

MAXLINEAR INC  
Form S-1/A  
March 18, 2010  
Table of Contents

As filed with the Securities and Exchange Commission on March 18, 2010

Registration No. 333-162947

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**Amendment No. 5 to**  
**FORM S-1**  
**REGISTRATION STATEMENT**

Under

The Securities Act of 1933

**MaxLinear, Inc.**

(Exact name of Registrant as specified in its charter)

Edgar Filing: MAXLINEAR INC - Form S-1/A

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

**3674**  
(Primary Standard Industrial  
Classification Code Number)

**14-1896129**  
(I.R.S. Employer  
Identification Number)

**2051 Palomar Airport Road, Suite 100**

**Carlsbad, California 92011**

**(760) 692-0711**

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

**Kishore Seendripu, Ph.D.**

**2051 Palomar Airport Road, Suite 100**

**Carlsbad, California 92011**

**(760) 692-0711**

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

*Copies to:*

**Douglas H. Collom**

**Robert F. Kornegay**

**Anthony G. Mauriello**

**Wilson Sonsini Goodrich & Rosati,**

**Professional Corporation**

**12235 El Camino Real, Suite 200**

**San Diego, California 92103**

**Telephone: (858) 350-2300**

**Telecopy: (858) 350-2399**

**Bruce K. Dallas**

**Davis Polk & Wardwell LLP**

**1600 El Camino Real**

**Menlo Park, California 94025**

**Telephone: (650) 752-2000**

**Telecopy: (650) 752-2111**

Edgar Filing: MAXLINEAR INC - Form S-1/A

**Approximate date of commencement of proposed sale to the public:** As soon as practicable after this registration statement becomes effective.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933 check the following box: "

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

\_\_\_\_\_

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

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

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

Large accelerated filer "

Non-accelerated filer  (Do not check if a smaller reporting company)

Accelerated filer "

Smaller reporting company "

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

**Table of Contents**

The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and we are not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

*PROSPECTUS (Subject to Completion)*

*Issued March 18, 2010*

*5,434,783 Shares*

*CLASS A COMMON STOCK*

*MaxLinear, Inc. is offering 4,166,667 shares of its Class A common stock, and the selling stockholders are offering 1,268,116 shares of Class A common stock. We will not receive any proceeds from the sale of shares by the selling stockholders. This is our initial public offering and no public market currently exists for our shares. We anticipate that the initial public offering price will be between \$11.00 and \$13.00 per share.*

*We have applied to list our Class A common stock on the New York Stock Exchange, Inc. under the symbol **MXL**.*

*Investing in our Class A common stock involves risks. See **Risk Factors** beginning on page 8.*

PRICE \$ A SHARE

	<i>Price to Public</i>	<i>Underwriting Discounts and Commissions</i>	<i>Proceeds to MaxLinear</i>	<i>Proceeds to Selling Stockholders</i>
<i>Per Share</i>	\$	\$	\$	\$
<i>Total</i>	\$	\$	\$	\$

We and the selling stockholders have granted the underwriters the right to purchase up to an additional 815,217 shares of Class A common stock to cover over-allotments.

The Securities and Exchange Commission and state securities regulators have not approved or disapproved these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The underwriters expect to deliver the shares of Class A common stock to purchasers on \_\_\_\_\_, 2010.

**MORGAN STANLEY**

**DEUTSCHE BANK SECURITIES**

**UBS INVESTMENT BANK**

**THOMAS WEISEL PARTNERS LLC**

**NEEDHAM & COMPANY, LLC**

, 2010

**Table of Contents**

**Table of Contents****TABLE OF CONTENTS**

	<b>Page</b>
<u>Prospectus Summary</u>	1
<u>Risk Factors</u>	8
<u>Special Note Regarding Forward-Looking Statements</u>	30
<u>Use of Proceeds</u>	31
<u>Dividend Policy</u>	31
<u>Capitalization</u>	32
<u>Dilution</u>	34
<u>Selected Consolidated Financial Data</u>	36
<u>Management's Discussion and Analysis of Financial Condition and Results of Operations</u>	38
<u>Business</u>	58
<u>Management</u>	71
<u>Compensation Discussion and Analysis</u>	80
<u>Certain Relationships and Related Party Transactions</u>	107
<u>Principal and Selling Stockholders</u>	110
<u>Description of Capital Stock</u>	113
<u>Shares Eligible for Future Sale</u>	120
<u>Material U.S. Federal Income and Estate Tax Consequences to Non-U.S. Holders</u>	123
<u>Underwriters</u>	126
<u>Legal Matters</u>	130
<u>Experts</u>	130
<u>Where You Can Find Additional Information</u>	130
<u>Index to Consolidated Financial Statements</u>	F-1

You should rely only on the information contained in this prospectus and in any free writing prospectus prepared by or on behalf of us. Neither we, the selling stockholders nor the underwriters have authorized anyone to provide you with information different from, or in addition to, that contained in this prospectus or any related free writing prospectus. This prospectus is an offer to sell only the shares offered hereby but only under circumstances and in jurisdictions where it is lawful to do so. The information contained in this prospectus is current only as of its date. Our business, financial condition, results of operations and prospects may have changed since that date.

**Until, \_\_\_\_\_, 2010 (the 25th day after the date of this prospectus), all dealers effecting transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This delivery requirement is in addition to a dealer's obligation to deliver a prospectus when acting as an underwriter and with respect to an unsold allotment or subscription.**

For investors outside the United States: Neither we, the selling stockholders nor any of the underwriters have done anything that would permit this offering or possession or distribution of this prospectus in any jurisdiction where action for that purpose is required, other than in the United States. You are required to inform yourselves about and to observe any restrictions relating to this offering and the distribution of this prospectus outside of the United States.

**Table of Contents**

**PROSPECTUS SUMMARY**

*This summary highlights information contained in greater detail elsewhere in this prospectus. This summary does not contain all the information that you should consider before investing in our Class A common stock. You should read the entire prospectus carefully, including Risk Factors beginning on page 8 and our consolidated financial statements and related notes included elsewhere in this prospectus, before making an investment decision.*

**MAXLINEAR, INC.**

We are a provider of highly integrated, radio-frequency analog and mixed-signal semiconductor solutions for broadband communications applications. Our high performance radio-frequency, or RF, receiver products capture and process digital and analog broadband signals to be decoded for various applications. These products include both RF receivers and RF receiver systems-on-chip, or SoCs, which incorporate our highly integrated radio system architecture and the functionality necessary to demodulate broadband signals. Our initial products have principally been incorporated into, and our revenue has been largely attributable to, mobile handsets in Japan, in-vehicle entertainment devices in Japan and set top boxes in Europe. As we have expanded our product portfolio, however, we have developed products that enable the display of broadband video in a wide range of additional electronic devices, including cable boxes, digital televisions, personal computers and netbooks. We combine our high performance RF and mixed-signal semiconductor design skills with our expertise in digital communications systems, software and embedded systems to provide highly integrated semiconductor devices that are manufactured using low-cost complementary metal oxide semiconductor, or CMOS, process technology.

We are a fabless semiconductor company and primarily sell our products through distributors to original equipment manufacturers, or OEMs, module makers and original design manufacturers, or ODMs. During 2009, we sold our products to more than 35 end user customers, including Panasonic Corporation, Murata Manufacturing Co., Ltd., MTC Co., Ltd., Alps Electric Co., Ltd., Mico Electrical (Hong Kong) Ltd., and Sony Corporation. From inception through December 31, 2009, we shipped 75 million RF receivers and RF receiver SoCs.

For the year ended December 31, 2009, approximately 96% of our net revenue related to sales through distributors, all of which are located in Asia. Tomen Electronics Corporation was our largest distributor, accounting for 54% of our total net revenue for 2009.

Recent technological advances in the display and broadcast TV markets are driving dramatic changes in the way consumers access and experience multimedia content. These advances include the ongoing worldwide conversion from analog to digital television broadcasting; the increasing availability of high-speed broadband and wireless connectivity; rapid improvements in display technology; the transition from standard to high definition television; and the proliferation of multimedia content accessible through terrestrial broadcast digital television, cable, satellite and telecommunications carrier services. As a result, system designers are adding enhanced television functionality to set top boxes and digital televisions. Television also is being incorporated in stationary and mobile electronic devices that previously did not include this functionality, such as mobile handsets, PCs and netbooks. Each electronic device equipped with broadcast digital TV or video functionality must incorporate one or more RF receivers that reliably capture and process broadcast signals. As a result of these trends, RF receiver technology is being deployed in a variety of devices for the cable, consumer, mobile and automotive markets. RF receivers incorporate RF, digital and analog signal processing functions. According to IMS Research, in a work commissioned on our behalf, as of February 10, 2010, the worldwide market for silicon tuners and demodulators is projected to be \$2.4 billion in 2010 and \$3.4 billion in 2013, representing a 13% compound annual growth rate.





## **Table of Contents**

For the past several decades, the RF receiver technology of choice has been the electro-mechanical can tuner. Despite field-proven performance attributes such as signal clarity, can tuners are often prohibitively large in size and have high power consumption, low reliability and high cost, especially in systems requiring multiple RF receivers in a single device. In response, silicon RF receiver solutions have been developed that eliminate some of the mechanical and discrete electronic components found in can tuners. However, existing silicon RF receivers typically have been designed using a conventional radio system architecture that employs multiple external discrete components, although fewer than in traditional can tuners. In addition, these silicon RF receivers have been fabricated using expensive, special purpose semiconductor manufacturing processes such as gallium arsenide and silicon germanium process technologies.

We combine our high performance analog and mixed-signal semiconductor design skills with our expertise in digital communications systems, software and embedded systems to develop RF receivers and RF receiver SoCs. Our solutions have the following key features:

***Proprietary Radio Architecture.*** Using our proprietary CMOS-based radio architecture, we leverage both analog and digital signal processing to improve system performance across multiple products.

***High Signal Clarity Performance.*** We design our RF receivers and RF receiver SoCs to provide high signal clarity performance under the wide range of challenging signal conditions encountered in cable, consumer, mobile and in-vehicle applications. We believe that signal clarity is more critical in television compared to other communications applications such as voice and data, because signal loss and interference have a more adverse impact on the end user experience of television.

***Highly Integrated Solution.*** Our products integrate on a single chip the functionality associated with traditional analog and digital integrated circuits and other expensive discrete components. This high level of integration has the cost benefits associated with smaller silicon die area, fewer external components and better power efficiency.

***Low Power.*** Our products enable our customers to reduce power consumption in consumer electronic devices without compromising the stringent performance requirements of applications such as broadcast television. The benefits of low power consumption increase with the number of RF receivers included in a system.

***Scalable Platform.*** Our product families share a highly modular, core radio system architecture, which enables us to offer RF receiver and RF receiver SoC solutions that meet the requirements of a wide variety of geographies, broadcast standards and applications. As a result, our customers can minimize the design resources required to develop applications for multiple market segments.

***Space Efficient Solution.*** Our highly integrated CMOS-based RF receivers and RF receiver SoCs have an extremely small silicon die size, require minimal external components and consume very little power. This enables our customers to design multi-receiver applications, such as cable set top boxes, in an extremely small form factor.

Our objective is to be the leading provider of mixed signal RF receivers and RF receiver SoC solutions for stationary and mobile broadband video and data communications applications and, in the future, to leverage this core competency to expand into other communications markets with similar performance requirements. The key elements of our strategy are:

***Extend Technology Leadership in RF Receivers and RF Receiver SoCs.*** We believe that our success has been, and will continue to be, largely attributable to our RF and mixed signal design capability, which we leverage to develop high-performance, low-cost semiconductor solutions for broadband communications applications.

***Leverage and Expand our Existing Customer Base.*** We target customers who are leaders in their respective markets. We intend to continue to focus on sales to customers who are leaders in our current

## **Table of Contents**

target markets and to build on our relationships with these leading customers to define and enhance our product roadmap.

**Target Additional High-Growth Markets.** We intend to leverage our core competency in developing highly integrated RF receivers and RF receiver SoCs in standard CMOS process technology to address additional segments of the broadband communications and connectivity markets that we believe offer high growth potential.

**Expand Global Presence.** Due to the global nature of our supply chain and customer locations, we intend to continue to expand our sales, design and technical support organization both in the United States and overseas.

**Attract and Retain Top Talent.** We are committed to recruiting and retaining highly talented personnel with proven expertise in the design, development, marketing and sales of communications integrated circuits. We believe that our ability to attract the best engineers is a critical component of our future growth and success in our chosen markets.

## **Risks Affecting Us**

Our business is subject to numerous risks, which are highlighted in the section entitled **Risk Factors** immediately following this prospectus summary. These risks represent challenges to the successful implementation of our strategy and to the growth and future profitability of our business. Some of these risks are:

we depend on a limited number of customers for a substantial portion of our revenue;

we rely on third parties for our manufacturing operations, including wafer fabrication, assembly and test;

we face intense competition and expect competition to increase in the future;

our business depends in part on the timing and development of the global transition from analog to digital television;

we need to develop and introduce new or enhanced products on a timely basis;

we need to penetrate new and existing markets in order to continue to grow our business; and

your ability to influence corporate matters that require stockholder approval will be limited by our dual class common stock structure and the substantial high vote Class B common stock ownership position of our founders, executive officers, employees and directors and their affiliates who will, in the aggregate, own 77% of our common stock on an economic basis and 92% of the total votes on certain matters after giving effect to the offering See **Description of Capital Stock**.

## **Corporate History and Information**

## Edgar Filing: MAXLINEAR INC - Form S-1/A

We incorporated in the State of Delaware in September 2003. Our executive offices are located at 2051 Palomar Airport Road, Suite 100, Carlsbad, California 92011, and our telephone number is (760) 692-0711. Our website address is [www.MaxLinear.com](http://www.MaxLinear.com). Information contained on, or accessible through, our website or the websites of the selling stockholders is not incorporated by reference into this prospectus, and should not be considered to be part of this prospectus.

In this prospectus, unless the context otherwise requires, the Company, we, us and our refer to MaxLinear, Inc. and its subsidiaries.

The names MxL and digIQ are our registered trademarks. All other trademarks and trade names appearing in this prospectus are the property of their respective owners.

**Table of Contents**

**THE OFFERING**

Class A common stock offered by us	4,166,667 shares
Class A common stock offered by the selling stockholders	1,268,116 shares
Class A common stock to be outstanding after this offering	5,434,783 shares (6,250,000 if the underwriters exercise their over-allotment in full)
Class B common stock to be outstanding after this offering	23,994,947 shares (23,804,730 if the underwriters exercise their over-allotment in full)
Total Class A common stock and Class B common stock to be outstanding after this offering	29,429,730 shares
Over-allotment option	815,217 shares of Class A common stock
Use of proceeds	We intend to use the net proceeds to us from this offering for general corporate purposes, including working capital. We also may use a portion of the net proceeds to us to acquire complementary businesses, products, services or technologies. We will not receive any of the net proceeds from the sale of shares of Class A common stock by the selling stockholders. See Use of Proceeds.
Proposed New York Stock Exchange symbol	MXL

The number of shares of our Class A and Class B common stock to be outstanding following this offering is based on 25,263,063 shares of our common stock outstanding as of December 31, 2009 and excludes:

4,951,385 shares of our Class B common stock issuable upon the exercise of options outstanding as of December 31, 2009 under our 2004 Stock Plan, with a weighted average exercise price of \$3.38 per share;

208,692 shares of our Class B common stock issuable upon the exercise of options granted after December 31, 2009 under our 2004 Stock Plan, with a weighted average exercise price of \$9.03 per share;

9,319,269 shares of our Class A common stock reserved for future issuance under our stock-based compensation plans, including 277,678 shares under our 2004 Stock Plan and 9,041,591 shares of our Class A common stock reserved for future issuance under our 2010 Equity Incentive Plan, which will become effective in connection with this offering and contains provisions that will automatically increase its share reserve each year, as more fully described in Management Employee Benefit Plans ; and

## Edgar Filing: MAXLINEAR INC - Form S-1/A

645,827 shares of our Class A common stock reserved for future issuance under our 2010 Employee Stock Purchase Plan, which will become effective in connection with this offering and contains provisions that will automatically increase its share reserve each year, as more fully described in Management Employee Benefit Plans.

**Table of Contents**

Unless otherwise noted, the information in this prospectus reflects and assumes the following:

the conversion of all outstanding shares of our convertible preferred stock into an aggregate of 14,526,083 shares of Class B common stock upon the closing of this offering;

no exercise of options outstanding as of December 31, 2009;

the filing of our amended and restated certificate of incorporation immediately prior to the effectiveness of this offering; and

no exercise by the underwriters of their over-allotment option.

Two managing partners of Mission Ventures, one of our principal stockholders, including Edward E. Alexander, who is a member of our Board of Directors, have indicated their interest in purchasing up to an aggregate of \$875,000 of our Class A common stock in the offering from the underwriters, at the initial public offering price.



**Table of Contents****SUMMARY CONSOLIDATED FINANCIAL DATA**

We have derived the summary consolidated statement of operations data for the years ended December 31, 2007, 2008 and 2009 from our audited consolidated financial statements included elsewhere in this prospectus. Our historical results are not necessarily indicative of the results that may be expected in the future.

	Years Ended December 31,		
	2007	2008	2009
	(in thousands, except per share amounts)		
<b>Consolidated Statement of Operations Data:</b>			
Net revenue	\$ 9,696	\$ 31,331	\$ 51,350
Cost of net revenue	4,896	12,675	17,047
<b>Gross profit</b>	4,800	18,656	34,303
<b>Operating expenses:</b>			
Research and development	9,924	14,310	19,790
Selling, general and administrative	4,296	6,356	9,921
Total operating expenses	14,220	20,666	29,711
(Loss) income from operations	(9,420)	(2,010)	4,592
Interest income	654	179	51
Interest expense	(78)	(74)	(52)
Other income (expense), net	135	(9)	(32)
<b>(Loss) income before income taxes</b>	(8,709)	(1,914)	4,559
Provision for income taxes			230
<b>Net (loss) income</b>	(8,709)	(1,914)	4,329
Net income allocable to preferred stockholders			(3,691) <sup>(1)</sup>
<b>Net (loss) income attributable to common stockholders</b>	\$ (8,709)	\$ (1,914)	\$ 638
Net (loss) income per share attributable to common stockholders:			
Basic	\$ (0.93)	\$ (0.19)	\$ 0.06
Diluted	\$ (0.93)	\$ (0.19)	\$ 0.06
Shares used to compute net (loss) income per share attributable to common stockholders:			
Basic	9,364	9,861	10,129
Diluted	9,364	9,861	11,512
Pro forma net income per share attributable to common stockholders (unaudited):			
Basic			\$ 0.18
Diluted			\$ 0.17
Shares used to compute pro forma net income per share attributable to common stockholders (unaudited):			

Basic	24,655
Diluted	26,038

- <sup>(1)</sup> Please see Note 1 to our consolidated financial statements for an explanation of the method used to calculate net income allocable to preferred stockholders and net (loss) income attributable to common stockholders, including the method used to calculate the number of shares used in the computation of the per share amounts.

**Table of Contents**

	As of December 31, 2009		
	Actual	Pro Forma <sup>(1)</sup> (in thousands) (unaudited)	Pro Forma As Adjusted <sup>(2)(3)(4)</sup>
<b>Consolidated Balance Sheet Data:</b>			
Cash	\$ 17,921	\$ 17,921	\$ 61,368
Working capital	11,029	11,029	56,067
Total assets	35,773	35,773	76,882
Convertible preferred stock	35,351		
Total stockholders (deficit) equity	(19,475)	15,876	58,576

- (1) The pro forma balance sheet data in the table above reflects the conversion of all outstanding shares of convertible preferred stock into Class B common stock.
- (2) The pro forma as adjusted balance sheet data in the table above reflects the pro forma conversion described above plus the sale of shares of our Class A common stock in this offering and the application of the net proceeds at an initial public offering price of \$12.00 per share, the midpoint of the range set forth on the cover page of this prospectus, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.
- (3) A \$1.00 increase (decrease) in the assumed initial public offering price of \$12.00 per share, the midpoint of the range set forth on the cover page of this prospectus, would increase (decrease) our pro forma as adjusted net tangible book value by \$3.9 million, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. Each increase (decrease) of 1 million shares in the number of shares offered by us would increase (decrease) our pro forma as adjusted net tangible book value by approximately \$11.2 million. The pro forma as adjusted information discussed above is illustrative only and will be adjusted based on the actual public offering price and other terms of this offering determined at pricing.
- (4) As of December 31, 2009, we had deferred offering costs of \$2.3 million of which \$0.7 million had been paid and \$1.6 million was accrued. These amounts are reflected in the application of the proceeds from this offering.

