of this Agreement, to be an assignee of the Initial Purchasers. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties and shall inure to the benefit of and be binding upon each Holder of any Registrable Securities, *provided* that nothing herein shall be deemed to permit any assignment, transfer or other disposition of Registrable Securities in violation of the terms of the Indenture. If any transferee of any Holder shall acquire Registrable Securities, in any manner, whether by operation of law or otherwise, such Registrable Securities shall be held subject to all of the terms of this Agreement, and by taking and holding such Registrable Securities, such person shall be conclusively deemed to have agreed to be bound by and to perform all of the terms and provisions of this Agreement and such person shall be entitled to receive the benefits hereof.

(f) *Counterparts.* This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be original and all of which taken together shall constitute one and the same agreement.

(g) *Headings.* The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(h) *Governing Law.* THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

(i) *Severability.* If any term, provision, covenant or restriction of this Agreement is held to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, and the parties hereto shall use their best efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction, it being intended that all of the rights and privileges of the parties shall be enforceable to the fullest extent permitted by law.

(j) *Entire Agreement.* This Agreement is intended by the parties as a final expression of their agreement and is intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein and the registration rights granted by the Company with respect to the Registrable Securities. Except as provided in the Purchase Agreement, there are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein, with respect to the registration rights granted by the Company with respect to the Registrable Securities. This Agreement supersedes all prior agreements and undertakings among the parties with respect to such

registration rights. No party hereto shall have any rights, duties or obligations other than those specifically set forth in this Agreement.

(k) *Termination.* This Agreement and the obligations of the parties hereunder shall terminate upon the end of the Effectiveness Period, except for any liabilities or obligations under Section 4, 5 or 6 hereof and the obligations to effect Conversion Rate Increase Amounts and pay Additional Share Amounts under Section 2(e) hereof to the extent such damages accrue prior to the end of the Effectiveness Period, each of which shall remain in effect in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

ON SEMICONDUCTOR CORPORATION,

By: /s/ DONALD COLVIN  
Name: Donald Colvin  
Title: Senior Vice President, Chief Financial Officer  
and Treasurer

Confirmed and accepted as of the date first above written:

MORGAN STANLEY & CO. INCORPORATED

Acting severally on behalf of itself and the several Initial  
Purchasers named in Schedule I to the Purchase Agreement.

By: /s/ NATHAN MCMURTRAY  
Name: Nathan McMurtray  
Title: Vice President

CREDIT SUISSE FIRST BOSTON LLC

Acting severally on behalf of itself and the several Initial  
Purchasers named in Schedule I to the Purchase Agreement.

By: /s/ H. ANDREW FISHER  
Name: H. Andrew Fisher  
Title: Managing Director

J.P. MORGAN SECURITIES INC.

Acting severally on behalf of itself and the several Initial  
Purchasers named in Schedule I to the Purchase Agreement.

By: /s/ KEVIN J. KULAK  
Name: Kevin J. Kulak  
Title: Vice President

[CLEARY, GOTTlieb, STEEN &amp; HAMILTON LETTERHEAD]

Writer's Direct Dial: (212) 225-2420

June 30, 2004

ON Semiconductor Corporation  
5005 E. McDowell Road  
Phoenix, Arizona 85008

Ladies and Gentlemen:

We have acted as counsel to ON Semiconductor Corporation, a Delaware corporation (the "Issuer"), Semiconductor Components Industries, LLC, a Delaware limited liability company and a wholly owned subsidiary of the Issuer ("SCI LLC"), SCG (Malaysia SMP) Holding Corporation, a Delaware corporation and a wholly owned subsidiary of the Issuer (the "Malaysia Sub"), SCG (Czech) Holding Corporation, a Delaware corporation and a wholly owned subsidiary of the Issuer (the "Czech Sub"), SCG (China) Holding Corporation, a Delaware corporation and a wholly owned subsidiary of the Issuer (the "China Sub"), Semiconductor Components Industries Puerto Rico, Inc., a Delaware corporation and a wholly owned subsidiary of SCI LLC (the "Puerto Rico Sub"), SCG International Development LLC, a Delaware limited liability company and a wholly owned subsidiary of SCI LLC ("SCGID LLC"), Semiconductor Components Industries of Rhode Island, Inc., a Rhode Island corporation and a wholly owned subsidiary of SCI LLC ("SCI RI"), and Semiconductor Components Industries International of Rhode Island, Inc., a Rhode Island corporation and a wholly owned subsidiary of SCI LLC (together with SCI LLC, the Malaysia Sub, the Czech Sub, the China Sub, the Puerto Rico Sub, SCGID LLC and SCI RI, the "Guarantors"), in connection with the registration statement on Form S-3 (the "Registration Statement") filed with the Securities and Exchange Commission (the "Commission") pursuant to the Securities Act of 1933, as amended, for the registration of (i) \$260,000,000 aggregate principal amount of the Issuer's Zero Coupon Convertible Senior Subordinated Notes due 2024 (the "Notes"), (ii) the guarantees of the Notes by each of the Guarantors (collectively, the "Guarantees") and (iii) the Issuer's common stock,

