

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 10-Q**

(Mark One)

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

For the quarterly period ended December 2, 2004

OR

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

For the transition period from to

Commission file number 1-10658

**Micron Technology, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of  
incorporation or organization)

**75-1618004**

(IRS Employer  
Identification No.)

**8000 S. Federal Way, Boise, Idaho**

(Address of principal executive offices)

**83716-9632**

(Zip Code)

Registrant's telephone number, including area code

**(208) 368-4000**

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

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

The number of outstanding shares of the registrant's common stock as of January 6, 2005, was 613,828,151.

**PART I. FINANCIAL INFORMATION**

**Item 1. Financial Statements**

**MICRON TECHNOLOGY, INC.**

**CONSOLIDATED STATEMENTS OF OPERATIONS**

(Amounts in millions except per share amounts)  
(Unaudited)

	Quarter ended	
	December 2, 2004	December 4, 2003
Net sales	\$ 1,260.3	\$ 1,107.2
Cost of goods sold	837.3	821.2
Gross margin	423.0	286.0
Selling, general and administrative	86.8	81.2
Research and development	148.4	186.4
Restructure	(1.5)	(21.1)
Other operating (income) expense	14.4	17.8
Operating income	174.9	21.7
Interest income	5.7	3.8
Interest expense	(10.2)	(9.3)

Other non-operating income (expense)	(1.3)	0.4
Income before taxes	169.1	16.6
Income tax provision	(14.2)	(15.5)
Net income	<u>\$ 154.9</u>	<u>\$ 1.1</u>
Earnings per share:		
Basic	\$ 0.24	\$ 0.00
Diluted	0.23	0.00
Number of shares used in per share calculations:		
Basic	646.0	633.8
Diluted	700.5	636.6

*See accompanying notes to consolidated financial statements.*

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## MICRON TECHNOLOGY, INC.

### CONSOLIDATED BALANCE SHEETS (Amounts in millions except par value amounts) (Unaudited)

As of	December 2, 2004	September 2, 2004
<b>Assets</b>		
Cash and equivalents	\$ 320.8	\$ 486.1
Short-term investments	731.4	744.9
Receivables	860.8	773.7
Inventories	705.4	578.1
Prepaid expenses	45.2	37.4
Deferred income taxes	26.0	18.5
Total current assets	<u>2,689.6</u>	<u>2,638.7</u>
Intangible assets, net	271.5	276.2
Property, plant and equipment, net	4,806.3	4,712.7
Deferred income taxes	33.0	41.4
Restricted cash	27.7	27.6
Other assets	64.5	63.4
Total assets	<u>\$ 7,892.6</u>	<u>\$ 7,760.0</u>
<b>Liabilities and shareholders' equity</b>		
Accounts payable and accrued expenses	\$ 788.4	\$ 796.2
Deferred income	24.3	35.2
Equipment purchase contracts	55.8	70.1
Current portion of long-term debt	258.7	70.6
Total current liabilities	<u>1,127.2</u>	<u>972.1</u>
Long-term debt	825.2	1,027.9
Deferred income taxes	46.8	42.0
Other liabilities	114.0	103.2
Total liabilities	<u>2,113.2</u>	<u>2,145.2</u>
<b>Commitments and contingencies</b>		
Common stock, \$0.10 par value, authorized 3.0 billion shares, issued and outstanding 612.7 million and 611.5 million shares	61.3	61.2
Additional capital	4,673.7	4,663.9
Retained earnings	1,045.0	890.1
Accumulated other comprehensive loss	(0.6)	(0.4)
Total shareholders' equity	<u>5,779.4</u>	<u>5,614.8</u>
Total liabilities and shareholders' equity	<u>\$ 7,892.6</u>	<u>\$ 7,760.0</u>

*See accompanying notes to consolidated financial statements.*

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## MICRON TECHNOLOGY, INC.

### CONSOLIDATED STATEMENTS OF CASH FLOWS (Amounts in millions)

Three months ended	December 2, 2004	December 4, 2003
<b>Cash flows from operating activities</b>		
Net income	\$ 154.9	\$ 1.1
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	313.7	312.5
Noncash restructure and other charges (benefits)	(1.7)	(23.2)
Loss (gain) from write-down or disposition of equipment	5.2	(3.1)
Loss from write-down or disposition of investments	0.6	0.4
Change in operating assets and liabilities:		
Increase in receivables	(89.3)	(81.2)
(Increase) decrease in inventories	(127.2)	10.8
Increase in accounts payable and accrued expenses	26.6	14.7
Deferred income taxes	6.2	11.4
Other	2.4	11.8
Net cash provided by operating activities	291.4	255.2
<b>Cash flows from investing activities</b>		
Purchases of available-for-sale securities	(459.3)	(474.9)
Expenditures for property, plant and equipment	(359.4)	(260.6)
Increase in restricted cash	(0.1)	(24.4)
Proceeds from maturities of available-for-sale securities	463.4	110.2
Proceeds from sales of available-for-sale securities	10.0	31.9
Proceeds from sales of property, plant and equipment	3.8	22.0
Other	(8.5)	(7.5)
Net cash used for investing activities	(350.1)	(603.3)
<b>Cash flows from financing activities</b>		
Payments on equipment purchase contracts	(93.8)	(92.5)
Repayments of debt	(46.8)	(45.2)
Redemption of common stock	—	(67.5)
Proceeds from equipment sale-leaseback transactions	24.9	—
Proceeds from issuance of common stock	9.3	7.9
Proceeds from issuance of stock rights	—	450.0
Proceeds from issuance of debt	—	13.5
Other	(0.2)	(0.1)
Net cash (used for) provided by financing activities	(106.6)	266.1
Net decrease in cash and equivalents	(165.3)	(82.0)
Cash and equivalents at beginning of period	486.1	570.3
Cash and equivalents at end of period	\$ 320.8	\$ 488.3
<b>Supplemental disclosures</b>		
Income taxes refunded (paid), net	\$ (2.2)	\$ 1.1
Interest paid, net of amounts capitalized	(12.8)	(10.6)
Noncash investing and financing activities:		
Equipment acquisitions on contracts payable and capital leases	101.6	64.0

See accompanying notes to consolidated financial statements.

## MICRON TECHNOLOGY, INC.

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(All tabular amounts in millions except per share amounts)

(Unaudited)

#### Significant Accounting Policies

**Basis of presentation:** Micron Technology, Inc. and its subsidiaries (hereinafter referred to collectively as the “Company”) manufacture and market DRAM, Flash memory, CMOS image sensors and other semiconductor components. The accompanying consolidated financial statements have been prepared in accordance with generally accepted accounting principles and include the accounts of the Company and its consolidated subsidiaries. All significant intercompany transactions and balances have been eliminated. In the opinion of management, the accompanying unaudited consolidated financial statements contain all adjustments necessary to present fairly the consolidated financial position of the Company and its consolidated results of operations and cash flows.

The Company’s fiscal year is the 52 or 53-week period ending on the Thursday closest to August 31. The Company’s first quarter of fiscal 2005, which ended on December 2, 2004, contained 13 weeks and its first quarter of fiscal 2004, which ended on December 4, 2003, contained 14 weeks. The Company’s fiscal 2004 ended on September 2, 2004. All period references are to the Company’s fiscal periods unless otherwise indicated. These interim financial statements should be read in conjunction with the consolidated financial statements and accompanying notes included in the Company’s Annual Report on Form 10-K for the year ended September 2, 2004.

**Recently issued accounting standards:** In December 2004, the Financial Accounting Standards Board (“FASB”) issued a revised Statement of Financial Accounting Standards (“SFAS”) No. 123(R), “Share-Based Payment – an Amendment of FASB Statements No. 123 and 95.” SFAS 123(R) establishes standards for the accounting for transactions in which an entity exchanges its equity instruments for goods or services or incurs liabilities in exchange for goods or services that are based on the fair value of the entity’s equity instruments, focusing primarily on accounting for transactions in which an entity obtains employee services in share-based payment transactions. SFAS No. 123(R) requires public entities to measure the cost of employee services received in exchange for an award of equity instruments based on the grant-date fair value of the award (with limited exceptions) and recognize the cost over the period during which an employee is required to provide service in exchange for the award. The Company is required to adopt SFAS No. 123(R) in 2006. The Company is evaluating the impact of SFAS No. 123(R) and expects that it will record substantial non-cash stock compensation expenses. The adoption of SFAS No. 123(R) is not expected to have a significant effect on the Company’s financial condition or cash flows but is expected to have a significant adverse effect on its results of operations.

In December 2004, the FASB issued SFAS No. 153, “Exchanges of Nonmonetary Assets – An Amendment of APB Opinion No. 29,” which eliminates the exception for nonmonetary exchanges of similar productive assets and replaces it with a general exception for exchanges of nonmonetary assets that do not have commercial substance. The Company is required to adopt SFAS No. 153 for nonmonetary asset exchanges occurring in the first quarter of 2006 and its adoption is not expected to have a significant impact on the Company’s results of operations or financial condition.

In November 2004, the FASB issued SFAS No. 151, “Inventory Costs – An Amendment of ARB No. 43, Chapter 4,” which clarifies the accounting for abnormal amounts of idle facility expense, freight, handling costs and wasted material (spoilage). The Company is required to adopt SFAS No. 151 in 2006 and its adoption is not expected to have a significant impact on the Company’s results of operations or financial condition.

**Segment information:** The Company has determined, based on the nature of its operations and products offered to customers, that its only reportable segment is Semiconductor Operations. The Semiconductor Operations segment’s primary product is semiconductor memory.

**Stock-based compensation:** Employee stock plans are accounted for using the intrinsic value method prescribed by APB No. 25, “Accounting for Stock Issued to Employees.” The Company utilizes the Black-Scholes option valuation model to value stock options for pro forma presentation of income and per share data as if the fair

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value based method in Statement of Financial Accounting Standards (“SFAS”) No. 123, “Accounting for Stock-Based Compensation,” had been used to account for stock-based compensation. The following presents pro forma income (loss) and per share data as if a fair value based method had been used to account for stock-based compensation:

	Quarter ended	
	December 2, 2004	December 4, 2003
Net income, as reported	\$ 154.9	\$ 1.1
Redeemable common stock accretion	—	(0.5)
Redeemable common stock fair value adjustment	—	(0.4)
Net income available to common shareholders	154.9	0.2
Stock-based employee compensation expense included in reported net income, net of tax	0.1	—
Less total stock-based employee compensation expense determined under a fair value based method for all awards, net of tax	(43.9)	(54.7)
Pro forma net income (loss) available to common shareholders	\$ 111.1	\$ (54.5)
Earnings (loss) per share:		
Basic, as reported	\$ 0.24	\$ 0.00
Basic, pro forma	0.17	(0.09)
Diluted, as reported	\$ 0.23	\$ 0.00
Diluted, pro forma	0.16	(0.09)

Stock-based compensation expense in the above presentation does not reflect any significant income taxes, which is consistent with the Company’s treatment of income or loss from its U.S. operations. (See “Income Taxes” note.)

#### Supplemental Balance Sheet Information

Receivables	December 2, 2004	September 2, 2004
Trade receivables	\$ 781.9	\$ 710.4
Joint venture	25.3	23.8
Taxes other than income	16.5	14.8
Income taxes	9.1	9.6
Other	29.9	17.0
Allowance for doubtful accounts	(1.9)	(1.9)
	\$ 860.8	\$ 773.7

Inventories	December 2, 2004	September 2, 2004
Finished goods	\$ 181.6	\$ 151.0
Work in process	431.5	337.9
Raw materials and supplies	125.4	115.6

Allowance for obsolescence	(33.1)	(26.4)
	<u>\$ 705.4</u>	<u>\$ 578.1</u>

Intangible Assets	December 2, 2004		September 2, 2004	
	Gross Amount	Accumulated Amortization	Gross Amount	Accumulated Amortization
Product and process technology	\$ 363.5	\$ (154.6)	\$ 364.2	\$ (153.6)
Joint venture supply arrangement	105.0	(46.0)	105.0	(43.0)
Other	5.3	(1.7)	5.3	(1.7)
	<u>\$ 473.8</u>	<u>\$ (202.3)</u>	<u>\$ 474.5</u>	<u>\$ (198.3)</u>

During the first quarter of 2005 and 2004, the Company capitalized \$7.8 million and \$7.4 million, respectively, for product and process technology with weighted average useful lives of 10 years.

Amortization expense for intangible assets was \$12.5 million and \$13.5 million for the first quarter of 2005 and 2004, respectively. Annual amortization expense is estimated to be \$50.0 million for 2005, \$48.4 million for 2006, \$46.5 million for 2007, \$45.8 million for 2008 and \$34.8 million for 2009.

Property, Plant and Equipment	December 2, 2004	September 2, 2004
Land	\$ 108.9	\$ 108.9
Buildings	2,327.0	2,311.0
Equipment	7,622.3	7,339.4
Construction in progress	257.1	250.0
Software	197.8	213.8
	<u>10,513.1</u>	<u>10,223.1</u>
Accumulated depreciation	<u>(5,706.8)</u>	<u>(5,510.4)</u>
	<u>\$ 4,806.3</u>	<u>\$ 4,712.7</u>

Depreciation expense was \$299.6 million and \$298.8 million for the first quarter of 2005 and 2004, respectively.

The Company has a manufacturing facility in Utah that is only partially utilized. The Utah facility had a net book value of \$727.9 million as of December 2, 2004. A portion of the Utah facility is being used for component test operations. The Company is depreciating substantially all assets at the Utah facility other than \$195.0 million included in construction in progress as of December 2, 2004. Increased utilization of the facility is dependent upon market conditions, including, but not limited to, worldwide market supply of, and demand for, semiconductor products and the Company's operations, cash flows and alternative capacity utilization opportunities.

Accounts Payable and Accrued Expenses	December 2, 2004	September 2, 2004
Accounts payable	\$ 408.4	\$ 419.7
Salaries, wages and benefits	166.0	171.4
Joint venture	61.4	56.8
Taxes other than income	25.3	20.7
Other	127.3	127.6
	<u>\$ 788.4</u>	<u>\$ 796.2</u>

Debt	December 2, 2004	September 2, 2004
Convertible subordinated notes payable, interest rate of 2.5%, due February 2010	\$ 630.0	\$ 632.1
Subordinated notes payable, face amount of \$190.0 million and \$210.0 million, respectively, net of unamortized discount of \$6.0 million and \$8.5 million, respectively, stated interest rate of 6.5%, effective yield to maturity of 10.7%, due September 2005	184.0	201.5
Notes payable in periodic installments through July 2015, weighted average interest rate of 3.0% and 3.0%, respectively	174.9	187.1
Capital lease obligations payable in monthly installments through October 2008, weighted average imputed interest rate of 6.6% and 6.6%, respectively	95.0	77.8
	<u>1,083.9</u>	<u>1,098.5</u>
Less current portion	<u>(258.7)</u>	<u>(70.6)</u>
	<u>\$ 825.2</u>	<u>\$ 1,027.9</u>

As of December 2, 2004, notes payable of \$106.2 million, denominated in Japanese yen, were at weighted average interest rates of 1.3%.

In December 2004, the Company entered into additional capital lease obligations aggregating \$133 million payable in periodic installments through January 2009.

**Interest Rate Swap:** The Company entered into an interest rate swap agreement (the “Swap”) that effectively converted, beginning August 29, 2003, the fixed interest rate on the Company’s 2.5% Convertible Subordinated Notes (the “Notes”) to a variable interest rate based on the 3-month London Interbank Offering Rate (“LIBOR”) less 65 basis points (1.15% for the first quarter of 2005). The Swap qualifies as a fair-value hedge under SFAS No. 133, “Accounting for Derivative Instruments and Hedging Activities,” as amended. The gain or loss from changes in the fair value of the Swap is expected to be highly effective at offsetting the gain or loss from changes in the fair value of the Notes attributable to changes in interest rates. The Company measures the effectiveness of the Swap using regression analysis. The Company recognizes changes in the fair value of the Swap and changes in the fair value of the Notes since inception of the Swap in the accompanying consolidated balance sheets. For the first quarter of 2005, the Company recognized a net loss of less than \$0.1 million, which is included in other non-operating income, representing the difference between the change in the fair value of the Notes and the change in the fair value of the Swap. As of December 2, 2004, the Company had pledged \$26.0 million as collateral for the Swap which is included in restricted cash in the accompanying consolidated balance sheet. The amount of collateral fluctuates based on the fair value of the Swap. The Swap will terminate if the closing price of the Company’s common stock is at or exceeds \$14.15 after February 6, 2006.

## Contingencies

As is typical in the semiconductor and other high technology industries, from time to time, others have asserted, and may in the future assert, that the Company’s products or manufacturing processes infringe their intellectual property rights. In this regard, the Company is engaged in litigation with Rambus, Inc. (“Rambus”) relating to certain of Rambus’ patents and certain of the Company’s claims and defenses. Lawsuits between Rambus and the Company are pending in the United States, Germany, France, the United Kingdom and Italy. The Company also is engaged in litigation with Motorola, Inc. (“Motorola”) and Freescale Semiconductor, Inc. (“Freescale”) relating to certain of the Company’s patents and certain of Freescale’s patents. A lawsuit between Motorola and Freescale and the Company is pending in the U.S. District Court for the Western District of Texas (Austin). The above lawsuits pertain to certain of the Company’s SDRAM and DDR DRAM products, which account for a significant portion of net sales. The Company is unable to predict the outcome of assertions of infringement made against the Company. A court determination that the Company’s products or manufacturing processes infringe the intellectual property rights of others could result in significant liability and/or require the Company to make material changes to its products and/or manufacturing processes. Any of the foregoing could have a material adverse effect on the Company’s business, results of operations or financial condition.

On June 17, 2002, the Company received a grand jury subpoena from the U.S. District Court for the Northern District of California seeking information regarding an investigation by the Antitrust Division of the Department of Justice (the “DOJ”) into possible antitrust violations in the “Dynamic Random Access Memory” or “DRAM” industry. The Company is cooperating fully and actively with the DOJ in its investigation. The Company’s cooperation is pursuant to the terms of the DOJ’s Corporate Leniency Policy, which provides that in exchange for the Company’s full, continuing and complete cooperation in the pending investigation, the Company will not be subject to prosecution, fines or other penalties from the DOJ. Subsequent to the commencement of the DOJ investigation, fifty-four purported class action lawsuits were filed against the Company and other DRAM suppliers in various federal and state courts alleging violations of the Sherman Act, violations of state unfair competition law, and unjust enrichment relating to the sale and pricing of DRAM products. The complaints seek treble damages for the alleged damages sustained by purported class members, in addition to restitution, costs and attorneys’ fees, as well as an injunction against the allegedly unlawful conduct. The Company is unable to predict the outcome of these suits. Based upon the Company’s analysis of the claims made and the nature of the DRAM industry, the Company believes that class treatment of these cases is not appropriate and that any purported injury alleged by plaintiffs would be more appropriately resolved on a customer-by-customer basis. The final resolution of these alleged violations of federal or state antitrust laws could result in significant liability and could have a material adverse effect on the Company’s business, results of operations or financial condition.

On May 5, 2004, Rambus filed a complaint in the Superior Court of the State of California (San Francisco County) against the Company and other DRAM suppliers. The complaint alleges certain causes of action under California state law including conspiracy to restrict output and fix prices on Rambus DRAM (“RDRAM”), conspiracy to monopolize various relevant markets, intentional interference with prospective economic advantage relating to RDRAM, and unfair competition to disadvantage RDRAM. The complaint seeks treble damages, punitive damages, attorneys’ fees, costs, and a permanent injunction enjoining the defendants from the conduct alleged in the complaint. The Company is unable to predict the outcome of the suit. A court determination against the Company could result in significant liability and could have a material adverse effect on the Company’s business, results of operations or financial condition.

The Company has accrued a liability and charged operations for the estimated costs of adjudication or settlement of various asserted and unasserted claims existing as of the balance sheet date. The Company is currently a party to other legal actions arising out of the normal course of business, none of which is expected to have a material adverse effect on the Company’s business, results of operations or financial condition.

In the normal course of business, the Company is a party to a variety of agreements pursuant to which it may be obligated to indemnify the other party. It is not possible to predict the maximum potential amount of future payments under these types of agreements due to the conditional nature of the Company’s obligations and the unique facts and circumstances involved in each particular agreement. Historically, payments made by the Company under these types of agreements have not had a material effect on the Company’s business, results of operations or financial condition.

## Redeemable Common Stock

In connection with the Company’s acquisition on April 22, 2002, of substantially all of the assets of Toshiba Corporation’s (“Toshiba”) DRAM business as conducted by Dominion Semiconductor L.L.C., the Company issued Toshiba 1.5 million shares of common stock and granted Toshiba an option to require the Company to repurchase the shares for \$67.5 million in cash. During the first quarter of 2004, Toshiba exercised its option and the Company redeemed the 1.5 million shares.