**Table of Contents**

**RISK FACTORS**

*Investing in our Class A common stock involves a high degree of risk. You should consider carefully the risks and uncertainties described below, together with all of the other information in this prospectus, including our consolidated financial statements and related notes, before deciding whether to purchase shares of our Class A common stock. If any of the following risks is realized, our business, financial condition, results of operations and prospects could be materially and adversely affected. In that event, the price of our Class A common stock could decline and you could lose part or all of your investment.*

**Risks Related to Our Business**

*We depend on a limited number of customers for a substantial portion of our revenue, and the loss of, or a significant reduction in orders from, one or more of our major customers could have a material adverse effect on our revenue and operating results.*

In the year ended December 31, 2009, Panasonic, Murata and MTC accounted for 23%, 13% and 12%, respectively, of our net revenue, and our ten largest customers collectively accounted for 83% of our net revenue. Our operating results for the foreseeable future will continue to depend on sales to a relatively small number of customers and on the ability of these customers to sell products that incorporate our RF receivers or RF receiver SoCs. In the future, these customers may decide not to purchase our products at all, may purchase fewer products than they did in the past, or may alter their purchasing patterns. Factors that could affect our revenue from these large customers include the following:

substantially all of our sales to date have been made on a purchase order basis, which permits our customers to cancel, change or delay product purchase commitments with little or no notice to us and without penalty; and

some of our customers have sought or are seeking relationships with current or potential competitors which may affect their purchasing decisions.

Delays in development could impair our relationships with our strategic customers and negatively impact sales of the products under development. Moreover, it is possible that our customers may develop their own product or adopt a competitor's solution for products that they currently buy from us. If that happens, our sales would decline and our business, financial condition and results of operations could be materially and adversely affected.

In addition, our relationships with some customers may deter other potential customers who compete with these customers from buying our products. To attract new customers or retain existing customers, we may offer these customers favorable prices on our products. In that event, our average selling prices and gross margins would decline. The loss of a key customer, a reduction in sales to any key customer or our inability to attract new significant customers could seriously impact our revenue and materially and adversely affect our results of operations.

*We face intense competition and expect competition to increase in the future, which could have an adverse effect on our revenue, revenue growth rate, if any, and market share.*

## Edgar Filing: MAXLINEAR INC - Form S-1/A

The global semiconductor market in general, and the RF receiver market in particular, are highly competitive. We compete in different target markets to various degrees on the basis of a number of principal competitive factors, including our products' performance, features and functionality, energy efficiency, size, ease of system design, customer support, product roadmap, reputation, reliability and price, as well as on the basis of our customer support, the quality of our product roadmap and our reputation. We expect competition to increase and intensify as more and larger semiconductor companies as well as the internal resources of large, integrated

**Table of Contents**

original equipment manufacturers, or OEMs, enter our markets. Increased competition could result in price pressure, reduced profitability and loss of market share, any of which could materially and adversely affect our business, revenue, revenue growth rates and operating results.

As our products are integrated into a variety of stationary and mobile electronic devices, we compete with suppliers of both can tuners and traditional silicon RF receivers. Our competitors range from large, international companies offering a wide range of semiconductor products to smaller companies specializing in narrow markets and internal engineering groups within mobile device, television and STB manufacturers, some of which may be our customers. Our primary competitors include Analog Devices, Inc., Broadcom Corporation, Entropic Communications, Inc., Maxim Integrated Products, Inc., Microtune, Inc., Newport Media Inc., NXP B.V., Silicon Laboratories Inc. and Xceive Corporation. We expect competition in the markets in which we participate to increase in the future as existing competitors improve or expand their product offerings. In addition, we believe that a number of other public and private companies are in the process of developing competing products for digital television and other broadband communication applications. Because our products often are building block semiconductors which provide functions that in some cases can be integrated into more complex integrated circuits we also face competition from manufacturers of integrated circuits, some of which may be existing customers that develop their own integrated circuit products.

Our ability to compete successfully depends on elements both within and outside of our control, including industry and general economic trends. During past periods of downturns in our industry, competition in the markets in which we operate intensified as manufacturers of semiconductors reduced prices in order to combat production overcapacity and high inventory levels. Many of our competitors have substantially greater financial and other resources with which to withstand similar adverse economic or market conditions in the future. Moreover, the competitive landscape is changing as a result of consolidation within our industry as some of our competitors have merged with or been acquired by other competitors, and other competitors have begun to collaborate with each other. These developments may materially and adversely affect our current and future target markets and our ability to compete successfully in those markets.

***Our business, revenue and revenue growth, if any, will depend in part on the timing and development of the global transition from analog to digital television, which is subject to numerous regulatory and business risks outside our control.***

For the year ended December 31, 2009, a substantial majority of our revenue was attributable to demand for our products in the consumer market, consisting principally of sales of products ultimately incorporated in digital to analog converter boxes for sale to consumers in the European Union, or EU, as well as in automotive navigation displays and digital televisions in Japan. We expect a significant portion of our revenue in future periods to depend on the demand for digital to analog converter boxes, in Europe and for automotive digital TV, PCTV and digital televisions in Japan. In contrast to the United States, where the transition from analog to digital television occurred on a national basis in June 2009, in Europe the digital transition is being phased in on a local and regional basis and is expected to occur over several years. Most countries in Western Europe are expected to convert completely to digital television by 2012, with the transition in Eastern Europe expected to continue through 2015. Similarly, in Japan there is a government mandate to completely switch off analog TV transmissions by 2012. As a result, our future revenue will depend in part on government mandates requiring conversion from analog to digital television and on the timing and implementation of those mandates. If the transition to digital TV standards did not take place or were substantially delayed in Europe or other international markets, our business, revenue, operating results and financial condition would be materially and adversely affected.

## **Table of Contents**

***If we fail to develop and introduce new or enhanced products on a timely basis, our ability to attract and retain customers could be impaired and our competitive position could be harmed.***

We operate in a dynamic environment characterized by rapidly changing technologies and industry standards and technological obsolescence. To compete successfully, we must design, develop, market and sell new or enhanced products that provide increasingly higher levels of performance and reliability and meet the cost expectations of our customers. The introduction of new products by our competitors, the market acceptance of products based on new or alternative technologies, or the emergence of new industry standards could render our existing or future products obsolete. Our failure to anticipate or timely develop new or enhanced products or technologies in response to technological shifts could result in decreased revenue and our competitors winning more competitive bid processes, known as design wins. In particular, we may experience difficulties with product design, manufacturing, marketing or certification that could delay or prevent our development, introduction or marketing of new or enhanced products. If we fail to introduce new or enhanced products that meet the needs of our customers or penetrate new markets in a timely fashion, we will lose market share and our operating results will be adversely affected.

***If we fail to penetrate new markets, our revenue, revenue growth rate, if any, and financial condition could be materially and adversely affected.***

Currently, we sell most of our products to Japanese manufacturers of applications for the mobile electronic device market and the automotive TV display market in Japan, and to Chinese manufacturers of set top boxes for sale in the European market. Our future revenue growth, if any, will depend in part on our ability to expand beyond these markets with our RF receivers and RF receiver SoCs, particularly in markets for cable set top boxes, automotive entertainment, set top boxes for internet protocol television, or IPTV, and digital television on personal computers, or PCTV. Each of these markets presents distinct and substantial risks. If any of these markets does not develop as we currently anticipate or if we are unable to penetrate them successfully, it could materially and adversely affect our revenue and revenue growth rate, if any.

In the future, we expect cable set top boxes to represent our largest North American target market. The North American cable set top box market is dominated by only a few OEMs, including Motorola Inc., Cisco Systems, Inc., Arris Group, Inc. and Thomson S.A. These OEMs are large, multinational corporations with substantial negotiating power relative to us. Securing design wins with any of these companies will require a substantial investment of our time and resources. Even if we succeed, additional testing and operational certifications will be required by the OEMs' customers, which include large cable television companies such as Comcast Corporation and Time Warner Cable Inc. In addition, our products will need to be compatible with other components in our customers' designs, including components produced by our competitors or potential competitors. There can be no assurance that these other companies will support or continue to support our products.

Finally, the markets for IPTV and PCTV are new, still developing and relatively small. We have sold limited quantities of our products into these markets and cannot predict how or to what extent demand for our products in these markets will develop.

If we fail to penetrate these or other new markets upon which we target our resources, our revenue and revenue growth rate, if any, likely will decrease over time and our financial condition could suffer.

***To date, a substantial portion of our revenue has been attributable to demand for our products in markets for mobile electronic devices and the growth of these overall markets. These markets may not grow and develop in ways that we currently expect and are subject to substantial regulatory and market risks, any of which could have a material adverse effect on our business, revenue and operating results.***

Edgar Filing: MAXLINEAR INC - Form S-1/A

Sales of our products to customers in the mobile electronic device market accounted for a significant portion of our revenue for the year ended December 31, 2009. The development of the market for mobile digital



## **Table of Contents**

television will depend, among other factors, on regulatory decisions concerning adoption of mobile digital television standards, decisions by regulators and service providers concerning mobile television product offerings and agreements between service providers and content providers relating to economic aspects of mobile digital television broadcasts. Predicting how the global market for mobile digital television will develop is difficult because it is relatively new and subject to substantial regulatory and market risks, which vary from country to country.

Because of differences in international broadcast standards, government regulations and incentive structures, we expect substantial differences in the development of mobile television markets across different geographic markets. Major geographic markets have selected different broadcast standards and, once a standard is chosen, substantial infrastructure changes may be required to implement the standard and make mobile television generally available. We believe that it is unlikely that many service providers will commit to make mobile digital television available before a standard is selected and an implementation schedule established for their geographic service markets. In March 2008, the EU endorsed its standard for digital television, DVB-H; however, this spectrum is not yet available in all EU member countries. In October 2009, North America adopted ATSC-M/H, which is also referred to as A/153, as a digital mobile broadcast standard. Implementation of both DVB-H and ATSC-M/H will require substantial infrastructure improvements.

In addition to risks relating to standard-setting, we also expect governmental regulation of the pricing and content of mobile broadcasting and business decisions by service providers and content providers to have a material impact on the development of individual markets for mobile electronic devices. In 2009 and 2008, substantially all of the digital mobile television revenue was attributable to the Japanese market. From April 2006 until the end of March 2008, the Japanese government required that digital television programs broadcast on terrestrial digital television also be offered free of charge to the Japanese consumers on their mobile handsets. Moreover, until recently, Japanese service providers implemented pricing structures that subsidized the purchase of new handheld devices. In contrast, the European market has been characterized by subscription-based mobile digital television services, resulting in slower consumer adoption rates. Development of the European market has also been adversely affected by delays in agreements between service providers and content providers concerning the economic terms on which service providers will make these broadcasts available to subscribers. In China, conditional access issues relating to government control of content availability may limit the development of its mobile digital television market.

A portion of our mobile electronics customers supply the automotive entertainment market, which presents distinct risks. We cannot predict whether a substantial market will develop for broadcast digital television in automobiles, or if it does develop, whether we will be able to compete successfully in this market. Moreover, even if a market for broadcast digital television in automobiles does develop, government safety regulations could prohibit or limit the availability of broadcast television in automobiles. In addition, customers in the automotive market establish very demanding specifications for quality, performance and reliability. Minor product defects could damage our reputation in the automobile industry and result in a loss of future sales, even with customers with which we already may have obtained design wins.

As a result, we are unable to predict the timing or direction of the development of mobile digital television markets with any accuracy. In addition, because some of our products are not limited in the devices or geographic areas in which they may be deployed and we sell our products principally to distributors for subsequent sale to end user manufacturers, we cannot always determine with accuracy how, where or into which applications our products are being deployed. Delays in the development of, or unexpected developments in, these markets could have an adverse effect on order activity by mobile device manufacturers and, as a result, on our business, revenue, operating results and financial condition.

**Table of Contents**

*We rely on a limited number of third parties to manufacture, assemble and test our products, and the failure to manage our relationships with our third-party contractors successfully could adversely affect our ability to market and sell our products.*

We do not have our own manufacturing facilities. We operate an outsourced manufacturing business model that utilizes third-party foundry and assembly and test capabilities. As a result, we rely on third-party foundry wafer fabrication and assembly and test capacity, including sole sourcing for many components or products. Currently, all of our products are manufactured by United Microelectronics Corporation, or UMC, at foundries in Taiwan and Singapore. We also use third-party contractors for all of our assembly and test operations, including Advanced Semiconductor Engineering Inc., Siliconware Precision Industries Co., Ltd., Unisem (M) Berhad, Jiangyin Changdian Advanced Packaging Co., Ltd., Casio Micronics Co., Ltd., Giga Solution Technology Co., Ltd. and SIGURD Microelectronics Corp.

Relying on third party manufacturing, assembly and testing presents significant risks to us, including the following:

failure by us, our customers, or their end customers to qualify a selected supplier;

capacity shortages during periods of high demand;

reduced control over delivery schedules and quality;

shortages of materials;

misappropriation of our intellectual property;

limited warranties on wafers or products supplied to us; and

potential increases in prices.

The ability and willingness of our third-party contractors to perform is largely outside our control. If one or more of our contract manufacturers or other outsourcers fails to perform its obligations in a timely manner or at satisfactory quality levels, our ability to bring products to market and our reputation could suffer. For example, in the event that manufacturing capacity is reduced or eliminated at one or more facilities, including as a response to the recent worldwide decline in the semiconductor industry, manufacturing could be disrupted, we could have difficulties fulfilling our customer orders and our net revenue could decline. In addition, if these third parties fail to deliver quality products and components on time and at reasonable prices, we could have difficulties fulfilling our customer orders, our net revenue could decline and our business, financial condition and results of operations would be adversely affected.

Additionally, our manufacturing capacity may be similarly reduced or eliminated at one or more facilities due to the fact that our fabrication and assembly and test contractors are all located in the Pacific Rim region, principally in Taiwan and Singapore. The risk of earthquakes in these geographies is significant due to the proximity of major earthquake fault lines, and Taiwan in particular is also subject to typhoons and other Pacific storms. Earthquakes, fire, flooding, or other natural disasters in Taiwan or the Pacific Rim region, or political unrest, war, labor strikes, work stoppages or public health crises, such as outbreaks of H1N1 flu, in countries where our contractors' facilities are located could result in the disruption of our foundry, assembly or test capacity. Any disruption resulting from these events could cause significant delays in shipments of

our products until we are able to shift our manufacturing, assembly or test from the affected contractor to another third-party vendor. There can be no assurance that alternative capacity could be obtained on favorable terms, if at all.

## **Table of Contents**

***We do not have any long-term supply contracts with our contract manufacturers or suppliers, and any disruption in our supply of products or materials could have a material adverse effect on our business, revenue and operating results.***

We currently do not have long-term supply contracts with any of our third-party vendors, including UMC. We make substantially all of our purchases on a purchase order basis, and neither UMC nor our other contract manufacturers are required to supply us products for any specific period or in any specific quantity. We expect that it would take approximately nine to twelve months to transition performance of our foundry or assembly services to new providers. Such a transition would likely require a qualification process by our customers or their end customers. We generally place orders for products with some of our suppliers approximately four to five months prior to the anticipated delivery date, with order volumes based on our forecasts of demand from our customers. Accordingly, if we inaccurately forecast demand for our products, we may be unable to obtain adequate and cost-effective foundry or assembly capacity from our third-party contractors to meet our customers' delivery requirements, or we may accumulate excess inventories. On occasion, we have been unable to adequately respond to unexpected increases in customer purchase orders and therefore were unable to benefit from this incremental demand. None of our third-party contractors has provided any assurance to us that adequate capacity will be available to us within the time required to meet additional demand for our products.

To address capacity considerations, we are in the process of qualifying another semiconductor fabricator, but this qualification is not complete. Qualification will not occur if we identify a defect in the fabricator's manufacturing process or if our customers choose not to invest the time and expense required to qualify the proposed fabricator. If full qualification of the fabricator does not occur, we may not be able to sell all of the materials produced by this fabricator or to fulfill demand for our products, which would adversely affect our business, revenue and operating results. In addition, the resulting write-off of unusable inventories would have an adverse effect on our operating results.

***Average selling prices of our products could decrease rapidly, which could have a material adverse effect on our revenue and gross margins.***

We may experience substantial period-to-period fluctuations in future operating results due to the erosion of our average selling prices. From time to time, we have reduced the average unit price of our products in anticipation of competitive pricing pressures, new product introductions by us or our competitors and for other reasons. We expect that we will have to do so again in the future. If we are unable to offset any reductions in our average selling prices by increasing our sales volumes or introducing new products with higher operating margins, our revenue and gross margins will suffer. To maintain our gross margins, we must develop and introduce new products and product enhancements on a timely basis and continually reduce our and our customers' costs. Failure to do so would cause our revenue and gross margins to decline.

***Due to our limited operating history and our sell-through revenue recognition policy, we may have difficulty accurately predicting our future revenue and appropriately budgeting our expenses.***

We were incorporated in 2003 and did not begin to generate product revenue until the end of the fourth quarter of 2006. As a result, we have only a limited operating history from which to predict future revenue. This limited operating experience, combined with the rapidly evolving nature of the markets in which we sell our products, substantial uncertainty concerning how these markets may develop and other factors beyond our control, reduces our ability to accurately forecast quarterly or annual revenue. In addition, because we record revenue from sales when our products are shipped to end customers by our distributors, some of the revenue we record in a quarter may be derived from sales of products shipped to distributors during previous quarters. This revenue recognition policy reduces our ability to forecast quarterly or annual revenue accurately. We are currently expanding our staffing and increasing our expense levels in anticipation of future revenue growth. If our revenue does not increase as anticipated, we could incur significant losses due to our higher expense levels if we are not able to decrease our expenses in a timely manner to offset any shortfall in future revenue.



## **Table of Contents**

*We may not sustain our growth rate, and we may not be able to manage any future growth effectively.*

We have experienced significant growth in a short period of time. Our net revenue increased from approximately \$9.7 million in 2007 to approximately \$51.4 million in 2009. We may not achieve similar growth rates in future periods. You should not rely on our operating results for any prior quarterly or annual periods as an indication of our future operating performance. If we are unable to maintain adequate revenue growth, our financial results could suffer and our stock price could decline.

To manage our growth successfully and handle the responsibilities of being a public company, we believe we must effectively, among other things:

recruit, hire, train and manage additional qualified engineers for our research and development activities, especially in the positions of design engineering, product and test engineering and applications engineering;

add additional sales personnel and expand sales offices;

implement and improve our administrative, financial and operational systems, procedures and controls; and

enhance our information technology support for enterprise resource planning and design engineering by adapting and expanding our systems and tool capabilities, and properly training new hires as to their use.

If we are unable to manage our growth effectively, we may not be able to take advantage of market opportunities or develop new products and we may fail to satisfy customer requirements, maintain product quality, execute our business plan or respond to competitive pressures.

*Our customers require our products and our third-party contractors to undergo a lengthy and expensive qualification process which does not assure product sales.*

Prior to purchasing our products, our customers require that both our products and our third-party contractors undergo extensive qualification processes, which involve testing of the products in the customer's system and rigorous reliability testing. This qualification process may continue for six months or more. However, qualification of a product by a customer does not assure any sales of the product to that customer. Even after successful qualification and sales of a product to a customer, a subsequent revision to the RF receiver or RF receiver SoC, changes in our customer's manufacturing process or our selection of a new supplier may require a new qualification process, which may result in delays and in us holding excess or obsolete inventory. After our products are qualified, it can take an additional six months or more before the customer commences volume production of components or devices that incorporate our products. Despite these uncertainties, we devote substantial resources, including design, engineering, sales, marketing and management efforts, to qualifying our products with customers in anticipation of sales. If we are unsuccessful or delayed in qualifying any of our products with a customer, sales of this product to the customer may be precluded or delayed, which may impede our growth and cause our business to suffer.

*We are subject to risks associated with our distributors' product inventories and product sell-through. Should any of our distributors cease or be forced to stop distributing our products, our business would suffer.*

We currently sell substantially all of our products to customers through our distributors, who maintain their own inventories of our products. Sales to distributors accounted for 96% of our net revenue in the year ended December 31, 2009. If our distributors are unable to sell an adequate amount of their inventories of our products in a given quarter to manufacturers and end users or if they decide to decrease their inventories of our products for any reason, our sales to these distributors and our revenue may decline. In addition, if some distributors decide to purchase more of our products than are required to satisfy end customer demand in any particular

## **Table of Contents**

quarter, inventories at these distributors would grow in that quarter. These distributors likely would reduce future orders until inventory levels realign with end customer demand, which could adversely affect our product revenue in a subsequent quarter.