\$0.01 par value per share, issuable upon conversion of the Notes (the "Common Stock"). The Notes were issued under an Indenture dated as of April 6, 2004 (the "Indenture").

We have participated in the preparation of the Registration Statement and have reviewed the originals or copies certified or otherwise identified to our satisfaction of all such corporate records of the Issuer and the Guarantors and such other instruments and other certificates of public officials, officers and representatives of the Issuer and the Guarantors and such other persons, and we have made such investigations of law as we have deemed appropriate as a basis for the opinions expressed below.

In arriving at the opinions expressed below, we have assumed the authenticity of all documents submitted to us as originals and the conformity to the originals of all documents submitted to us as copies. In addition, we have assumed and have not verified the accuracy as to factual matters of each document we have reviewed.

Based on the foregoing, and subject to the further qualifications set forth below, it is our opinion that:

1. The Notes in global form are, and the Notes in certificated form when exchanged for interest in the Notes in global form in accordance with the terms thereof and of the Indenture will be, the valid, binding and enforceable obligations of the Issuer, entitled to the benefits of the Indenture.
2. Each of the Guarantees is the valid, binding and enforceable obligation of the relevant Guarantor.
3. The shares of Common Stock into which the Notes are convertible at the initial conversion rate have been duly authorized by all necessary corporate action of the Issuer and have been reserved for issuance upon conversion and, upon issuance thereof on the conversion of the Notes in accordance with the Indenture and the terms of the Notes at conversion prices at or in excess of the par value of such shares of Common Stock, will be validly issued, fully paid and nonassessable.

Insofar as the foregoing opinions relate to the validity, binding effect or enforceability of any obligation of any of the Issuer or the Guarantors, (a) we have assumed that each party to such obligation has satisfied those legal requirements that are applicable to it to the extent necessary to make such obligation enforceable against it (except that no such assumption is made as to the Issuer, SCI LLC, the Malaysia Sub, the Czech Sub, the China Sub, the Puerto Rico Sub and SCGID LLC regarding matters of the law of the State of New York or the General Corporation Law of the State of Delaware) and (b) such opinions are subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity.

The foregoing opinion is limited to the law of the State of New York and the General Corporation Law of the State of Delaware (including the applicable provisions of the Delaware Constitution and reported judicial decisions interpreting that Law).

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the use of our name under the caption "Legal Matters" in the Registration Statement and the prospectus which forms a part of the Registration Statement and any supplement or supplements to such prospectus. By the giving of such consent, we do not admit that we are experts with respect to any part of the Registration Statement, or otherwise, within the meaning of the Rules and Regulations of the Commission.

Very truly yours,

CLEARY, GOTTlieb, STEEN & HAMILTON

By           /s/ STEPHEN H. SHALEN            
Stephen H. Shalen, a partner



**ON SEMICONDUCTOR CORPORATION AND SUBSIDIARIES**  
**CALCULATION OF RATIO OF EARNINGS TO FIXED CHARGES**  
**(IN MILLIONS, EXCEPT RATIOS)**