## Stock Rights

On September 24, 2003, the Company received \$450.0 million, which is included in additional capital in the accompanying consolidated balance sheet, from Intel Corporation (“Intel”) in exchange for the issuance of stock rights exchangeable into approximately 33.9 million shares of the Company’s common stock. In conjunction with the issuance of the stock rights, the Company agreed to achieve operational objectives through May 2005, including

certain levels of DDR2 production and 300 mm wafer processing capacity, and dedication of resources to advanced product development. In the event the Company fails to achieve certain 2005 milestones and the Company's common stock price is then below Intel's purchase price of \$13.29, the Company could be obligated to pay Intel amounts not to exceed \$135 million, a substantial portion of which is payable, at the Company's election, in the Company's common stock. The shares issuable pursuant to the stock rights are included in weighted average common shares outstanding in the computations of earnings per share.

## Restructure and Other Charges

In the second quarter of 2003, the Company announced a series of cost-reduction initiatives. The restructure plan included the shutdown of the Company's 200mm production line in Virginia; the discontinuance of certain memory products, including SRAM and TCAM products; and an approximate 10% reduction of the Company's worldwide workforce. The Company has substantially completed the restructure plan. Through September 2, 2004, the Company had paid essentially all of the severance and other termination benefits and other costs incurred in connection with the restructure plan. The credits to restructure in the first quarter of 2005 and 2004 primarily reflect sales of equipment associated with the Company's 200mm production line in Virginia.

## Other Operating Income and Expense

Other operating expense for the first quarter of 2005 includes net losses of \$19.6 million from changes in currency exchange rates primarily as the result of a generally weaker U.S. dollar relative to the Japanese yen and euro. Other operating income for the first quarter of 2005 includes \$12.0 million in receipts from the U.S. government in connection with anti-dumping tariffs. Other operating expense for the first quarter of 2004 includes net losses of \$24.5 million from changes in currency exchange rates.

## Income Taxes

Income taxes for 2005 and 2004 primarily reflect taxes on the Company's non-U.S. operations. The Company has a valuation allowance for its net deferred tax asset associated with its U.S. operations. The provision for taxes on U.S. operations in the first quarter of 2005 and 2004 was substantially offset by a reduction in the valuation allowance. Until such time as the Company utilizes its U.S. net operating loss carryforwards and unused tax credits, the provision for taxes on the Company's U.S. operations is expected to be substantially offset by a reduction in the valuation allowance. As of December 2, 2004, the Company had aggregate U.S. tax net operating loss carryforwards of \$2.7 billion and unused U.S. tax credits of \$116.5 million, which expire through 2025. The Company also has unused state tax net operating loss carryforwards of \$1.7 billion for tax purposes which expire through 2025 and unused state tax credits of \$124.8 million for tax and financial reporting purposes, which expire through 2019.

## Earnings Per Share

Basic earnings per share is computed based on the weighted average number of common shares outstanding. Diluted earnings per share is computed based on the weighted average number of common shares outstanding plus the dilutive effects of stock options, warrants and convertible notes. Potential common shares that would increase earnings per share amounts or decrease loss per share amounts are antidilutive and are, therefore, excluded from earnings per share calculations. Antidilutive potential common shares that could dilute basic earnings per share in the future were 145.5 million for the first quarter of 2005 and 153.4 million for the first quarter of 2004. Basic and

diluted earnings per share computations for the first quarter of 2004 reflect the effect of accretion of, and fair value adjustment to, redeemable common stock.

	Quarter ended	
	December 2, 2004	December 4, 2003
Net income	\$ 154.9	\$ 1.1
Redeemable common stock accretion	—	(0.5)
Redeemable common stock fair value adjustment	—	(0.4)
Net income available to common shareholders	<u>\$ 154.9</u>	<u>\$ 0.2</u>
Weighted average common shares outstanding – Basic	646.0	633.8
Net effect of dilutive stock options	<u>54.5</u>	<u>2.8</u>
Weighted average common shares outstanding – Diluted	<u>700.5</u>	<u>636.6</u>
Earnings per share:		
Basic	\$ 0.24	\$ 0.00
Diluted	0.23	0.00

## Comprehensive Income

Comprehensive income for the first quarter of 2005 was \$154.7 million and included \$0.2 million net of tax of unrealized losses on investments. Comprehensive income for the first quarter 2004 was \$1.0 million and included \$0.1 million net of tax of unrealized losses on investments.

## Joint Venture

Since 1998, the Company has participated in TECH Semiconductor Singapore Pte. Ltd. ("TECH"), a semiconductor memory manufacturing joint venture in Singapore among the Company, the Singapore Economic Development Board, Canon Inc. and Hewlett-Packard Company. As of December 2, 2004, the Company had a 39.12% ownership interest in TECH. Significant financing, investment and operating decisions for TECH typically require approval from TECH's Board of Directors. The shareholders' agreement for the TECH joint venture expires in 2011. Under FASB Interpretation No. 46, "Consolidation of Variable Interest Entities," TECH does not qualify for consolidation.

TECH's semiconductor manufacturing facilities use the Company's product and process technology. Subject to specific terms and conditions, the Company has agreed to purchase all of the products manufactured by TECH. The Company generally purchases semiconductor memory products from TECH at prices determined quarterly, based on a discount from average selling prices realized by the Company for the immediately preceding quarter. The Company performs assembly and test services on product manufactured by TECH. The Company also provides certain technology, engineering and training to support TECH. All of these transactions with TECH are recognized as part of the net cost of products purchased from TECH. The net cost of products purchased from TECH amounted to \$144.5 million and \$123.1 million for the first quarter of 2005 and 2004, respectively. Amortization expense resulting from the TECH supply arrangement, included in the cost of products purchased from TECH, was \$3.0 million and \$2.6 million for the first quarter of 2005 and 2004, respectively. Receivables from TECH were \$25.3 million and payables to TECH were \$61.4 million as of December 2, 2004. Receivables from TECH were \$23.8 million and payables to TECH were \$56.8 million as of September 2, 2004. TECH supplied approximately 25% of the total megabits of memory produced by the Company in the first quarter of 2005. As of December 2, 2004, the Company had intangible assets with a net book value of \$59.0 million relating to the supply arrangement to purchase product from TECH.

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

*The following discussion contains trend information and other forward-looking statements that involve a number of risks and uncertainties. Forward-looking statements include, but are not limited to, statements such as those made in "Overview" regarding growth for CMOS image sensor and NAND Flash markets and allocation of manufacturing capacity to products other than Core DRAM; in "Net Sales" regarding future megabit production growth, production increases and allocation of wafer starts to DDR2 products, CMOS image sensors, Specialty memory products and Flash memory products; in "Gross Margin" regarding manufacturing cost reductions in future periods; in "Selling, General and Administrative" regarding the level of selling, general and administrative expenses in the second quarter of 2005; in "Research and Development" regarding the level of research and development expenses in the second quarter of 2005; in "Income Taxes" regarding future provisions for income taxes; in "Liquidity and Capital Resources" regarding capital spending in 2005 and in "Recently Issued Accounting Standards" regarding the impact on the Company's results of operations and financial condition from the adoption of new accounting standards. The Company's actual results could differ materially from the Company's historical results and those discussed in the forward-looking statements. Factors that could cause actual results to differ materially include, but are not limited to, those identified in "Certain Factors." This discussion should be read in conjunction with the Consolidated Financial Statements and accompanying notes and with the Company's Annual Report on Form 10-K for the year ended September 2, 2004. All period references are to the Company's fiscal periods unless otherwise indicated. All per share amounts are presented on a diluted basis. All tabular dollar amounts are in millions. Unless otherwise stated, all production data reflects production of the Company and its TECH joint venture.*

### **Overview**

The Company is a global manufacturer of semiconductor memory devices, principally DRAM and Flash, and CMOS image sensors. Its products are used in a broad range of electronic applications including personal computers, workstations, servers, mobile phones and other consumer products. The Company's customers are principally original equipment manufacturers located around the world.

The markets for the Company's products behave in a manner similar to commodity markets as the products are generally standardized with selling prices that fluctuate based on industry-wide relationships of supply and demand. The Company's operating results and financial condition in these types of markets are dependent on reductions in costs of production, capital efficiency and return on research and development investments. Historically, the semiconductor memory market has been subject to governmental subsidization, resulting in the periodic entry of new competitors and, at times, excess supply.

The Company utilizes its proprietary product and process technology to manufacture sophisticated semiconductor memory devices having progressively smaller die sizes. By reducing the size of the circuits ("shrinking") that make up each memory cell, the Company is able to produce more megabits of memory on each wafer and thus reduce the cost of its memory products. In 2004, the Company introduced products featuring its 6F<sup>2</sup> Hypershrink™ array architecture technology that enables it to further shrink die sizes. This 6F<sup>2</sup> technology reduces the size of memory cells approximately 20% from industry standard 8F<sup>2</sup> products without significant additional investment in equipment. The Company continually introduces new generations of products that have lower costs per megabit and improved performance characteristics such as higher data transfer rates, reduced package size per megabit and lower power consumption.

The Company has made substantial investments in its manufacturing facilities in the United States, Europe and Asia. A significant portion of the Company's semiconductor manufacturing equipment is replaced every three to five years with increasingly advanced equipment to implement leading edge technology and reduce costs per megabit. Because the Company owns most of its manufacturing capacity, a significant portion of the Company's operating costs are fixed. In general, these fixed costs do not vary with changes in the Company's utilization of its manufacturing capacity. Accordingly, the Company's margins fluctuate with utilization. The Company must generate sufficient cash flow from operations or obtain external financing for reinvestment in manufacturing capability. Historically, the Company has accessed external markets to fund a portion of its cash requirements.

Maximizing returns from investments in research and development ("R&D") is dependent on developing process technology that effectively reduces production costs, leveraging required investments across a substantial scale of production, and designing new products that can be successfully brought to market. The Company must invest heavily in R&D to expand its product offering and enable development of leading-edge product and process technologies. The Company has made significant R&D investments in recent periods to develop products that will enable it to enter new markets.

In recent years, approximately 80% of the Company's products were sold into computer and computer peripheral markets. The computing market for a number of decades has had an extremely high growth rate. However, as with any maturing market, it is unlikely that historic growth rates for this market will be sustained.

The Company is strategically diversifying its business into semiconductor products other than Core DRAM. Core DRAM consists of standardized, high-volume, products that are sold primarily for use as main system memory in computers. The Company's non-Core DRAM products include Specialty



memory, Flash memory and CMOS image sensors. These products leverage the Company's competencies in semiconductor memory manufacturing and product and process technology. Non-Core DRAM products are typically of lower density and are manufactured in lower volumes than Core DRAM and allow the Company to use prior generation processes and equipment. Unlike Core DRAM, these products are typically used in electronic devices other than computers and in many cases the Company can differentiate them from competitor's products based on performance characteristics.

Markets for some of the Company's non-DRAM products are expected to grow rapidly, in particular the markets for NAND Flash and CMOS image sensors. The Company believes that its product and process technology and manufacturing competencies position it well to compete in these markets. Accordingly, the Company plans to allocate an increasing portion of its manufacturing capacity to these products in 2005. Success in these markets is dependent in part on the Company's ability to timely develop new products that are well received by customers and gain sufficient market share.

## Results of Operations

	First Quarter				Fourth Quarter	
	2005	% of net sales	2004	% of net sales	2004	% of net sales
Net sales	\$ 1,260.3	100.0%	\$ 1,107.2	100.0%	\$ 1,189.2	100.0%
Gross margin	423.0	33.6%	286.0	25.8%	392.6	33.0%
SG&A	86.8	6.9%	81.2	7.3%	74.7	6.3%
R&D	148.4	11.8%	186.4	16.8%	199.2	16.8%
Restructure	(1.5)	(0.1)%	(21.1)	(1.9)%	(0.6)	(0.1)%
Operating income	174.9	13.9%	21.7	2.0%	125.4	10.5%

The Company's fiscal year is the 52 or 53-week period ending on the Thursday closest to August 31. The Company's first quarter of fiscal 2005 and fourth quarter of fiscal 2004 contained 13 weeks. The Company's first quarter of fiscal 2004 contained 14 weeks.

### Net Sales

Net sales for the first quarter of 2005 increased by 6% as compared to the fourth quarter of 2004 primarily due to an increase in megabits sold. The Company's overall average selling prices per megabit for the first quarter of 2005 were essentially unchanged from the fourth quarter of 2004. During the first quarter of 2005, the Company increased its sales of DDR2, Flash and Specialty memory products, including pseudo-static RAM ("PSRAM") and mobile SDRAM. DDR products constituted 60% of the Company's megabits sold in the first quarter of 2005 and 71% of megabits sold in the fourth quarter of 2004.

The Company's overall megabit production in the first quarter of 2005 increased 8% as compared to the fourth quarter of 2004 principally due to gains in manufacturing efficiencies as well as increased production from its 300mm wafer fabrication facility in Virginia. Megabit production growth in the first quarter of 2005 was relatively

higher for DDR2, Specialty memory and Flash memory products than for DDR products. The Company's DDR2 products produce fewer megabits per wafer than other Core DRAM products because they have a relatively larger die size and have not yet reached the mature manufacturing yields of other Core DRAM products. Megabit production slightly outpaced sales volume in the first quarter of 2005 due primarily to increased volumes in inventory of DDR2 products in preparation for the unfolding market transition to this higher performance architecture, and to SDRAM products, which have been one of the Company's strongest margin products but which experienced competitive pressures in the first quarter of 2005.

The Company expects that growth in megabit production over the next several quarters will continue to be affected by an increase in wafers allocated to DDR2 products, CMOS image sensors, Specialty memory products and Flash memory products. Net sales of DDR2 products increased to 10% of total net sales in the first quarter of 2005 as compared to 2% of total net sales in the fourth quarter of 2004, and the Company expects DDR2 production to increase significantly over the next several quarters.

Net sales for the first quarter of 2005 increased by 14% as compared to the first quarter of 2004 primarily due to a 12% increase in average per megabit selling prices for the Company's memory products and, to a lesser extent, an increase in sales of CMOS image sensors. The increase in net sales for the first quarter of 2005 as compared to the first quarter of 2004 was partially offset by a 4% decrease in megabits sold due to shifts in the Company's product mix and by one less week than the first quarter of 2004, which was a 14-week quarter. Megabits produced in the first quarter of 2005 increased 8% as compared to the first quarter of 2004. DDR products constituted 75% of the Company's megabits sold in the first quarter of 2004.

### Gross Margin

The Company's gross margin percentage for the first quarter of 2005 was approximately the same as for the fourth quarter of 2004. During the first quarter of 2005, the Company realized improved margins for its DDR, DDR2, Specialty memory, and Flash memory products. However, the gross margin percentage for DDR2 products is lower than the Company's average as DDR2 products have not yet reached mature manufacturing yields. The Company's overall average selling prices per megabit for the first quarter of 2005 were essentially unchanged from the fourth quarter of 2004.

The Company's overall cost of goods sold per megabit in the first quarter of 2005 was essentially unchanged compared to the fourth quarter of 2004 as significant reductions in costs of goods sold for most products resulting from manufacturing improvements were offset by the effect of the shift in product mix. The Company reduced product costs through manufacturing efficiencies achieved by improving product yields and increased manufacture of products utilizing the Company's 110nm process technology and 6F<sup>2</sup> technology. The Company's 6F<sup>2</sup> technology enables it to produce approximately 20% more potential die per wafer than standard products, which use 8F<sup>2</sup> technology. Manufacturing costs per megabit for DDR2 products were higher than the Company's Core DRAM products in the first quarter of 2005 because they have a relatively larger die size, have not yet fully utilized the Company's 6F<sup>2</sup> and other advanced process technology, and have not yet reached the mature manufacturing yields of other Core DRAM products. Manufacturing costs per megabit were also higher for Specialty memory and certain Flash memory products, which do not require leading edge process technology and have relatively lower density and greater complexity than Core DRAM products. Per megabit costs in the first quarter of 2005 were also affected by higher costs associated with products from the Company's 300mm wafer fabrication facility, which has not yet been ramped to a scale necessary to match production costs at the

Company's other facilities. During the first quarter of 2005, the Company qualified its 256 Meg DDR on 300mm for sale to customers and began including costs associated with the manufacture of these devices in inventory and costs of goods sold rather than research and development expense. The Company expects that per megabit cost reductions over the next several quarters will continue to be affected by higher costs associated with the shifts in product mix to DDR2 and non-Core DRAM products and the continued ramp of its 300mm wafer fabrication facility until the 300mm operations reach sufficient volumes to be more efficient than the Company's mature 200mm operations.

The Company's gross margin percentage for the first quarter of 2005 improved to 34% from 26% for the first quarter of 2004, primarily due to the 12% increase in average selling prices for the Company's semiconductor products.

**TECH Semiconductor Singapore Pte. Ltd. ("TECH"):** The TECH joint venture supplied approximately 25% of the total megabits of memory produced by the Company in the first quarter of 2005 and fourth quarter of 2004 and 30% of the total megabits produced in the first quarter of 2004. The Company generally purchases memory products from TECH at prices determined quarterly, based on a discount from average selling prices realized by the Company for the immediately preceding quarter. Depending on market conditions, the gross margin from the sale of TECH products may be higher or lower than the gross margin from the sale of products manufactured by the Company's wholly-owned operations. In the first quarter of 2005, the Company realized lower gross margin percentages on sales of TECH products than for products manufactured by its wholly-owned operations. In the fourth quarter of 2004, the gross margin percentages realized by the Company on sales of TECH products were approximately the same as gross margins realized on products manufactured by the Company's wholly-owned facilities. In the first quarter of 2004, the Company realized higher gross margin percentages on sales of TECH products than for products manufactured by its wholly-owned operations.

### **Selling, General and Administrative**

Selling, general and administrative ("SG&A") expenses for the first quarter of 2005 were 16% higher than for the fourth quarter of 2004 primarily due to higher costs associated with legal matters and technical and professional fees. SG&A expenses for the first quarter of 2005 were 7% higher than for the first quarter of 2004 primarily due to higher levels of performance-based compensation expense and other personnel costs. SG&A expenses for the second quarter of 2005 are expected to approximate \$90 million to \$95 million.

### **Research and Development**

Research and development ("R&D") expenses vary primarily with the number of development wafers processed, the cost of advanced equipment dedicated to new product and process development, and personnel costs. Because of the lead times necessary to manufacture its products, the Company typically begins to process wafers before completion of performance and reliability testing. The Company deems development of a product complete once the product has been thoroughly reviewed and tested for performance and reliability. R&D expenses can vary significantly depending on the timing of product qualification.

R&D expenses for the first quarter of 2005 decreased 26% from the fourth quarter of 2004 and 20% from the first quarter of 2004 principally because the Company qualified its 256 Meg DDR at its 300mm wafer fabrication plant in Virginia for sale to customers and began including costs associated with the manufacture of these devices in inventory and costs of goods sold rather than research and development expense. R&D expenses for the second quarter of 2005 are expected to approximate \$160 million to \$170 million.

The Company's process technology R&D efforts are focused primarily on development of 95nm, 78nm and smaller line-width process technologies, which are designed to facilitate the Company's transition to next generation products. Additional R&D efforts include process development to support the Company's 300mm wafer manufacturing, CMOS image sensors, NAND Flash memory, Specialty memory products including PSRAM and reduced latency DRAM ("RLDRAM") and new manufacturing materials. Efforts toward the design and development of new products are concentrated on the Company's 512 Meg and 1 Gig DDR, DDR2 and DDR3 products as well as NAND Flash memory, CMOS image sensors and Specialty memory products.

### **Restructure and Other Charges**

In the second quarter of 2003, the Company announced a series of cost-reduction initiatives. The restructure plan included the shutdown of the Company's 200mm production line in Virginia; the discontinuance of certain memory products, including SRAM and TCAM; and an approximate 10% reduction in the Company's worldwide workforce. The Company has substantially completed the restructure plan. Through September 2, 2004, the Company had paid essentially all of the severance and other termination benefits and other costs incurred in connection with the restructure plan. The credits to restructure in 2005 and 2004 primarily reflect sales of equipment associated with the Company's 200mm production line in Virginia.

### **Other Operating Income and Expense**

Other operating expense for the first quarter of 2005 includes net losses of \$19.6 million from changes in currency exchange rates primarily as the result of a generally weaker U.S. dollar relative to the Japanese yen and euro. Other operating income for the first quarter of 2005 includes \$12.0 million in receipts from the U.S. government in connection with anti-dumping tariffs. Other operating income for the fourth quarter of 2004 includes \$7.2 million from the Commonwealth of Virginia for meeting investment commitments at the Company's Virginia wafer fabrication facility. Other operating expense for the first quarter of 2004 includes net losses of \$24.5 million from changes in currency exchange rates. The Company estimates that, based on its assets and liabilities denominated in currencies other than U.S. dollar as of December 2, 2004, a 1% change in the exchange rate versus the U.S. dollar would result in foreign currency gains or losses of approximately \$2 million for the Japanese yen and \$1 million for the euro.