Our reserve estimates with respect to the products stocked by our distributors are based principally on reports provided to us by our distributors, typically on a monthly basis. To date, we believe that this data typically has been accurate. To the extent that this resale and channel inventory data is inaccurate or not received in a timely manner, we may not be able to make reserve estimates for future periods accurately or at all.

*We are subject to order and shipment uncertainties, and differences between our estimates of customer demand and product mix and our actual results could negatively affect our inventory levels, sales and operating results.*

Our revenue is generated on the basis of purchase orders with our customers rather than long-term purchase commitments. In addition, our customers can cancel purchase orders or defer the shipments of our products under certain circumstances. Our products are manufactured using a silicon foundry according to our estimates of customer demand, which requires us to make separate demand forecast assumptions for every customer, each of which may introduce significant variability into our aggregate estimate. We have limited visibility into future customer demand and the product mix that our customers will require, which could adversely affect our revenue forecasts and operating margins. Moreover, because our target markets are relatively new, many of our customers have difficulty accurately forecasting their product requirements and estimating the timing of their new product introductions, which ultimately affects their demand for our products. Historically, because of this limited visibility, actual results have been different from our forecasts of customer demand. Some of these differences have been material, leading to excess inventory or product shortages and revenue and margin forecasts above those we were actually able to achieve. These differences may occur in the future, and the adverse impact of these differences between forecasts and actual results could grow if we are successful in selling more products to some customers. In addition, the rapid pace of innovation in our industry could render significant portions of our inventory obsolete. Excess or obsolete inventory levels could result in unexpected expenses or increases in our reserves that could adversely affect our business, operating results and financial condition. Conversely, if we were to underestimate customer demand or if sufficient manufacturing capacity were unavailable, we could forego revenue opportunities, potentially lose market share and damage our customer relationships. In addition, any significant future cancellations or deferrals of product orders or the return of previously sold products due to manufacturing defects could materially and adversely impact our profit margins, increase our write-offs due to product obsolescence and restrict our ability to fund our operations.

*Winning business is subject to lengthy competitive selection processes that require us to incur significant expenditures. Even if we begin a product design, a customer may decide to cancel or change its product plans, which could cause us to generate no revenue from a product and adversely affect our results of operations.*

We are focused on securing design wins to develop RF receivers and RF receiver SoCs for use in our customers' products. These selection processes typically are lengthy and can require us to incur significant design and development expenditures and dedicate scarce engineering resources in pursuit of a single customer opportunity. We may not win the competitive selection process and may never generate any revenue despite incurring significant design and development expenditures. These risks are exacerbated by the fact that some of our customers' products likely will have short life cycles. Failure to obtain a design win could prevent us from offering an entire generation of a product, even though this has not occurred to date. This could cause us to lose revenue and require us to write off obsolete inventory, and could weaken our position in future competitive selection processes.

After securing a design win, we may experience delays in generating revenue from our products as a result of the lengthy development cycle typically required. Our customers generally take a considerable amount of time to evaluate our products. The typical time from early engagement by our sales force to actual product





**Table of Contents**

introduction runs from nine to twelve months for the consumer market, to as much as 12 to 36 months for the automotive TV display market. The delays inherent in these lengthy sales cycles increase the risk that a customer will decide to cancel, curtail, reduce or delay its product plans, causing us to lose anticipated sales. In addition, any delay or cancellation of a customer's plans could materially and adversely affect our financial results, as we may have incurred significant expense and generated no revenue. Finally, our customers' failure to successfully market and sell their products could reduce demand for our products and materially and adversely affect our business, financial condition and results of operations. If we were unable to generate revenue after incurring substantial expenses to develop any of our products, our business would suffer.

*Our operating results are subject to substantial quarterly and annual fluctuations and may fluctuate significantly due to a number of factors that could adversely affect our business and our stock price.*

Our revenue and operating results have fluctuated in the past and are likely to fluctuate in the future. These fluctuations may occur on a quarterly and on an annual basis and are due to a number of factors, many of which are beyond our control. These factors include, among others:

changes in end-user demand for the products manufactured and sold by our customers;

the receipt, reduction or cancellation of significant orders by customers;

fluctuations in the levels of component inventories held by our customers;

the gain or loss of significant customers;

market acceptance of our products and our customers' products;

our ability to develop, introduce and market new products and technologies on a timely basis;

the timing and extent of product development costs;

new product announcements and introductions by us or our competitors;

incurrence of research and development and related new product expenditures;

seasonality or cyclical fluctuations in our markets;

currency fluctuations;

fluctuations in IC manufacturing yields;

## Edgar Filing: MAXLINEAR INC - Form S-1/A

significant warranty claims, including those not covered by our suppliers;

changes in our product mix or customer mix;

intellectual property disputes;

loss of key personnel or the shortage of available skilled workers; and

the effects of competitive pricing pressures, including decreases in average selling prices of our products.

The foregoing factors are difficult to forecast, and these, as well as other factors, could materially adversely affect our quarterly or annual operating results. We typically are required to incur substantial development costs in advance of a prospective sale with no certainty that we will ever recover these costs. A substantial amount of time may pass between a design win and the generation of revenue related to the expenses previously incurred, which can potentially cause our operating results to fluctuate significantly from period to period. In addition, a significant amount of our operating expenses are relatively fixed in nature due to our significant sales, research and development costs. Any failure to adjust spending quickly enough to compensate for a revenue shortfall could magnify its adverse impact on our results of operations.

---

**Table of Contents**

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

The semiconductor industry requires substantial investment in research and development in order to develop and bring to market new and enhanced technologies and products. Many of our products originated with our research and development efforts and have provided us with a significant competitive advantage. Our research and development expense was \$9.9 million in 2007, \$14.3 million in 2008 and \$19.8 million in 2009. In 2008, we increased our research and development expenditures as compared to prior periods as part of our strategy of devoting focused research and development efforts on the development of innovative and sustainable product platforms. Although we have reduced research and development spending in connection with the current economic downturn, we are committed to investing in new product development in order to stay competitive in our markets and plan to invest in process development and maintain research and development fabrication capabilities in order to develop manufacturing processes for devices that are invented internally. We do not know whether we will have sufficient resources to maintain the level of investment in research and development required to remain competitive. In addition, we cannot assure you that the technologies which are the focus of our research and development expenditures will become commercially successful.

*Our business would be adversely affected by the departure of existing members of our senior management team.*

Our success depends, in large part, on the continued contributions of our senior management team, in particular, the services of Kishore Seendripu, Ph.D., our Chairman, President and Chief Executive Officer, Curtis Ling, Ph.D., our Chief Technical Officer and a Director, and Madhukar Reddy, Ph.D., our Vice President, IC and RF Systems Engineering. None of our senior management team is bound by written employment contracts to remain with us for a specified period. In addition, we have not entered into non-compete agreements with members of our senior management team. The loss of any member of our senior management team could harm our ability to implement our business strategy and respond to the rapidly changing market conditions in which we operate.

*If we are unable to attract, train and retain qualified personnel, especially our design and technical personnel, we may not be able to execute our business strategy effectively.*

Our future success depends on our ability to retain, attract and motivate qualified personnel, including our management, sales and marketing and finance, and especially our design and technical personnel. We do not know whether we will be able to retain all of these personnel as we continue to pursue our business strategy. Historically, we have encountered difficulties in hiring and retaining qualified engineers because there is a limited pool of engineers with the expertise required in our field. Competition for these personnel is intense in the semiconductor industry. As the source of our technological and product innovations, our design and technical personnel represent a significant asset. The loss of the services of one or more of our key employees, especially our key design and technical personnel, or our inability to retain, attract and motivate qualified design and technical personnel, could have a material adverse effect on our business, financial condition and results of operations.

*We are subject to warranty claims, product liability and product recalls.*

From time to time, we are subject to warranty or product liability claims that may require us to make significant expenditures to defend these claims or pay damage awards. In the event of a warranty claim, we may also incur costs if we compensate the affected customer. We maintain product liability insurance, but this insurance is limited in amount and subject to significant deductibles. There is no guarantee that our insurance will be available or adequate to protect against all claims. We also may incur costs and expenses relating to a recall of one of our customers products containing one of our devices. The process of identifying a recalled product in devices that have been widely distributed may be lengthy and require significant resources, and we may incur significant replacement costs, contract damage claims from our customers and

reputational harm. Costs or payments made in connection with warranty and product liability claims and product recalls could materially affect our financial condition and results of operations.

## **Table of Contents**

*The complexity of our products could result in unforeseen delays or expenses caused by undetected defects or bugs, which could reduce the market acceptance of our new products, damage our reputation with current or prospective customers and adversely affect our operating costs.*

Highly complex products like our RF receivers and RF receiver SoCs may contain defects and bugs when they are first introduced or as new versions are released. Due to our limited operating history, defects and bugs that may be contained in our products may not yet have manifested. We have in the past experienced, and may in the future experience, defects and bugs. If any of our products contains defects or bugs, or has reliability, quality or compatibility problems, we may not be able to successfully correct these problems. Consequently, our reputation may be damaged and customers may be reluctant to buy our products, which could materially and adversely affect our ability to retain existing customers and attract new customers, and our financial results. In addition, these defects or bugs could interrupt or delay sales to our customers. If any of these problems are not found until after we have commenced commercial production of a new product, we may be required to incur additional development costs and product recall, repair or replacement costs. These problems may also result in claims against us by our customers or others. As a result, our operating costs could be adversely affected.

*We may face claims of intellectual property infringement, which could be time-consuming, costly to defend or settle and result in the loss of significant rights.*

The semiconductor industry is characterized by companies that hold large numbers of patents and other intellectual property rights and that vigorously pursue, protect and enforce intellectual property rights. From time to time, third parties may assert against us and our customers and distributors their patent and other intellectual property rights to technologies that are important to our business.

Claims that our products, processes or technology infringe third-party intellectual property rights, regardless of their merit or resolution, could be costly to defend or settle and could divert the efforts and attention of our management and technical personnel. In addition, many of our customer and distributor agreements require us to indemnify and defend our customers or distributors from third-party infringement claims and pay damages in the case of adverse rulings. Claims of this sort also could harm our relationships with our customers or distributors and might deter future customers from doing business with us. We do not know whether we will prevail in these proceedings given the complex technical issues and inherent uncertainties in intellectual property litigation. If any pending or future proceedings result in an adverse outcome, we could be required to:

cease the manufacture, use or sale of the infringing products, processes or technology;

pay substantial damages for infringement;

expend significant resources to develop non-infringing products, processes or technology;

license technology from the third-party claiming infringement, which license may not be available on commercially reasonable terms, or at all;

cross-license our technology to a competitor to resolve an infringement claim, which could weaken our ability to compete with that competitor; or

Edgar Filing: MAXLINEAR INC - Form S-1/A

pay substantial damages to our customers or end users to discontinue their use of or to replace infringing technology sold to them with non-infringing technology.

Any of the foregoing results could have a material adverse effect on our business, financial condition and results of operations.

## Table of Contents

*We utilize a significant amount of intellectual property in our business. If we are unable to protect our intellectual property, our business could be adversely affected.*

Our success depends in part upon our ability to protect our intellectual property. To accomplish this, we rely on a combination of intellectual property rights, including patents, copyrights, trademarks and trade secrets in the United States and in selected foreign countries where we believe filing for such protection is appropriate. Effective patent, copyright, trademark and trade secret protection may be unavailable, limited or not applied for in some countries. Some of our products and technologies are not covered by any patent or patent application. We cannot guarantee that:

any of our present or future patents or patent claims will not lapse or be invalidated, circumvented, challenged or abandoned;

our intellectual property rights will provide competitive advantages to us;

our ability to assert our intellectual property rights against potential competitors or to settle current or future disputes will not be limited by our agreements with third parties;

any of our pending or future patent applications will be issued or have the coverage originally sought;

our intellectual property rights will be enforced in jurisdictions where competition may be intense or where legal protection may be weak;

any of the trademarks, copyrights, trade secrets or other intellectual property rights that we presently employ in our business will not lapse or be invalidated, circumvented, challenged, or abandoned; or

we will not lose the ability to assert our intellectual property rights against or to license our technology to others and collect royalties or other payments.

In addition, our competitors or others may design around our protected patents or technologies. Effective intellectual property protection may be unavailable or more limited in one or more relevant jurisdictions relative to those protections available in the United States, or may not be applied for in one or more relevant jurisdictions. If we pursue litigation to assert our intellectual property rights, an adverse decision in any of these legal actions could limit our ability to assert our intellectual property rights, limit the value of our technology or otherwise negatively impact our business, financial condition and results of operations.

Monitoring unauthorized use of our intellectual property is difficult and costly. Unauthorized use of our intellectual property may have occurred or may occur in the future. Although we have taken steps to minimize the risk of this occurring, any such failure to identify unauthorized use and otherwise adequately protect our intellectual property would adversely affect our business. Moreover, if we are required to commence litigation, whether as a plaintiff or defendant, not only would this be time-consuming, but we would also be forced to incur significant costs and divert our attention and efforts of our employees, which could, in turn, result in lower revenue and higher expenses.

We also rely on customary contractual protections with our customers, suppliers, distributors, employees and consultants, and we implement security measures to protect our trade secrets. We cannot assure you that these contractual protections and security measures will not be



breached, that we will have adequate remedies for any such breach or that our suppliers, employees or consultants will not assert rights to intellectual property arising out of such contracts.

In addition, we have a number of third-party patent and intellectual property license agreements. For example, we are a party to license agreements with Texas Instruments and NEC Electronics relating to demodulator technologies that are licensed specifically for the use in our products for cable set top boxes and mobile television handsets for the ISDB-T segment market in Japan and South America, respectively. Some of these license agreements require us to make one-time payments or ongoing royalty payments. Also, a few of our license agreements contain most-favored nation clauses or other price restriction clauses which may effect the

## **Table of Contents**

amount we may charge for our products, processes or technology. We cannot guarantee that the third-party patents and technology we license will not be licensed to our competitors or others in the semiconductor industry. In the future, we may need to obtain additional licenses, renew existing license agreements or otherwise replace existing technology. We are unable to predict whether these license agreements can be obtained or renewed or the technology can be replaced on acceptable terms, or at all.

In connection with settling a trademark dispute with Linear Technology Corporation, we agreed not to register the MAXLINEAR mark or any other marks containing the term LINEAR. We may continue to use MAXLINEAR as a corporate identifier, including to advertise our products and services, but may not use that mark on our products. The agreement does not affect our ability to use our registered trademark MxL, which we use on our products. Due to our agreement not to register the MAXLINEAR mark, our ability to effectively prevent third parties from using the MAXLINEAR mark in connection with similar products or technology may be affected. If we are unable to protect our trademarks, we may experience difficulties in achieving and maintaining brand recognition and customer loyalty.

### ***The use of open source software in our products, processes and technology may expose us to additional risks and harm our intellectual property.***

Our products, processes and technology sometimes utilize and incorporate software that is subject to an open source license. Open source software is typically freely accessible, usable and modifiable. Certain open source software licenses require a user who intends to distribute the open source software as a component of the user's software to disclose publicly part or all of the source code to the user's software. In addition, certain open source software licenses require the user of such software to make any derivative works of the open source code available to others on unfavorable terms or at no cost. This can subject previously proprietary software to open source license terms.

While we monitor the use of all open source software in our products, processes and technology and try to ensure that no open source software is used in such a way as to require us to disclose the source code to the related product, processes or technology when we do not wish to do so, such use could inadvertently occur. Additionally, if a third party software provider has incorporated certain types of open source software into software we license from such third party for our products, processes or technology, we could, under certain circumstances, be required to disclose the source code to our products, processes or technology. This could harm our intellectual property position and have a material adverse effect on our business, results of operations and financial condition.

### ***We rely on third parties to provide services and technology necessary for the operation of our business. Any failure of one or more of our vendors, suppliers or licensors to provide these services or technology could have a material adverse effect on our business.***

We rely on third-party vendors to provide critical services, including, among other things, services related to accounting, billing, human resources, information technology, network development, network monitoring, in-licensing and intellectual property that we cannot or do not create or provide ourselves. We depend on these vendors to ensure that our corporate infrastructure will consistently meet our business requirements. The ability of these third-party vendors to successfully provide reliable and high quality services is subject to technical and operational uncertainties that are beyond our control. While we may be entitled to damages if our vendors fail to perform under their agreements with us, our agreements with these vendors limit the amount of damages we may receive. In addition, we do not know whether we will be able to collect on any award of damages or that these damages would be sufficient to cover the actual costs we would incur as a result of any vendor's failure to perform under its agreement with us. Any failure of our corporate infrastructure could have a material adverse effect on our business, financial condition and results of operations. Upon expiration or termination of any of our agreements with third-party vendors, we may not be able to replace the services provided to us in a timely manner or on terms and conditions, including service levels and cost, that are favorable to us and a transition



**Table of Contents**

from one vendor to another vendor could subject us to operational delays and inefficiencies until the transition is complete.

Additionally, we incorporate third-party technology into and with some of our products, and we may do so in future products. The operation of our products could be impaired if errors occur in the third-party technology we use. It may be more difficult for us to correct any errors in a timely manner if at all because the development and maintenance of the technology is not within our control. There can be no assurance that these third parties will continue to make their technology, or improvements to the technology, available to us, or that they will continue to support and maintain their technology. Further, due to the limited number of vendors of some types of technology, it may be difficult to obtain new licenses or replace existing technology. Any impairment of the technology or our relationship with these third parties could have a material adverse effect on our business.

*Our business, financial condition and results of operations could be adversely affected by the political and economic conditions of the countries in which we conduct business and other factors related to our international operations.*

We sell our products throughout the world. Sales to end customers in Asia accounted for 99% and 97% of our net revenue in the years ended December 31, 2009 and 2008, respectively. Sales to end customers in Japan accounted for 54% and 87% of our net revenue in the years ended December 31, 2009 and 2008, respectively. In addition, approximately 19% of our employees are located outside of the United States, including 30 in Asia and one in Europe. All of our products are manufactured, assembled and tested in Asia, and all of our major distributors are located in Asia. Multiple factors relating to our international operations and to particular countries in which we operate could have a material adverse effect on our business, financial condition and results of operations. These factors include:

changes in political, regulatory, legal or economic conditions;

restrictive governmental actions, such as restrictions on the transfer or repatriation of funds and foreign investments and trade protection measures, including export duties and quotas and customs duties and tariffs;

disruptions of capital and trading markets;

changes in import or export licensing requirements;

transportation delays;

civil disturbances or political instability;

geopolitical turmoil, including terrorism, war or political or military coups;

public health emergencies;

differing employment practices and labor standards;

Edgar Filing: MAXLINEAR INC - Form S-1/A

limitations on our ability under local laws to protect our intellectual property;

local business and cultural factors that differ from our customary standards and practices;

nationalization and expropriation;

changes in tax laws;

currency fluctuations relating to our international operating activities; and

difficulty in obtaining distribution and support.

Substantially all of our products are manufactured in Taiwan. Any conflict or uncertainty in this country, including due to natural disaster or public health or safety concerns, could have a material adverse effect on our business, financial condition and results of operations. In addition, if the government of any country in which our

## **Table of Contents**

products are manufactured or sold sets technical standards for products manufactured in or imported into their country that are not widely shared, it may lead some of our customers to suspend imports of their products into that country, require manufacturers in that country to manufacture products with different technical standards and disrupt cross-border manufacturing relationships which, in each case, could have a material adverse effect on our business, financial condition and results of operations.

We also are subject to risks associated with international political conflicts involving the U.S. government. For example, we were recently instructed by the U.S. Department of Homeland Security to cease using Polar Star International Company Limited, a distributor based in Hong Kong, that delivered third-party products, to a political group that the U.S. government did not believe should have been provided with the products in question. As a result, we immediately ceased all business operations with that distributor. The loss of Polar Star as a distributor did not materially delay shipment of our products because Polar Star was a non-exclusive distributor and we had in place alternative distribution arrangements. However, we cannot provide assurances that similar disruptions of distribution arrangements in the future will not result in delayed shipments until we are able to identify alternative distribution channels, which could include a requirement to increase our direct sales efforts. Loss of a key distributor under similar circumstances could have an adverse effect on our business, revenues and operating results.

*If we suffer losses to our facilities or distribution system due to catastrophe, our operations could be seriously harmed.*

Our facilities and distribution system, and those of our third-party contractors, are subject to risk of catastrophic loss due to fire, flood or other natural or man-made disasters. A number of our facilities and those of our contract manufacturers are located in areas with above average seismic activity. The UMC foundries that manufacture all of our wafers are located in Taiwan and Singapore, and all of the third-party contractors who assemble and test our products also are located in Asia. In addition, our headquarters are located in Southern California. The risk of an earthquake in the Pacific Rim region or Southern California is significant due to the proximity of major earthquake fault lines. For example, in 2002 and 2003, major earthquakes occurred in Taiwan. Any catastrophic loss to any of these facilities would likely disrupt our operations, delay production, shipments and revenue and result in significant expenses to repair or replace the facility. In particular, any catastrophic loss at our Carlsbad, California, Singapore or Shanghai facilities would materially and adversely affect our business.