	January 1, 1999 through August 3, 1999	August 4, 1999 through December 31, 1999	Year ended December 31,				Quarter ended April 2, 2004
			2000	2001	2002	2003	
<b>EARNINGS</b>							
Pre-tax income (loss) from continuing operations before adjustment for minority interests in consolidated subsidiaries or income or loss from equity investees	\$ 103.3	\$ 46.7	\$ 113.4	\$(368.8)	\$(129.6)	\$(136.3)	\$ (44.9)
<b>FIXED CHARGES</b>							
Interest expense and amortization of debt discount and issuance costs	7.3	57.1	137.1	143.6	152.5	151.1	34.3
One-third of rental expense	1.3	2.3	4.3	3.7	4.1	4.4	1.5
<b>Total Fixed Charges</b>	<b>8.6</b>	<b>59.4</b>	<b>141.4</b>	<b>147.3</b>	<b>156.6</b>	<b>155.5</b>	<b>35.8</b>
Pre-tax income (loss) from continuing operations before adjustment for minority interests in consolidated subsidiaries or income or loss from equity investees plus fixed charges	\$ 111.9	\$ 106.1	\$ 254.8	\$(221.5)	\$ 27.0	\$ 19.2	\$ (9.1)
<b>Ratio of Earnings to Fixed Charges</b>	<b>13.0</b>	<b>1.8</b>	<b>1.8</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>—</b>

We have calculated our ratio of earnings to fixed charges as earnings, which is the sum of earnings from continuing operations before income taxes, income applicable to minority interests and equity in net income (loss) of unconsolidated affiliates, plus fixed charges, divided by fixed charges. Fixed charges are the sum of interest on indebtedness, amortization of debt discount and expense and that portion of net rental expense deemed representative of the interest component. The deficiencies for the quarter ended April 2, 2004 and for the years ended December 31, 2003, 2002 and 2001 were \$44.9 million and \$136.3 million, \$129.6 million and \$368.8 million, respectively.

## CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in this Registration Statement on Form S-3 of ON Semiconductor Corporation of the following reports, which appear in ON Semiconductor Corporation's Annual Report on Form 10-K/A for the year ended December 31, 2003 filed on March 22, 2004:

- Our report dated February 2, 2004 relating to the financial statement schedule of ON Semiconductor Corporation; and,
- Our report dated February 2, 2004, except for the third paragraph of Note 2 and the third paragraph of Note 11 for which the date is February 9, 2004, relating to the consolidated financial statements of ON Semiconductor Corporation.

We also consent to the incorporation by reference in this Registration Statement on Form S-3 of ON Semiconductor Corporation of the following reports, which appear in ON Semiconductor Corporation's Current Report on Form 8-K filed on May 12, 2004:

- Our report dated February 2, 2004, except for the third paragraph of Note 2 for which the date is February 9, 2004, relating to the consolidated financial statements of Semiconductor Components Industries, LLC (a wholly-owned subsidiary of ON Semiconductor Corporation);
- Our report dated February 2, 2004, except for the third paragraph of Note 2 for which the date is February 9, 2004, relating to the consolidated financial statements of SCG (China) Holding Corporation (a wholly-owned subsidiary of ON Semiconductor Corporation);
- Our report dated February 2, 2004, except for the third paragraph of Note 2 for which the date is February 9, 2004, relating to the consolidated financial statements of ON Semiconductor Trading Ltd. (an indirect wholly-owned subsidiary of ON Semiconductor Corporation);
- Our report dated February 2, 2004, except for the third paragraph of Note 2 for which the date is February 9, 2004, relating to the consolidated financial statements of SCG Malaysia Holdings Sdn. Bhd. (an indirect wholly-owned subsidiary of ON Semiconductor Corporation);
- Our report dated February 2, 2004, except for the third paragraph of Note 2 for which the date is February 9, 2004, relating to the financial statements of ON Semiconductor Japan Technology, Ltd. (an indirect wholly-owned subsidiary of ON Semiconductor Corporation); and,
- Our report dated February 2, 2004, except for the third paragraph of Note 2 for which the date is February 9, 2004, relating to the financial statements of SCG Philippines, Incorporated (an indirect wholly-owned subsidiary of ON Semiconductor Corporation).

We also consent to the reference to us under the heading "Experts" in such Registration Statement.