### **Income Taxes**

Income taxes for 2005 and 2004 primarily reflect taxes on the Company's non-U.S. operations. The Company has a valuation allowance for its net deferred tax asset associated with its U.S. operations. The provision for taxes on U.S. operations in the first quarter of 2005 and 2004 was substantially offset by a reduction in the valuation allowance. Until such time as the Company utilizes its U.S. net operating loss carryforwards and unused tax credits, the

provision for taxes on the Company's U.S. operations is expected to be substantially offset by a reduction in the valuation allowance. As of December 2, 2004, the Company had aggregate U.S. tax net operating loss carryforwards of \$2.7 billion and unused U.S. tax credits of \$116.5 million, which expire through 2025. The Company also has unused state tax net operating loss carryforwards of \$1.7 billion for tax purposes which expire through 2025 and unused state tax credits of \$124.8 million for tax and financial reporting purposes, which expire through 2019.

## Liquidity and Capital Resources

The Company's liquidity is highly dependent on average selling prices for its semiconductor memory products and the timing of capital expenditures, both of which can vary significantly from period to period. As of December 2, 2004, the Company had cash and marketable investments totaling \$1,052.2 million compared to \$1,231.0 million as of September 2, 2004.

**Operating Activities:** For the first quarter of 2005, net cash provided by operating activities was \$291.4 million, which principally reflects the Company's \$154.9 million of net income adjusted by \$313.7 million for non-cash depreciation and amortization expense, partially offset by an \$89.3 million increase in accounts receivable associated with the Company's higher level of sales and a \$30.6 million increase in finished goods inventories.

**Investing Activities:** For the first quarter of 2005, net cash used by investing activities was \$350.1 million, which included expenditures for property, plant and equipment of \$359.4 million. The Company believes that to develop new product and process technologies, support future growth, achieve operating efficiencies and maintain product quality, it must continue to invest in manufacturing technologies, facilities and capital equipment, research and development, and product and process technologies. The Company expects 2005 capital spending to approximate \$1.5 billion. As of December 2, 2004, the Company had commitments extending into 2006 of approximately \$290 million for the acquisition of property, plant and equipment.

**Financing Activities:** For the first quarter of 2005, net cash used by financing activities was \$106.6 million. Payments on equipment purchase contracts and debt were \$140.6 million for the first quarter of 2005, and included a \$20.0 million prepayment of the Company's \$210 million subordinated notes due September 2005. In the first quarter of 2005, the Company received \$24.9 million in proceeds from a sales-leaseback transaction. In December 2004, the Company entered into additional capital lease obligations aggregating \$133 million payable in periodic installments through January 2009.

In the first quarter of 2004, the Company received \$450.0 million from Intel in exchange for the issuance of stock rights exchangeable into approximately 33.9 million shares of the Company's common stock. In conjunction with the issuance of the stock rights, the Company agreed to achieve operational objectives through May 2005,

including certain levels of DDR2 production and 300mm wafer fabrication capacity. In the event the Company fails to achieve certain 2005 milestones and the Company's common stock price is then below Intel's per share purchase price of \$13.29, the Company could be obligated to pay Intel amounts not to exceed \$135 million, a substantial portion of which is payable, at the Company's election, in the Company's common stock.

Access to capital markets has historically been important to the Company. Depending on market conditions, the Company may, from time to time, issue registered or unregistered securities to raise capital to fund a portion of its operations.

As of December 2, 2004, future maturities of notes payable, minimum lease payments under capital lease obligations and minimum commitments under operating leases were as follows:

Fiscal year	Notes payable	Capital lease obligations	Operating leases
Remainder of 2005	\$ 33.1	\$ 20.2	\$ 6.9
2006	242.8	35.3	14.0
2007	46.0	21.6	4.0
2008	26.0	21.3	3.4
2009	6.1	8.4	2.9
2010 and thereafter	643.4	—	25.4

## Off-Balance Sheet Arrangements

As of December 2, 2004, the Company had the following off-balance sheet arrangements: convertible debt, call spread options, stock warrants and its variable interest in the TECH joint venture.

In the second quarter of 2003, the Company issued \$632.5 million of 2.5% Convertible Subordinated Notes (the "Notes"). Holders of the Notes may convert all or some of their Notes at any time prior to maturity, unless previously redeemed or repurchased, into the Company's common stock at a conversion rate of 84.8320 shares for each \$1,000 principal amount of the Notes. This conversion rate is equivalent to a conversion price of approximately \$11.79 per share. The Company may redeem the Notes at any time after February 6, 2006, at declining premiums to par.

Concurrent with the issuance of the Notes, the Company purchased call spread options (the "Call Spread Options") covering 53.7 million shares of the Company's common stock, which is the number of shares issuable upon conversion of the Notes in full. The Call Spread Options have a lower strike price of \$11.79, a higher strike price of \$18.19, may be settled at the Company's option either in cash or net shares and expire on January 29, 2008. Settlement of the Call Spread Options in cash on January 29, 2008, would result in the Company receiving an amount ranging from zero if the market price per share of the Company's common stock is at or below \$11.79 to a maximum of \$343.4 million if the market price per share of the Company's common stock is at or above \$18.19.

During the fourth quarter of 2001, the Company received \$480.2 million from the issuance of warrants to purchase 29.1 million shares of the Company's common stock. The warrants entitle the holders to exercise their warrants and purchase shares of Common Stock for \$56.00 per share (the

“Exercise Price”) at any time through May 15, 2008 (the “Expiration Date”). Warrants exercised prior to the Expiration Date will be settled on a “net share” basis, wherein investors receive common stock equal to the difference between \$56.00 and the average closing sale price for the common shares over the 30 trading days immediately preceding the Exercise Date. At expiration, the Company may elect to settle the warrants on a net share basis or for cash, provided certain conditions are satisfied. As of December 2, 2004, there have been no exercises of warrants and all warrants issued remain outstanding.

See “Item 1. Notes to Consolidated Financial Statements – Joint Venture” for a description of the Company’s arrangement with its TECH joint venture.

## Recently Issued Accounting Standards

In December 2004, the Financial Accounting Standards Board (“FASB”) issued a revised Statement of Financial Accounting Standards (“SFAS”) No. 123(R), “Share-Based Payment – an Amendment of FASB Statements No. 123 and 95.” SFAS 123(R) establishes standards for the accounting for transactions in which an entity exchanges its equity instruments for goods or services or incurs liabilities in exchange for goods or services that are based on the fair value of the entity’s equity instruments, focusing primarily on accounting for transactions in which an entity obtains employee services in share-based payment transactions. SFAS No. 123(R) requires public entities to measure the cost of employee services received in exchange for an award of equity instruments based on the grant-date fair value of the award (with limited exceptions) and recognize the cost over the period during which an employee is required to provide service in exchange for the award. The Company is required to adopt SFAS No. 123(R) in 2006. The Company is evaluating the impact of SFAS No. 123(R) and expects that it will record substantial non-cash stock compensation expenses. The adoption of SFAS No. 123(R) is not expected to have a significant effect on the Company’s financial condition or cash flows but is expected to have a significant adverse effect on its results of operations.

In December 2004, the FASB issued SFAS No. 153, “Exchanges of Nonmonetary Assets – An Amendment of APB Opinion No. 29,” which eliminates the exception for nonmonetary exchanges of similar productive assets and replaces it with a general exception for exchanges of nonmonetary assets that do not have commercial substance. The Company is required to adopt SFAS No. 153 for nonmonetary asset exchanges occurring in the first quarter of 2006 and its adoption is not expected to have a significant impact on the Company’s results of operations or financial condition.

In November 2004, the FASB issued SFAS No. 151, “Inventory Costs – An Amendment of ARB No. 43, Chapter 4,” which clarifies the accounting for abnormal amounts of idle facility expense, freight, handling costs and wasted material (spoilage). The Company is required to adopt SFAS No. 151 in 2006 and its adoption is not expected to have a significant impact on the Company’s results of operations or financial condition.

## Critical Accounting Policies

The preparation of financial statements and related disclosures in conformity with U.S. GAAP requires management to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues, expenses and related disclosures. Estimates and judgments are based on historical experience, forecasted future events and various other assumptions that the Company believes to be reasonable under the circumstances. Estimates and judgments may vary under different assumptions or conditions. The Company evaluates its estimates and judgments on an ongoing basis. Management believes the accounting policies below are critical in the portrayal of the Company’s financial condition and results of operations and require management’s most difficult, subjective or complex judgments.

**Contingencies:** The Company is subject to the possibility of losses from various contingencies. Considerable judgment is necessary to estimate the probability and amount of any loss from such contingencies. An accrual is made when it is probable that a liability has been incurred or an asset has been impaired and the amount of loss can be reasonably estimated. The Company accrues a liability and charges operations for the estimated costs of adjudication or settlement of asserted and unasserted claims existing as of the balance sheet date.

**Income taxes:** The Company is required to estimate its provision for income taxes and amounts ultimately payable or recoverable in numerous tax jurisdictions around the world. Estimates involve interpretations of regulations and are inherently complex. Resolution of income tax treatments in individual jurisdictions may not be known for many years after completion of any fiscal year. The Company is also required to evaluate the realizability of its deferred tax assets on an ongoing basis in accordance with U.S. GAAP, which requires the assessment of the Company’s performance and other relevant factors when determining the need for a valuation allowance with respect to these deferred tax assets. Realization of deferred tax assets is dependent on the Company’s ability to generate future taxable income.

**Inventories:** Inventories are stated at the lower of average cost or market value. Cost includes labor, material and overhead costs, including product and process technology costs. Determining market value of inventories involves numerous judgments, including projecting average selling prices and sales volumes for future periods and costs to complete products in work in process inventories. To project average selling prices and sales volumes, the Company reviews recent sales volumes, existing customer orders, current contract prices, industry analysis of supply and demand, seasonal factors, general economic trends and other information. When these analyses reflect estimated market values below the Company’s manufacturing costs, the Company records a charge to cost of goods sold in advance of when the inventory is actually sold. Differences in forecasted average selling prices used in calculating lower of cost or market adjustments can result in significant changes in the estimated net realizable value of product inventories and accordingly the amount of write-down recorded. Due to the volatile nature of the semiconductor memory industry, actual selling prices and volumes often vary significantly from projected prices and volumes and, as a result, the timing of when product costs are charged to operations can vary significantly.

U.S. GAAP provides for products to be grouped into categories in order to compare costs to market values. The amount of any inventory write-down can vary significantly depending on the determination of inventory categories. The Company’s inventory has been categorized as semiconductor memory products or CMOS image sensors. The major characteristics the Company considers in determining inventory categories are product type and markets.

**Product and process technology:** Costs incurred to acquire product and process technology or to patent technology developed by the Company are capitalized and amortized on a straight-line basis over periods currently ranging up to 10 years. The Company capitalizes a portion of costs incurred based on

its analysis of historical and projected patents issued as a percent of patents filed. Capitalized product and process technology costs are amortized over the shorter of (i) the estimated useful life of the technology, (ii) the patent term or (iii) the term of the technology agreement.

**Property, plant and equipment:** The Company reviews the carrying value of property, plant and equipment for impairment when events and circumstances indicate that the carrying value of an asset or group of assets may not be recoverable from the estimated future cash flows expected to result from its use and/or disposition. In cases where undiscounted expected future cash flows are less than the carrying value, an impairment loss is recognized equal to the amount by which the carrying value exceeds the estimated fair value of the assets. The estimation of future cash flows involves numerous assumptions which require judgment by the Company, including, but not limited to, future use of the assets for Company operations versus sale or disposal of the assets, future selling prices for the Company's products and future production and sales volumes. In addition, judgment is required by the Company in determining the groups of assets for which impairment tests are separately performed.

**Research and development:** Costs related to the conceptual formulation and design of products and processes are expensed as research and development when incurred. Determining when product development is complete requires judgment by the Company. The Company deems development of a product complete once the product has been thoroughly reviewed and tested for performance and reliability.

## **Certain Factors**

*In addition to the factors discussed elsewhere in this Form 10-Q, the following are important factors which could cause actual results or events to differ materially from those contained in any forward- looking statements made by or on behalf of the Company.*

**We have experienced dramatic declines in average selling prices for our memory products which have adversely affected our business.**

In recent years, we have experienced annual decreases in per megabit average selling prices for our semiconductor memory products including: 17% in 2003, 53% in 2002, 60% in 2001, 37% in 1999, 60% in 1998 and 75% in 1997. At times, average selling prices for our semiconductor products have been below our costs. If average selling prices for our memory products decrease faster than we can decrease per megabit costs, our business, results of operations or financial condition could be materially adversely affected.

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**Increased worldwide DRAM production or lack of demand for DRAM could lead to further declines in average selling prices for DRAM.**

The transition to smaller line-width process technologies and 300mm wafers in the industry could, depending upon the rate of transition, lead to a significant increase in the worldwide supply of DRAM. Increases in worldwide supply of DRAM also result from DRAM fab capacity expansions, either by way of new facilities, increased capacity utilization or reallocation of other semiconductor production to DRAM production. Several of our competitors have announced plans to increase production through construction of new facilities or expansion of existing facilities. Increases in worldwide supply of DRAM, if not accompanied with increases in demand, could lead to further declines in average selling prices for our products and could materially adversely affect our business, results of operations or financial condition.

**As the computer industry matures and the growth rate of computers sold or growth rate of the amount of semiconductor memory included in each computer decreases, sales of our semiconductor products could decrease.**

We are dependent on the computing market as most of the semiconductor products we sell are used in computers, servers or peripheral products. Approximately 70% of our sales of semiconductor products for the first quarter of 2005 were to the computing market. DRAMs are the primary semiconductor memory components in computers. Throughout most of the 1980s and 1990s, industry revenue for the DRAM market grew at a much faster rate than the overall economy, driven by both growth in sales of computers and the amount of memory included in each computer sold. However, as with any maturing market, it is unlikely that historic growth rates for this market will be sustained. In recent years, the DRAM market has grown at a significantly slower rate as the computer industry has continued to mature. The reduction in the growth rate of computers sold or growth rate of the average amount of semiconductor memory included in each computer could reduce sales of our semiconductor products and our business, results of operations or financial condition could be materially adversely affected.

**We may be unable to reduce our per megabit manufacturing costs at the same rate as we have in the past.**

Historically, our gross margin has benefited from decreases in per megabit manufacturing costs achieved through improvements in our manufacturing processes, including reducing the die size of our existing products. In future periods, we may be unable to reduce our per megabit manufacturing costs or reduce costs at historical rates due to the ever increasing complexity of manufacturing processes, to changes in process technologies or products which inherently may require relatively larger die sizes, or to strategic product diversification decisions affecting product mix.

**If we are unable to timely and efficiently convert our manufacturing operations to 300mm wafer fabrication, our business, results of operations or financial condition could be materially adversely affected.**

Until such time that production at the our 300mm wafer fabrication facility in Virginia reaches mature product yields and significant volume with regards to capacity utilization, it will adversely affect our results of operations. We are assessing which of our other facilities will be converted to 300mm wafer fabrication and when those facilities will be converted. We may also experience disruptions in manufacturing operations, reduced wafer output and reduced yields during our conversion of other facilities to 300mm wafers and our business, results of operations or financial condition could be materially adversely affected.

**We may not be able to generate sufficient cash flows to fund our operations and make adequate capital investments.**

Our cash flows from operations depend primarily on the volume of semiconductor memory sold, average selling prices and per megabit manufacturing costs. To develop new product and process technologies, support future growth, achieve operating efficiencies and maintain product quality, we must make significant capital investments in manufacturing technology, facilities and capital equipment, research and development, and product and process technology. In addition to cash provided by operations, we have from time to time utilized external sources of financing. Depending on general

market and economic conditions or other factors, we may not be able to generate sufficient cash flows to fund our operations and make adequate capital investments or access capital markets for funds on acceptable terms.

**The semiconductor memory industry is highly competitive.**

We face intense competition from a number of companies, including Elpida Memory, Inc., Hynix Semiconductor Inc., Infineon Technologies AG and Samsung Electronics Co., Ltd. Additionally, we face competition from emerging companies in Taiwan and China who have announced plans to significantly expand the scale of their operations. Some of our competitors are large corporations or conglomerates that may have greater resources to withstand downturns in the semiconductor markets in which we compete, invest in technology and capitalize on growth opportunities. Our competitors seek to increase silicon capacity, improve yields, reduce die size and minimize mask levels in their product designs. These factors have significantly increased worldwide supply and put downward pressure on prices.

Historically, various governments have provided economic assistance to international competitors, which has enabled, or artificially supported, competitors' production of semiconductor memory. This factor may continue to increase the supply of semiconductor products in future periods.

**Changes in foreign currency exchange rates could materially adversely affect our business, results of operations or financial condition.**

Our financial statements are prepared in accordance with U.S. GAAP and are reported in U.S. dollars. Across our multi-national operations there are transactions and balances denominated in other currencies, primarily the Japanese yen and euro. In the event that the U.S. dollar weakens significantly compared to the Japanese yen or euro, our results of operations or financial condition will be adversely affected. The Company estimates that, based on its assets and liabilities denominated in currencies other than U.S. dollar as of December 2, 2004, a 1% change in the exchange rate versus the U.S. dollar would result in foreign currency gains or losses of approximately \$2 million for the Japanese yen and \$1 million for the euro.

**Current economic and political conditions may harm our business.**

Global economic conditions and the effects of military or terrorist actions may cause significant disruptions to worldwide commerce. If these disruptions result in delays or cancellations of customer orders, a decrease in corporate spending on information technology or our inability to effectively market, manufacture or ship our products, our business, results of operations or financial condition could be materially adversely affected.

**If our TECH joint venture experiences financial difficulty, or if our supply of semiconductor products from TECH is disrupted, our business, results of operations or financial condition could be materially adversely affected.**

TECH supplied approximately 25% of our total megabits of memory produced in the first quarter of 2005. We have agreements to purchase all of the products manufactured by TECH subject to specific terms and conditions. In some periods, we have realized higher margins on products purchased from TECH than products manufactured by our wholly-owned facilities. Any reduction in supply could materially adversely affect our business, results of operations or financial condition. As of December 2, 2004, we had intangible assets with a net book value of \$59.0 million relating to the supply arrangement to purchase product from TECH. In the event that our supply of semiconductor products from TECH is reduced or eliminated, we may be required to write off part or all of these assets and our revenues and results of operations would be adversely affected.

**If we are unable to respond to customer demand for diversified semiconductor memory products or are unable to do so in a cost-effective manner, we may lose market share and our business, results of operations or financial condition could be materially adversely affected.**

In recent periods, the semiconductor memory market has become increasingly segmented, with diverse memory needs being driven by the different requirements of desktop and notebook computers, servers, workstations, handheld devices, and communications, industrial and other applications that demand specific memory solutions. We offer customers a variety of semiconductor memory products, including DDR, DDR2, SDRAM, EDO, Flash and PSRAM.

We need to dedicate significant resources to product design and development to respond to customer demand for the continued diversification of semiconductor products. If we are unable to invest sufficient resources to meet the diverse memory needs of customers, we may lose market share. In addition, as we diversify our product lines we may encounter difficulties penetrating certain markets, particularly markets where we do not have existing customers. If we are unable to respond to customer demand for market diversification in a cost-effective manner, our business, results of operations or financial condition could be materially adversely affected.

**An adverse determination that our products or manufacturing processes infringe the intellectual property rights of others could materially adversely affect our business, results of operations or financial condition.**

As is typical in the semiconductor and other high technology industries, from time to time, others have asserted, and may in the future assert, that our products or manufacturing processes infringe their intellectual property rights. In this regard, we are engaged in litigation with Rambus, Inc. ("Rambus") relating to certain of Rambus' patents and certain of our claims and defenses. On August 28, 2000, we filed a complaint (amended) against Rambus in U.S. District Court for the District of Delaware seeking monetary damages and declaratory and injunctive relief. Among other things, our amended complaint alleges violation of federal antitrust laws, breach of contract, fraud, deceptive trade practices, and negligent misrepresentation. The complaint also seeks a declaratory judgment (a) that certain Rambus patents are not infringed by us, are invalid, and/or are unenforceable (b) that we have an implied license to those patents and (c) that Rambus is estopped from enforcing those patents against us. On February 15, 2001, Rambus filed an answer and counterclaim in Delaware denying that we are entitled to relief, alleging infringement of the eight Rambus patents named in our declaratory judgment claim, and seeking monetary damages and injunctive relief. A number of other suits are currently pending in Europe alleging that certain of our SDRAM and DDR SDRAM products infringe various of Rambus' country counterparts to its European patent 525 068, including: on September 1, 2000, Rambus filed suit against Micron Semiconductor (Deutschland) GmbH in the District Court of Mannheim, Germany; on September 13, 2000, Rambus filed suit against Micron Europe Limited in the High Court of Justice, Chancery Division in London, England; on September 22, 2000, Rambus filed a complaint against us and Repronic (a

distributor of our products) in Court of First Instance of Paris, France; on September 29, 2000, we filed suit against Rambus in the Civil Court of Milan, Italy, alleging invalidity and non-infringement. In addition, on December 29, 2000, we filed suit against Rambus in the Civil Court of Avezzano, Italy, alleging invalidity and non-infringement of the Italian counterpart to European patent 1 004 956. On August 10, 2001, Rambus filed suit against us and Assitec (an electronics retailer) in the Civil Court of Pavia, Italy, alleging that certain DDR SDRAM products infringe the Italian counterpart to European patent 1 022 642. In the European suits against us, Rambus is seeking monetary damages and injunctive relief. We also are engaged in litigation with Motorola, Inc. (“Motorola”) and Freescale Semiconductor, Inc. (“Freescale”) relating to certain of our patents and certain of Freescale’s patents. On January 8, 2004, Motorola filed suit against us in the U.S. District Court for the Western District of Texas (Austin) alleging infringement of ten Motorola patents. Freescale, a former subsidiary of Motorola, was later added as a party with Motorola. We counterclaimed against Motorola and Freescale alleging infringement of twenty-four Company patents. The above lawsuits pertain to certain of our SDRAM and DDR DRAM products, which account for a significant portion of our net sales. A court determination that our products or manufacturing processes infringe the intellectual property rights of others could result in significant liability and/or require us to make material changes to our products and/or manufacturing processes. We are unable to predict the outcome of assertions of infringement made against the Company. Any of the foregoing could have a material adverse effect on our business, results of operations or financial condition.