*Our business is subject to various governmental regulations, and compliance with these regulations may cause us to incur significant expenses. If we fail to maintain compliance with applicable regulations, we may be forced to recall products and cease their manufacture and distribution, and we could be subject to civil or criminal penalties.*

Our business is subject to various international and U.S. laws and other legal requirements, including packaging, product content, labor and import/export regulations. These regulations are complex, change frequently and have generally become more stringent over time. We may be required to incur significant costs to comply with these regulations or to remedy violations. Any failure by us to comply with applicable government regulations could result in cessation of our operations or portions of our operations, product recalls or impositions of fines and restrictions on our ability to conduct our operations. In addition, because many of our products are regulated or sold into regulated industries, we must comply with additional regulations in marketing our products.

Our products and operations are also subject to the rules of industrial standards bodies, like the International Standards Organization, as well as regulation by other agencies, such as the U.S. Federal Communications Commission. If we fail to adequately address any of these rules or regulations, our business could be harmed.

## **Table of Contents**

We must conform the manufacture and distribution of our semiconductors to various laws and adapt to regulatory requirements in all countries as these requirements change. If we fail to comply with these requirements in the manufacture or distribution of our products, we could be required to pay civil penalties, face criminal prosecution and, in some cases, be prohibited from distributing our products in commerce until the products or component substances are brought into compliance.

*We have identified deficiencies in our internal control over financial reporting in the past. If we fail to maintain effective internal control over financial reporting in the future, the accuracy and timing of our financial reporting may be adversely affected.*

In connection with the audit of our consolidated financial statements for the year ended December 31, 2008, we, together with our independent registered public accounting firm, identified a material weakness in our internal control over financial reporting. A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the company's annual or interim financial statements will not be prevented or detected on a timely basis. The material weakness related to our lack of staffing of personnel that oversee our financial statement close process. Specifically, we determined that we did not have accounting personnel with a sufficient level of technical expertise to provide required oversight for our accounting and financial reporting functions. For example, we did not have either a controller or director of financial reporting.

Through the date of this prospectus, we have taken steps intended to remediate this material weakness, primarily through the hiring of additional accounting and finance personnel with technical accounting and financial reporting experience. In particular, during 2009 we increased the size and expertise of our accounting staff. We are, however, still in the process of recruiting additional personnel and continue to rely on consultants within our finance organization. We are currently recruiting a Chief Financial Officer, and when he or she is retained, our current Vice President, Finance and Treasurer will assume full-time responsibility for treasury and financial planning functions. We are also recruiting a full-time financial reporting manager and a consultant to act as an internal auditor. In December 2009, we hired a full-time controller, who also serves as our Chief Accounting Officer. As a result of the additional finance staff hired during 2009 we determined that the material weakness that existed as of December 31, 2008 had been remediated.

Any inability to recruit and retain the finance personnel we require would have an adverse impact on our ability to accurately and timely prepare our financial statements. We may be unable to locate and hire qualified finance professionals with requisite technical and public company experience when and as needed. In addition, new employees will require time and training to learn our business and operating processes and procedures. If our finance and accounting organization is unable for any reason to respond adequately to the increased demands that will result from being a public company, the quality and timeliness of our financial reporting may suffer, which could result in the identification of material weaknesses in our internal control. Any consequences resulting from inaccuracies or delays in our reported financial statements could have an adverse effect on the trading price of our Class A common stock as well as an adverse effect on our business, operating results and financial condition.

If we fail to enhance our internal control over financial reporting to meet the demands that will be placed upon us as a public company, including the requirements of the Sarbanes-Oxley Act of 2002, or Sarbanes-Oxley Act, we may be unable to report our financial results timely and accurately and prevent fraud. The Sarbanes-Oxley Act requires, among other things, that we maintain effective internal controls for financial reporting and disclosure. In particular, we must perform system and process evaluation and testing of our internal controls over financial reporting to allow management and our independent registered public accounting firm to report on the effectiveness of our internal controls over financial reporting as required by Section 404 of the Sarbanes-Oxley Act. We expect to incur significant expense and devote substantial management effort toward ensuring compliance with Section 404.

## **Table of Contents**

If we are not able to comply with the requirements of Section 404 in a timely manner, or if we fail to remedy any material weakness and maintain effective internal control over our financial reporting in the future, our financial statements may be inaccurate, our ability to report our financial results on a timely and accurate basis may be adversely affected, our access to the capital markets may be restricted, the trading price of our Class A common stock may decline and we may be subject to sanctions or investigation by regulatory authorities, including the SEC or the New York Stock Exchange, or the NYSE. We may also be required to restate our financial statements from prior periods.

*We are subject to the cyclical nature of the semiconductor industry.*

The semiconductor industry is highly cyclical and is characterized by constant and rapid technological change, rapid product obsolescence and price erosion, evolving standards, short product life cycles and wide fluctuations in product supply and demand. The industry is experiencing a significant downturn during the current global recession. These downturns have been characterized by diminished product demand, production overcapacity, high inventory levels and accelerated erosion of average selling prices. The current downturn and any future downturns could have a material adverse effect on our business and operating results. Furthermore, any upturn in the semiconductor industry could result in increased competition for access to third-party foundry and assembly capacity. We are dependent on the availability of this capacity to manufacture and assemble our RF receivers and RF receiver SoCs. None of our third-party foundry or assembly contractors has provided assurances that adequate capacity will be available to us in the future.

*Our products must conform to industry standards in order to be accepted by end users in our markets.*

Generally, our products comprise only a part of a communications device. All components of these devices must uniformly comply with industry standards in order to operate efficiently together. We depend on companies that provide other components of the devices to support prevailing industry standards. Many of these companies are significantly larger and more influential in driving industry standards than we are. Some industry standards may not be widely adopted or implemented uniformly, and competing standards may emerge that may be preferred by our customers or end users. If larger companies do not support the same industry standards that we do, or if competing standards emerge, market acceptance of our products could be adversely affected, which would harm our business.

Products for communications applications are based on industry standards that are continually evolving. Our ability to compete in the future will depend on our ability to identify and ensure compliance with these evolving industry standards. The emergence of new industry standards could render our products incompatible with products developed by other suppliers. As a result, we could be required to invest significant time and effort and to incur significant expense to redesign our products to ensure compliance with relevant standards. If our products are not in compliance with prevailing industry standards for a significant period of time, we could miss opportunities to achieve crucial design wins. We may not be successful in developing or using new technologies or in developing new products or product enhancements that achieve market acceptance. Our pursuit of necessary technological advances may require substantial time and expense.



## **Table of Contents**

### **Risks Relating to Our Class A Common Stock and this Offering**

*The dual class structure of our common stock as contained in our charter documents will have the effect of allowing our founders, executive officers, employees and directors and their affiliates to limit your ability to influence corporate matters that you may consider unfavorable.*

We will sell Class A common stock in this offering. All currently outstanding shares of our common and preferred stock, including all shares held by our founders, executive officers, directors and their affiliates, and employees will be converted into shares of our Class B common stock immediately prior to the closing of this offering. For a period of seven years following this offering, the dual class structure of our common stock will have the following effects with respect to the holders of our Class A common stock:

allows the holders of our Class B common stock to have the sole right to elect two management directors to the Board of Directors; with respect to change of control matters, allows the holders of our Class B common stock to have ten votes per share compared to the holders of our Class A common stock who will have one vote per share on these matters; and

with respect to the adoption of or amendments to our equity incentive plans, allows the holders of our Class B common stock to have ten votes per share compared to the holders of our Class A common stock who will have one vote per share on these matters, subject to certain limitations described under the caption Description of Capital Stock .

Thus, our dual class structure will limit your ability to influence corporate matters and, as a result, we may take actions that our stockholders do not view as beneficial, which may adversely affect the market price of our Class A common stock.

*The concentration of our capital stock ownership with our founders, executive officers, employees and our directors and their affiliates will limit your ability to influence corporate matters.*

We anticipate that our founders, executive officers, employees and our directors and their affiliates, will together own approximately 77% of our Class B common stock, representing approximately 92% of the voting power of our outstanding capital stock with respect to change of control matters and the adoption of or amendment to our equity incentive plans. In particular, following this offering, our founders and our Chairman, President and Chief Executive Officer, Dr. Seendripu, together will control approximately 31% of our outstanding Class B common stock, representing approximately 37% of the voting power of our outstanding capital stock with respect to change of control matters and the adoption of or amendment to our equity incentive plans. Dr. Seendripu and the other founders therefore will have significant influence over the management and affairs of the company and over all matters requiring stockholder approval, including the election of two Class B directors and significant corporate transactions, such as a merger or other sale of our company or its assets, for the foreseeable future.

In addition, because of this dual class structure, our executive officers and directors and employees will continue, for a period of seven years following the closing of this offering, to be able to control some matters submitted to our stockholders for approval even if they come to own less than 50% of the total number of outstanding shares of our common stock. This concentrated control will limit your ability to influence corporate matters and, as a result, we may take actions that our stockholders do not view as beneficial. As a result, the market price of our Class A common stock could be adversely affected.

*Our management team may invest or spend the proceeds of this offering in ways with which you may not agree or in ways which may not yield a return.*

The net proceeds from this offering may be used for general corporate purposes, including working capital. We may also use a portion of the net proceeds to acquire complementary businesses, products, services or technologies. However, we do not have any agreements or commitments for any specific acquisitions at this time. Our management will have considerable discretion in the application of the net proceeds, and you will not

**Table of Contents**

have the opportunity, as part of your investment decision, to assess whether the proceeds are being used appropriately. The net proceeds may be used for corporate purposes that do not increase our operating results or market value. Until the net proceeds are used, they may be placed in investments that do not produce significant income or that may lose value.

*Anti-takeover provisions in our charter documents and under Delaware law could make an acquisition of us more difficult, limit attempts by our stockholders to replace or remove our current management and limit the market price of our Class A common stock.*

Provisions in our certificate of incorporation and bylaws, as amended and restated upon the closing of this offering, may have the effect of delaying or preventing a change of control or changes in our management. Our amended and restated certificate of incorporation and amended and restated bylaws to become effective upon completion of this offering will include provisions that:

authorize our Board of Directors to issue, without further action by the stockholders, up to 25,000,000 shares of undesignated preferred stock;

require that any action to be taken by our stockholders be effected at a duly called annual or special meeting and not by written consent;

specify that special meetings of our stockholders can be called only by our Board of Directors, our Chairman of the Board of Directors, the President of the Company or by unanimous written consent of our directors appointed by the holders of Class B common stock;

establish an advance notice procedure for stockholder approvals to be brought before an annual meeting of our stockholders, including proposed nominations of persons for election to our Board of Directors;

establish that our Board of Directors is divided into three classes, Class I, Class II and Class III, with each class serving staggered terms and with one Class B director being elected to each of Classes II and III;

provide for a dual class common stock structure, which provides our founders, current investors, executives and employees with significant influence over all matters requiring stockholder approval, including the election of directors and significant corporate transactions, such as a merger or other sale of our company or its assets;

provide that our directors may be removed only for cause;

provide that vacancies on our Board of Directors may be filled only by a majority of directors then in office, even though less than a quorum, other than any vacancy in the two directorships reserved for the designees of the holders of Class B common stock, which may be filled only by the affirmative vote of the holders of a majority of the outstanding Class B common stock or by the remaining director elected by the Class B common stock (with the consent of founders holding a majority in interest of the Class B common stock over which the founders then exercise voting control);

specify that no stockholder is permitted to cumulate votes at any election of directors; and

## Edgar Filing: MAXLINEAR INC - Form S-1/A

require supermajority votes of the holders of our common stock to amend specified provisions of our charter documents.

These provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our Board of Directors, which is responsible for appointing the members of our management. In addition, because we are incorporated in Delaware, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, which generally prohibits a Delaware corporation from engaging in any of a broad range of business combinations with any interested stockholder for a period of three years following the date on which the stockholder became an interested stockholder. See Description of Capital Stock elsewhere in this prospectus.

**Table of Contents**

*Our share price may be volatile and you may be unable to sell your shares at or above the offering price, if at all.*

The initial public offering price for the shares of our Class A common stock was determined by negotiations between us and representatives of the underwriters and may not be indicative of prices that will prevail in the trading market. The market price of our Class A common stock could be subject to wide fluctuations in response to many risk factors listed in this section, and others beyond our control, including:

actual or anticipated fluctuations in our financial condition and operating results;

overall conditions in the semiconductor market;

addition or loss of significant customers;

changes in laws or regulations applicable to our products;

actual or anticipated changes in our growth rate relative to our competitors;

announcements of technological innovations by us or our competitors;

announcements by us or our competitors of significant acquisitions, strategic partnerships, joint ventures or capital commitments;

additions or departures of key personnel;

competition from existing products or new products that may emerge;

issuance of new or updated research or reports by securities analysts;

fluctuations in the valuation of companies perceived by investors to be comparable to us;

disputes or other developments related to proprietary rights, including patents, litigation matters and our ability to obtain intellectual property protection for our technologies;

announcement or expectation of additional financing efforts;

sales of our Class A or Class B common stock by us or our stockholders;

## Edgar Filing: MAXLINEAR INC - Form S-1/A

share price and volume fluctuations attributable to inconsistent trading volume levels of our shares;

the expiration of contractual lock-up agreements with our executive officers, directors and stockholders; and

general economic and market conditions.

Furthermore, the stock markets recently have experienced extreme price and volume fluctuations that have affected and continue to affect the market prices of equity securities of many companies. These fluctuations often have been unrelated or disproportionate to the operating performance of those companies. These broad market and industry fluctuations, as well as general economic, political and market conditions such as recessions, interest rate changes or international currency fluctuations, may negatively impact the market price of our Class A common stock. If the market price of our Class A common stock after this offering does not exceed the initial public offering price, you may not realize any return on your investment in us and may lose some or all of your investment. In the past, companies that have experienced volatility in the market price of their stock have been subject to securities class action litigation. We may be the target of this type of litigation in the future. Securities litigation against us could result in substantial costs and divert our management's attention from other business concerns, which could seriously harm our business.

***If securities or industry analysts do not publish research or reports about our business, or publish negative reports about our business, especially due to our dual-class voting structure, our share price and trading volume could decline.***

The trading market for our Class A common stock will depend on the research and reports that securities or industry analysts publish about us or our business, especially with respect to our unique dual-class voting

## **Table of Contents**

structure as to the election of directors, change of control matters and matters related to our equity incentive plans. We do not have any control over these analysts. If one or more of the analysts who cover us downgrade our shares or change their opinion of our shares, our share price would likely decline. If one or more of these analysts cease coverage of our company or fail to regularly publish reports on us, we could lose visibility in the financial markets, which could cause our share price or trading volume to decline.

*Of our total outstanding shares after this offering, 23,994,947 shares, or 82%, will be restricted from immediate resale but may be sold into the market in the near future. Future sales of our Class A common stock in the public market could cause our share price to decline.*

Sales of a substantial number of shares of our Class A common stock in the public market after this offering, or the perception that these sales might occur, could depress the market price of our Class A common stock and could impair our ability to raise capital through the sale of additional equity securities. Based on the total number of outstanding shares of our common stock as of December 31, 2009, upon completion of this offering, we will have 5,434,783 shares of Class A common stock and 23,994,947 shares of Class B common stock outstanding, assuming no exercise of our outstanding options.

All of the shares of Class A common stock sold in this offering will be freely tradable without restrictions or further registration under the Securities Act of 1933, as amended, or the Securities Act, except for any shares held by our affiliates as defined in Rule 144 under the Securities Act. 23,994,947 shares of Class B common stock outstanding after this offering, based on shares outstanding as of December 31, 2009, will be restricted as a result of securities laws, lock-up agreements or other contractual restrictions that restrict transfers for at least 180 days after the date of this prospectus, subject to certain extensions.

The underwriters may, in their sole discretion, release all or some portion of the shares subject to lock-up agreements prior to expiration of the lock-up period. See *Shares Eligible for Future Sale* elsewhere in this prospectus.

After this offering, the holders of 14,526,083 shares of Class B common stock, or 57.5% of our total outstanding common stock, based on shares outstanding as of December 31, 2009, will be entitled to rights with respect to registration of these shares under the Securities Act pursuant to a registration rights agreement. See *Certain Relationships and Related Party Transactions Registration Rights Agreement* elsewhere in this prospectus. In addition, upon exercise of outstanding options by our executive officers and certain other employees, our executive officers and those other employees will be entitled to rights with respect to registration of the Class B common stock acquired on exercise. Shares of our Class B common stock automatically will convert into shares of our Class A common stock upon any sale or transfer, whether or not for value, except for certain transfers described in our amended and restated certificate of incorporation to become effective upon completion of this offering. See *Description of Capital Stock* elsewhere in this prospectus. If these holders of our Class B common stock, by exercising their registration rights, sell a large number of shares, they could adversely affect the market price for our Class A common stock. If we file a registration statement for the purposes of selling additional shares to raise capital and are required to include shares held by these holders pursuant to the exercise of their registration rights, our ability to raise capital may be impaired. We intend to file a registration statement on Form S-8 under the Securities Act to register approximately 9,965,096 shares of our common stock for issuance under our 2010 Equity Incentive Plan and 2010 Employee Stock Purchase Plan. Once we register these shares, they can be freely sold in the public market upon issuance and once vested, subject to a 180-day lock-up period and other restrictions provided under the terms of the applicable plan and/or the option agreements entered into with option holders.

*No public market for our Class A common stock currently exists and an active trading market may not develop or be sustained following this offering.*

## Edgar Filing: MAXLINEAR INC - Form S-1/A

Prior to this offering, there has been no public market for our Class A common stock. Although we have applied to list our Class A common stock on the NYSE, an active trading market may not develop following the



## **Table of Contents**

completion of this offering or, if developed, may not be sustained. The lack of an active market may impair your ability to sell your shares at the time you wish to sell them or at a price that you consider reasonable. The lack of an active market may also reduce the fair market value of your shares. An inactive market may also impair our ability to raise capital to continue to fund operations by selling shares and may impair our ability to acquire other companies or technologies by using our shares as consideration.

***The requirements of being a public company may strain our resources, divert management's attention and affect our ability to attract and retain qualified board members.***

As a public company, we will be subject to the reporting requirements of the Securities Exchange Act of 1934, as amended, or the Exchange Act, the Sarbanes-Oxley Act, the listing requirements of the NYSE and other applicable securities rules and regulations. None of our senior executives has managed a public company. Compliance with these rules and regulations will increase our legal and financial compliance costs, make some activities more difficult, time-consuming or costly and increase demand on our systems and resources. The Exchange Act requires, among other things, that we file annual, quarterly and current reports with respect to our business and financial condition. The Sarbanes-Oxley Act requires, among other things, that we maintain effective disclosure controls and procedures and internal control over financial reporting. In order to maintain and, if required, improve our disclosure controls and procedures and internal control over financial reporting to meet this standard, significant resources and management oversight may be required. As a result, management's attention may be diverted from other business concerns, which could have a material adverse effect on our business, financial condition and results of operations. Although we have already hired additional staff to comply with these requirements, we may need to hire more employees in the future, which will increase our costs and expenses.

In addition, changing laws, regulations and standards relating to corporate governance and public disclosure are creating uncertainty for public companies, increasing legal and financial compliance costs and making some activities more time consuming. These laws, regulations and standards are subject to varying interpretations, in many cases due to their lack of specificity, and, as a result, their application in practice may evolve over time as new guidance is provided by regulatory and governing bodies. This could result in continuing uncertainty regarding compliance matters and higher costs necessitated by ongoing revisions to disclosure and governance practices. We intend to invest resources to comply with evolving laws, regulations and standards, and this investment may result in increased general and administrative expenses and a diversion of management's time and attention from revenue-generating activities to compliance activities. If our efforts to comply with new laws, regulations and standards differ from the activities intended by regulatory or governing bodies due to ambiguities related to practice, regulatory authorities may initiate legal proceedings against us and our business may be harmed.

We also expect that being a public company and these new rules and regulations will make it more expensive for us to obtain director and officer liability insurance, and we may be required to accept reduced coverage or incur substantially higher costs to obtain coverage. These factors could also make it more difficult for us to attract and retain qualified members of our Board of Directors, particularly to serve on our audit committee and compensation committee, and qualified executive officers.