/s/ PricewaterhouseCoopers LLP

Phoenix, Arizona  
June 29, 2004

**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM T-1****STATEMENT OF ELIGIBILITY  
UNDER THE TRUST INDENTURE ACT OF 1939 OF A  
CORPORATION DESIGNATED TO ACT AS TRUSTEE** **CHECK IF AN APPLICATION TO DETERMINE ELIGIBILITY OF A TRUSTEE PURSUANT TO SECTION 305(b) (2)****WELLS FARGO BANK, NATIONAL ASSOCIATION**  
(Exact name of trustee as specified in its charter)**A National Banking Association**(Jurisdiction of incorporation or  
organization if not a U.S. national  
bank)**94-1347393**  
(I.R.S. Employer  
Identification No.)**101 North Phillips Avenue**  
**Sioux Falls, South Dakota**  
(Address of principal executive offices)**57104**  
(Zip code)**Wells Fargo & Company**  
**Law Department, Trust Section**  
**MAC N9305-175****Sixth Street and Marquette Avenue, 17<sup>th</sup> Floor**  
**Minneapolis, Minnesota 55479**  
**(612) 667-4608**

(Name, address and telephone number of agent for service)

**ON SEMICONDUCTOR CORPORATION<sup>1</sup>**

(Exact name of obligor as specified in its charter)

**Delaware**(State or other jurisdiction of  
incorporation or organization)**36-3840979**  
(I.R.S. Employer  
Identification No.)**5005 E. McDowell Road**  
**Phoenix, Arizona**  
(Address of principal executive offices)**85008**  
(Zip code)**Zero Coupon Convertible Senior Subordinated Notes due 2024**  
(Title of the indenture securities)<sup>1</sup> See Table 1 – List of additional obligors

Table 1

Address of each of the Guarantors listed below is 5005 E. McDowell Road, Phoenix, AZ 85008

	<u>Guarantor</u>	<u>State of Incorporation</u>	<u>Federal EIN</u>
1.	Semiconductor Components Industries, LLC	Delaware	36-4292817
2.	SCG (Malaysia SMP) Holding Corporation	Delaware	36-4307329
3.	SCG (China) Holding Corporation	Delaware	36-4265717
4.	SCG (Czech) Holding Corporation	Delaware	36-4292303
5.	Semiconductor Components Industries Puerto Rico, Inc.	Delaware	36-4304551
6.	SCG International Development LLC	Delaware	36-4292819
7.	Semiconductor Components Industries of Rhode Island, Inc.	Rhode Island	05-0347660
8.	Semiconductor Components Industries International of Rhode Island, Inc.	Rhode Island	05-0492494

**Item 1. General Information. Furnish the following information as to the trustee:**

- (a) Name and address of each examining or supervising authority to which it is subject.

Comptroller of the Currency  
Treasury Department  
Washington, D.C.

Federal Deposit Insurance Corporation  
Washington, D.C.

Federal Reserve Bank of San Francisco  
San Francisco, California 94120

- (b) Whether it is authorized to exercise corporate trust powers.

The trustee is authorized to exercise corporate trust powers.

**Item 2. Affiliations with Obligor. If the obligor is an affiliate of the trustee, describe each such affiliation.**

None with respect to the trustee.

No responses are included for Items 3-14 of this Form T-1 because the obligor is not in default as provided under Item 13.

**Item 15. Foreign Trustee. Not applicable.**

**Item 16. List of Exhibits. List below all exhibits filed as a part of this Statement of Eligibility.**

- Exhibit 1. A copy of the Articles of Association of the trustee now in effect.\*
- Exhibit 2. A copy of the Comptroller of the Currency Certificate of Corporate Existence and Fiduciary Powers for Wells Fargo Bank, National Association, dated February 4, 2004.\*\*
- Exhibit 3. See Exhibit 2
- Exhibit 4. Copy of By-laws of the trustee as now in effect.\*\*\*
- Exhibit 5. Not applicable.
- Exhibit 6. The consent of the trustee required by Section 321(b) of the Act.
- Exhibit 7. A copy of the latest report of condition of the trustee published pursuant to law or the requirements of its supervising or examining authority.
- Exhibit 8. Not applicable.
- Exhibit 9. Not applicable.

\* Incorporated by reference to the exhibit of the same number to the trustee's Form T-1 filed as exhibit 25 to the Form T-3 dated March 3, 2004 of Trans-Lux Corporation file number 022-28721.

\*\* Incorporated by reference to the exhibit of the same number to the trustee's Form T-1 filed as exhibit 25 to the Form T-3 dated March 3, 2004 of Trans-Lux Corporation file number 022-28721.