We have a number of patent and intellectual property license agreements. Some of these license agreements require us to make one time or periodic payments. We may need to obtain additional patent licenses or renew existing license agreements in the future. We are unable to predict whether these license agreements can be obtained or renewed on acceptable terms.

#### **Allegations of antitrust violations.**

On June 17, 2002, we received a grand jury subpoena from the U.S. District Court for the Northern District of California seeking information regarding an investigation by the Antitrust Division of the Department of Justice (the “DOJ”) into possible antitrust violations in the “Dynamic Random Access Memory” or “DRAM” industry. We are cooperating fully and actively with the DOJ in its investigation of the DRAM industry. Our cooperation is pursuant to the terms of the DOJ’s Corporate Leniency Policy, which provides that in exchange for our full, continuing and

complete cooperation in the pending investigation, we will not be subject to prosecution, fines or other penalties from the DOJ.

Subsequent to the commencement of the DOJ investigation, a number of purported class action lawsuits were filed against us and other DRAM suppliers. Sixteen cases were filed between June 21, 2002, and September 19, 2002, in the following federal district courts: one in the Southern District of New York, five in the District of Idaho and ten in the Northern District of California. The foregoing federal district court cases were transferred to the U.S. District Court for the Northern District of California (San Francisco) for consolidated proceedings. On October 6, 2003 and November 8, 2004, the plaintiffs filed consolidated amended class action complaints. The most recent consolidated amended complaint purports to be on behalf of a class of individuals and entities who purchased DRAM directly from the various DRAM suppliers during the period from July 1, 1999 through at least June 30, 2002. The consolidated amended complaint alleges price-fixing in violation of the Sherman Act and seeks treble monetary damages, costs, attorneys’ fees, and an injunction against the allegedly unlawful conduct. Eight additional cases were filed between August 2, 2002, and March 11, 2003, in the following California state superior courts: five in San Francisco County, one in Santa Clara County, one in Los Angeles County and one in Humboldt County. Each of the California state cases purports to be on behalf of a class of individuals and entities who indirectly purchased DRAM during a specified time period commencing December 1, 2001. The complaints allege violations of California’s Cartwright Act and state unfair competition law and unjust enrichment and seek treble monetary damages, restitution, costs, attorneys’ fees, and an injunction against the allegedly unlawful conduct. The foregoing California state cases were transferred to San Francisco County Superior Court for consolidated proceedings. On October 15, 2003, the plaintiffs filed a consolidated amended class action complaint. The consolidated amended complaint purports to be on behalf of a class of individuals and entities who purchased DRAM indirectly from the various DRAM suppliers during the period from November 1, 2001 through June 30, 2002. The consolidated amended complaint alleges violations of California’s Cartwright Act and state unfair competition law and unjust enrichment and seeks treble monetary damages, costs, attorneys’ fees, and an injunction against the allegedly unlawful conduct. Thirty additional cases were filed in the following state courts between May and November 2004: Hot Spring County, Arkansas; Maricopa County, Arizona (2); Collier County, Florida (subsequently dismissed without prejudice); Broward County, Florida; Lee County, Florida; Miami Dade County, Florida; Johnson County, Kansas; Essex County, Massachusetts (subsequently dismissed with prejudice); Middlesex County, Massachusetts; Wayne County, Michigan; Hennepin County, Minnesota; Mecklenburg County, North Carolina; Guilford County, North Carolina; Cass County, North Dakota; Lancaster County, Nebraska; Hudson County, New Jersey; New York County, New York; Albany County, New York; Westchester County, New York; Cuyahoga County, Ohio; Pennington County, South Dakota; Minnehaha County, South Dakota; Davidson County, Tennessee (3); Chittenden County, Vermont (2); Monroe County, Wisconsin; and Brooke County, West Virginia. The complaints purport to be on behalf of a class of individuals and entities who indirectly purchased DRAM and/or products containing DRAM in the respective states during various time periods ranging from 1999 through the filing of the complaint. The complaints allege violations of the various state antitrust, consumer protection and/or unfair competition laws relating to the sale and pricing of DRAM products and seek treble monetary damages, restitution, costs, interest and attorneys’ fees. We are unable to predict the outcome of these suits. Based upon our analysis of the claims made and the nature of the DRAM industry, we believe that class treatment of these cases is not appropriate and that any purported injury alleged by plaintiffs would be more appropriately resolved on a customer-by-customer basis. The final resolution of these alleged violations of federal or state antitrust laws could result in significant liability and could have a material adverse effect on our business, results of operations or financial condition.

#### **Allegations of anticompetitive conduct.**

On May 5, 2004, Rambus filed a complaint in the Superior Court of the State of California (San Francisco County) against us and other DRAM suppliers. The complaint alleges certain causes of action under California state law including conspiracy to restrict output and fix prices on Rambus DRAM (“RDRAM”), conspiracy to monopolize various relevant markets, intentional interference with prospective economic advantage relating to RDRAM, and unfair competition to disadvantage RDRAM. The complaint seeks treble damages, punitive damages, attorneys’ fees, costs, and a permanent injunction enjoining the defendants from the conduct alleged in the complaint. We are unable to predict the outcome of the suit. A court determination against us could result in significant liability and could have a material adverse effect on our business, results of operations or financial condition.

We are developing new products that complement our traditional memory products or leverage their underlying design or process technology. We anticipate expending significant resources for new semiconductor product development over the next several years. There can be no assurance that our product development efforts will be successful, that we will be able to cost-effectively manufacture these new products, that we will be able to successfully market these products or that margins generated from sales of these products will recover costs of development efforts.

**We face risks associated with our international sales and operations that could materially adversely affect our business, results of operations or financial condition.**

Sales to customers outside the United States approximated 64% of our consolidated net sales for the first quarter of 2005. In addition, we have manufacturing operations in Italy, Japan, Puerto Rico, Scotland and Singapore. Our international sales and operations are subject to a variety of risks, including:

- currency exchange rate fluctuations,
- export and import duties, changes to import and export regulations, and restrictions on the transfer of funds,
- political and economic instability,
- problems with the transportation or delivery of our products,
- issues arising from cultural or language differences and labor unrest,
- longer payment cycles and greater difficulty in collecting accounts receivable, and
- compliance with trade and other laws in a variety of jurisdictions.

These factors may materially adversely affect our business, results of operations or financial condition.

**If our manufacturing process is disrupted, our business, results of operations or financial condition could be materially adversely affected.**

We manufacture products using highly complex processes that require technologically advanced equipment and continuous modification to improve yields and performance. Difficulties in the manufacturing process can reduce yields or disrupt production and may increase our per megabit manufacturing costs. From time to time, we have experienced minor disruptions in our manufacturing process as a result of power outages or equipment failures. If production at a fabrication facility is disrupted for any reason, manufacturing yields may be adversely affected or we may be unable to meet our customers' requirements and they may purchase products from other suppliers. This could result in a significant increase in manufacturing costs or loss of revenues or damage to customer relationships, which could materially adversely affect our business, results of operations or financial condition.

**Disruptions in our supply of raw materials could materially adversely affect our business, results of operations or financial condition.**

Our operations require raw materials that meet exacting standards. We generally have multiple sources of supply for our raw materials. However, only a limited number of suppliers are capable of delivering certain raw materials that meet our standards. Various factors could reduce the availability of raw materials such as silicon wafers, photomasks, chemicals, gases, lead frames and molding compound. Shortages may occur from time to time in the future. In addition, disruptions in transportation lines could delay our receipt of raw materials. Lead times for the supply of raw materials have been extended in the past. If our supply of raw materials is disrupted or our lead times extended, our business, results of operations or financial condition could be materially adversely affected.

**If we fail to achieve certain milestones, we could be obligated to pay Intel Corporation amounts up to \$135 million.**

In conjunction with the issuance of stock rights to Intel in September 2003, we agreed to achieve operational objectives through May 2005, including certain levels of DDR2 production and 300mm wafer fabrication capacity. If we fail to achieve certain 2005 milestones and our common stock price is then below Intel's purchase price of \$13.29, we could be obligated to pay Intel amounts up to \$135 million, a substantial portion of which is payable, at our election, in our common stock.

**Products that do not meet specifications or that contain, or are perceived by our customers to contain, defects or that are otherwise incompatible with end uses could impose significant costs on us or otherwise materially adversely affect our business, results of operations or financial condition.**

Because the design and production process for semiconductor memory is highly complex, it is possible that we may produce products that do not comply with customer specifications, contain defects or are otherwise incompatible with end uses. If, despite design review, quality control and product qualification procedures, problems with nonconforming, defective or incompatible products occur after we have shipped such products, we could be adversely affected in several ways, including the following:

- we may replace product or otherwise compensate customers for costs incurred or damages caused by defective or incompatible product, and
- we may encounter adverse publicity, which could cause a decrease in sales of our products.

**We expect to make future acquisitions where advisable, which involve numerous risks.**

We expect to make future acquisitions where we believe it is advisable to enhance shareholder value. Acquisitions involve numerous risks, including:



- increasing our exposure to changes in average selling prices for semiconductor memory products,
- difficulties in integrating the operations, technologies and products of the acquired companies,
- increasing capital expenditures to upgrade and maintain facilities,
- increasing debt to finance any acquisition,
- diverting management's attention from normal daily operations,
- managing larger operations and facilities and employees in separate geographic areas, and
- hiring and retaining key employees.

Mergers and acquisitions of high-technology companies are inherently risky, and future acquisitions may not be successful and may materially adversely affect our business, results of operations or financial condition.

**Recently enacted changes in the securities laws and regulations are likely to increase our costs.**

The Sarbanes-Oxley Act of 2002 has required changes in some of our corporate governance, securities disclosure and compliance practices. In response to the requirements of that Act, the Securities and Exchange Commission and the New York Stock Exchange have promulgated new rules on a variety of subjects. Compliance with these new rules has increased our costs, and we expect these increased costs to continue indefinitely. We also expect these developments to make it more difficult and more expensive for us to obtain director and officer liability insurance, and we may be forced to accept reduced coverage or incur substantially higher costs to obtain coverage. Likewise, these developments may make it more difficult for us to attract and retain qualified members of our board of directors or qualified executive officers.

**We face risks related to implementation of new Sarbanes-Oxley Section 404 controls audit.**

Beginning in 2005, Section 404 of the Sarbanes-Oxley Act of 2002 requires that our management conduct an evaluation of the effectiveness of our internal controls over financial reporting and include a report on their assessment in our Annual Report on Form 10-K. In addition, our independent registered public accounting firm is required to express an opinion as to the fairness of management's assessment and separately on the effectiveness of our internal controls over financial reporting as of the end of our fiscal year being reported on. 2005 will be the first year that we undergo an audit of our assessment of the effectiveness of our internal controls over financial reporting, and it is possible that either significant deficiencies or material weaknesses could be found in connection with these evaluation and audit processes. If we are unable to remediate such deficiencies and weaknesses, management may be unable to conclude our controls are operating effectively and our independent registered public accounting firm may issue an adverse opinion on our management's assessment or on the effectiveness of our internal controls over financial reporting. If this were to occur, investor confidence regarding our internal controls could be harmed and our stock price could decline.

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

***Interest Rate Risk***

Substantially all of the Company's investments are at fixed interest rates; therefore, the fair value of these instruments is affected by changes in market interest rates. The Company believes that the market risk arising from its holdings of investments is minimal as the Company's investments generally mature within one year.

Substantially all of the Company's debt is at fixed interest rates; therefore, the fair value of the debt fluctuates based on changes in market interest rates. The estimated fair market value of the Company's debt approximated \$1.2 billion as of December 2, 2004 and \$1.2 billion as of September 2, 2004. The Company entered into an interest rate swap agreement (the "Swap") that effectively converted, beginning August 29, 2003, the 2.5% fixed interest rate on the Company's \$632.5 million Convertible Subordinated Notes (the "Notes") to a variable interest rate based on the 3-month London Interbank Offering Rate ("LIBOR") less 65 basis points. The Swap qualifies as a fair-value hedge under SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities" as amended. The gain or loss from changes in the fair value of the Swap is expected to be highly effective at offsetting the gain or loss from changes in the fair value of the Notes attributable to changes in interest rates.

***Foreign Currency Exchange Rate Risk***

The functional currency for substantially all of the Company's operations is the U.S. dollar. The Company held aggregate cash and other assets in foreign currency valued at U.S. \$124.8 million as of December 2, 2004, and U.S. \$118.9 million as of September 2, 2004 (including deferred income tax assets denominated in Japanese yen valued at U.S. \$48.3 million as of December 2, 2004, and U.S. \$52.4 million as of September 2, 2004). The Company also held aggregate foreign currency liabilities valued at U.S. \$396.8 million as of December 2, 2004, and U.S. \$403.6 million as of September 2, 2004 (including debt denominated in Japanese yen valued at U.S. \$106.6 million as of December 2, 2004, and U.S. \$113.1 million as of September 2, 2004). Foreign currency receivables and payables as of December 2, 2004, were comprised primarily of Japanese yen, euros, Singapore dollars and British pounds. The Company estimates that, based on its assets and liabilities denominated in currencies other than U.S. dollar as of December 2, 2004, a 1% change in the exchange rate versus the U.S. dollar would result in foreign currency gains or losses of approximately \$2 million for the Japanese yen and \$1 million for the euro.

#### **Item 4. Controls and Procedures**

An evaluation was carried out under the supervision and with the participation of the Company's management, including its principal executive officer and principal financial officer, of the effectiveness of the design and operation of the Company's disclosure controls and procedures (as defined in Rule 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934) as of the end of the period covered by this report. Based upon that evaluation, the principal executive officer and principal financial officer concluded that those disclosure controls and procedures were effective to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms.

During the quarterly period covered by this report, there were no significant changes in the Company's internal controls over financial reporting that have materially affected, or are reasonably likely to materially affect, the Company's internal controls over financial reporting.

## **PART II. OTHER INFORMATION**

### **Item 1. Legal Proceedings**

On August 28, 2000, the Company filed a complaint against Rambus, Inc. ("Rambus") in U.S. District Court for the District of Delaware seeking monetary damages and declaratory and injunctive relief. Among other things, the Company's complaint (as amended) alleges violation of federal antitrust laws, breach of contract, fraud, deceptive trade practices, and negligent misrepresentation. The complaint also seeks a declaratory judgment (a) that certain Rambus patents are not infringed by the Company, are invalid, and/or are unenforceable (b) that the Company has an implied license to those patents and (c) that Rambus is estopped from enforcing those patents against the Company. On February 15, 2001, Rambus filed an answer and counterclaim in Delaware denying that the Company is entitled to relief, alleging infringement of the eight Rambus patents named in the Company's declaratory judgment claim, and seeking monetary damages and injunctive relief. A number of other suits are currently pending in Europe alleging that certain of the Company's SDRAM and DDR SDRAM products infringe various of Rambus' country counterparts to its European patent 525 068, including: on September 1, 2000, Rambus filed suit against Micron Semiconductor (Deutschland) GmbH in the District Court of Mannheim, Germany; on September 13, 2000, Rambus filed suit against Micron Europe Limited in the High Court of Justice, Chancery Division in London, England; on September 22, 2000, Rambus filed a complaint against the Company and Reptronic (a distributor of the Company's products) in Court of First Instance of Paris, France; on September 29, 2000, the Company filed suit against Rambus in the Civil Court of Milan, Italy, alleging invalidity and non-infringement. In addition, on December 29, 2000, the Company filed suit against Rambus in the Civil Court of Avezzano, Italy, alleging invalidity and non-infringement of the Italian counterpart to European patent 1 004 956. On August 10, 2001, Rambus filed suit against the Company and Assitec (an electronics retailer) in the Civil Court of Pavia, Italy, alleging that certain DDR SDRAM products infringe the Italian counterpart to European patent 1 022 642. In the European suits against the Company, Rambus is seeking monetary damages and injunctive relief. These lawsuits pertain to certain of the Company's SDRAM and DDR DRAM products, which account for a significant portion of the Company's net sales. The Company is unable to predict the outcome of these suits.

On January 8, 2004, Motorola, Inc. ("Motorola") filed suit against the Company in the U.S. District Court for the Western District of Texas (Austin) alleging infringement of ten Motorola patents. Freescale Semiconductor, Inc. ("Freescale"), a spin-off of Motorola, was later added as a party with Motorola. The Company counterclaimed against Motorola and Freescale alleging infringement of twenty-four Company patents. These lawsuits pertain to certain of the Company's SDRAM and DDR DRAM products, which account for a significant portion of the Company's net sales. The Company is unable to predict the outcome of these suits.

A court determination that the Company's products or manufacturing processes infringe the product or process intellectual property rights of others could result in significant liability and/or require the Company to make material changes to its products and/or manufacturing processes. Any of the foregoing results could have a material adverse effect on the Company's business, results of operations or financial condition.

On June 17, 2002, the Company received a grand jury subpoena from the U.S. District Court for the Northern District of California seeking information regarding an investigation by the Antitrust Division of the Department of Justice (the "DOJ") into possible antitrust violations in the "Dynamic Random Access Memory" or "DRAM" industry. The Company is cooperating fully and actively with the DOJ in its investigation. Our cooperation is pursuant to the terms of the DOJ's Corporate Leniency Policy, which provides that in exchange for our full, continuing and complete cooperation in the pending investigation, we will not be subject to prosecution, fines or other penalties from the DOJ. Subsequent to the commencement of the DOJ investigation, a number of purported class action lawsuits were filed against the Company and other DRAM suppliers. Sixteen cases were filed between June 21, 2002, and September 19, 2002, in the following federal district courts: one in the Southern District of New York, five in the District of Idaho and ten in the Northern District of California. The foregoing federal district court cases were transferred to the U.S. District Court for the Northern District of California (San Francisco) for consolidated proceedings. On October 6, 2003, the plaintiffs filed a consolidated amended class action complaint. The consolidated amended complaint purports to be on behalf of a class of individuals and entities who purchased DRAM directly from the various DRAM suppliers during the period from approximately November 1, 2001 through at least June 30, 2002. The consolidated amended complaint alleges price-fixing in violation of the Sherman Act and seeks treble monetary damages, costs, attorneys' fees, and an injunction against the allegedly unlawful conduct.

Eight additional cases were filed between August 2, 2002, and March 11, 2003, in the following California state superior courts: five in San Francisco County, one in Santa Clara County, one in Los Angeles County and one in Humboldt County. The foregoing California state cases were transferred to San Francisco County Superior Court for consolidated proceedings. On October 15, 2003, the plaintiffs filed a consolidated amended class action complaint. The consolidated amended complaint purports to be on behalf of a class of individuals and entities who purchased DRAM indirectly from the various DRAM suppliers during the period from November 1, 2001 through June 30, 2002. The consolidated amended complaint alleges violations of California's Cartwright Act and state unfair competition law and unjust enrichment and seeks treble monetary damages, costs, attorneys' fees, and an injunction against the allegedly unlawful conduct. Thirty additional cases were filed in the following state courts between May and November 2004: Hot Spring County, Arkansas; Maricopa County, Arizona (2); Collier County, Florida (subsequently dismissed without prejudice); Broward County, Florida; Lee County, Florida; Miami Dade County, Florida; Johnson County, Kansas; Essex County, Massachusetts (subsequently dismissed with prejudice); Middlesex County, Massachusetts; Wayne County, Michigan; Hennepin County, Minnesota; Mecklenburg County, North Carolina; Guilford County, North Carolina; Cass County, North Dakota; Lancaster County, Nebraska; Hudson County, New Jersey; New York County, New York; Albany County, New York; Westchester

County, New York; Cuyahoga County, Ohio; Pennington County, South Dakota; Minnehaha County, South Dakota; Davidson County, Tennessee (3); Chittenden County, Vermont (2); Monroe County, Wisconsin; and Brooke County, West Virginia. The complaints purport to be on behalf of a class of individuals and entities who indirectly purchased DRAM and/or products containing DRAM in the respective states during various time periods ranging from 1999 through the filing of the complaint. The complaints allege violations of the various state antitrust, consumer protection and/or unfair competition laws relating to the sale and pricing of DRAM products and seek treble monetary damages, restitution, costs, interest and attorneys' fees. Based upon the Company's analysis of the claims made and the nature of the DRAM industry, the Company believes that class treatment of these cases is not appropriate and that any purported injury alleged by plaintiffs would be more appropriately resolved on a customer-by-customer basis. The Company is unable to predict the outcome of these suits. The final resolution of these alleged violations of federal or state antitrust laws could result in significant liability and could have a material adverse effect on the Company's business, results of operations or financial condition.