***We do not intend to pay dividends for the foreseeable future.***

We have never declared or paid any cash dividends on our common stock and do not intend to pay any cash dividends in the foreseeable future. We anticipate that we will retain all of our future earnings for use in the development of our business and for general corporate purposes. Any determination to pay dividends in the future will be at the discretion of our Board of Directors. Accordingly, investors must rely on sales of their Class A common stock after price appreciation, which may never occur, as the only way to realize any future gains on their investments.



**Table of Contents**

**SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS**

This prospectus contains forward-looking statements that are based on our management's beliefs and assumptions and on information currently available to our management. The forward-looking statements are contained principally in Prospectus Summary, Risk Factors, Management's Discussion and Analysis of Financial Condition and Results of Operations, Business and Compensation Discussion and Analysis. Forward-looking statements include information concerning our possible or assumed future results of operations, business strategies, financing plans, competitive position, industry environment, potential growth opportunities and the effects of competition. Forward-looking statements include all statements that are not historical facts and can be identified by terms such as anticipates, believes, could, seeks, estimates, expects, intends, may, plans, potential, predicts, projects, should, will, would or similar expressions and the negatives of those terms.

Forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statements, including those described in Risk Factors and elsewhere in this prospectus. Given these uncertainties, you should not place undue reliance on these forward-looking statements. Also, forward-looking statements represent our management's beliefs and assumptions only as of the date of this prospectus. You should read this prospectus and the documents that we have filed as exhibits to the registration statement, of which this prospectus is a part, completely and with the understanding that our actual future results may be materially different from what we expect.

Except as required by law, we assume no obligation to update these forward-looking statements publicly, or to update the reasons actual results could differ materially from those anticipated in these forward-looking statements, even if new information becomes available in the future.

This prospectus also contains estimates and other information concerning our industry, including market size and growth rates, that are based on industry publications, surveys and forecasts, including those generated by IMS Research, iSuppli and Infonetics Research. This information involves a number of assumptions and limitations. Although we believe the information in these industry publications, surveys and forecasts is reliable, we have not independently verified the accuracy or completeness of the information. The industry in which we operate is subject to a high degree of uncertainty and risk due to variety of factors, including those described in Risk Factors. These and other factors could cause results to differ materially from those expressed in these publications, surveys and forecasts.

**Table of Contents**

**USE OF PROCEEDS**

We estimate that the net proceeds to us from our sale of 4,166,667 shares of Class A common stock in this offering at an assumed initial public offering price of \$12.00 per share, the midpoint of the price range set forth on the front cover of this prospectus, after deducting estimated underwriting discounts and commissions and estimated offering expenses, will be approximately \$42.7 million, or \$49.7 million if the underwriters' over-allotment option is exercised in full. We will not receive any proceeds from the sale of Class A common stock by the selling stockholders. A \$1.00 increase (decrease) in the assumed initial public offering price would increase (decrease) the net proceeds to us from this offering by \$3.9 million, assuming the number of shares offered by us, as set forth on the front cover of this prospectus, remains the same and after deducting the estimated underwriting discounts and commissions.

The principal purposes of this offering are to create a public market for our Class A common stock, obtain additional capital, facilitate our future access to the public equity markets, increase awareness of our company among potential customers and improve our competitive position. We intend to use the net proceeds received by us in this offering for general corporate purposes, including working capital. In addition, we also may use a portion of the net proceeds to acquire complementary businesses, products, services or technologies. The amount and timing of these expenditures will vary depending on a number of factors, including competitive and technological developments and the rate of growth, if any, of our business.

Pending their use, we plan to invest our net proceeds from this offering in short-term, interest-bearing obligations, investment-grade instruments, certificates of deposit or direct or guaranteed obligations of the U.S. government. Our management will have broad discretion in the application of the net proceeds from this offering to us, and investors will be relying on the judgment of our management regarding the application of the proceeds.

**DIVIDEND POLICY**

We have never declared or paid cash dividends on our common stock. We currently intend to retain all available funds and any future earnings for use in the operation of our business and do not anticipate paying any dividends on our common stock in the foreseeable future. Any future determination to declare dividends will be made at the discretion of our Board of Directors and will depend on our financial condition, operating results, capital requirements, general business conditions and other factors that our Board of Directors may deem relevant.

**Table of Contents****CAPITALIZATION**

The following table sets forth our capitalization as of December 31, 2009 on:

an actual basis;

on a pro forma basis to reflect the conversion of all outstanding shares of our convertible preferred stock into 14,526,083 shares of our Class B common stock and the conversion of all outstanding shares of our common stock into 10,736,980 shares of our Class B common stock upon the closing of this offering; and

on a pro forma as adjusted basis to reflect (i) our receipt of the net proceeds from our sale of 4,166,667 shares of our Class A common stock and (ii) the sale of 1,268,116 shares by the selling stockholders of our Class A common stock (after giving effect to the conversion of these shares of our Class B common stock into Class A common stock) in this offering at an assumed initial public offering price of \$12.00 per share, the midpoint of the price range set forth on the front cover of this prospectus, after deducting estimated underwriting discounts and commissions and estimated offering expenses.

The information below is illustrative only and our capitalization following the completion of this offering will be adjusted based on the actual initial public offering price and other terms of this offering determined at pricing. You should read this table together with Management's Discussion and Analysis of Financial Condition and Results of Operations and our consolidated financial statements and the related notes appearing elsewhere in this prospectus.

	As of December 31, 2009		
	Actual	Pro Forma (unaudited)	Pro Forma As Adjusted <sup>(1)</sup>
	(in thousands, except share and per share amounts)		
Capital lease obligations, including current portion	\$ 239	\$ 239	\$ 239
Convertible preferred stock, \$0.0001 par value; 22,492,225 shares authorized <sup>(2)</sup> :			
Series A convertible preferred stock, 11,696,000 shares authorized; 7,553,590 shares issued and outstanding, liquidation preference of \$15,351, actual; no shares issued and outstanding, pro forma and pro forma as adjusted	15,351		
Series B convertible preferred stock, 10,796,225 shares authorized; 6,972,493 shares issued and outstanding, liquidation preference of \$20,000, actual; no shares issued and outstanding, pro forma and pro forma as adjusted	20,000		
Stockholders' equity (deficit):			
Preferred stock, \$0.0001 par value: no shares authorized, issued or outstanding, actual; 25,000,000 shares authorized, no shares issued or outstanding, pro forma and pro forma as adjusted			
Common stock, \$0.0001 par value: 48,333,351 shares authorized, 10,736,980 shares issued and outstanding, actual; 550,000,000 shares authorized, no shares issued and outstanding, pro forma and pro forma as adjusted	1		
Class A common stock, \$0.0001 par value: no shares authorized, issued and outstanding, actual; 500,000,000 shares authorized, no shares issued and outstanding, pro forma; 500,000,000 shares authorized, 5,434,783 shares issued and outstanding, pro forma as adjusted		1	1
Class B common stock, \$0.0001 par value: no shares authorized, issued and outstanding, actual; 500,000,000 shares authorized, 25,263,063 shares issued and outstanding, pro forma; 500,000,000 shares authorized, 23,994,947 shares issued and		2	2

Edgar Filing: MAXLINEAR INC - Form S-1/A

outstanding, pro forma as adjusted			
Additional paid-in capital <sup>(1)</sup>	2,301	37,650	80,350
Accumulated deficit	(21,777)	(21,777)	(21,777)
Total stockholders' equity (deficit) <sup>(1)</sup>	(19,475)	15,876	58,576
Total capitalization <sup>(1)</sup>	\$ 16,115	\$ 16,115	\$ 58,815

**Table of Contents**

- (1) A \$1.00 increase (decrease) in the assumed initial public offering price of \$12.00 per share, the midpoint of the range set forth on the cover page of this prospectus, would increase (decrease) each of additional paid-in capital, total stockholders' equity and total capitalization by \$3.9 million, assuming that the number of shares of Class A common stock offered by us, as set forth on the cover page of this prospectus, remains the same, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. Similarly, each increase (decrease) of 1 million shares in the number of shares of Class A common stock offered by us would increase (decrease) cash, cash equivalents and available-for-sale securities and each of working capital, total assets and total stockholders' equity by approximately \$11.2 million. The pro forma as adjusted information discussed above is illustrative only and will be adjusted based on the actual public offering price and other terms of this offering determined at pricing.
- (2) Upon certain change in control events that may be outside of our control, including our liquidation, sale or transfer of control, holders of the convertible preferred stock can cause its redemption. Accordingly, these shares are considered contingently redeemable and have been classified as temporary equity on our balance sheets instead of in stockholders' deficit. We have adjusted the carrying values of the convertible preferred stock to their liquidation values at each period end.

The number of shares of our Class A and Class B common stock to be outstanding following this offering is based on 25,263,063 shares of our common stock outstanding as of December 31, 2009 and excludes:

4,951,385 shares of our Class B common stock issuable upon the exercise of options outstanding as of December 31, 2009 under our 2004 Stock Plan, with a weighted average exercise price of \$3.38 per share;

208,692 shares of our Class B common stock issuable upon the exercise of options granted after December 31, 2009 under our 2004 Stock Plan, with a weighted average exercise price of \$9.03 per share;

9,319,269 shares of our Class A common stock reserved for future issuance under our stock-based compensation plans, including 277,678 shares under our 2004 Stock Plan and 9,041,591 shares of our Class A common stock reserved for future issuance under our 2010 Equity Incentive Plan, which will become effective in connection with this offering and contains provisions that will automatically increase its share reserve each year, as more fully described in Management Employee Benefit Plans ; and

645,827 shares of our Class A common stock reserved for future issuance under our 2010 Employee Stock Purchase Plan, which will become effective in connection with this offering and contains provisions that will automatically increase its share reserve each year, as more fully described in Management Employee Benefit Plans.

**Table of Contents****DILUTION**

If you invest in our Class A common stock, your interest will be diluted to the extent of the difference between the amount per share paid by purchasers of shares of our Class A common stock in this initial public offering and the pro forma as adjusted net tangible book value per share of our Class A and Class B common stock immediately after completion of this offering.

At December 31, 2009, our net tangible book deficit was approximately \$19.5 million, or \$1.81 per share of common stock. Net tangible book deficit per share represents the amount of our tangible assets less our liabilities, divided by the shares of common stock outstanding at December 31, 2009. After giving effect to the conversion of all of our outstanding common stock and preferred stock into Class B common stock, which will occur immediately prior to this offering, and (i) our sale of 4,166,667 shares of Class A common stock (ii) the sale of 1,268,116 shares by the selling stockholders of our Class A common stock in this offering at an assumed initial public offering price of \$12.00, the midpoint of the price range set forth on the front cover of this prospectus, and after deducting estimated underwriting discounts and commissions and estimated offering expenses, our pro forma as adjusted net tangible book value at December 31, 2009 would have been \$58.6 million, or \$1.99 per share of common stock. This represents an immediate increase in pro forma as adjusted net tangible book value of \$1.36 per share to existing stockholders and an immediate dilution of \$10.01 per share to new investors.

The following table illustrates this dilution:

Assumed initial public offering price per share of Class A common stock	\$ 12.00
Pro forma net tangible book value per share as of December 31, 2009	\$ 0.63
Increase in pro forma as adjusted net tangible book value per share attributable to new investors	1.36
Pro forma as adjusted net tangible book value per share after this offering	1.99
Pro forma dilution per share to new investors in this offering	\$ 10.01

If the underwriters exercise their over-allotment option in full, the pro forma net tangible book value per share of our Class A and Class B common stock after giving effect to this offering would be approximately \$2.18 per share, and the dilution in pro forma net tangible book value per share to investors in this offering would be approximately \$9.82 per share of Class A common stock.

The following table summarizes, on a pro forma as adjusted basis as of December 31, 2009, the total number of shares of Class A common stock purchased from us, the total consideration paid to us and the average price per share paid to us by existing stockholders and by new investors purchasing shares of Class A common stock in this offering at the initial public offering price of \$12.00, the midpoint of the price range set forth on the front cover of this prospectus, before deducting estimated underwriting discounts and commissions and estimated offering expenses:

	Shares Purchased		Total Consideration		Average Price Per Share
	Number	Percent	Amount	Percent	
Existing stockholders before this offering	25,263,063	86%	\$ 36,235,194	42%	\$ 1.43
New public investors	4,166,667	14	50,000,004	58	12.00



Edgar Filing: MAXLINEAR INC - Form S-1/A

Totals	29,429,730	100%	\$ 86,235,198	100%
--------	------------	------	---------------	------

Except as otherwise indicated, the discussion and tables above assume no exercise of the underwriters' option to purchase additional shares, no exercise of any outstanding options and no sale of our Class A common

---

**Table of Contents**

stock by the selling stockholders. The sale of 1,268,116 shares of our Class A common stock to be sold by the selling stockholders in this offering will reduce the number of shares held by existing stockholders to 23,994,947, or 82% of the total shares outstanding, and will increase the number of shares held by investors participating in this offering to 5,434,783, or 18% of the total shares outstanding. In addition, if the underwriters' option to purchase additional shares is exercised in full, the number of shares held by existing stockholders will be reduced to 79% of the total number of shares of common stock to be outstanding upon completion of this offering, and the number of shares of common stock held by investors participating in this offering will be further increased to 6,250,000, or 21% of the total number of shares of common stock to be outstanding upon completion of the offering.

A \$1.00 increase (decrease) in the assumed initial public offering price of \$12.00 per share, the midpoint of the range set forth on the cover page of this prospectus, would increase (decrease) our pro forma as adjusted net tangible book value by \$3.9 million, assuming that the number of shares of Class A common stock offered by us, as set forth on the cover page of this prospectus, remains the same, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. Each increase of 1 million shares in the number of shares of Class A common stock offered by us, together with a \$1.00 increase in the assumed offering price of \$12.00 per share, would increase our pro forma as adjusted net tangible book value by approximately \$16.0 million. Similarly, each decrease of 1 million shares in the number of shares of Class A common stock offered by us would decrease our pro forma as adjusted net tangible book value by approximately \$11.2 million. The pro forma as adjusted information discussed above is illustrative only and will be adjusted based on the actual public offering price and other terms of this offering determined at pricing.

The table above excludes the following shares:

4,951,385 shares of our Class B common stock issuable upon the exercise of options outstanding as of December 31, 2009 under our 2004 Stock Plan, with a weighted average exercise price of \$3.38 per share;

208,692 shares of our Class B common stock issuable upon the exercise of options granted after December 31, 2009 under our 2004 Stock Plan, with a weighted average exercise price of \$9.03 per share;

9,319,269 shares of our common stock reserved for future issuance under our stock-based compensation plans, including 277,678 shares under our 2004 Stock Plan and 9,041,591 shares of common stock reserved for issuance under our 2010 Equity Incentive Plan, which will become effective in connection with this offering, and any future increase in shares reserved for issuance under such plan; and

645,827 shares of our common stock reserved for future issuance under our 2010 Employee Stock Purchase Plan, which will become effective in connection with this offering and any future increase in shares reserved for issuance under such plan.

To the extent that any of these options are exercised, new options are issued under our stock-based compensation plans or we issue additional shares of common stock in the future, there will be further dilution to investors participating in this offering. If all our outstanding options had been exercised, the pro forma net tangible book value as of December 31, 2009 would have been \$32.6 million, or \$1.08 per share of Class A and Class B common stock, and the pro forma net tangible book value after this offering would have been \$75.3 million, or \$2.19 per share of Class A and Class B common stock, causing dilution to new investors of \$9.81 per share of Class A common stock.

**Table of Contents****SELECTED CONSOLIDATED FINANCIAL DATA**

We have derived the selected consolidated statement of operations data for the fiscal years ended December 31, 2007, 2008 and 2009 and selected consolidated balance sheet data as of December 31, 2008 and 2009 from our audited consolidated financial statements and related notes included elsewhere in this prospectus. We have derived the statement of operations data for the fiscal years ended December 31, 2005 and 2006 and the balance sheet data as of December 31, 2005, 2006 and 2007 from our audited consolidated financial statements not included in this prospectus. Our historical results are not necessarily indicative of the results to be expected for any future period. The following selected consolidated financial data should be read in conjunction with Management's Discussion and Analysis of Financial Condition and Results of Operations and our consolidated financial statements and related notes included elsewhere in this prospectus.

	2005	Years Ended December 31,			2009
		2006	2007	2008	
	(in thousands, except per share amounts)				
<b>Consolidated Statement of Operations Data:</b>					
Net revenue	\$ 8	\$ 578	\$ 9,696	\$ 31,331	\$ 51,350
Cost of net revenue		507	4,896	12,675	17,047
<b>Gross profit</b>	8	71	4,800	18,656	34,303
<b>Operating expenses:</b>					
Research and development	4,169	7,810	9,924	14,310	19,790
Selling, general and administrative	1,243	2,321	4,296	6,356	9,921
Total operating expenses	5,412	10,131	14,220	20,666	29,711
(Loss) income from operations	(5,404)	(10,060)	(9,420)	(2,010)	4,592
Interest income	364	343	654	179	51
Interest expense	(20)	(17)	(78)	(74)	(52)
Other income (expense), net	(55)	(20)	135	(9)	(32)
<b>(Loss) income before income taxes</b>	(5,115)	(9,754)	(8,709)	(1,914)	4,559
Provision for income taxes					230
<b>Net (loss) income</b>	(5,115)	(9,754)	(8,709)	(1,914)	4,329
Accretion to liquidation value of preferred stock		(92)			
Net income allocable to preferred stockholders					(3,691) <sup>(1)</sup>
<b>Net (loss) income attributable to common stockholders</b>	\$ (5,115)	\$ (9,846)	\$ (8,709)	\$ (1,914)	\$ 638
Net (loss) income per share attributable to common stockholders:					
Basic	\$ (0.81)	\$ (1.23)	\$ (0.93)	\$ (0.19)	\$ 0.06
Diluted	\$ (0.81)	\$ (1.23)	\$ (0.93)	\$ (0.19)	\$ 0.06
Shares used to compute net (loss) income per share attributable to common stockholders:					
Basic	6,278	8,031	9,364	9,861	10,129
Diluted	6,278	8,031	9,364	9,861	11,512
Pro forma net income per share attributable to common stockholders (unaudited):					
Basic					\$ 0.18
Diluted					\$ 0.17

## Edgar Filing: MAXLINEAR INC - Form S-1/A

Shares used to compute pro forma net income per share attributable to common stockholders  
(unaudited):

Basic	24,655
Diluted	26,038

- (1) Please see Note 1 to our consolidated financial statements for an explanation of the method used to calculate net income allocable to preferred stockholders and net (loss) income attributable to common stockholders, including the method used to calculate the number of shares used in the computation of the per share amounts.

**Table of Contents**

	2005	2006	As of December 31, 2007 (in thousands)	2008	2009
<b>Consolidated Balance Sheet Data:</b>					
Cash, cash equivalents and investments available-for-sale	\$ 9,442	\$ 19,481	\$ 8,973	\$ 9,720	\$ 17,921
Working capital	9,143	18,762	10,292	8,406	11,029
Total assets	10,455	22,323	14,603	16,723	35,773
Capital lease obligations, net of current portion	174	90	301	238	115
Convertible preferred stock <sup>(1)</sup>	15,351	35,351	35,351	35,351	35,351
Total stockholders (deficit)	(5,636)	(15,427)	(23,914)	(25,363)	(19,475)

- (1) Upon certain change in control events that may be outside of our control, including our liquidation, sale or transfer of control, holders of the convertible preferred stock can cause its redemption. Accordingly, these shares are considered contingently redeemable and have been classified as temporary equity on our balance sheets instead of in stockholders' deficit. We have adjusted the carrying values of the convertible preferred stock to their liquidation values at each period end.

**Table of Contents**

**MANAGEMENT'S DISCUSSION AND ANALYSIS OF  
FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

*The following discussion and analysis of the financial condition and results of our operations should be read in conjunction with the consolidated financial statements and related notes included elsewhere in this prospectus. This discussion contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those discussed below. Factors that could cause or contribute to such differences include, but are not limited to, those identified below, and those discussed in the section titled "Risk Factors" included elsewhere in this prospectus.*

**Overview**

We are a provider of highly integrated, radio-frequency analog and mixed-signal semiconductor solutions for broadband communications applications. Our high performance radio-frequency, or RF, receiver products capture and process digital and analog broadband signals to be decoded for various applications. These products include both RF receivers and RF receiver systems-on-chip, or SoCs, which incorporate our highly integrated radio system architecture and the functionality necessary to demodulate broadband signals. Our current products enable the display of broadband video content in a wide range of electronic devices, including cable and terrestrial set top boxes, digital televisions, mobile handsets, personal computers, netbooks and in-vehicle entertainment devices.

The history of our product development and sales and marketing efforts is as follows:

From 2003 to 2005, we were primarily engaged in the design and development of our core CMOS-based radio architecture platform technology, our digital demodulation platform technology and our global digital television RF receiver product platform.