\*\*\* Incorporated by reference to the exhibit of the same number to the trustee's Form T-1 filed as exhibit 25 to the Form T-3 dated March 3, 2004 of Trans-Lux Corporation file number 022-28721.

SIGNATURE

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the trustee, Wells Fargo Bank, National Association, a national banking association organized and existing under the laws of the United States of America, has duly caused this statement of eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of Middletown and State of Connecticut on the 24th day of June 2004.

WELLS FARGO BANK, NATIONAL ASSOCIATION

/s/ JOSEPH P. O'DONNELL

---

**Joseph P. O'Donnell**  
**Assistant Vice President**

June 24, 2004

Securities and Exchange Commission  
Washington, D.C. 20549

Gentlemen:

In accordance with Section 321(b) of the Trust Indenture Act of 1939, as amended, the undersigned hereby consents that reports of examination of the undersigned made by Federal, State, Territorial, or District authorities authorized to make such examination may be furnished by such authorities to the Securities and Exchange Commission upon its request therefor.

Very truly yours,

WELLS FARGO BANK, NATIONAL ASSOCIATION

/s/ JOSEPH P. O'DONNELL

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Joseph P. O'Donnell  
Assistant Vice President



## Exhibit 7

## Consolidated Report of Condition of

Wells Fargo Bank National Association  
of 101 North Phillips Avenue, Sioux Falls, SD 57104

And Foreign and Domestic Subsidiaries,

at the close of business March 31, 2004, filed in accordance with 12 U.S.C. §161 for National Banks.

Dollar Amounts  
In Millions

## ASSETS

Cash and balances due from depository institutions:		
Noninterest-bearing balances and currency and coin		\$ 13,890
Interest-bearing balances		6,251
Securities:		
Held-to-maturity securities		0
Available-for-sale securities		27,661
Federal funds sold and securities purchased under agreements to resell:		
Federal funds sold in domestic offices		1,436
Securities purchased under agreements to resell		170
Loans and lease financing receivables:		
Loans and leases held for sale		29,359
Loans and leases, net of unearned income	233,785	
LESS: Allowance for loan and lease losses	2,629	
Loans and leases, net of unearned income and allowance		231,156
Trading Assets		8,314
Premises and fixed assets (including capitalized leases)		2,787
Other real estate owned		180
Investments in unconsolidated subsidiaries and associated companies		284
Customers' liability to this bank on acceptances outstanding		69
Intangible assets		
Goodwill		7,915
Other intangible assets		6,871
Other assets		11,217
Total assets		\$ 347,560

## LIABILITIES

Deposits:		
In domestic offices		\$ 240,660
Noninterest-bearing	78,496	
Interest-bearing	162,164	
In foreign offices, Edge and Agreement subsidiaries, and IBFs		15,087
Noninterest-bearing	3	
Interest-bearing	15,084	
Federal funds purchased and securities sold under agreements to repurchase:		
Federal funds purchased in domestic offices		18,617
Securities sold under agreements to repurchase		3,028

	<b>Dollar Amounts In Millions</b>
Trading liabilities	4,973
Other borrowed money (includes mortgage indebtedness and obligations under capitalized leases)	18,180
Bank's liability on acceptances executed and outstanding	69
Subordinated notes and debentures	4,824
Other liabilities	9,494
<b>Total liabilities</b>	<b>\$ 314,932</b>
Minority interest in consolidated subsidiaries	70
<b>EQUITY CAPITAL</b>	
Perpetual preferred stock and related surplus	0
Common stock	520
Surplus (exclude all surplus related to preferred stock)	23,424
Retained earnings	7,812
Accumulated other comprehensive income	802
Other equity capital components	0
<b>Total equity capital</b>	<b>32,558</b>
<b>Total liabilities, minority interest, and equity capital</b>	<b>\$ 347,560</b>

I, James E. Hanson, Vice President of the above-named bank do hereby declare that this Report of Condition has been prepared in conformance with the instructions issued by the appropriate Federal regulatory authority and is true to the best of my knowledge and belief.

\_\_\_\_\_  
James E. Hanson  
Vice President

We, the undersigned directors, attest to the correctness of this Report of Condition and declare that it has been examined by us and to the best of our knowledge and belief has been prepared in conformance with the instructions issued by the appropriate Federal regulatory authority and is true and correct.

Howard Atkins  
Dave Hoyt  
John Stumpf

Directors