On May 5, 2004, Rambus filed a complaint in the Superior Court of the State of California (San Francisco County) against the Company and other DRAM suppliers. The complaint alleges certain causes of action under California state law including a conspiracy to restrict output and fix prices on Rambus DRAM ("RDRAM"), a conspiracy to monopolize various relevant markets, intentional interference with prospective economic advantage relating to RDRAM, and unfair competition to disadvantage RDRAM. The complaint seeks treble damages, punitive damages, attorneys' fees, costs, and a permanent injunction enjoining the defendants from the conduct alleged in the complaint. The Company is unable to predict the outcome of the suit. A court determination against the Company could result in significant liability and could have a material adverse effect on the Company's business, results of operations or financial condition.

See "Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations — Certain Factors."

#### Item 4. Submission of Matters to a Vote of Shareholders

The registrant's 2004 Annual Meeting of Shareholders was held on November 18, 2004. At the meeting, the following items were submitted to a vote of the shareholders:

(a) The following nominees for Directors were elected. Each person elected as a Director will serve until the next annual meeting of shareholders or until such person's successor is elected and qualified.

Name of Nominee	Votes Cast For	Votes Cast Against/Withheld
Steven R. Appleton	547,022,519	7,609,233
James W. Bagley	546,913,928	7,717,824
Ronald C. Foster	548,347,192	6,284,560
Robert A. Lothrop	470,335,638	84,296,114
Thomas T. Nicholson	469,857,631	84,774,121
Gordon C. Smith	540,113,169	14,518,583
William P. Weber	471,505,202	83,126,550

(b) The proposal by the Company to approve an amendment to the Company's 1989 Employee Stock Purchase Plan increasing the number of shares of Common Stock reserved for issuance thereunder by 4,000,000 as described in the proxy statement was approved with 429,434,818 votes in favor, 16,029,227 votes against, 3,687,670 abstentions and 105,480,037 broker non-votes.

(c) The proposal by the Company to approve the 2004 Equity Incentive Plan with 14,000,000 shares of Common Stock reserved for issuance thereunder was approved with 253,259,339 votes in favor, 192,072,587 votes against, 3,819,789 abstentions and 105,480,037 broker non-votes.

(d) The proposal by the Company to approve the Executive Officer Performance Incentive Plan was approved with 540,079,335 votes in favor, 10,442,131 votes against, 4,110,286 abstentions.

(e) The ratification of the appointment of PricewaterhouseCoopers LLP as independent public accountants of the Company for the fiscal year ending September 1, 2005, was approved with 546,524,613 votes in favor, 4,888,541 votes against and 3,218,598 abstentions.

#### Item 6. Exhibits

Exhibit Number	Description of Exhibit
10.60	2004 Equity Incentive Plan
10.61	Executive Officer Performance Incentive Plan
10.139	1989 Employee Stock Purchase Plan *
31.1	Rule 13a-14(a) Certification of Chief Executive Officer
31.2	Rule 13a-14(a) Certification of Chief Financial Officer
32.1	Certification of Chief Executive Officer Pursuant to 18 U.S.C. 1350
32.2	Certification of Chief Financial Officer Pursuant to 18 U.S.C. 1350

\* Incorporated by reference to Registration Statement on Form S-8 (Reg. 333-120620)

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

Micron Technology, Inc.

(Registrant)

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Dated: January 11, 2005

/s/ W. G. Stover, Jr.

W. G. Stover, Jr., Vice President of Finance and  
Chief Financial Officer (Principal Financial and  
Accounting Officer)

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**MICRON TECHNOLOGY, INC.  
2004 EQUITY INCENTIVE PLAN**

**ARTICLE 1  
PURPOSE**

1.1. **GENERAL.** The purpose of the Micron Technology, Inc. 2004 Equity Incentive Plan (the “Plan”) is to promote the success, and enhance the value, of Micron Technology, Inc. (the “Company”), by linking the personal interests of employees, officers, directors and consultants of the Company or any Affiliate (as defined below) to those of Company stockholders and by providing such persons with an incentive for outstanding performance. The Plan is further intended to provide flexibility to the Company in its ability to motivate, attract, and retain the services of employees, officers, directors and consultants upon whose judgment, interest, and special effort the successful conduct of the Company’s operation is largely dependent. Accordingly, the Plan permits the grant of incentive awards from time to time to selected employees, officers, directors and consultants of the Company and its Affiliates.

**ARTICLE 2  
DEFINITIONS**

2.1. **DEFINITIONS.** When a word or phrase appears in this Plan with the initial letter capitalized, and the word or phrase does not commence a sentence, the word or phrase shall generally be given the meaning ascribed to it in this Section or in Section 1.1 unless a clearly different meaning is required by the context. The following words and phrases shall have the following meanings:

- (a) “Affiliate” means (i) any Subsidiary or Parent, or (ii) an entity that directly or through one or more intermediaries controls, is controlled by or is under common control with, the Company, as determined by the Committee.
- (b) “Award” means any Option, Stock Appreciation Right, Restricted Stock Award, Restricted Stock Unit Award, Deferred Stock Unit Award, Performance Share, Dividend Equivalent Award, or Other Stock-Based Award granted to a Participant under the Plan.
- (c) “Award Certificate” means a written document, in such form as the Committee prescribes from time to time, setting forth the terms and conditions of an Award. Award Certificates may be in the form of individual award agreements or certificates or a program document describing the terms and provisions of an Awards or series of Awards under the Plan.
- (d) “Board” means the Board of Directors of the Company.
- (e) “Change in Control” means and includes the occurrence of any one of the following events:
  - (i) individuals who, on the Effective Date, constitute the Board of Directors of the Company (the “Incumbent Directors”) cease for any reason to constitute at least a majority of such Board, provided that any person becoming a director after the Effective Date and whose election or nomination for election was approved by a vote of at least a majority of the Incumbent Directors then on the Board shall be an Incumbent Director; provided, however, that no individual initially elected or nominated as a director of the Company as a result of an actual or threatened election contest with respect to the election or removal of directors (“Election Contest”) or other actual or threatened solicitation of proxies or consents by or on behalf of any Person other than the Board (“Proxy Contest”), including by reason of any agreement intended to avoid or settle any Election Contest or Proxy Contest, shall be deemed an Incumbent Director; or
  - (ii) any person is or becomes a “beneficial owner” (as defined in Rule 13d-3 under the 1934 Act), directly or indirectly, of either (A) 35% or more of the then-outstanding shares of common stock of the Company (“Company Common Stock”) or (B) securities of the Company

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representing 35% or more of the combined voting power of the Company’s then outstanding securities eligible to vote for the election of directors (the “Company Voting Securities”); provided, however, that for purposes of this subsection (ii), the following acquisitions shall not constitute a Change in Control: (w) an acquisition directly from the Company, (x) an acquisition by the Company or a Subsidiary of the Company, (y) an acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any Subsidiary of the Company, or (z) an acquisition pursuant to a Non-Qualifying Transaction (as defined in subsection (iii) below); or

(iii) the consummation of a reorganization, merger, consolidation, statutory share exchange or similar form of corporate transaction involving the Company or a Subsidiary (a “Reorganization”), or the sale or other disposition of all or substantially all of the Company’s assets (a “Sale”) or the acquisition of assets or stock of another corporation (an “Acquisition”), unless immediately following such Reorganization, Sale or Acquisition: (A) all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the outstanding Company Common Stock and outstanding Company Voting Securities immediately prior to such Reorganization, Sale or Acquisition beneficially own, directly or indirectly, more than 50% of, respectively, the then outstanding shares of common stock and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation resulting from such Reorganization, Sale or Acquisition (including, without limitation, a corporation which as a result of such transaction owns the Company or all or substantially all of the Company’s assets or stock either directly or through one or more subsidiaries, the “Surviving Corporation”) in substantially the same proportions as their ownership, immediately prior to such Reorganization, Sale or Acquisition, of the outstanding Company Common Stock and the outstanding Company Voting Securities, as the case may be, and (B) no person (other than (x) the Company or any Subsidiary of the Company, (y) the Surviving Corporation or its ultimate parent corporation, or (z) any employee benefit plan or related trust) sponsored or maintained by any of the foregoing is the beneficial owner, directly or indirectly, of 35% or more of the total common stock or 35% or more of the total voting power of the outstanding voting securities eligible to elect directors of the Surviving Corporation, and (C) at least a majority of the members of the board of directors of the Surviving Corporation were Incumbent Directors at the time of the Board’s approval of the execution of the initial agreement providing for such Reorganization, Sale or Acquisition (any Reorganization, Sale or Acquisition which satisfies all of the criteria specified in (A), (B) and (C) above shall be deemed to be a “Non-Qualifying Transaction”); or

(iv) approval by the stockholders of the Company of a complete liquidation or dissolution of the Company.

(f) “Code” means the Internal Revenue Code of 1986, as amended from time to time, and includes a reference to the underlying final regulations.

(g) “Committee” means the committee of the Board described in Article 4.

(h) “Company” means Micron Technology, Inc., a Delaware corporation, or any successor corporation.

(i) “Continuous Status as a Participant” means the absence of any interruption or termination of service as an employee, officer, consultant or director of the Company or any Affiliate, as applicable; provided, however, that for purposes of an Incentive Stock Option, or a Stock Appreciation Right issued in tandem with an Incentive Stock Option, “Continuous Status as a Participant” means the absence of any interruption or termination of service as an employee of the Company or any Parent or Subsidiary, as applicable, pursuant to applicable tax regulations. Continuous Status as a Participant shall continue to the extent provided in a written severance or employment agreement during any period for which severance compensation payments are made to an employee, officer, consultant or director and shall not be considered interrupted in the case of any leave of absence authorized in writing by the Company prior to its commencement; provided, however, that for purposes of Incentive Stock Options, no such leave may

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exceed 90 days, unless reemployment upon expiration of such leave is guaranteed by statute or contract. If reemployment upon expiration of a leave of absence approved by the Company is not so guaranteed, on the 91st day of such leave any Incentive Stock Option held by the Participant shall cease to be treated as an Incentive Stock Option and shall be treated for tax purposes as a Nonstatutory Stock Option.

(j) “Covered Employee” means a covered employee as defined in Code Section 162(m)(3).

(k) “Disability” or “Disabled” has the same meaning as provided in the long-term disability plan or policy maintained by the Company or if applicable, most recently maintained, by the Company or if applicable, an Affiliate, for the Participant, whether or not such Participant actually receives disability benefits under such plan or policy. If no long-term disability plan or policy was ever maintained on behalf of Participant or if the determination of Disability relates to an Incentive Stock Option, or a Stock Appreciation Right issued in tandem with an Incentive Stock Option, Disability means Permanent and Total Disability as defined in Section 22(e)(3) of the Code. In the event of a dispute, the determination whether a Participant is Disabled will be made by the Committee and may be supported by the advice of a physician competent in the area to which such Disability relates.

(l) “Deferred Stock Unit” means a right granted to a Participant under Article 11.

(m) “Dividend Equivalent” means a right granted to a Participant under Article 12.

(n) “Effective Date” has the meaning assigned such term in Section 3.1.

(o) “Eligible Participant” means an employee, officer, consultant or director of the Company or any Affiliate.

(p) “Exchange” means the New York Stock Exchange or any other national securities exchange or national market system on which the Stock may from time to time be listed or traded.

(q) “Fair Market Value” of the Stock, on any date, means: (i) if the Stock is listed or traded on any Exchange, the average closing price for such Stock (or the closing bid, if no sales were reported) as quoted on such Exchange (or the Exchange with the greatest volume of trading in the Stock) for the last market trading day prior to the day of determination, as reported by *Bloomberg L.P.* or such other source as the Committee deems reliable; (ii) if the Stock is quoted on the over-the-counter market or is regularly quoted by a recognized securities dealer, but selling prices are not reported, the Fair Market Value of the Stock shall be the mean between the high bid and low asked prices for the Stock on the last market trading day prior to the day of determination, as reported by *Bloomberg L.P.* or such other source as the Committee deems reliable, or (iii) in the absence of an established market for the Stock, the Fair Market Value shall be determined in good faith by the Committee.

(r) “Full Value Award” means an Award other than in the form of an Option or SAR, and which is settled by the issuance of Stock.

(s) “Grant Date” of an Award means the first date on which all necessary corporate action has been taken to approve the grant of the Award as provided in the Plan, or such later date as is determined and specified as part of that authorization process. Notice of the grant shall be provided to the grantee within a reasonable time after the Grant Date.

(t) “Incentive Stock Option” means an Option that is intended to be an incentive stock option and meets the requirements of Section 422 of the Code or any successor provision thereto.

(u) “Non-Employee Director” means a director of the Company who is not a common law employee of the Company or an Affiliate.

(v) “Nonstatutory Stock Option” means an Option that is not an Incentive Stock Option.

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(w) “Option” means a right granted to a Participant under Article 7 of the Plan to purchase Stock at a specified price during specified time periods. An Option may be either an Incentive Stock Option or a Nonstatutory Stock Option.

(x) “Other Stock-Based Award” means a right, granted to a Participant under Article 13 that relates to or is valued by reference to Stock or other Awards relating to Stock.

(y) “Parent” means a corporation, limited liability company, partnership or other entity which owns or beneficially owns a majority of the outstanding voting stock or voting power of the Company. Notwithstanding the above, with respect to an Incentive Stock Option, Parent shall have the meaning set forth in Section 424(e) of the Code.

(z) “Participant” means a person who, as an employee, officer, director or consultant of the Company or any Affiliate, has been granted an Award under the Plan; provided that in the case of the death of a Participant, the term “Participant” refers to a beneficiary designated pursuant to Section 14.5 or the legal guardian or other legal representative acting in a fiduciary capacity on behalf of the Participant under applicable state law and court supervision.

(aa) “Performance Share” means any right granted to a Participant under Article 9 to a unit to be valued by reference to a designated number of Shares to be paid upon achievement of such performance goals as the Committee establishes with regard to such Performance Share.

(bb) “Person” means any individual, entity or group, within the meaning of Section 3(a)(9) of the 1934 Act and as used in Section 13(d)(3) or 14(d)(2) of the 1934 Act.

(cc) “Plan” means the Micron Technology, Inc. 2004 Equity Incentive Plan, as amended from time to time.

(dd) “Public Offering” shall occur on closing date of a public offering of any class or series of the Company’s equity securities pursuant to a registration statement filed by the Company under the 1933 Act.

(ee) “Qualified Performance-Based Award” means an Award that is either (i) intended to qualify for the Section 162(m) Exemption and is made subject to performance goals based on Qualified Business Criteria as set forth in Section 14.10(b), or (ii) an Option or SAR.

(ff) “Qualified Business Criteria” means one or more of the Business Criteria listed in Section 14.10(b) upon which performance goals for certain Qualified Performance-Based Awards may be established by the Committee.

(gg) “Restricted Stock Award” means Stock granted to a Participant under Article 10 that is subject to certain restrictions and to risk of forfeiture.

(hh) “Restricted Stock Unit Award” means the right granted to a Participant under Article 10 to receive shares of Stock (or the equivalent value in cash or other property if the Committee so provides) in the future, which right is subject to certain restrictions and to risk of forfeiture.

(ii) “Section 162(m) Exemption” means the exemption from the limitation on deductibility imposed by Section 162(m) of the Code that is set forth in Section 162(m)(4)(C) of the Code or any successor provision thereto.

(jj) “Shares” means shares of the Company’s Stock. If there has been an adjustment or substitution pursuant to Section 15.1, the term “Shares” shall also include any shares of stock or other securities that are substituted for Shares or into which Shares are adjusted pursuant to Section 15.1.

(kk) “Stock” means the \$.10 par value common stock of the Company and such other

securities of the Company as may be substituted for Stock pursuant to Article 15.

(ll) “Stock Appreciation Right” or “SAR” means a right granted to a Participant under Article 8 to receive a payment equal to the difference between the Fair Market Value of a Share as of the date of exercise of the SAR over the base price of the SAR, all as determined pursuant to Article 8.

(mm) “Subsidiary” means any corporation, limited liability company, partnership or other entity of which a majority of the outstanding voting stock or voting power is beneficially owned directly or indirectly by the Company. Notwithstanding the above, with respect to an Incentive Stock Option, Subsidiary shall have the meaning set forth in Section 424(f) of the Code.

(nn) “1933 Act” means the Securities Act of 1933, as amended from time to time.

(oo) “1934 Act” means the Securities Exchange Act of 1934, as amended from time to time.

### **ARTICLE 3 EFFECTIVE TERM OF PLAN**

3.1. **EFFECTIVE DATE.** The Plan shall be effective as of the date it is approved by both the Board and the stockholders of the Company (the “Effective Date”).

3.2. **TERMINATION OF PLAN.** The Plan shall terminate on the tenth anniversary of the Effective Date unless earlier terminated as provided herein. The termination of the Plan on such date shall not affect the validity of any Award outstanding on the date of termination.

### **ARTICLE 4 ADMINISTRATION**

4.1. COMMITTEE. The Plan shall be administered by a Committee appointed by the Board (which Committee shall consist of at least two directors) or, at the discretion of the Board from time to time, the Plan may be administered by the Board. It is intended that at least two of the directors appointed to serve on the Committee shall be “non-employee directors” (within the meaning of Rule 16b-3 promulgated under the 1934 Act) and “outside directors” (within the meaning of Code Section 162(m)) and that any such members of the Committee who do not so qualify shall abstain from participating in any decision to make or administer Awards that are made to Eligible Participants who at the time of consideration for such Award (i) are persons subject to the short-swing profit rules of Section 16 of the 1934 Act, or (ii) are reasonably anticipated to become Covered Employees during the term of the Award. However, the mere fact that a Committee member shall fail to qualify under either of the foregoing requirements or shall fail to abstain from such action shall not invalidate any Award made by the Committee which Award is otherwise validly made under the Plan. The members of the Committee shall be appointed by, and may be changed at any time and from time to time in the discretion of, the Board. The Board may reserve to itself any or all of the authority and responsibility of the Committee under the Plan or may act as administrator of the Plan for any and all purposes. To the extent the Board has reserved any authority and responsibility or during any time that the Board is acting as administrator of the Plan, it shall have all the powers of the Committee hereunder, and any reference herein to the Committee (other than in this Section 4.1) shall include the Board. To the extent any action of the Board under the Plan conflicts with actions taken by the Committee, the actions of the Board shall control.

4.2. ACTION AND INTERPRETATIONS BY THE COMMITTEE. For purposes of administering the Plan, the Committee may from time to time adopt rules, regulations, guidelines and procedures for carrying out the provisions and purposes of the Plan and make such other determinations, not inconsistent with the Plan, as the Committee may deem appropriate. The Committee’s interpretation of the Plan, any Awards granted under the Plan, any Award Certificate and all decisions and determinations by the Committee with respect to the Plan are final, binding, and conclusive on all parties. Each member of the Committee is entitled to, in good faith, rely or act upon any report or other information furnished to that member by any officer or other employee of the Company or any Affiliate, the Company’s or an Affiliate’s independent certified public accountants, Company counsel or any executive compensation consultant or other professional retained by the Company to assist in the administration of the Plan.