In 2006, we commenced shipments of our global digital television RF receiver product for set top box and PC applications and began design and development of our first-generation mobile digital television RF receiver product and our second-generation global digital television RF receiver product platform.

In 2007, we introduced and began shipping our first commercially available mobile digital television receiver and our digital television RF receiver product for automotive applications. Also in that year, we began development of our second-generation mobile digital RF receiver product.

In 2008, we began development of our third generation mobile digital television receiver product, our cable television digital RF receiver product and our global hybrid digital/analog television RF receiver product.

In 2008, we began commercial shipments of our second generation global digital television RF receiver products, our second generation mobile digital television RF receiver product, our second generation digital television receiver product for automotive applications and our third generation mobile digital RF receiver product.

In 2009, we commenced development of our mobile digital SoC product and our cable television RF receiver SoC product. We also began commercial shipments of our first generation cable television receiver product, our global digital television RF receiver

## Edgar Filing: MAXLINEAR INC - Form S-1/A

product for the netbook market and our cable television RF receiver SoC product.

Our net revenue has grown from approximately \$600,000 in fiscal 2006 to \$51.4 million in fiscal 2009. Through December 31, 2008, a substantial majority of our net revenue was derived from sales of our mobile handset digital television receivers in the Japanese market, and the balance was generated from sales of our global digital television RF receiver products. In 2009, a substantial majority of our net revenue was derived from sales of global digital television RF receiver products for digital set top box applications, as well as automotive navigation displays and digital televisions. During this period, sales of our mobile digital handset

## **Table of Contents**

television receivers into Japan continued to represent a significant portion of our revenue. Our ability to achieve revenue growth in the future will depend, among other factors, on our ability to further penetrate existing markets, the timing of the global transition from analog to digital television, our ability to obtain design wins with manufacturers of set top boxes for the cable industry, trends in the development markets for mobile digital television and our ability to penetrate additional markets.

Through December 31, 2009, substantially all of our sales have been to customers outside the United States. Sales to customers in Asia accounted for 92%, 97% and 99% of net revenue in the years ended December 31, 2007, 2008 and 2009, respectively. Because many of our customers or their OEM manufacturers are located in Asia, we anticipate that a majority of our revenue will continue to come from sales to customers in that region. Although a large percentage of our sales are made to customers in Asia, we believe that a significant number of the systems designed by these customers and incorporating our semiconductor products are then sold to end users outside Asia. For example, we believe revenue generated from sales of our digital terrestrial set top box products during the year ended December 31, 2009 related principally to sales to Asian set top box manufacturers delivering products into European markets. To date, all of our sales have been denominated in United States dollars.

A significant portion of our net revenue has historically been generated by a limited number of customers. For the year ended December 31, 2009, Panasonic, Murata and MTC represented 23%, 13% and 12%, respectively, of net revenue. In the case of Panasonic, we sell multiple products into disparate end user applications such as modules for televisions, in-vehicle or automotive applications and mobile handsets. Substantially all of our sales to these and other customers are through distributors based in Asia. Although we actually sell the products to, and are paid by, the distributors, we refer to these end customers as our customers.

We have incurred substantial losses from the time of our incorporation. We achieved profitability on a quarterly basis in the second quarter of fiscal 2008 and were again profitable in each quarter of fiscal 2009. As of December 31, 2009, we had an accumulated deficit of \$21.8 million.

Our business depends on winning competitive bid selection processes, known as design wins, to develop semiconductors for use in our customers' products. These selection processes are typically lengthy, and as a result, our sales cycles will vary based on market served, whether the design-win is with an existing or a new customer and whether our product being designed in our customer's device is a first generation or subsequent generation product. Our customers' products can be complex and, if our engagement results in a design win, can require significant time to define, design and result in volume production. Because the sales cycle for our products is long, we can incur significant design and development expenditures in circumstances where we do not ultimately recognize any revenue. We do not have any long-term purchase commitments with any of our customers, all of whom purchase our products on a purchase order basis. Once one of our products is incorporated into a customer's design, however, we believe that our product is likely to remain a component of the customer's product for its life cycle because of the time and expense associated with redesigning the product or substituting an alternative chip. Product life cycles in our target markets will vary by application. For example, in the digital set top box market a design-in can have a product life cycle of 18 to 24 months. In the automotive sector, the product life cycle of a design-in can range from 36 to 60 months. In the mobile television sector, the product life cycle can range from 12 to 36 months.

## **Critical Accounting Policies and Estimates**

Our consolidated financial statements and the related notes included elsewhere in this prospectus are prepared in accordance with accounting principles generally accepted in the United States. The preparation of these consolidated financial statements requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue, costs and expenses, and any related disclosures. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances. Changes in accounting estimates are reasonably likely to occur from period to period. Accordingly, actual results





## **Table of Contents**

could differ significantly from the estimates made by our management. We evaluate our estimates and assumptions on an ongoing basis. To the extent that there are material differences between these estimates and our actual results, our future financial statement presentation, financial condition, results of operations and cash flows will be affected.

We believe that the following accounting policies involve a greater degree of judgment and complexity than our other accounting policies. Accordingly, these are the policies we believe are the most critical to understanding and evaluating our consolidated financial condition and results of operations.

### ***Revenue Recognition***

Our revenue is generated from sales of our RF receiver and RF receiver SoC products. We recognize revenue when all of the following criteria are met: persuasive evidence of an arrangement exists; delivery of goods has occurred; the sales price is fixed or determinable; collectibility is reasonably assured; and title to products has transferred to the customer, which, based on the terms of our agreement with the customer, may occur on shipment or customer receipt.

We record revenue based on facts available at the time of sale. Amounts that are not probable of collection once the product has shipped and title has transferred to the customer are deferred until the amount that is probable of collection can be determined. Items that are considered when determining the amounts that will be ultimately collected are the customer's overall creditworthiness and payment history, rights to return unsold product, rights to price protection, payment terms conditioned on sale or use of product by the customer, or extended payment terms granted to the customer.

In 2006 and 2007, for distributor transactions, revenue was recorded upon shipment of products to the distributors as title of the inventory transferred to the distributor, the sales price was known, collectibility was reasonably assured and no right of return existed. In 2008, our relationship with our distributors changed such that we increased our direct interaction and negotiations with our end customers, increased the number of end customers and requested our distributors to carry additional inventory. These changes created variability in the ultimate amount to be collected upon shipment to the distributor whereby we could no longer consider the price as fixed and determinable. As a result, since 2008, for distributor transactions, revenue is not recognized until product is shipped to the end customer and the amount that will ultimately be collected is determinable. Upon shipment of products to these distributors, title to the inventory transfers to the distributor and the distributor is invoiced, generally with 30-day terms. On shipments where revenue is not recognized, we record a trade receivable for the selling price as there is a legally enforceable right to payment, relieving the inventory for the carrying value of goods shipped since legal title has passed to the distributor, and record the corresponding gross profit in our consolidated balance sheet as a component of deferred revenue and deferred profit, representing the difference between the receivable recorded and the cost of inventory shipped.

In 2009, we began providing rebates of free product to end customers based on volume purchases. We estimate that all of the rebates will be achieved, reduce the average selling price of the product sold under the rebate program and defer revenue for the difference between the amount billed to the customer and the adjusted average selling price. Once the targeted level is achieved, the deferred revenue is recognized as revenue as rebated products are shipped to the end customer.

### ***Allowance for Doubtful Accounts***

## Edgar Filing: MAXLINEAR INC - Form S-1/A

We perform ongoing credit evaluations of our customers and adjust credit limits based on each customers' credit worthiness, as determined by our review of current credit information. We continuously monitor collections and payments from our customers and maintain an allowance for doubtful accounts based upon our historical experience, our anticipation of uncollectible accounts receivable and any specific customer collection issues that we have identified. While our credit losses have historically been insignificant, we may experience

## **Table of Contents**

higher credit loss rates in the future than we have in the past. Our receivables are concentrated in relatively few customers. Therefore, a significant change in the liquidity or financial position of any one significant customer could make collection of our accounts receivable more difficult, require us to increase our allowance for doubtful accounts and negatively affect our working capital.

### ***Inventory Valuation***

We continually assess the recoverability of our inventory based on assumptions about demand and market conditions. Forecasted demand is determined based on historical sales and expected future sales. We value our inventory at the lower of standard cost (which approximates actual cost on a first-in, first-out basis) or its current estimated market value. We reduce our inventory to the estimated lower of cost or market value on a part-by-part basis to account for its obsolescence or lack of marketability. Reductions are calculated as the difference between the cost of inventory and the estimated market value based upon assumptions about future demand and market conditions. If actual market conditions are less favorable than those projected by management, additional inventory write-downs may be required that may adversely affect our operating results. If actual market conditions are more favorable, we may have higher gross profits when products are sold.

### ***Income Taxes***

We account for income taxes under the asset and liability approach. We record a valuation allowance to reduce our net deferred tax assets to the amount that we believe is more likely than not to be realized. In assessing the need for a valuation allowance, we consider historical levels of income, projections of future income, expectations and risks associated with estimates of future taxable income and ongoing prudent and practical tax planning strategies. To the extent that we believe it is more likely than not that some portion of our deferred tax assets will not be realized, we would increase the valuation allowance against the deferred tax assets. Realization of our deferred tax assets is dependent primarily upon future U.S. taxable income. Our judgments regarding future profitability may change due to future market conditions, changes in U.S. or international tax laws and other factors. These changes, if any, may require possible material adjustments to these deferred tax assets, resulting in a reduction in net income or an increase in net loss in the period when such determinations are made.

We are subject to income taxes in the United States and foreign countries, and are subject to routine corporate income tax audits in many of these jurisdictions. We believe that our tax return positions are fully supported, but tax authorities are likely to challenge certain positions, which may not be fully sustained. However, our income tax expense includes amounts intended to satisfy income tax assessments that result from these challenges. Determining the income tax expense for these potential assessments and recording the related assets and liabilities requires management judgment and estimates. We believe that our provision for uncertain tax positions, including related interest and penalties, is adequate based on information currently available to us. The amount ultimately paid upon resolution of audits could be materially different from the amounts previously included in income tax expense and therefore could have a material impact on our tax provision, net income and cash flows. Our overall provision requirement could change due to the issuance of new regulations or new case law, negotiations with tax authorities, resolution with respect to individual audit issues, or the entire audit, or the expiration of statutes of limitations.

In addition to our current research and development center in Shanghai, we are in the process of expanding our international operations and staff to better support our expansion into international markets. We expect this business expansion will include an international structure that, among other things, consists of research and development cost-sharing arrangements, certain licenses and other contractual arrangements between us and our wholly owned foreign subsidiaries, both existing and currently contemplated. We anticipate that these prospective arrangements will result in an increasing percentage of our consolidated pre-tax income being subject to foreign tax at relatively lower tax rates when compared to the U.S. federal statutory tax rate. As a result, our effective tax rate is expected to be lower than the U.S. federal statutory rate. However, the realization of any expected tax benefits is contingent upon several factors, including the judgments of tax authorities in several jurisdictions and thus cannot be assured.



## **Table of Contents**

### ***Stock-Based Compensation***

Effective January 1, 2006, we adopted authoritative guidance for stock-based compensation, which requires us to measure the cost of employee services received in exchange for equity incentive awards, including stock options, based on the grant date fair value of the award. The fair value is estimated using the Black-Scholes option pricing model. The resulting cost is recognized over the period during which the employee is required to provide services in exchange for the award, which is usually the vesting period. We recognize compensation expense over the vesting period using the straight-line method and classify these amounts in the statements of operations based on the department to which the related employee reports.

We account for stock options issued to non-employees in accordance with authoritative guidance for equity based payments to non-employees. Stock options issued to non-employees are accounted for at their estimated fair value determined using the Black-Scholes option-pricing model. The fair value of options granted to non-employees is re-measured as they vest, and the resulting increase in value, if any, is recognized as expense during the period the related services are rendered.

For further information regarding our methodology for determining our historical stock compensation expense, see [Historical Stock-Based Compensation Expense](#) later in this section.

### **Results of Operations**

The following describes the line items set forth in our consolidated statements of operations.

***Net Revenue.*** Net revenue is generated from sales of our RF receivers and RF receiver SoCs. Substantially all of our end customers purchase products indirectly from us through distributors. Although we actually sell the products to, and are paid by, the distributors, we refer to these end customers as our customers.

***Cost of Net Revenue.*** Cost of net revenue includes the cost of finished silicon wafers processed by third-party foundries, primarily by UMC, an affiliate of one of our stockholders; costs associated with our outsourced packaging and assembly, test and shipping; costs of personnel and equipment associated with manufacturing support, logistics and quality assurance; amortization of production mask costs; cost of production load boards and sockets; and an allocated portion of our occupancy costs.

***Research and Development.*** Research and development expense includes personnel-related expenses, including stock-based compensation, new product engineering mask costs, prototype integrated circuit packaging and test costs, computer-aided design software license costs, intellectual property license costs, reference design development costs, development testing and evaluation costs, depreciation expense and allocated occupancy costs. Research and development activities include the design of new products, refinement of existing products and design of test methodologies to ensure compliance with required specifications. All research and development costs are expensed as incurred.

## Edgar Filing: MAXLINEAR INC - Form S-1/A

***Selling, General and Administrative.*** Selling, general and administrative expense includes personnel-related expenses, including stock-based compensation, distributor and other third-party sales commissions, field application engineering support, travel costs, professional and consulting fees, legal fees, depreciation expense and allocated occupancy costs.

***Interest Income.*** Interest income consists of interest earned on our cash, cash equivalents and investment balances.

***Interest Expense.*** Interest expense consists primarily of imputed interest on capital leases generally related to purchases of property and equipment.

**Table of Contents**

**Other Income (expense).** Other income (expense) generally consists of income (expense) generated from minor non-operating transactions.

**Provision for Income Taxes.** In each period since our inception, we have recorded a valuation allowance for the full amount of our deferred tax asset, as the realization of the full amount of our deferred tax asset is uncertain. As a result, through December 31, 2009, we have not recorded any federal or state income tax benefit derived from the deferred tax asset in our statements of operations. Since we became profitable for the year ended December 31, 2009, a provision for income taxes has been recorded as we are unable to fully offset our alternative minimum taxable income due to limitations in our ability to fully utilize net operating loss carryforwards. In addition, the ability to use net operating loss carryforwards for state tax purposes in California is currently suspended.

The following table sets forth our consolidated statement of operations data as a percentage of net revenue for the periods indicated.

	Years Ended December 31,		
	2007	2008	2009
Net revenue	100%	100%	100%
Cost of net revenue	50	40	33
Gross profit	50	60	67
Operating expenses:			
Research and development	102	46	39
Selling, general and administrative	44	20	19
Total operating expenses	146	66	58
(Loss) income from operations	(96)	(6)	9
Interest income	7	1	
Interest expense	(1)		
Other income (expense), net		(1)	(1)
(Loss) income before income taxes	(90)	(6)	8
Provision for income taxes			
Net (loss) income	(90)%	(6)%	8%

**Comparison of the Fiscal Years Ended December 31, 2007, 2008 and 2009****Net Revenue**

	Years Ended December 31,			% Change	
	2007	2008	2009	2008	2009
Net revenue	\$ 9,696	\$ 31,331	\$ 51,350	223%	64%

(dollars in thousands)



## Edgar Filing: MAXLINEAR INC - Form S-1/A

Net revenue for the year ended December 31, 2009 increased by \$20.0 million from 2008 primarily due to an increase in shipments of our worldwide digital terrestrial television RF receiver products. A substantial portion of the increase in our digital terrestrial television RF receiver products is attributable to shipments of digital-to-analog converter set top boxes for European end markets and to a lesser extent to an increase in shipments to the automotive digital television and PCTV markets in Japan. The increase in shipments of digital terrestrial RF receiver products was offset by an \$8.7 million decrease in shipments and revenue from our mobile digital television RF receiver products for the Japanese handset market, which reflected a phase-out of consumer handset subsidies by Japanese service providers beginning in the middle of 2008. We expect sales of our second-generation global digital terrestrial device to continue to account for a substantial portion of our revenue and

**Table of Contents**

revenue growth, if any, as the European market undergoes a multi-year country-by-country conversion from analog to digital television as a result of the increasing attach rates of digital television features in the automotive, PC and television markets. During 2009, our second-generation digital terrestrial device was successfully adopted by several digital-to-analog television converter set top box makers, principally original device manufacturers in China, for delivery in European end markets. Because some of our products may be deployed in multiple devices or geographic areas and our customers consist principally of distributors who sell our products to end customers, we do not always know how or where our products are deployed. As a result, although we have been able to quantify our Japanese mobile handset revenue based on unique characteristics of the Japanese market and our product for that market, we generally do not expect to be able to quantify our revenue by product in future filings.

Net revenue for the year ended December 31, 2008 increased by \$21.6 million from 2007 primarily due to a higher volume and a full year of shipments of our existing mobile digital television RF receiver and release to production and shipment of our second-generation global digital terrestrial television RF receiver and automotive television RF receiver products. In particular, \$17.5 million of the \$21.6 million increase in net revenue in 2008 was due to shipments and sales of our mobile digital television RF receiver products for the Japanese mobile handset market, which was released to production in the second half of 2007. As a result, 2008 was the first full year of volume shipments of our Japanese mobile handset products.

**Cost of Net Revenue and Gross Profit**

	Years Ended December 31,			% Change	
	2007	2008	2009	2008	2009
	(dollars in thousands)				
Cost of net revenue	\$ 4,896	\$ 12,675	\$ 17,047	159%	34%
% of net revenue	50%	40%	33%		
Gross profit	\$ 4,800	\$ 18,656	\$ 34,303	289%	84%
% of net revenue	50%	60%	67%		

Cost of net revenue and gross profit increased by \$4.4 million and \$15.7 million, respectively, from 2008 to 2009. The increase in cost of net revenue was principally due to increased sales of our second-generation global digital television RF receiver product. Cost of net revenue increased at a lesser rate than the increase in net revenue, however, principally as a result of improved unit costs associated with lower silicon die and manufacturing expenses as we transitioned our second generation global digital television RF receiver product to a 0.13 $\mu$  CMOS manufacturing process technology from an 0.18 $\mu$  technology. Lower package and assembly costs due to the choice of a smaller package and reduced test costs due to higher wafer yields were also significant contributors to the decrease in cost of net revenue. The rise in shipments and, to a lesser extent, the reduction in per unit manufacturing cost of the second-generation global digital television RF receiver products resulted in the increase in both the absolute gross profit and the gross profit percentage of net revenue in 2009 compared to 2008. We currently expect that gross profit percentage will fluctuate from quarter to quarter in the future based on changes in product mix, average selling prices, or manufacturing costs.

Cost of net revenue and gross profit increased by \$7.8 million and \$13.9 million, respectively, from 2007 to 2008. The increase in cost of net revenue was primarily attributable to increased revenue from product shipments in 2008 relative to 2007. Gross profit and gross profit percentage increased in 2008 relative to 2007 principally because of increased revenue from second-generation products in 2008, which were introduced in 2007 and benefited from an improvement in manufacturing costs during the year due to lower unit wafer, assembly, packaging and test costs. In addition, our 2008 gross profit percentage benefited from a beneficial product mix.

**Table of Contents****Research and Development**

	Years Ended December 31,			% Change	
	2007	2008	2009	2008	2009
	(dollars in thousands)				
Research and development	\$ 9,924	\$ 14,310	\$ 19,790	44%	38%
% of net revenue	102%	46%	39%		

Research and development expense for 2009 was \$19.8 million, an increase of \$5.5 million, or 38%, from 2008. The increase was primarily attributable to an increase in the number of new product development and existing product enhancement initiatives undertaken during 2009, relating primarily to our RF receiver SoC products. Incremental personnel-related costs of \$3.1 million (including \$0.3 million of stock-based compensation expense) contributed the largest portion of the increase, reflecting growth in our average full-time-equivalent headcount in 2009 compared to the prior year, as well as 2009 bonus accruals of \$0.7 million that did not apply in 2008, when no bonuses were accrued or paid on a company-wide basis. Also contributing to the increase were \$1.1 million of acquired intellectual property, \$0.8 million of computer-aided design and related software license costs associated with the increase in the scope and number of our research and development projects, \$0.4 million of facility-related costs associated with the need for larger scale operations and \$0.4 million related to supplies, travel and other costs. These increases were offset by a decrease of \$0.3 million related to the timing of various engineering test activities in 2009. We expect our research and development expenses to increase in absolute dollars as we continue to focus on expanding our product portfolio and enhancing existing products.