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4.3. AUTHORITY OF COMMITTEE. Except as provided below, the Committee has the exclusive power, authority and discretion to:

- (a) Grant Awards;
- (b) Designate Participants;
- (c) Determine the type or types of Awards to be granted to each Participant;
- (d) Determine the number of Awards to be granted and the number of Shares or dollar amount to which an Award will relate;
- (e) Determine the terms and conditions of any Award granted under the Plan, including but not limited to, the exercise price, base price, or purchase price, any restrictions or limitations on the Award, any schedule for lapse of forfeiture restrictions or restrictions on the exercisability of an Award, and accelerations or waivers thereof, based in each case on such considerations as the Committee in its sole discretion determines;
- (f) Accelerate the vesting, exercisability or lapse of restrictions of any outstanding Award, in accordance with Article 14, based in each case on such considerations as the Committee in its sole discretion determines;
- (g) Determine whether, to what extent, and under what circumstances an Award may be settled in, or the exercise price of an Award may be paid in, cash, Stock, other Awards, or other property, or an Award may be canceled, forfeited, or surrendered;
- (h) Prescribe the form of each Award Certificate, which need not be identical for each Participant;
- (i) Decide all other matters that must be determined in connection with an Award;
- (j) Establish, adopt or revise any rules, regulations, guidelines or procedures as it may deem necessary or advisable to administer the Plan;
- (k) Make all other decisions and determinations that may be required under the Plan or as the Committee deems necessary or advisable to administer the Plan;
- (l) Amend the Plan or any Award Certificate as provided herein; and
- (m) Adopt such modifications, procedures, and subplans as may be necessary or desirable to comply with provisions of the laws of non-U.S. jurisdictions in which the Company or any Affiliate may operate, in order to assure the viability of the benefits of Awards granted to participants located in such other jurisdictions and to meet the objectives of the Plan.

Notwithstanding the foregoing, grants of Awards to Non-Employee Directors hereunder shall be made only in accordance with the terms, conditions and parameters of a plan, program or policy for the compensation of Non-Employee Directors as in effect from time to time, and the Committee may not make discretionary grants hereunder to Non-Employee Directors.

Notwithstanding the above, the Board or the Committee may, by resolution, expressly delegate to a special committee, consisting of one or more directors who are also officers of the Company, the authority, within specified parameters, to (i) designate officers, employees and/or consultants of the Company or any of its Affiliates to be recipients of Awards under the Plan, and (ii) to determine the number of such Awards to be received by any such Participants; provided, however, that such delegation of duties and responsibilities to an officer of the Company may not be made with respect to the grant of Awards to eligible participants (a) who are subject to Section 16(a) of the

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1934 Act at the Grant Date, or (b) who as of the Grant Date are reasonably anticipated to become Covered Employees during the term of the Award. The acts of such delegates shall be treated hereunder as acts of the Board and such delegates shall report regularly to the Board and the Compensation Committee regarding the delegated duties and responsibilities and any Awards so granted.

4.4. AWARD CERTIFICATES. Each Award shall be evidenced by an Award Certificate. Each Award Certificate shall include such provisions, not inconsistent with the Plan, as may be specified by the Committee.

## **ARTICLE 5 SHARES SUBJECT TO THE PLAN**

5.1. NUMBER OF SHARES. Subject to adjustment as provided in Sections 5.2 and 15.1, the aggregate number of Shares reserved and available for issuance pursuant to Awards granted under the Plan shall be 14,000,000; provided, however, that each Share issued under the Plan pursuant to a Full Value Award shall reduce the number of available Shares by two (2) shares. The maximum number of Shares that may be issued upon exercise of Incentive Stock Options granted under the Plan shall be 2,000,000.

5.2. SHARE COUNTING.

(a) To the extent that an Award is canceled, terminates, expires, is forfeited or lapses for any reason, any unissued Shares subject to the Award will again be available for issuance pursuant to Awards granted under the Plan.

(b) Shares subject to Awards settled in cash will again be available for issuance pursuant to Awards granted under the Plan.

(c) If the exercise price of an Option is satisfied by delivering Shares to the Company (by either actual delivery or attestation), only the number of Shares issued in excess of the delivery or attestation (less any shares delivered by the optionee to satisfy an applicable tax withholding obligation) shall be considered for purposes of determining the number of Shares remaining available for issuance pursuant to Awards granted under the Plan.

(d) To the extent that the full number of Shares subject to an Option is not issued upon exercise of the Option for any reason, only the number of Shares issued and delivered upon exercise of the Option shall be considered for purposes of determining the number of Shares remaining available for issuance pursuant to Awards granted under the Plan. Nothing in this subsection shall imply that any particular type of cashless exercise of an Option is permitted under the Plan, that decision being reserved to the Committee or other provisions of the Plan.

5.3. STOCK DISTRIBUTED. Any Stock distributed pursuant to an Award may consist, in whole or in part, of authorized and unissued Stock, treasury Stock or Stock purchased on the open market.

5.4. LIMITATION ON AWARDS. Notwithstanding any provision in the Plan to the contrary (but subject to adjustment as provided in Section 15.1), the maximum number of Shares with respect to one or more Options and/or SARs that may be granted during any one calendar year under the Plan to any one Participant shall be 2,000,000. The maximum aggregate grant with respect to Awards of Restricted Stock, Restricted Stock Units, Deferred Stock Units, Performance Shares or other Stock-Based Awards (other than Options or SARs) granted in any one calendar year to any one Participant shall be 2,000,000.

## **ARTICLE 6 ELIGIBILITY**

6.1. GENERAL. Awards may be granted only to Eligible Participants; except that Incentive Stock Options may be granted to only to Eligible Participants who are employees of the Company or a Parent or Subsidiary as defined in Section 424(e) and (f) of the Code.

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## **ARTICLE 7 STOCK OPTIONS**

7.1. GENERAL. The Committee is authorized to grant Options to Participants on the following terms and conditions:

(a) EXERCISE PRICE. The exercise price per Share under an Option shall be determined by the Committee; provided that the exercise price for any Option shall not be less than the Fair Market Value as of the Grant Date.

(b) TIME AND CONDITIONS OF EXERCISE. The Committee shall determine the time or times at which an Option may be exercised in whole or in part, subject to Section 7.1(d). The Committee shall also determine the performance or other conditions, if any, that must be satisfied before all or part of an Option may be exercised or vested. The Committee may waive any exercise or vesting provisions at any time in whole or in part based upon factors as the Committee may determine in its sole discretion so that the Option becomes exercisable or vested at an earlier date. The Committee may permit an arrangement whereby receipt of Stock upon exercise of an Option is delayed until a specified future date.

(c) PAYMENT. The Committee shall determine the methods by which the exercise price of an Option may be paid, the form of payment, including, without limitation, cash, Shares, or other property (including "cashless exercise" arrangements), and the methods by which Shares shall be delivered or deemed to be delivered to Participants; provided, however, that if Shares are used to pay the exercise price of an Option, such Shares must have been held by the Participant for at least such period of time, if any, as necessary to avoid the recognition of an expense under generally accepted accounting principles as a result of the exercise of the Option.

(d) EXERCISE TERM. In no event may any Option be exercisable for more than ten years from the Grant Date.

(e) **SUSPENSION.** Any Participant who is also a participant in the Retirement at Micron (“RAM”) Section 401(k) Plan and who requests and receives a hardship distribution from the RAM Plan, is prohibited from making, and must suspend, his or her employee elective contributions and employee contributions including, without limitation on the foregoing, the exercise of any Option granted from the date of receipt by that employee of the RAM hardship distribution.

7.2. **INCENTIVE STOCK OPTIONS.** The terms of any Incentive Stock Options granted under the Plan must comply with the following additional rules:

(a) **EXERCISE PRICE.** The exercise price of an Incentive Stock Option shall not be less than the Fair Market Value as of the Grant Date.

(b) **LAPSE OF OPTION.** Subject to any earlier termination provision contained in the Award Certificate, an Incentive Stock Option shall lapse upon the earliest of the following circumstances; provided, however, that the Committee may, prior to the lapse of the Incentive Stock Option under the circumstances described in subsections (3), (4) or (5) below, provide in writing that the Option will extend until a later date, but if an Option is so extended and is exercised after the dates specified in subsections (3) and (4) below, it will automatically become a Nonstatutory Stock Option:

- (1) The expiration date set forth in the Award Certificate.
- (2) The tenth anniversary of the Grant Date.
- (3) Three months after termination of the Participant’s Continuous Status as a Participant for any reason other than the Participant’s Disability or death.

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- (4) One year after the Participant’s Continuous Status as a Participant by reason of the Participant’s Disability.
- (5) One year after the termination of the Participant’s death if the Participant dies while employed, or during the three-month period described in paragraph (3) or during the one-year period described in paragraph (4) and before the Option otherwise lapses.

Unless the exercisability of the Incentive Stock Option is accelerated as provided in Article 14, if a Participant exercises an Option after termination of employment, the Option may be exercised only with respect to the Shares that were otherwise vested on the Participant’s termination of employment. Upon the Participant’s death, any exercisable Incentive Stock Options may be exercised by the Participant’s beneficiary, determined in accordance with Section 14.5.

(c) **INDIVIDUAL DOLLAR LIMITATION.** The aggregate Fair Market Value (determined as of the Grant Date) of all Shares with respect to which Incentive Stock Options are first exercisable by a Participant in any calendar year may not exceed \$100,000.00.

(d) **TEN PERCENT OWNERS.** No Incentive Stock Option shall be granted to any individual who, at the Grant Date, owns stock possessing more than ten percent of the total combined voting power of all classes of stock of the Company or any Parent or Subsidiary unless the exercise price per share of such Option is at least 110% of the Fair Market Value per Share at the Grant Date and the Option expires no later than five years after the Grant Date.

(e) **EXPIRATION OF AUTHORITY TO GRANT INCENTIVE STOCK OPTIONS.** No Incentive Stock Option may be granted pursuant to the Plan after the day immediately prior to the tenth anniversary of the date the Plan was adopted by the Board, or the termination of the Plan, if earlier.

(f) **RIGHT TO EXERCISE.** During a Participant’s lifetime, an Incentive Stock Option may be exercised only by the Participant or, in the case of the Participant’s Disability, by the Participant’s guardian or legal representative.

(g) **ELIGIBLE GRANTEES.** The Committee may not grant an Incentive Stock Option to a person who is not at the Grant Date an employee of the Company or a Parent or Subsidiary.

## **ARTICLE 8**

### **STOCK APPRECIATION RIGHTS**

8.1. **GRANT OF STOCK APPRECIATION RIGHTS.** The Committee is authorized to grant Stock Appreciation Rights to Participants on the following terms and conditions:

(a) **RIGHT TO PAYMENT.** Upon the exercise of a Stock Appreciation Right, the Participant to whom it is granted has the right to receive the excess, if any, of:

- (1) The Fair Market Value of one Share on the date of exercise; over
- (2) The base price of the Stock Appreciation Right as determined by the Committee, which shall not be less than the Fair Market Value of one Share on the Grant Date.

(b) **OTHER TERMS.** All awards of Stock Appreciation Rights shall be evidenced by an Award Certificate. The terms, methods of exercise, methods of settlement, form of consideration payable in settlement, and any other terms and conditions of any Stock Appreciation Right shall be determined by the Committee at the time of the grant of the Award and shall be reflected in the Award Certificate.

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**ARTICLE 9**  
**PERFORMANCE SHARES**

9.1. **GRANT OF PERFORMANCE SHARES.** The Committee is authorized to grant Performance Shares to Participants on such terms and conditions as may be selected by the Committee. The Committee shall have the complete discretion to determine the number of Performance Shares granted to each Participant, subject to Section 5.4, and to designate the provisions of such Performance Shares as provided in Section 4.3. All Performance Shares shall be evidenced by an Award Certificate or a written program established by the Committee, pursuant to which Performance Shares are awarded under the Plan under uniform terms, conditions and restrictions set forth in such written program.

9.2. **PERFORMANCE GOALS.** The Committee may establish performance goals for Performance Shares which may be based on any criteria selected by the Committee. Such performance goals may be described in terms of Company-wide objectives or in terms of objectives that relate to the performance of the Participant, an Affiliate or a division, region, department or function within the Company or an Affiliate. If the Committee determines that a change in the business, operations, corporate structure or capital structure of the Company or the manner in which the Company or an Affiliate conducts its business, or other events or circumstances render performance goals to be unsuitable, the Committee may modify such performance goals in whole or in part, as the Committee deems appropriate. If a Participant is promoted, demoted or transferred to a different business unit or function during a performance period, the Committee may determine that the performance goals or performance period are no longer appropriate and may (i) adjust, change or eliminate the performance goals or the applicable performance period as it deems appropriate to make such goals and period comparable to the initial goals and period, or (ii) make a cash payment to the participant in amount determined by the Committee. The foregoing two sentences shall not apply with respect to an Award of Performance Shares that is intended to be a Qualified Performance-Based Award.

9.3. **RIGHT TO PAYMENT.** The grant of a Performance Share to a Participant will entitle the Participant to receive at a specified later time a specified number of Shares, or the equivalent value in cash or other property, if the performance goals established by the Committee are achieved and the other terms and conditions thereof are satisfied. The Committee shall set performance goals and other terms or conditions to payment of the Performance Shares in its discretion which, depending on the extent to which they are met, will determine the number of the Performance Shares that will be earned by the Participant.

9.4. **OTHER TERMS.** Performance Shares may be payable in cash, Stock, or other property, and have such other terms and conditions as determined by the Committee and reflected in the Award Certificate.

**ARTICLE 10**  
**RESTRICTED STOCK AND RESTRICTED STOCK UNIT AWARDS**

10.1. **GRANT OF RESTRICTED STOCK AND RESTRICTED STOCK UNITS.** The Committee is authorized to make Awards of Restricted Stock or Restricted Stock Units to Participants in such amounts and subject to such terms and conditions as may be selected by the Committee. An Award of Restricted Stock or Restricted Stock Units shall be evidenced by an Award Certificate setting forth the terms, conditions, and restrictions applicable to the Award.

10.2. **ISSUANCE AND RESTRICTIONS.** Restricted Stock or Restricted Stock Units shall be subject to such restrictions on transferability and other restrictions as the Committee may impose (including, without limitation, limitations on the right to vote Restricted Stock or the right to receive dividends on the Restricted Stock). These restrictions may lapse separately or in combination at such times, under such circumstances, in such installments, upon the satisfaction of performance goals or otherwise, as the Committee determines at the time of the grant of the Award or thereafter. Except as otherwise provided in an Award Certificate or any special Plan document governing an Award, the Participant shall have all of the rights of a stockholder with respect to the Restricted Stock, and the Participant shall have none of the rights of a stockholder with respect to Restricted Stock Units until such time as Shares of Stock are paid in settlement of the Restricted Stock Units.

10.3. **FORFEITURE.** Except as otherwise determined by the Committee at the time of the grant of the

Award or thereafter, upon termination of Continuous Status as a Participant during the applicable restriction period or upon failure to satisfy a performance goal during the applicable restriction period, Restricted Stock or Restricted Stock Units that are at that time subject to restrictions shall be forfeited; provided, however, that the Committee may provide in any Award Certificate that restrictions or forfeiture conditions relating to Restricted Stock or Restricted Stock Units will be waived in whole or in part in the event of terminations resulting from specified causes, and the Committee may in other cases waive in whole or in part restrictions or forfeiture conditions relating to Restricted Stock or Restricted Stock Units.

10.4. **DELIVERY OF RESTRICTED STOCK.** Shares of Restricted Stock shall be delivered to the Participant at the time of grant either by book-entry registration or by delivering to the Participant, or a custodian or escrow agent (including, without limitation, the Company or one or more of its employees) designated by the Committee, a stock certificate or certificates registered in the name of the Participant. If physical certificates representing shares of Restricted Stock are registered in the name of the Participant, such certificates must bear an appropriate legend referring to the terms, conditions, and restrictions applicable to such Restricted Stock.

**ARTICLE 11**  
**DEFERRED STOCK UNITS**

11.1. **GRANT OF DEFERRED STOCK UNITS.** The Committee is authorized to grant Deferred Stock Units to Participants subject to such terms and conditions as may be selected by the Committee. Deferred Stock Units shall entitle the Participant to receive Shares of Stock (or the equivalent value in cash or other property if so determined by the Committee) at a future time as determined by the Committee, or as determined by the Participant within guidelines established by the Committee in the case of voluntary deferral elections. An Award of Deferred Stock Units shall be evidenced by an Award Certificate setting forth the terms and conditions applicable to the Award.

**ARTICLE 12**  
**DIVIDEND EQUIVALENTS**

12.1. GRANT OF DIVIDEND EQUIVALENTS. The Committee is authorized to grant Dividend Equivalents to Participants subject to such terms and conditions as may be selected by the Committee. Dividend Equivalents shall entitle the Participant to receive payments equal to dividends with respect to all or a portion of the number of Shares subject to an Award, as determined by the Committee. The Committee may provide that Dividend Equivalents be paid or distributed when accrued or be deemed to have been reinvested in additional Shares, or otherwise reinvested.

### **ARTICLE 13 STOCK OR OTHER STOCK-BASED AWARDS**

13.1. GRANT OF STOCK OR OTHER STOCK-BASED AWARDS. The Committee is authorized, subject to limitations under applicable law, to grant to Participants such other Awards that are payable in, valued in whole or in part by reference to, or otherwise based on or related to Shares, as deemed by the Committee to be consistent with the purposes of the Plan, including without limitation Shares awarded purely as a “bonus” and not subject to any restrictions or conditions, convertible or exchangeable debt securities, other rights convertible or exchangeable into Shares, and Awards valued by reference to book value of Shares or the value of securities of or the performance of specified Parents or Subsidiaries. The Committee shall determine the terms and conditions of such Awards.

### **ARTICLE 14 PROVISIONS APPLICABLE TO AWARDS**

14.1. STAND-ALONE AND TANDEM AWARDS. Awards granted under the Plan may, in the discretion of the Committee, be granted either alone or in addition to, in tandem with, any other Award granted under the Plan. Subject to Section 16.2, awards granted in addition to or in tandem with other Awards may be granted either at the same time as or at a different time from the grant of such other Awards.

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14.2. TERM OF AWARD. The term of each Award shall be for the period as determined by the Committee, provided that in no event shall the term of any Incentive Stock Option or a Stock Appreciation Right granted in tandem with the Incentive Stock Option exceed a period of ten years from its Grant Date (or, if Section 7.2(d) applies, five years from its Grant Date).

14.3. FORM OF PAYMENT FOR AWARDS. Subject to the terms of the Plan and any applicable law or Award Certificate, payments or transfers to be made by the Company or an Affiliate on the grant or exercise of an Award may be made in such form as the Committee determines at or after the Grant Date, including without limitation, cash, Stock, other Awards, or other property, or any combination, and may be made in a single payment or transfer, in installments, or on a deferred basis, in each case determined in accordance with rules adopted by, and at the discretion of, the Committee.

14.4. LIMITS ON TRANSFER. No right or interest of a Participant in any unexercised or restricted Award may be pledged, encumbered, or hypothecated to or in favor of any party other than the Company or an Affiliate, or shall be subject to any lien, obligation, or liability of such Participant to any other party other than the Company or an Affiliate. No unexercised or restricted Award shall be assignable or transferable by a Participant other than by will or the laws of descent and distribution or, except in the case of an Incentive Stock Option, pursuant to a domestic relations order that would satisfy Section 414(p)(1)(A) of the Code if such Section applied to an Award under the Plan; provided, however, that the Committee may (but need not) permit other transfers where the Committee concludes that such transferability (i) does not result in accelerated taxation, (ii) does not cause any Option intended to be an Incentive Stock Option to fail to be described in Code Section 422(b), and (iii) is otherwise appropriate and desirable, taking into account any factors deemed relevant, including without limitation, state or federal tax or securities laws applicable to transferable Awards.

14.5. BENEFICIARIES. Notwithstanding Section 14.4, a Participant may, in the manner determined by the Committee, designate a beneficiary to exercise the rights of the Participant and to receive any distribution with respect to any Award upon the Participant’s death. A beneficiary, legal guardian, legal representative, or other person claiming any rights under the Plan is subject to all terms and conditions of the Plan and any Award Certificate applicable to the Participant, except to the extent the Plan and Award Certificate otherwise provide, and to any additional restrictions deemed necessary or appropriate by the Committee. If no beneficiary has been designated or survives the Participant, payment shall be made to the Participant’s estate. Subject to the foregoing, a beneficiary designation may be changed or revoked by a Participant at any time provided the change or revocation is filed with the Committee.

14.6. STOCK CERTIFICATES. All Stock issuable under the Plan is subject to any stop-transfer orders and other restrictions as the Committee deems necessary or advisable to comply with federal or state securities laws, rules and regulations and the rules of any national securities exchange or automated quotation system on which the Stock is listed, quoted, or traded. The Committee may place legends on any Stock certificate or issue instructions to the transfer agent to reference restrictions applicable to the Stock.

14.7. ACCELERATION UPON A CHANGE IN CONTROL. Except as otherwise provided in the Award Certificate or any special Plan document governing an Award, upon the occurrence of a Change in Control, all outstanding Options, SARs, and other Awards in the nature of rights that may be exercised shall become fully exercisable, and all time-based vesting restrictions on outstanding Awards shall lapse. Except as otherwise provided in the Award Certificate or any special Plan document governing an Award, upon the occurrence of a Change in Control, the target payout opportunities attainable under all outstanding performance-based Awards shall be deemed to have been fully earned as of the effective date of the Change in Control based upon an assumed achievement of all relevant performance goals at the “target” level and there shall be prorata payout to Participants within thirty (30) days following the effective date of the Change in Control based upon the length of time within the performance period that has elapsed prior to the Change in Control.