Research and development expense for 2008 was \$14.3 million, an increase of \$4.4 million, or 44%, from 2007. The increase in absolute research and development expense in 2008 relative to 2007 was primarily attributable to an increase in personnel and in the number of new product or product enhancement projects. These additional projects resulted in increased personnel-related costs of \$3.5 million as well as \$0.5 million of increased license or technology acquisition costs, including costs of computer aided design software licenses. In addition, we experienced \$0.4 million of net increases in other expenses, including facility costs and project specific supplies and testing costs.

**Selling, General and Administrative**

	Years Ended December 31,			% Change	
	2007	2008	2009	2008	2009
	(dollars in thousands)				
Selling, general and administrative	\$ 4,296	\$ 6,356	\$ 9,921	48%	56%
% of net revenue	44%	20%	19%		

Selling, general and administrative expense for 2009 was \$9.9 million, or 19% of net revenue, an increase of \$3.6 million, or 56%, from 2008. The year-to-year increase was primarily attributable to costs associated with the need for larger scale operations as a result of increased demand for our products and increased expenses as we prepared to become a public reporting company. Specifically, the increase was attributable to an additional \$2.0 million of personnel-related costs, including \$0.7 million of incremental sales commissions, 2009 bonus accruals of \$0.5 million and \$0.3 million of incremental stock-based compensation expense; an additional \$0.7 million of increased legal and accounting expenses, \$0.5 million of incremental consulting expenses and \$0.4 million of additional supplies, travel and facility-related costs. We expect selling, general and administrative expenses to increase in absolute dollars in the future as we expand our sales, finance and administrative personnel and as we incur incremental expenses associated with being a public company.

Selling, general and administrative expense for 2008 was \$6.4 million, or 20% of net revenue, an increase of \$2.1 million, or 48%, from 2007. In 2007, selling, general and administrative expense was \$4.3 million or 44% of



**Table of Contents**

net revenue, an increase of 85% from \$2.3 million, or 402% of net revenue in 2006. The increase in selling, general and administrative expense in 2008 results from our increasing revenue and the larger scope of our business in 2008. Specifically, sales commissions to distributors contributed \$1.0 million of the increase from 2007 to 2008, consulting and personnel costs contributed \$0.4 million, travel-related expenses contributed \$0.1 million, and legal expenses associated with patent filings contributed \$0.3 million.

***Other Income (Expense)***

	<b>Years Ended December 31,</b>		
	<b>2007</b>	<b>2008</b>	<b>2009</b>
	<b>(in thousands)</b>		
Interest income	\$ 654	\$ 179	\$ 51
Interest expense	\$ (78)	\$ (74)	\$ (52)
Other income (expense), net	\$ 135	\$ (9)	\$ (32)

Interest income in 2009 decreased from 2008 due to earning lower yields on cash and investments in 2009. Interest income in 2008 decreased from 2007 due to lower cash and investment balances in 2008 resulting from the use of our cash and investment balances to fund our operations.

Interest expense in 2009 decreased from 2008 due to lower outstanding debt balances. Interest expense in 2008 remained relatively consistent with 2007 due to relatively insignificant changes in the outstanding debt balances as a result of normally scheduled principal reductions.

Other income (expense), net in 2009 consisted primarily of the write-off of the carrying value of leasehold improvements in connection with vacating certain leased facilities. Other income (expense), net in 2007 consisted primarily of net settlement payments received from a supplier as compensation for defective products.

**Table of Contents****Quarterly Results of Operations**

The following table sets forth our unaudited consolidated statements of operations data for each of the eight quarters in the period ended December 31, 2009. The quarterly data have been prepared on the same basis as the audited consolidated financial statements included elsewhere in this prospectus. You should read this information together with our consolidated financial statements and related notes included elsewhere in this prospectus.

	March 31, 2008	June 30, 2008	September 30, 2008	Three Months Ended				December 31, 2009
				December 31, 2008	March 31, 2009	June 30, 2009	September 30, 2009	December 31, 2009
	(in thousands)							
Net revenue	\$ 5,865	\$ 9,878	\$ 7,833	\$ 7,755	\$ 8,771	\$ 11,176	\$ 16,200	\$ 15,203
Cost of net revenue	2,750	4,145	3,025	2,755	3,062	3,898	5,564	4,523
<b>Gross profit</b>	<b>3,115</b>	<b>5,733</b>	<b>4,808</b>	<b>5,000</b>	<b>5,709</b>	<b>7,278</b>	<b>10,636</b>	<b>10,680</b>
Operating expenses:								
Research and development	2,915	3,447	4,058	3,890	3,863	4,955	5,324	5,648
Selling, general and administrative	1,264	1,613	1,566	1,913	1,736	2,119	2,941	3,125
<b>Total operating expenses</b>	<b>4,179</b>	<b>5,060</b>	<b>5,624</b>	<b>5,803</b>	<b>5,599</b>	<b>7,074</b>	<b>8,265</b>	<b>8,773</b>
(Loss) income from operations	(1,064)	673	(816)	(803)	110	204	2,371	1,907
Interest income	65	44	41	29	9		18	24
Interest expense	(18)	(18)	(17)	(21)	(17)	(9)	(14)	(12)
Other income (expense), net	(1)	(1)	1	(8)		(27)		(5)
(Loss) income before income taxes	(1,018)	698	(791)	(803)	102	168	2,375	1,914
Provision for income taxes					10	15	209	(4)
<b>Net (loss) income</b>	<b>\$ (1,018)</b>	<b>\$ 698</b>	<b>\$ (791)</b>	<b>\$ (803)</b>	<b>\$ 92</b>	<b>\$ 153</b>	<b>\$ 2,166</b>	<b>\$ 1,918</b>

**Table of Contents**

The following table sets forth our unaudited consolidated statement of operations data for each of the eight quarters in the period ended December 31, 2009 as a percentage of net revenue for the periods indicated.

	March 31, 2008	June 30, 2008	September 30, 2008	Three Months Ended			September 30, 2009	December 31, 2009
	100%	100%	100%	December 31, 2008	March 31, 2009	June 30, 2009	100%	100%
Net revenue	100%	100%	100%	100%	100%	100%	100%	100%
Cost of net revenue	47	42	39	36	35	35	34	30
Gross profit	53	58	61	64	65	65	66	70
Operating expenses:								
Research and development	50	35	52	50	44	44	33	37
Selling, general and administrative	22	16	20	25	20	19	18	20
Total operating expenses	72	51	72	75	64	63	51	57
(Loss) income from operations	(19)	7	(11)	(11)	1	2	15	13
Interest income	1		1					
Interest expense								
Other income (expense), net	1			1		(1)	(1)	
(Loss) income before income taxes	(17)	7	(10)	(10)	1	1	14	13
Provision for income taxes							1	
Net (loss) income	(17)%	7%	(10)%	(10)%	1%	1%	13%	13%

Net revenue has generally increased over the eight quarters presented due to continued new product introductions and our success in acquiring new customers in different target markets. In 2008, we introduced and commenced commercial shipments of our second-generation global digital television RF receiver and second-generation mobile digital television RF receiver products. In 2009, we began shipping in volume quantities of our third-generation mobile digital television RF receiver product. In the third quarter of 2009, we also introduced our first digital cable RF receiver product. In the fourth quarter of 2009, we began commercial shipments of our cable RF receiver SoC product.

Although we have experienced substantial year-over-year increases in our net revenues from 2007 through 2009, our quarter-over-quarter revenues have at times fluctuated, notably in the third and fourth quarters of 2008 and in the fourth quarter of 2009. We believe these fluctuations have reflected changes in the end-user application markets for products deploying our integrated circuits and, in late 2008, a substantially adverse macroeconomic environment. For example, in 2008, Japanese cell-phone operators phased out mobile handset subsidies, contributing in part to the decline in net revenues in late 2008 as a decline in overall handset shipments in Japan led to lower unit sales of our

## Edgar Filing: MAXLINEAR INC - Form S-1/A

mobile digital television RF receiver products. Also contributing to the decline in revenue in the second half of 2008 was the global financial and economic crisis, which resulted in reduced orders for our global digital television RF receiver products designed for the European set top digital to analog converter box market. We entered this market as the global financial crisis began and observed that OEMs did not appear to replenish inventories at expected rates in the initial months after the crisis began. Order activity for these products accelerated in the second and third quarters of 2009, however, which we believe reflected pent-up demand as well as accelerated fulfillment requirements by converter box manufacturers in response to the pending third quarter 2009 analog shut-off in the Spanish television market.



## **Table of Contents**

We believe some of our markets may be influenced by seasonal factors and demand for our European converter box products may fluctuate substantially as major geographic centers in Europe approach their various deadlines to terminate analog television broadcasts. At this time, however, we cannot identify specific seasonality trends for future fiscal periods as we have a limited operating history for comparison, we are continuing to expand our products into new addressable markets, each of which may have unique seasonality characteristics, and we are continuing to experience relatively rapid growth in our net revenue, which may make identifying seasonality trends more difficult. Because of our limited operating history and rapid growth in our revenue, we believe that period-to-period comparisons of revenue and operating results should not be relied upon as indicators of future performance.

Gross profit percentages improved sequentially in each of the quarters starting from the fourth quarter of 2006. Gross profit percentages grew from 53% in the first quarter of 2008 to a high of 70% in the fourth quarter of 2009. Factors contributing to the increase in gross profit percentage were reductions in manufacturing costs attributable to unit wafer, packaging and test costs for all product lines; introduction of our second- and third- generation products with reduced per unit cost of manufacturing due to reduced silicon die-size, less required testing time and improved wafer yields; favorable changes in product mix and shipments to end markets such as the automotive and digital television markets, which have higher average selling prices; and improved operational efficiencies relating to manufacturing overhead cost. Gross profit percentages in the first, second, third and fourth quarters of 2009 were 65%, 65%, 66% and 70%, respectively. We do anticipate that gross profit percentages will fluctuate from quarter to quarter due to changing product mix, selling prices and manufacturing costs.

To accommodate our growth, our operating expenses have generally increased substantially over the eight quarters ending December 31, 2009, with the exception of the fourth quarter of 2008 and first quarter of 2009, when we reduced certain variable expenses in response to global economic uncertainty. These expense reductions resulted primarily from reductions in our headcount and in discretionary costs such as travel-related expenses and professional fees that we determined to reduce in light of the economic environment. Increases in our operating expenses have been largely attributable to growing investments in our research and development organization, which investment we believe will be necessary to secure our future product roadmap, and to a lesser extent increases in our selling, general and administrative expenses. Among our research and development investments, we have increased our research and development personnel, invested in computer-aided design software to enhance our design capabilities, licensed or acquired intellectual property to augment our product offerings; increased the frequency of our engineering development mask releases to increase the speed of product development; expanded our product prototype and reference platform design capability; and increased production load board and socket costs along with production test capability. We expect our research and development expenses will continue to increase in absolute dollars for the foreseeable future.

We have also increased our selling, general and administrative expenses as required to support our revenue growth and the larger scope of our business. In particular, we have increased staff to expand and maintain our sales, marketing and administrative activities. Selling, general and administrative expenses increased substantially in the third and fourth quarters of 2009 as we incurred additional accounting and other professional fees, including increased consulting expenses, to prepare for this offering.

## **Liquidity and Capital Resources**

Our principal source of liquidity as of December 31, 2009 consisted of \$17.9 million of cash. Since inception, our operations have been financed primarily by net proceeds of approximately \$35.3 million from the sales of shares of our preferred stock and, beginning in 2009, by cash generated from operations. We believe our current cash, together with the net proceeds of this offering, will be sufficient to satisfy our liquidity requirements for the next 12 months.

Our primary uses of cash are to fund operating expenses, purchases of inventory and the acquisition of property and equipment. Cash used to fund operating expenses excludes the impact of non-cash items such as depreciation and stock-based compensation and is impacted by the timing of when we pay these expenses as reflected in the change in our outstanding accounts payable and accrued expenses.



**Table of Contents**

Our primary sources of cash are cash receipts on accounts receivable from our shipment of products to distributors and direct customers. Aside from the growth in amounts billed to our customers, net cash collections of accounts receivable are impacted by the efficiency of our cash collections process, which can vary from period to period depending on the payment cycles of our major distributor customers.

Below is a summary of our cash flows provided by (used in) operating activities, investing activities and financing activities for the periods indicated:

	Years Ended December 31,		
	2007	2008	2009
	(in thousands)		
Net cash (used in) provided by operating activities	\$ (10,402)	\$ 1,602	\$ 9,860
Net cash provided by investing activities	7,882	157	391
Net cash used in financing activities	(86)	(41)	(250)
Effect of exchange rates on cash and cash equivalents			1
Net increase (decrease) in cash and cash equivalents	\$ (2,606)	\$ 1,718	\$ 10,002

**Net Cash (Used in) Provided by Operating Activities**

Net cash used in operating activities in 2007 primarily reflected the net loss of \$8.7 million, growth in accounts receivable and inventories of \$1.6 million and \$1.0 million, respectively, repayment of amounts due to related party of \$0.1 million and \$80,000 of other non-cash activities, offset by growth in accounts payable and other accrued expenses and accrued compensation of \$0.5 million and \$0.2 million, respectively, and \$0.5 million of depreciation. Substantially all of our working capital accounts increased in 2007 as a result of our significant revenue growth and related operational spending.

Net cash used in operating activities in 2008 primarily reflected the net loss of \$1.9 million, growth in inventory, prepaid and other assets, accrued compensation and accretion of investment (premiums) discounts, net, of \$1.7 million, \$0.1 million, \$0.2 million and \$0.1 million, respectively, offset by decreases in accounts receivable of \$0.9 million and growth in accounts payable and other accrued expenses, deferred revenue, amortization and depreciation and stock-based compensation of \$0.5 million, \$3.3 million, \$0.6 million and \$0.4 million, respectively. Our inventory grew due to our increased purchasing activity in support of our increasing sales forecasts. Our accounts receivable decreased in 2008 as a result of lower distributor purchases in December 2008 as a result of the global economic slowdown. The economic slowdown also resulted in our distributors carrying more inventory at the end of 2008 prior to adjusting their buying in response to market conditions, which resulted in growth in our deferred revenue.

Net cash provided by operating activities in 2009 primarily reflected our net income of \$4.3 million, growth in amortization and depreciation, stock-based compensation, reduction in inventory, and increases in accounts payable and accrued expenses (including amounts due to related party), accrued compensation, deferred revenue and deferred profit and other of \$0.8 million, \$1.0 million, \$0.8 million, \$5.1 million, \$1.2 million, \$6.6 million and \$0.1 million, respectively, offset by decreases in accounts receivable and prepaid and other assets of \$8.4 million and \$1.7 million, respectively. Our accounts receivable increased as a result of significantly higher distributor shipments in 2009 and our inventory decreased as a result of sales and production being more closely matched in 2009. Our accounts payable and accrued expenses increased in 2009 in support of our increased production volumes and overall operational growth. Deferred revenue and deferred profit increased as our revenue grew and our distributors carried higher inventory balances.

*Net Cash Provided by Investing Activities*

Net cash provided by investing activities during the years ended December 31, 2007, 2008 and 2009 consisted of sales of investment securities, net of purchases, of \$8.2 million, \$1.1 million and \$1.8 million,

**Table of Contents**

respectively. Purchases of property and equipment accounted for \$0.3 million in 2007, \$0.9 million in 2008 and \$1.4 million in 2009.

***Net Cash Used in Financing Activities***

Net cash used in financing activities during the year ended December 31, 2007 consisted of \$121,000 for the repayment of equipment financing, offset by \$35,000 of net proceeds from the exercise of stock options.

Net cash used in financing activities during the year ended December 31, 2008 consisted of \$89,000 for the repayment of equipment financing, offset by \$48,000 of net proceeds from the exercise of stock options.

Net cash used in financing activities during the year ended December 31, 2009 consisted of \$108,000 for the repayment of equipment financing and \$747,000 for costs paid in connection with our initial public offering, offset by \$605,000 of net proceeds from the exercise of stock options.

**Contractual Obligations, Commitments and Contingencies**

The following table summarizes our outstanding contractual obligations as of December 31, 2009:

	Total	Payments Due by Period		
		Less Than 1 Year	1-3 Years	3-5 Years
		(in thousands)		
Capital lease obligations (including interest)	\$ 278	\$ 151	\$ 125	\$ 2
Operating lease obligations	2,393	476	1,079	838
Software license agreements	2,926	1,602	1,324	
Purchase obligations	4,380	4,380		
<b>Total contractual obligations</b>	<b>\$ 9,977</b>	<b>\$ 6,609</b>	<b>\$ 2,528</b>	<b>\$ 840</b>

During January 2010, we entered into a five-year noncancelable operating lease agreement for a research and development facility in Irvine, CA. The lease is subject to rent holidays and rent increases and is scheduled to commence in April 2010 with an option to extend the lease for an additional five years. Future minimum annual payments under the operating lease for the years 2010, 2011, 2012, 2013, 2014 and 2015 are approximately \$20,000; \$83,000; \$87,000; \$90,000; \$94,000 and \$24,000 respectively.

**Warranties and Indemnifications**

## Edgar Filing: MAXLINEAR INC - Form S-1/A

In connection with the sale of products in the ordinary course of business, we often make representations affirming, among other things, that our products do not infringe on the intellectual property rights of others, and agree to indemnify customers against third-party claims for such infringement. Further, our by-laws require us to indemnify our officers and directors against any action that may arise out of their services in that capacity, and we have also entered into indemnification agreements with respect to all of our directors. We have not been subject to any material liabilities under such provisions and therefore believe that our exposure for these indemnification obligations is minimal. Accordingly, we have no liabilities recorded for these indemnity agreements as of December 31, 2009.

### **Off-Balance Sheet Arrangements**

As part of our ongoing business, we do not participate in transactions that generate relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special

## **Table of Contents**

purpose entities, or SPEs, which would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes. As of December 31, 2009, we were not involved in any unconsolidated SPE transactions.

### **Recent Accounting Pronouncements**

Effective January 1, 2009, we implemented the FASB's revised authoritative guidance for business combinations. This revised guidance requires an acquiring company to measure all assets acquired and liabilities assumed, including contingent considerations and all contractual contingencies, at fair value as of the acquisition date. In addition, an acquiring company is required to capitalize in-process research and development and either amortize it over the life of the product, or write it off if the project is abandoned or impaired. Previously, post-acquisition adjustments related to business combination deferred tax asset valuation allowances and liabilities for uncertain tax positions were generally required to be recorded as an increase or decrease to Goodwill. The revised guidance does not permit this accounting and, generally, requires any such changes to be recorded in current period income tax expense. Thus, all changes to valuation allowances and liabilities for uncertain tax positions established in acquisition accounting, regardless of the guidance used to initially account for the business combination, will be recognized in current period income tax expense. The adoption of the revised guidance did not have an impact on our consolidated financial statements, but the nature and magnitude of the specific effects will depend upon the nature, terms and size of the acquisitions consummated after the effective date of January 1, 2009.

Effective January 1, 2009, we adopted the revised authoritative guidance for the accounting treatment afforded preacquisition contingencies in a business combination. Under the revised guidance, an acquirer is required to recognize at fair value an asset acquired or liability assumed in a business combination that arises from a contingency if the acquisition-date fair value of the liability can be determined during the measurement period. If the acquisition-date fair value cannot be determined, the acquirer will apply the authoritative guidance used to evaluate contingencies to determine whether the contingency should be recognized as of the acquisition date or after the acquisition date. The adoption of the revised guidance did not have an impact on our consolidated financial statements, but the nature and magnitude of the specific effects will depend upon the nature, terms and size of the acquisitions consummated after the effective date of January 1, 2009.

Effective April 1, 2009, we adopted FASB's revised authoritative guidance for fair value measurements, which clarifies the measurement of fair value in a market that is not active, and is effective as of the issue date, including application to prior periods for which financial statements have not been issued. We also adopted additional authoritative guidance for determining whether a market is active or inactive, and whether a transaction is distressed, is applicable to all assets and liabilities (financial and nonfinancial) and which requires enhanced disclosures. The adoption of this guidance did not have a material impact on our consolidated financial position, results of operations or cash flows.

Effective April 1, 2009, we adopted authoritative guidance that provides greater clarity about the credit and noncredit component of an other-than-temporary impairment event and to more effectively communicate when an other-than-temporary impairment event has occurred. The adoption of this guidance, which applies to investments in debt securities, did not have a material impact on our consolidated financial position, results of operations or cash flows.

In October 2009, the FASB issued new standards for revenue recognition with multiple deliverables. These new standards impact the determination of when the individual deliverables included in a multiple-element arrangement may be treated as separate units of accounting. Additionally, these new standards modify the manner in which the transaction consideration is allocated across the separately identified deliverables by no longer permitting the residual method of allocating arrangement consideration. These new standards are effective for us beginning in the first quarter of fiscal year 2011, however early adoption is permitted. We do not expect these new standards to significantly impact our consolidated financial statements.