14.8. ACCELERATION UPON DEATH OR DISABILITY. Except as otherwise provided in the Award Certificate or any special Plan document governing an Award, upon the Participant’s death or Disability during his or her Continuous Status as a Participant, (i) all of such Participant’s outstanding Options, SARs, and other Awards in the nature of rights that may be exercised shall become fully exercisable, (ii) all time-based vesting

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restrictions on the Participant’s outstanding Awards shall lapse, and (iii) the target payout opportunities attainable under all of such Participant’s outstanding performance-based Awards shall be deemed to have been fully earned as of the date of termination based upon an assumed achievement of all relevant performance goals at the “target” level and there shall be a prorata payout to the Participant or his or her estate within thirty (30) days following the

date of termination based upon the length of time within the performance period that has elapsed prior to the date of termination. Any Awards shall thereafter continue or lapse in accordance with the other provisions of the Plan and the Awards Certificate. To the extent that this provision causes Incentive Stock Options to exceed the dollar limitation set forth in Section 7.2(c), the excess Options shall be deemed to be Nonstatutory Stock Options.

14.9. ACCELERATION FOR ANY OTHER REASON. Regardless of whether an event has occurred as described in Section 14.7 or 14.8 above, and subject to Section 14.11 as to Qualified Performance-Based Awards, the Committee may in its sole discretion at any time determine that all or a portion of a Participant's Options, SARs, and other Awards in the nature of rights that may be exercised shall become fully or partially exercisable, that all or a part of the time-based vesting restrictions on all or a portion of the outstanding Awards shall lapse, and/or that any performance-based criteria with respect to any Awards shall be deemed to be wholly or partially satisfied, in each case, as of such date as the Committee may, in its sole discretion, declare. The Committee may discriminate among Participants and among Awards granted to a Participant in exercising its discretion pursuant to this Section 14.9.

14.10. EFFECT OF ACCELERATION. If an Award is accelerated under Section 14.7, Section 14.8 or Section 14.9, the Committee may, in its sole discretion, provide (i) that the Award will expire after a designated period of time after such acceleration to the extent not then exercised, (ii) that the Award will be settled in cash rather than Stock, (iii) that the Award will be assumed by another party to a transaction giving rise to the acceleration or otherwise be equitably converted or substituted in connection with such transaction, (iv) that the Award may be settled by payment in cash or cash equivalents equal to the excess of the Fair Market Value of the underlying Stock, as of a specified date associated with the transaction, over the exercise price of the Award, or (v) any combination of the foregoing. The Committee's determination need not be uniform and may be different for different Participants whether or not such Participants are similarly situated. To the extent that such acceleration causes Incentive Stock Options to exceed the dollar limitation set forth in Section 7.2(c), the excess Options shall be deemed to be Nonstatutory Stock Options.

14.11. QUALIFIED PERFORMANCE-BASED AWARDS.

(a) The provisions of the Plan are intended to ensure that all Options and Stock Appreciation Rights granted hereunder to any Covered Employee shall qualify for the Section 162(m) Exemption; provided that the exercise or base price of such Award is not less than the Fair Market Value of the Shares on the Grant Date.

(b) When granting any other Award, the Committee may designate such Award as a Qualified Performance-Based Award, based upon a determination that the recipient is or may be a Covered Employee with respect to such Award, and the Committee wishes such Award to qualify for the Section 162(m) Exemption. If an Award is so designated, the Committee shall establish performance goals for such Award within the time period prescribed by Section 162(m) of the Code based on one or more of the following Qualified Business Criteria, which may be expressed in terms of Company-wide objectives or in terms of objectives that relate to the performance of an Affiliate or a unit, division, region, department or function within the Company or an Affiliate:

- Gross and/or net revenue (including whether in the aggregate or attributable to specific products)
- Cost of Goods Sold and Gross Margin
- Costs and expenses, including Research & Development and Selling, General & Administrative
- Income (gross, operating, net, etc.)
- Earnings, including before interest, taxes, depreciation and amortization (whether in the aggregate or on a per share basis)
- Cash flows and share price
- Return on investment, capital, equity

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- Manufacturing efficiency (including yield enhancement and cycle time reductions), quality improvements and customer satisfaction
- Product life cycle management (including product and technology design, development, transfer, manufacturing introduction, and sales price optimization and management)
- Economic profit or loss
- Market share
- Employee retention, compensation, training and development, including succession planning
- Objective goals consistent with the Participant's specific officer duties and responsibilities, designed to further the financial, operational and other business interests of the Company, including goals and objectives with respect to regulatory compliance matters.

Performance goals with respect to the foregoing Qualified Business Criteria may be specified in absolute terms (including completion of pre-established projects, such as the introduction of specified products), in percentages, or in terms of growth from period to period or growth rates over time as well as measured relative to an established or specially-created performance index of Company competitors, peers or other members of high tech industries. Any member of an index that disappears during a measurement period shall be disregarded for the entire measurement period. Performance Goals need not be based upon an increase or positive result under a business criterion and could include, for example, the maintenance of the status quo or the limitation of economic losses (measured, in each case, by reference to a specific business criterion).

(c) Each Qualified Performance-Based Award (other than an Option or SAR) shall be earned, vested and payable (as applicable) only upon the achievement of performance goals established by the Committee based upon one or more of the Qualified Business Criteria, together with the satisfaction of any other conditions, including the condition as to continued employment as set forth in subsection (g) below, as the Committee may determine to be appropriate; provided, however, that the Committee may provide, in its sole and absolute discretion, either in connection with the grant thereof or by amendment thereafter, that achievement of such performance goals will be waived upon the death or Disability of the Participant, or upon a Change in Control. Performance periods established by the Committee for any such Qualified Performance-Based Award may be as short as ninety (90) days and may be any longer period.

(d) The Committee may provide in any Qualified Performance-Based Award that any evaluation of performance may include or exclude any of the following events that occurs during a performance period: (a) asset write-downs or impairment charges; (b) litigation or claim judgments or settlements; (c) the effect of changes in tax laws, accounting principles or other laws or provisions affecting reported results; (d) accruals for reorganization and restructuring programs; (e) extraordinary nonrecurring items as described in Accounting Principles Board Opinion

No. 30 and/or in management's discussion and analysis of financial condition and results of operations appearing in the Company's annual report to stockholders for the applicable year; (f) acquisitions or divestitures; and (g) foreign exchange gains and losses. To the extent such inclusions or exclusions affect Awards to Covered Employees, they shall be prescribed in a form and at a time that meets the requirements of Code Section 162(m) for deductibility.

(e) Any payment of a Qualified Performance-Based Award granted with performance goals pursuant to subsection (c) above shall be conditioned on the written certification of the Committee in each case that the performance goals and any other material conditions were satisfied. Written certification may take the form of a Committee resolution passed by a majority of the Committee at a properly convened meeting or through unanimous action by the Committee via action by written consent. The certification requirement also may be satisfied by a separate writing executed by the Chairman of the Committee, acting in his capacity as such, following the foregoing Committee action or by the Chairman executing approved minutes of the Committee in which such determinations were made. Except as specifically provided in subsection (c), no Qualified Performance-Based Award held by a Covered Employee or an employee who in the reasonable judgment of the Committee may be a Covered Employee on the date of payment, may be amended, nor may the Committee exercise any discretionary authority it may otherwise have under the Plan with respect to a Qualified Performance-Based Award under the Plan, in any manner to waive the

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achievement of the applicable performance goal based on Qualified Business Criteria or to increase the amount payable pursuant thereto or the value thereof, or otherwise in a manner that would cause the Qualified Performance-Based Award to cease to qualify for the Section 162(m) Exemption.

(f) Section 5.4 sets forth the maximum number of Shares or dollar value that may be granted in any one-year period to a Participant in designated forms of Qualified Performance-Based Awards.

(g) With respect to a Participant who is an officer of the Company, any payment of a Qualified Performance-Based Award granted with performance goals pursuant to subsection (c) above shall be conditioned on the officer having remained continuously employed by the Company or an Affiliate for the entire performance or measurement period, including, as well, through the date of determination and certification of the payment of any such Award pursuant to subsection (e) above (the "Certification Date"). For purposes of the Plan, with respect to any given performance or measurement period, an officer of the Company who (i) terminates employment (regardless of cause) or who otherwise ceases to be an officer, prior to the Certification Date and (ii) who, pursuant to a separate contractual arrangement with the Company is entitled to receive payments from the Company thereunder extending to or beyond such Certification Date as a result of such termination or cessation in officer status, shall be deemed to have been employed by the Company as an officer through the Certification Date for purposes of payment eligibility.

14.12. **TERMINATION OF EMPLOYMENT.** Whether military, government or other service or other leave of absence shall constitute a termination of employment shall be determined in each case by the Committee at its discretion, and any determination by the Committee shall be final and conclusive. A Participant's Continuous Status as a Participant shall not be deemed to terminate (i) in a circumstance in which a Participant transfers from the Company to an Affiliate, transfers from an Affiliate to the Company, or transfers from one Affiliate to another Affiliate, or (ii) in the discretion of the Committee as specified at or prior to such occurrence, in the case of a spin-off, sale or disposition of the Participant's employer from the Company or any Affiliate. To the extent that this provision causes Incentive Stock Options to extend beyond three months from the date a Participant is deemed to be an employee of the Company, a Parent or Subsidiary for purposes of Sections 424(e) and 424(f) of the Code, the Options held by such Participant shall be deemed to be Nonstatutory Stock Options.

14.13. **DEFERRAL.** Subject to applicable law, the Committee may permit or require a Participant to defer such Participant's receipt of the payment of cash or the delivery of Shares that would otherwise be due to such Participant by virtue of the exercise of an Option or SAR, the lapse or waiver of restrictions with respect to Restricted Stock or Restricted Stock Units, or the satisfaction of any requirements or goals with respect to Performance Shares, and Other Stock-Based Awards. If any such deferral election is required or permitted, the Board shall, in its sole discretion, establish rules and procedures for such payment deferrals.

14.14. **FORFEITURE EVENTS.** The Committee may specify in an Award Certificate that the Participant's rights, payments and benefits with respect to an Award shall be subject to reduction, cancellation, forfeiture or recoupment upon the occurrence of certain specified events, in addition to any otherwise applicable vesting or performance conditions of an Award. Such events shall include, but shall not be limited to, termination of employment for cause, violation of material Company or Affiliate policies, breach of noncompetition, confidentiality or other restrictive covenants that may apply to the Participant, or other conduct by the Participant that is detrimental to the business or reputation of the Company or any Affiliate.

14.15. **SUBSTITUTE AWARDS.** The Committee may grant Awards under the Plan in substitution for stock and stock-based awards held by employees of another entity who become employees of the Company or an Affiliate as a result of a merger or consolidation of the former employing entity with the Company or an Affiliate or the acquisition by the Company or an Affiliate of property or stock of the former employing corporation. The Committee may direct that the substitute awards be granted on such terms and conditions as the Committee considers appropriate in the circumstances.

## **ARTICLE 15 CHANGES IN CAPITAL STRUCTURE**

15.1. **GENERAL.** In the event of a corporate event or transaction involving the Company (including,

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without limitation, any stock dividend, stock split, extraordinary cash dividend, recapitalization, reorganization, merger, consolidation, split-up, spin-off, combination or exchange of shares), the authorization limits under Section 5.1 and 5.4 shall be adjusted proportionately, and the Committee may adjust the Plan and Awards to preserve the benefits or potential benefits of the Awards. Action by the Committee may include: (i) adjustment of the number and kind of shares which may be delivered under the Plan; (ii) adjustment of the number and kind of shares subject to outstanding Awards; (iii) adjustment of the exercise price of outstanding Awards or the measure to be used to determine the amount of the benefit payable on an Award; and (iv) any other adjustments that the Committee determines to be equitable. In addition, the Committee may, in its sole discretion, provide (i) that Awards will be settled in cash or other property rather than Stock, (ii) that Awards will become immediately vested and exercisable and will expire after a designated period of time to the extent not then exercised, (iii) that

Awards will be assumed by another party to a transaction or otherwise be equitably converted or substituted in connection with such transaction, (iv) that outstanding Awards may be settled by payment in cash or cash equivalents equal to the excess of the Fair Market Value of the underlying Stock, as of a specified date associated with the transaction, over the exercise price of the Award, (v) that applicable performance targets and performance periods for Awards will be modified, consistent with Code Section 162(m) where applicable, or (vi) any combination of the foregoing. The Committee's determination need not be uniform and may be different for different Participants whether or not such Participants are similarly situated. Without limiting the foregoing, in the event of a subdivision of the outstanding Stock (stock-split), a declaration of a dividend payable in Shares, or a combination or consolidation of the outstanding Stock into a lesser number of Shares, the authorization limits under Section 5.1 and 5.4 shall automatically be adjusted proportionately, and the Shares then subject to each Award shall automatically be adjusted proportionately without any change in the aggregate purchase price therefor. To the extent that any adjustments made pursuant to this Article 15 cause Incentive Stock Options to cease to qualify as Incentive Stock Options, such Options shall be deemed to be Nonstatutory Stock Options.

## **ARTICLE 16**

### **AMENDMENT, MODIFICATION AND TERMINATION**

16.1. **AMENDMENT, MODIFICATION AND TERMINATION.** The Board or the Committee may, at any time and from time to time, amend, modify or terminate the Plan without stockholder approval; provided, however, that if an amendment to the Plan would, in the reasonable opinion of the Board or the Committee, either (i) materially increase the number of Shares available under the Plan, (ii) expand the types of awards under the Plan, (iii) materially expand the class of participants eligible to participate in the Plan, (iv) materially extend the term of the Plan, or (v) otherwise constitute a material change requiring stockholder approval under applicable laws, policies or regulations or the applicable listing or other requirements of an Exchange, then such amendment shall be subject to stockholder approval; and provided, further, that the Board or Committee may condition any other amendment or modification on the approval of stockholders of the Company for any reason, including by reason of such approval being necessary or deemed advisable to (i) permit Awards made hereunder to be exempt from liability under Section 16(b) of the 1934 Act, (ii) to comply with the listing or other requirements of an Exchange, or (iii) to satisfy any other tax, securities or other applicable laws, policies or regulations.

16.2. **AWARDS PREVIOUSLY GRANTED.** At any time and from time to time, the Committee may amend, modify or terminate any outstanding Award without approval of the Participant; provided, however:

- (a) Subject to the terms of the applicable Award Certificate, such amendment, modification or termination shall not, without the Participant's consent, reduce or diminish the value of such Award determined as if the Award had been exercised, vested, cashed in or otherwise settled on the date of such amendment or termination (with the per-share value of an Option or Stock Appreciation Right for this purpose being calculated as the excess, if any, of the Fair Market Value as of the date of such amendment or termination over the exercise or base price of such Award);
- (b) The original term of an Option may not be extended without the prior approval of the stockholders of the Company;
- (c) Except as otherwise provided in Article 15, the exercise price of an Option may not be reduced, directly or indirectly, without the prior approval of the stockholders of the Company; and

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- (d) No termination, amendment, or modification of the Plan shall adversely affect any Award previously granted under the Plan, without the written consent of the Participant affected thereby. An outstanding Award shall not be deemed to be "adversely affected" by a Plan amendment if such amendment would not reduce or diminish the value of such Award determined as if the Award had been exercised, vested, cashed in or otherwise settled on the date of such amendment (with the per-share value of an Option or Stock Appreciation Right for this purpose being calculated as the excess, if any, of the Fair Market Value as of the date of such amendment over the exercise or base price of such Award).

## **ARTICLE 17**

### **GENERAL PROVISIONS**

17.1. **NO RIGHTS TO AWARDS; NON-UNIFORM DETERMINATIONS.** No Participant or any Eligible Participant shall have any claim to be granted any Award under the Plan. Neither the Company, its Affiliates nor the Committee is obligated to treat Participants or Eligible Participants uniformly, and determinations made under the Plan may be made by the Committee selectively among Eligible Participants who receive, or are eligible to receive, Awards (whether or not such Eligible Participants are similarly situated).

17.2. **NO STOCKHOLDER RIGHTS.** No Award gives a Participant any of the rights of a stockholder of the Company unless and until Shares are in fact issued to such person in connection with such Award.

17.3. **WITHHOLDING.** The Company or any Affiliate shall have the authority and the right to deduct or withhold, or require a Participant to remit to the Company, an amount sufficient to satisfy federal, state, and local taxes (including the Participant's FICA obligation) required by law to be withheld with respect to any exercise, lapse of restriction or other taxable event arising as a result of the Plan. If Shares are surrendered to the Company to satisfy withholding obligations in excess of the minimum withholding obligation, such Shares must have been held by the Participant as fully vested shares for such period of time, if any, as necessary to avoid the recognition of an expense under generally accepted accounting principles. The Company shall have the authority to require a Participant to remit cash to the Company in lieu of the surrender of Shares for tax withholding obligations if the surrender of Shares in satisfaction of such withholding obligations would result in the Company's recognition of expense under generally accepted accounting principles. With respect to withholding required upon any taxable event under the Plan, the Committee may, at the time the Award is granted or thereafter, require or permit that any such withholding requirement be satisfied, in whole or in part, by withholding from the Award Shares having a Fair Market Value on the date of withholding equal to the minimum amount (and not any greater amount) required to be withheld for tax purposes, all in accordance with such procedures as the Committee establishes.

17.4. **NO RIGHT TO CONTINUED SERVICE.** Nothing in the Plan, any Award Certificate or any other document or statement made with respect to the Plan, shall interfere with or limit in any way the right of the Company or any Affiliate to terminate any Participant's employment or status as an officer, director or consultant at any time, nor confer upon any Participant any right to continue as an employee, officer, director or consultant of the Company or any Affiliate, whether for the duration of a Participant's Award or otherwise.

17.5. UNFUNDED STATUS OF AWARDS. The Plan is intended to be an “unfunded” plan for incentive and deferred compensation. With respect to any payments not yet made to a Participant pursuant to an Award, nothing contained in the Plan or any Award Certificate shall give the Participant any rights that are greater than those of a general creditor of the Company or any Affiliate. This Plan is not intended to be subject to ERISA.

17.6. RELATIONSHIP TO OTHER BENEFITS. No payment under the Plan shall be taken into account in determining any benefits under any pension, retirement, savings, profit sharing, group insurance, welfare or benefit plan of the Company or any Affiliate unless provided otherwise in such other plan.

17.7. EXPENSES. The expenses of administering the Plan shall be borne by the Company and its Affiliates.

17.8. TITLES AND HEADINGS. The titles and headings of the Sections in the Plan are for convenience of reference only, and in the event of any conflict, the text of the Plan, rather than such titles or headings, shall control.

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17.9. GENDER AND NUMBER. Except where otherwise indicated by the context, any masculine term used herein also shall include the feminine; the plural shall include the singular and the singular shall include the plural.

17.10. FRACTIONAL SHARES. No fractional Shares shall be issued and the Committee shall determine, in its discretion, whether cash shall be given in lieu of fractional Shares or whether such fractional Shares shall be eliminated by rounding up or down.

17.11. GOVERNMENT AND OTHER REGULATIONS.

(a) Notwithstanding any other provision of the Plan, no Participant who acquires Shares pursuant to the Plan may, during any period of time that such Participant is an affiliate of the Company (within the meaning of the rules and regulations of the Securities and Exchange Commission under the 1933 Act), sell such Shares, unless such offer and sale is made (i) pursuant to an effective registration statement under the 1933 Act, which is current and includes the Shares to be sold, or (ii) pursuant to an appropriate exemption from the registration requirement of the 1933 Act, such as that set forth in Rule 144 promulgated under the 1933 Act.

(b) Notwithstanding any other provision of the Plan, if at any time the Committee shall determine that the registration, listing or qualification of the Shares covered by an Award upon any Exchange or under any foreign, federal, state or local law or practice, or the consent or approval of any governmental regulatory body, is necessary or desirable as a condition of, or in connection with, the granting of such Award or the purchase or receipt of Shares thereunder, no Shares may be purchased, delivered or received pursuant to such Award unless and until such registration, listing, qualification, consent or approval shall have been effected or obtained free of any condition not acceptable to the Committee. Any Participant receiving or purchasing Shares pursuant to an Award shall make such representations and agreements and furnish such information as the Committee may request to assure compliance with the foregoing or any other applicable legal requirements. The Company shall not be required to issue or deliver any certificate or certificates for Shares under the Plan prior to the Committee’s determination that all related requirements have been fulfilled. The Company shall in no event be obligated to register any securities pursuant to the 1933 Act or applicable state or foreign law or to take any other action in order to cause the issuance and delivery of such certificates to comply with any such law, regulation or requirement.

17.12. GOVERNING LAW. To the extent not governed by federal law, the Plan and all Award Certificates shall be construed in accordance with and governed by the laws of the State of Delaware.

17.13. ADDITIONAL PROVISIONS. Each Award Certificate may contain such other terms and conditions as the Committee may determine; provided that such other terms and conditions are not inconsistent with the provisions of the Plan.

17.14. NO LIMITATIONS ON RIGHTS OF COMPANY. The grant of any Award shall not in any way affect the right or power of the Company to make adjustments, reclassification or changes in its capital or business structure or to merge, consolidate, dissolve, liquidate, sell or transfer all or any part of its business or assets. The Plan shall not restrict the authority of the Company, for proper corporate purposes, to draft or assume awards, other than under the Plan, to or with respect to any person. If the Committee so directs, the Company may issue or transfer Shares to an Affiliate, for such lawful consideration as the Committee may specify, upon the condition or understanding that the Affiliate will transfer such Shares to a Participant in accordance with the terms of an Award granted to such Participant and specified by the Committee pursuant to the provisions of the Plan.

17.15. INDEMNIFICATION. Each person who is or shall have been a member of the Committee, or of the Board, or an officer of the Company to whom authority was delegated in accordance with Article 4 shall be indemnified and held harmless by the Company against and from any loss, cost, liability, or expense that may be imposed upon or reasonably incurred by him or her in connection with or resulting from any claim, action, suit, or proceeding to which he or she may be a party or in which he or she may be involved by reason of any action taken or

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failure to act under the Plan and against and from any and all amounts paid by him or her in settlement thereof, with the Company’s approval, or paid by him or her in satisfaction of any judgment in any such action, suit, or proceeding against him or her, provided he or she shall give the Company an opportunity, at its own expense, to handle and defend the same before he or she undertakes to handle and defend it on his or her own behalf, unless such loss, cost, liability, or expense is a result of his or her own willful misconduct or except as expressly provided by statute. The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such persons may be entitled under the Company’s Certificate of Incorporation or Bylaws, as a matter of law, or otherwise, or any power that the Company may have to indemnify them or hold them harmless.

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**MICRON TECHNOLOGY, INC.**  
**EXECUTIVE OFFICER**  
**PERFORMANCE INCENTIVE PLAN**  
**Effective as of September 3, 2004**

**1. Purpose.**

The purpose of the Plan is to promote the success of the Company by providing performance-based incentive compensation in the form of cash payments ("Awards") to the chief executive officer, president and vice-presidents ("Executive Officers") of the Company. Such Awards are designed to attract, retain and reward the Executive Officers for outstanding business performance. The Plan is intended, but not required, to provide qualified performance-based compensation in accordance with Section 162(m) of the Internal Revenue Code of 1986, as it may be amended from time to time, and the regulations promulgated thereunder ("Section 162(m)").

**2. Administration.**

The Plan shall be administered by the Committee. The Committee shall be composed solely of two or more outside directors as defined in Section 162(m) and shall qualify as an independent compensation committee under Section 162(m). The Committee shall have full power and authority to construe, interpret and administer the Plan and shall have authority to delegate the day-to-day administration of the Plan to Company employees or to such other persons as the Committee deems reasonable under the circumstances. The Committee shall meet at such times and places as it may determine. A majority of the members of the Committee shall constitute a quorum and all decisions of the Committee with respect to matters related to the Plan shall be final, conclusive and binding upon all persons, including the Company, shareholders, employees, Company successors and assigns and a Participant's spouse, if any, and his or her guardian, estate and/or heirs ("Interested Parties"). The Committee shall have the full and exclusive right to make reductions in Awards under the Plan. In determining whether to reduce any Award and the amount of any such reduction, the Committee shall take into consideration such factors as the Committee shall determine reasonable under the circumstances, in its sole and absolute discretion. All expenses of the administration of the Plan shall be borne by the Company, including all Awards, if any, paid pursuant to the terms of the Plan.

**3. Stockholder Approval.**

The Plan shall be effective if, and only if, the Company's shareholders approve the Plan. No Award shall be paid under the Plan for any period until after stockholder approval of the Plan has been obtained. To the extent necessary for the Plan to qualify as performance-based compensation under Section 162(m), the material terms of the Plan shall be disclosed to and re-approved by the shareholders no later than the first shareholders meeting that occurs in the fifth year following the year in which shareholders previously approved the material terms of the Plan.

**4. Participants.**

(a) *Selection of Participants.* For each measurement period (which may or may not be the same period with respect to each Participant and which may or may not be a twelve-month period; provided, however, in no event will a measurement period be less than ninety (90) days for any Participant), the Committee will choose, in its sole discretion, the Executive Officers who will participate in the Plan (each a "Participant"). Nothing in this Plan shall be construed as precluding or prohibiting an Executive Officer from being eligible to participate in any other bonus or compensation arrangement of the Company, whether or not currently established.

(b) *Employment Criteria.* To be eligible to receive an Award under the terms of the Plan with respect to a measurement period, a Participant must be continuously employed by the Company or a subsidiary or affiliate as an Executive Officer for the entire measurement period, including, as well, through the date of determination and certification of the payment of any such Award ("Certification Date"). For purposes of the Plan, with respect to any given measurement period, a Participant who (i) terminates employment (regardless of cause) or who otherwise ceases to be an Executive Officer, prior to the Certification Date and (ii) who, pursuant to a separate contractual arrangement with the Company is entitled to receive payments from the Company thereunder extending to or beyond such Certification Date as a result of such termination or cessation in Executive Officer status, shall be deemed to have been employed by the Company as an Executive Officer through the Certification Date for purposes of Award eligibility.

**5. Business Criteria on Which Performance Goals Shall be Based.**

Awards under the Plan shall be based on the attainment of Performance Goals for the specified measurement period that are related, directly or indirectly, to one or more of the following objective business criteria, or any combination or portion thereof:

- Gross and/or net revenue (including whether in the aggregate or attributable to specific products)
- Cost of Goods Sold and Gross Margin
- Costs and expenses, including Research & Development and Selling, General & Administrative
- Income (gross, operating, net, etc.)
- Earnings, including before interest, taxes, depreciation and amortization (whether in the aggregate or on a per share basis)
- Cash flows and share price
- Return on investment, capital, equity
- Manufacturing efficiency (including yield enhancement and cycle time reductions), quality improvements and customer satisfaction
- Product life cycle management (including product and technology design, development, transfer, manufacturing introduction, and sales price optimization and management)
- Economic profit or loss
- Market share
- Employee retention, compensation, training and development, including succession planning
- Objective goals consistent with the Participant's specific officer duties and responsibilities, designed to further the financial, operational and other business interests of the Company, including goals and objectives with respect to regulatory compliance matters.

The business criteria may be expressed or measured at the individual, function, department, region, unit, subsidiary, affiliate or Company levels or any combination of the foregoing. Company Performance Goals with respect to the foregoing business criteria may be specified in absolute terms (including completion of pre-established projects, such as the introduction of specified products), in ratios, in percentages, or in terms of growth from period to period, growth rates over time as well as in terms of performance measured relative to an established or specially-created performance index of Company competitors, peers or other members of high tech industries. Any member of an index that disappears during a measurement period shall be disregarded for the entire measurement period. Performance Goals need not be based upon an increase or positive result under a business criterion and could include, for example, the maintenance of the status quo or the limitation of economic losses (measured, in each case, by reference to a specific business criterion).

## **6. Establishment of Performance Goals.**

(a) *Committee Action.* For each measurement period the Committee shall establish the following: (1) the length of the measurement period with respect to each Participant (measurement periods need not be the same for each Participant. Measurement periods will coincide with the Company's fiscal year unless a shorter measurement period is established; provided, however, in no event will a measurement period be less than a three-month period for any Participant); (2) the Participants in the Plan for such period; (3) the specific Company, subsidiary, affiliate, group, division, unit, department, function and/or individual business criterion or criteria, or combination thereof, that will be measured with respect to each Participant; (4) the specific results, or range of results, to be achieved with respect to the selected criterion or criteria ("Performance Goals"); (5) any special adjustments that may need to be applied in calculating whether the Performance Goals have been met to factor out extraordinary items; (6) the formula for calculating the awards under the Plan in relation to the Performance Goals (including instructions for extrapolating the amounts payable when performance results fall in a range between threshold, target and maximum goals), and; (7) the targeted bonus amounts or Awards (expressed in absolute terms or as a percentage of base compensation fixed at the time the performance formula is established) for each Participant.

(b) *Timing of Committee Action.* The Committee shall make the above determinations in writing no later than ninety (90) days after the start of each measurement period, on or before twenty-five percent (25%) of the measurement period has elapsed, and while the outcome is substantially uncertain.

(c) *Maximum Award.* The maximum Award that may be paid to any one Participant with respect to the aggregate of all measurement periods in any fiscal year shall not exceed \$3,000,000.

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(d) *Changes in the Business, Executive Officer Positions or Duties, Re-Set Events, Etc.*

(1) *Awards Not Intended to Satisfy Section 162(m).* With respect to Awards not intended to satisfy Section 162(m), if the Committee determines that a change in the business, operations, corporate structure or capital structure of the Company, including any acquisition, disposition or merger, or the manner in which the Company or a subsidiary or affiliate conducts its business, or other events or circumstances render Performance Goals to be unsuitable for a measurement period, the Committee may modify such Performance Goals in whole or in part, and/or such measurement period, as the Committee deems appropriate. If a Participant is promoted, demoted or transferred to a different business unit or function during a measurement period, the Committee may determine that the Performance Goals or measurement period are no longer appropriate and may (i) adjust, change or eliminate the Performance Goals or the applicable measurement period as it deems appropriate to make such goals and period comparable to the initial Performance Goals and measurement period, or (ii) make an Award to the Participant in amount determined by the Committee to be in the best interests of the Company, in the Committee's sole discretion. The foregoing two sentences shall apply with respect to an Award that is not intended to satisfy Section 162(m).

(2) *Awards Intended to Satisfy Section 162(m).* With respect to Awards intended to satisfy Section 162(m), unless otherwise specified by the Committee in its written determinations establishing the business criteria for the particular measurement period, if prior to the end of such measurement period the Company (i) disposes of businesses or interests that, individually or in the aggregate, represent either (A) five percent (5%) or more of the Company's consolidated gross revenues for the four fiscal quarters completed immediately preceding the consummation of the dispositions or (B) five percent (5%) of the Company's consolidated property, plant and equipment, net, measured as of the last day of the fiscal quarter immediately preceding the disposition or (ii) consummates one or more acquisitions during the measurement period that, individually or in the aggregate, constitute a Triggering Acquisition, in each case a "Re-Set Event," the Performance Goals shall be adjusted, effective as of the last day of the fiscal quarter immediately before the consummation of the Re-Set Event, (x) to reflect the business disposition by eliminating from the Performance Goals the projected business results relating to the disposed business for the remainder of the fiscal quarters of the measurement period, and (y) to reflect any business acquisition, by establishing supplemental performance criteria in compliance with Sections 5 and 6 (a) through (c) above, as the Committee deems appropriate, with respect to the acquired business (which business shall be tracked separately as an independent business unit for purposes of any such supplemental performance criteria). For purposes of this Section, a Triggering Acquisition means an acquisition (or combination of acquisitions) in which either (i) the acquired entity's gross revenues for the four quarters completed immediately prior to consummation of the acquisition is equal to five percent (5%) or more of the pro-forma gross revenues for the same four quarters for the combination of the Company and its affiliates and the acquired entity, or (ii) the acquired entity's property, plant and equipment, net, equals or exceeds five percent (5%) of the pro-forma property, plant and equipment, net, for the combination of the Company and its affiliates and the acquired entity. (If either the Company and its affiliates or the entity being acquired had consummated other acquisitions during the four quarters in question, the calculation described in the prior sentence shall be made using pro-forma earnings for each member of the combined entity.) Notwithstanding the foregoing, nothing in this Section 6(d)(2) will be construed to authorize the Committee to take actions under this Section 6(d)(2) that are not permitted by Section 162(m).

(e) *Change in Control.*

(1) *Awards.* Notwithstanding Section 6(d), in the event of a Change in Control (as defined below), each measurement period shall be deemed to have ended as of the last day of the fiscal month immediately preceding such Change in Control (the "CIC Termination Date"). The Committee shall determine with respect to each Participant whether his or her Performance Goal(s) were Achieved (as defined below) as of the CIC Termination Date. In the case of any such achievement, a Participant shall receive, subject to the terms and conditions of the Plan, including the Committee's discretion and certification as set forth in Section 7 below, an Award payable within thirty days of the Certification Date. Subject to the Committee's discretion set forth in Section 7(b), Awards that are Achieved as defined in subsection 6(e)(2)(i) shall not be pro-rated and Awards that are Achieved as defined in subsection 6(e)(2)(ii) shall be pro-rated.

(2) *Definitions.* For purposes of this Section 6, the following terms shall be defined as follows:

“Achieved” shall mean with respect to (i) a non-financial or non-numerical Performance Goal, the full achievement of such Performance Goal; and (ii) a financial or numerical Performance Goal, the achievement of

results which, when extrapolated over the remainder of the full measurement period, disregarding the CIC Termination Date, would result in the Performance Goal being satisfied.

“Change in Control” means and includes the occurrence of any one of the following events:

(i) individuals who, on the date this Plan becomes effective (“Effective Date”), constitute the Board of Directors of the Company (the “Incumbent Directors”) and who cease for any reason to constitute at least a majority of such Board, provided that any person becoming a director after the Effective Date and whose election or nomination for election was approved by a vote of at least a majority of the Incumbent Directors then on the Board shall be an Incumbent Director; provided, however, that no individual initially elected or nominated as a director of the Company as a result of an actual or threatened election contest with respect to the election or removal of directors (“Election Contest”) or other actual or threatened solicitation of proxies or consents by or on behalf of any Person other than the Board (“Proxy Contest”), including by reason of any agreement intended to avoid or settle any Election Contest or Proxy Contest, shall be deemed an Incumbent Director; or

(ii) any person is or becomes a “beneficial owner” (as defined in Rule 13d-3 under the 1934 Securities Exchange Act), directly or indirectly, of either (A) 35% or more of the then-outstanding shares of common stock of the Company (“Company Common Stock”) or (B) securities of the Company representing 35% or more of the combined voting power of the Company’s then outstanding securities eligible to vote for the election of directors (the “Company Voting Securities”); provided, however, that for purposes of this subsection (ii), the following acquisitions shall not constitute a Change in Control: (w) an acquisition directly from the Company, (x) an acquisition by the Company or a subsidiary of the Company, (y) an acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any subsidiary of the Company, or (z) an acquisition pursuant to a Non-Qualifying Transaction (as defined in subsection (iii) below); or

(iii) the consummation of a reorganization, merger, consolidation, statutory share exchange or similar form of corporate transaction involving the Company or a subsidiary (a “Reorganization”), or the sale or other disposition of all or substantially all of the Company’s assets (a “Sale”) or the acquisition of assets or stock of another corporation (an “Acquisition”), unless immediately following such Reorganization, Sale or Acquisition: (A) all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the outstanding Company Common Stock and outstanding Company Voting Securities immediately prior to such Reorganization, Sale or Acquisition beneficially own, directly or indirectly, more than 50% of, respectively, the then outstanding shares of common stock and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation resulting from such Reorganization, Sale or Acquisition (including, without limitation, a corporation which as a result of such transaction owns the Company or all or substantially all of the Company’s assets or stock either directly or through one or more subsidiaries, the “Surviving Corporation”) in substantially the same proportions as their ownership, immediately prior to such Reorganization, Sale or Acquisition, of the outstanding Company Common Stock and the outstanding Company Voting Securities, as the case may be, and (B) no person (other than (x) the Company or any subsidiary of the Company, (y) the Surviving Corporation or its ultimate parent corporation, or (z) any employee benefit plan (or related trust) sponsored or maintained by any of the foregoing is the beneficial owner, directly or indirectly, of 35% or more of the total common stock or 35% or more of the total voting power of the outstanding voting securities eligible to elect directors of the Surviving Corporation, and (C) at least a majority of the members of the board of directors of the Surviving Corporation were Incumbent Directors at the time of the Board’s approval of the execution of the initial agreement providing for such Reorganization, Sale or Acquisition (any Reorganization, Sale or Acquisition which satisfies all of the criteria specified in (A), (B) and (C) above shall be deemed to be a “Non-Qualifying Transaction”); or approval by the shareholders of the Company of a complete liquidation or dissolution of the Company.

## **7. Determination and Certification of Attainment of Performance Goals; Committee Discretion.**

(a) *Determination and Certification of Awards.* As soon as practicable following the expiration of a measurement period, the Committee shall determine, pursuant to the Performance Goals and other elements established pursuant to Section 6 above, the Award to be paid to each Participant for such measurement period. The Committee’s determinations shall be final, binding and conclusive with respect to all Interested Parties and shall be certified in writing by the Committee prior to the payment of any such Award, which writing may take the form of a Committee resolution passed by a majority of the Committee at a properly convened meeting or through unanimous action by the Committee via action by written consent. The certification requirement also may be satisfied by a

separate writing executed by the Chairman of the Committee, acting in his capacity as such, following the foregoing Committee action or by the Chairman executing approved minutes of the Committee in which such determinations were made.

(b) *Committee Discretion.* The Committee, in its sole discretion, based on any factors the Committee deems appropriate, may reduce the Award to any Participant in any measurement period (including reduction to zero if the Committee so determines). The Committee shall make a determination of whether and to what extent to reduce Awards under the Plan for each measurement period at such time or times following the close of the measurement period as the Committee shall deem appropriate. The reduction in the amount of an Award to any Participant for a measurement period shall have no effect on (i.e., shall neither increase nor decrease) the amount of the Award to any other Participant for such measurement period.

## **8. Payment of Awards.**

Awards shall be paid in cash, in a single lump sum, to the Participants as soon as practicable following the Certification Date. Notwithstanding the foregoing, subject to applicable law, the Committee may permit or require a Participant to defer the receipt of an Award. If any such deferral is permitted or required, the Board shall, in its sole discretion, establish rules and procedures for such Award deferrals.

Payments of Awards to Participants, if any, who are employees of subsidiaries or affiliates of the Company shall be paid directly by such subsidiaries or affiliates. The Company (or such subsidiary or affiliate as the case may be) shall be authorized to withhold applicable taxes from an Award and such other

amounts as shall be required by law or as have been previously authorized by the Participant.

**9. *Amendment; Termination.***

The Committee shall be authorized to amend, modify, suspend or terminate the Plan, in whole or in part, as the Committee shall deem proper and in the best interests of the Company at any time for the purpose of meeting or addressing any changes in legal requirements or for any other purpose permitted by law. The Committee will seek shareholder approval of any amendment determined to require shareholder approval pursuant to Section 162(m) or any other applicable law, rule regulation or listing requirement.

**10. *Nonassignability.***

No Award or any other right or obligation under the Plan shall be conveyed, assigned, encumbered, or transferred by any Participant or Eligible Participant hereunder and any such attempted conveyance, assignment, encumbrance or transfer shall be void.

**11. *No Right to Continued Employment.***

Nothing in this Plan shall confer upon any employee who is an Executive Officer or Participant any right to continue in the employ of the Company or shall interfere with or restrict in any way the right of the Company to discharge such employee at any time for any reason whatsoever, with or without good cause.

**12. *Effectiveness.***

Upon stockholder approval as described in Section 3, the Plan shall be effective for measurement periods beginning on or after September 3, 2004.

**RULE 13a-14(a) CERTIFICATION OF  
CHIEF EXECUTIVE OFFICER**

I, Steven R. Appleton, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Micron Technology, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - c. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: January 11, 2005

/s/ Steven R. Appleton

Steven R. Appleton

Chief Executive Officer

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**RULE 13a-14(a) CERTIFICATION OF  
CHIEF FINANCIAL OFFICER**

I, W. G. Stover, Jr., certify that:

1. I have reviewed this quarterly report on Form 10-Q of Micron Technology, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - c. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: January 11, 2005

/s/ W. G. Stover, Jr.  
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W. G. Stover, Jr.  
Chief Financial Officer

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**CERTIFICATION OF CHIEF EXECUTIVE OFFICER  
PURSUANT TO 18 U.S.C. 1350**

I, Steven R. Appleton, certify, pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of Micron Technology, Inc. on Form 10-Q for the period ended December 2, 2004, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in such Quarterly Report on Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of Micron Technology, Inc.

Date: January 11, 2005

By: /s/ Steven R. Appleton

Steven R. Appleton

Chairman of the Board, Chief Executive Officer  
and President

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**CERTIFICATION OF CHIEF FINANCIAL OFFICER  
PURSUANT TO 18 U.S.C. 1350**

I, W. G. Stover, Jr., certify, pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of Micron Technology, Inc. on Form 10-Q for the period ended December 2, 2004, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in such Quarterly Report on Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of Micron Technology, Inc.

Date: January 11, 2005

By: /s/ W. G. Stover, Jr.  
W. G. Stover, Jr.  
Vice President of Finance and  
Chief Financial Officer

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