## **Table of Contents**

In October 2009, the FASB issued new standards for the accounting for certain revenue arrangements that include software elements. These new standards amend the scope of pre-existing software revenue guidance by removing from the guidance non-software components of tangible products and certain software components of tangible products. These new standards are effective for us beginning in the first quarter of fiscal year 2011, however early adoption is permitted. We do not expect these new standards to significantly impact our consolidated financial statements.

## **Quantitative and Qualitative Disclosures About Market Risk**

### ***Interest Rate Sensitivity***

We had cash of \$17.9 million at December 31, 2009, which was held for working capital purposes. We do not enter into investments for trading or speculative purposes. We do not believe that we have any material exposure to changes in the fair value of these investments as a result of changes in interest rates due to their short-term nature. Declines in interest rates, however, will reduce future investment income.

### ***Foreign Currency Risk***

To date, our international customer and vendor agreements have been denominated almost exclusively in United States dollars. Accordingly, we have limited exposure to foreign currency exchange rates and do not enter into foreign currency hedging transactions. The functional currency of MaxLinear Limited is the United States dollar. The functional currency of MaxLinear Shanghai Limited is the local currency. Accordingly, the effects of exchange rate fluctuations on the net assets of MaxLinear Shanghai Limited's operations are accounted for as translation gains or losses in accumulated other comprehensive income within stockholders' equity. We do not believe that a change of 10% in such foreign currency exchange rates would have a material impact on our financial position or results of operations.

### ***Stock-Based Compensation***

For a complete discussion of our assumptions and policies relating to stock compensation expense, please refer to the section below captioned Historical Stock-Based Compensation Expense.

## **Historical Stock-Based Compensation Expense**

For purposes of determining our historical stock-based compensation expense, we used the Black-Scholes valuation model to calculate the fair value of stock options on the grant date. This model requires inputs such as the expected term of the option, expected volatility and the risk-free interest rate. Our forfeiture rates also affect the amount of aggregate compensation. These inputs are subjective and generally require significant judgment. For each of the three years ended December 31, 2009, we estimated the grant date fair value of stock options using the Black-Scholes option pricing model with the following weighted-average assumptions:

Edgar Filing: MAXLINEAR INC - Form S-1/A

	Years Ended December 31,		
	2007	2008	2009
Risk-free interest rate	4.82%	2.78%	2.68%
Dividend yield			
Expected life of options (years)	6.25	6.08	6.18
Volatility	70.00%	61.99%	56.00%

We estimated our expected volatility from the historical volatilities of several unrelated public companies within the semiconductor industry because we have little information on the volatility of the price of our common stock, since we have no trading history. When making the selections of our industry peer companies to be used in the volatility calculation, we also considered their stage of development, size and financial leverage.

**Table of Contents**

We calculated the weighted-average expected life of options using the simplified method. This decision was based on the lack of relevant historical data due to our limited historical experience.

We derived the risk-free interest rate assumption from the yield as of the grant date for U.S. Treasury zero-coupon bonds with maturities similar to those of the expected term of the award being valued. We based the assumed dividend yield on the expectation that we will not pay cash dividends in the foreseeable future.

We estimated forfeitures at the time of grant and will revise, if necessary, in subsequent periods if actual forfeitures differ from those estimates. We utilized our historical forfeiture rates to estimate our future forfeiture rate at 5% for 2009. We will continue to evaluate the appropriateness of estimating the forfeiture rate based on actual forfeiture experience, analysis of employee turnover behavior and other factors. Quarterly changes in the estimated forfeiture rate can have a significant effect on stock-based compensation expense as the cumulative effect of adjusting the rate for all stock compensation expense amortization is recognized in the period the forfeiture estimate is changed. If a revised forfeiture rate is higher than the previously estimated forfeiture rate, an adjustment is made that will result in a decrease to the stock-based compensation expense recognized in the consolidated financial statements. If a revised forfeiture rate is lower than the previously estimated forfeiture rate, an adjustment is made that will result in an increase to the stock-based compensation expense recognized in the consolidated financial statements. The effect of forfeiture adjustments during 2007, 2008 and 2009 was insignificant. We will continue to use judgment in evaluating the expected term, volatility and forfeiture rate related to our stock-based compensation on a prospective basis and incorporating these factors in the Black-Scholes option-pricing model.

If in the future, we determine that other methods are more reasonable, or other methods for calculating these assumptions are prescribed by authoritative guidance, the fair value calculated for our stock options could change significantly. Higher volatility and longer expected lives result in an increase to stock-based compensation expense determined at the date of grant. Stock-based compensation expense affects our research and development expense and our selling, general and administrative expense.

In order to determine the grant date fair value of stock option grants, we are required to determine the fair value of our common stock. The exercise price for all stock options granted was at or above the estimated fair value of the underlying common stock as determined on the date of grant by our Board of Directors. Our management did not provide additional valuation information to our Board of Directors relating to grants made in the fourth quarter of 2008 due to extraordinary volatility in global capital markets at that time and our Board of Director's view that continued reliance on our July 2008 valuation remained appropriate, particularly given our lack of quarterly revenue growth in the second half of 2008.

**Table of Contents**

The following table summarizes, by grant date, the number of stock options granted since January 1, 2008 and the associated per share exercise price, which equaled or exceeded the fair value of our common stock as determined by our Board of Directors, with input from management, for each of these grants:

Grant Date	Number of Options Granted	Exercise Price	Common Stock Fair Value Per Share at Grant Date
January 10, 2008	55,106	\$ 1.16	\$ 1.01
March 4, 2008	313,865	1.16	1.01
March 31, 2008	539,910	1.16	1.01
August 20, 2008	517,500	1.45	1.44
October 1, 2008	350,073	1.45	1.44
December 2, 2008	247,609	1.45	1.44
March 3, 2009	48,217	1.45	0.96
July 28, 2009	427,123	4.26	4.23
July 28, 2009	86,110	4.69	4.23
September 11, 2009	332,590	5.50	5.48
October 16, 2009	206,893	6.55	6.55
October 20, 2009	335,165	6.55	6.55
October 27, 2009	300,649	7.45	7.45
October 27, 2009	226,039	8.19	7.45
November 5, 2009	60,060	7.49	7.49
December 28, 2009	183,924	8.39	8.39
January 14, 2010	67,397	8.72	8.72
February 22, 2010	98,807	9.18	9.18
February 25, 2010	20,988	9.18	9.18
March 3, 2010	21,500	9.18	9.18

Given the absence of an active market for our common stock, our Board of Directors was required to estimate the fair value of our common stock at the time of each grant. Our Board of Directors, which includes members who are experienced in valuing the securities of early-stage companies, considered objective and subjective factors in determining the estimated fair value of our common stock on each option grant date. Factors considered by our Board of Directors included the following:

the prices of our convertible preferred stock sold to outside investors in arm's-length transactions;

the rights, preferences and privileges of our convertible preferred stock relative to those of our common stock;

our operating and financial performance;

the introduction of new products;

our stage of development;

the fact that option grants involve illiquid securities in a private company;

the risks inherent in the development of our products and expansion of our target markets; and

the likelihood of achieving a liquidity event, such as an initial public offering or sale of our company, given prevailing market conditions.

Our Board of Directors has performed valuations of our common stock for purposes of granting stock options in a manner consistent with the methods outlined in the American Institute of Certified Public Accountants Practice Aid, *Valuation of Privately-Held-Company Equity Securities Issued as Compensation*. These valuations were prepared in a consistent manner and involved a two-step process. First, we established our enterprise value using the income approach and the market approach. The income approach, which relies on a discounted cash flow analysis, measures the value of a company as the present value of its future economic benefits by applying an appropriate risk-adjusted discount rate to expected cash flows, based on forecasts of

**Table of Contents**

revenue and costs. The market approach, which relies on analysis of comparable public companies and comparable acquisitions, measures the value of a company through comparison to comparable companies and transactions. Consideration is given to the financial condition and operating performance of the company being valued relative to those of publicly traded companies operating in the same or similar lines of business. When choosing the comparable companies to be used for the market approach, we focused on companies in the semiconductor industry. Some of the specific criteria we used to select comparable companies within our industry included the business description, business size, projected growth, financial condition and historical operating results. For each valuation report, we prepared a financial forecast to be used in the computation of the enterprise value for both the market approach and the income approach. The financial forecasts took into account our past experience and future expectations. The risks associated with achieving these forecasts were assessed in selecting the appropriate discount rate. As discussed below, there is inherent uncertainty in these estimates. Second, we allocated the resulting equity value among the securities that comprise our capital structure using the Option-Pricing Method. The aggregate value of the common stock derived from the Option-Pricing Method was then divided by the number of common shares outstanding to arrive at the per share common value. We then applied a discount for lack of marketability to reflect the increased risk arising from the inability of holders to readily sell the shares.

In each valuation, we considered the market approach based on analysis of comparable public companies and comparable acquisitions analysis. Ultimately, our Board of Directors determined that these analyses were not appropriate due to our relatively early stage of development and our expectation that we would realize higher growth rates than an industry average calculated based on public company peers. Since the fair value of our common stock has been ultimately determined by our discounted cash flow analyses, our valuations have been heavily dependent on our estimates of revenue, costs and related cash flows. These estimates are highly subjective and subject to frequent change based on both new operating data as well as various macroeconomic conditions that impact our business. Each of our valuations was prepared using data that was consistent with our then-current operating plans that we were using to manage our business.

In addition, our discounted cash flow calculations are sensitive to highly subjective assumptions that we were required to make at each valuation date relating to an appropriate discount rate and an appropriate marketability discount.

<b>Valuation Date</b>	<b>Discount Rate</b>	<b>Discount for Lack of Marketability</b>
June 30, 2007	40%	34.0%
May 30, 2008	40%	40.0%
January 30, 2009	40%	43.0%
July 21, 2009	40%	32.0%
September 1, 2009	40%	17.0%
October 9, 2009	40%	17.0%
October 23, 2009	35%	15.0%
November 3, 2009	35%	15.0%
December 16, 2009	35%	11.5%
January 5, 2010	35%	9.9%
February 11, 2010	35%	8.1%

Our discount rate was determined based on our stage of development at each valuation date and was quantified based on our review of venture capital required rates of return for investments in companies of the equivalent stage of development. From July 2008 through October 9, 2009, we maintained our discount rate at 40%. Effective October 23, 2009, we began using a discount rate of 35%. These rates are within the 30% to 50% range we considered based on the various studies we utilized.

Our discount for lack of marketability is reflective of the increased risk associated with ownership of a privately held stock and the resultant higher yield expected by an investor. We quantified the discount using a put-option model and verified that the resulting value was reasonable by comparing the results to empirical evidence, including studies of restricted stock and private transactions prior to public offerings.



**Table of Contents**

Other specific factors that were considered during the preparation of the various valuations included:

significant operating losses for the years ended December 31, 2006, 2007 and 2008;

flat revenue growth trends in the second, third and fourth quarters of 2008 as a result of global macroeconomic uncertainty and adverse developments in the Japanese mobile handset market;

the absence of a significant initial public offering market throughout 2008 and continuing through the second quarter of 2009; and

progress of design wins and other market developments that influence forecasted revenue.

As a result of our Black-Scholes option fair value calculations and the allocation of value to the vesting periods using the straight-line vesting attribution method, we recognized employee stock-based compensation in the statements of operations as follows:

	<b>Years Ended December 31,</b>		
	<b>2007</b>	<b>2008</b>	<b>2009</b>
	<b>(in thousands)</b>		
Research and development	\$ 154	\$ 293	\$ 570
Selling, general and administrative	37	100	354
	<b>\$ 191</b>	<b>\$ 393</b>	<b>\$ 924</b>

The total compensation cost related to unvested stock option grants not yet recognized as of December 31, 2009 was \$7.1 million, and the weighted-average period over which these grants are expected to vest is 3.05 years.

Based on an assumed initial public offering price of \$12.00 per share, the intrinsic value of stock options outstanding at December 31, 2009 was \$42.7 million, of which \$15.1 million and \$27.6 million related to stock options that were vested and unvested, respectively, at that date.



## Table of Contents

### BUSINESS

#### Overview

We are a provider of highly integrated, RF analog and mixed-signal semiconductor solutions for broadband communications applications. Our high performance RF receiver products capture and process digital and analog broadband signals to be decoded for various applications. These products include both RF receivers and RF receiver SoCs, which incorporate our highly integrated radio system architecture and the functionality necessary to demodulate broadband signals. Our current products enable the display of broadband video in a wide range of electronic devices, including cable and terrestrial set top boxes, digital televisions, mobile handsets, personal computers, netbooks and in-vehicle entertainment devices.

We combine our high performance RF and mixed-signal semiconductor design skills with our expertise in digital communications systems, software and embedded systems to provide highly integrated semiconductor devices that are manufactured using low-cost CMOS process technology. In addition, our ability to design analog and mixed-signal circuits in CMOS allows us to efficiently combine analog and digital signal processing functionality in the same integrated circuit. As a result, our RF receivers and RF receiver SoCs have high levels of performance, small silicon die size and low power consumption. Moreover, our proprietary CMOS-based radio system architecture provides to our customers the benefits of superior RF system performance, shorter design cycles, significant design flexibility and low system cost across a broad range of broadband communications applications.

We sell our products to OEMs, module makers and ODMs. During 2009, we sold our products to more than 35 customers, including Panasonic, Murata, MTC, Alps, Mico and Sony. From inception through December 31, 2009, we shipped 75 million RF receivers and RF receiver SoCs. For the year ended December 31, 2009, our net revenue was \$51.4 million as compared to \$31.3 million in the year ended December 31, 2008.

#### Industry Background

Recent technological advances in the display and broadcast TV markets are driving dramatic changes in the way consumers access and experience multimedia content. These advances include the ongoing worldwide conversion from analog to digital television broadcasting; the increasing availability of high-speed broadband and wireless connectivity; rapid improvements in display technology; the transition from standard to high definition television; and the proliferation of multimedia content accessible through terrestrial broadcast digital television, cable, satellite and telecommunications carrier services. As a result, system designers are adding enhanced television functionality to set top boxes and digital televisions. Television is also being incorporated in stationary and mobile electronic devices that previously did not include this functionality, such as mobile handsets, PCs and netbooks. Each electronic device equipped with broadcast digital TV or video functionality must incorporate one or more RF receivers that reliably capture and process broadcast signals. We believe that several favorable trends, across multiple target markets, are contributing to the increase in revenue opportunity for providers of RF receivers and RF receiver SoCs. These trends include the following:

**Cable / Broadband Access.** Competing cable, satellite and other broadband service providers differentiate their services by providing consumers with bundled video, voice and broadband data, referred to as triple-play services. These services include advanced features, such as, channel guide information, video-on-demand, digital video recording, or DVR, and picture-in-picture viewing. Many set top boxes, including those used for triple-play services, now enable consumers to simultaneously access, and manage multimedia content from multiple locations in the same house. These advanced features require a set top box to simultaneously receive, demodulate and decode multiple

signals spread across several channels. Each simultaneously accessed signal requires a dedicated RF receiver. This greatly increases the number of RF receivers required to be deployed in each set top box.

## **Table of Contents**

**Consumer / PC.** Increasingly, consumers are demanding advanced features in their televisions and are also using non-traditional consumer electronic devices, such as personal computers, netbooks and portable media players, to access broadcast television and other multimedia content. In the traditional television market, system designers are introducing cable and satellite ready televisions equipped with enhanced features such as picture-in-picture and DVR. According to iSuppli, the number of flat panel television systems is expected to reach 228 million units per year in 2013. In addition, advances in display and semiconductor technologies have enabled the adoption of broadcast digital television and other video display functions in non-traditional TV devices such as netbooks, personal computers and portable media players.

**Mobile.** Consumers have shown a desire to have access to the same media content on-the-go as they have in a stationary environment through a personal computer, television and other multimedia devices. At the same time, the multimedia processing and display capabilities of mobile phones have advanced sufficiently to enable video services with high video quality at a modest cost increase to consumers. Further, the increasing availability of digital TV broadcast worldwide, which is much more robust than analog and resistant to mobile effects such as fading, Doppler conditions and multipath interference, enables mass deployment of mobile video services to consumers. According to Infonetics Research, the worldwide market for mobile video phones is expected to grow from 60.7 million units in 2008 to 397 million units in 2013, representing a compounded annual growth rate of 46%. Recognizing these trends, service providers are targeting mobile video as an important broadband service offering.

**Automotive.** The automobile cabin has evolved to provide many of the features and comforts that consumers experience at their homes. In many automobiles, new technologies such as GPS, Bluetooth telephony, video game and DVD playback systems have become standard features. Many vehicles now incorporate video screens in the automobile dashboard and in the back of passenger seats. In areas with more advanced and widespread broadcast digital television transmission, such as Japan, high definition television reception is an increasingly common feature in automotive entertainment systems. As digital broadcast television is implemented in many countries, we expect an increase in the number of automobiles adopting in-vehicle broadcast digital TV.

As a result of these trends, RF receiver technology is being deployed in a variety of devices for the cable, consumer, mobile and automotive markets. The proliferation of applications with advanced features has led to an increase in the number of devices with multiple RF receivers and RF receiver SoCs. RF receivers incorporate RF, digital and analog signal processing functions. According to IMS Research, in a work commissioned on our behalf, as of February 10, 2010, the worldwide market for silicon tuners and demodulators is projected to be \$2.4 billion in 2010 and \$3.4 billion in 2013, representing a 13% compound annual growth rate.

### ***Challenges Faced by Providers of Systems and RF Receivers***

The stringent performance requirements of broadband communications applications and the distinct technological challenges associated with the cable, consumer, mobile and automotive markets present significant obstacles to service providers and system designers. In particular, designing and implementing RF receivers to capture broadcast digital television signals is extremely challenging due in part to the wide frequency band across which broadcast digital television signals are transmitted. As compared to other digital radio technologies, such as cellular, WiFi and Bluetooth, television signals are acquired over a much wider frequency band and encounter many more sources of interference. As a result, traditionally, design and implementation of these RF receivers have been accomplished using conventional radio system architectures that employ multiple discrete components and are fabricated using expensive special purpose semiconductor manufacturing processes, such as silicon germanium and gallium arsenide-based process technologies.

---

**Table of Contents**

The core challenges of capturing and processing a high quality broadband communications signal are common to the cable, consumer, mobile and automotive markets. These challenges include:

***Design Challenges of Multiple RF Receivers.*** System designers and service providers across various markets seek to enhance consumer appeal through the addition of new features in their products. Incorporating more than one RF receiver in an electronic device enables many of these features and advanced applications that are rapidly becoming a part of the standard offering from device makers and service providers. For example, in the cable set top box market, it is necessary to support the simultaneous reception of multiple channels for voice, video and data applications in many system designs. In order to meet such requirements, OEMs must employ multiple RF receivers in their system design. Each additional RF receiver poses new challenges to the system designer, such as increased design complexity, overall cost, circuit board space, power consumption and heat dissipation. In addition, a high level of integration in multiple-receiver designs is necessary to combat the reliability and signal interference issues arising from the close proximity of sensitive RF elements.

***Signal Clarity Performance Requirements.*** Television reception requires a robust and clear signal to provide an adequate user experience. One of the core attributes of system performance is signal clarity, often measured by the signal-to-noise ratio parameter, which measures the strength of the desired signal relative to the combined noise and undesired signal strength in the same channel. Television reception requires an RF receiver that has a wide dynamic range and the ability to isolate the desired signal from the undesired signals, which include the noise generated by extraneous radio waves and interferers produced by home networking systems such as WLAN, Bluetooth and MoCA. Traditional RF receiver implementations utilized expensive discrete components, such as bandpass filters, resonance elements and varactor diodes to meet the stringent requirements imposed by broadband television reception. In high speed mobile environments, a method known as diversity combining of radio signals, in which the desired signal is captured using multiple RF receivers and reconstructed into a single signal, has been employed to improve the signal-to-noise ratio. Diversity combining of radio signals requires substantial RF, digital signal processing and software expertise. Both the traditional broadband reception and diversity combining of RF signals in mobile environments are difficult to implement and pose challenges to RF receiver providers.

***Multiple Standards.*** Worldwide, there are several regional standards for the transmission and reception of broadband analog and digital TV signals. Technical performance, feature requirements and the predominance of a particular means of TV transmission vary regionally. Further, each major geographic region has adopted its own TV standard for cable, terrestrial and satellite transmissions, such as DVB-T/C/S, DOCSIS, ATSC, ISDB-T, DTMB and CMMB. As a result of these multiple standards, there are region specific RF receiver requirements and implementations, which make global standards compliance extremely challenging. Many system designers prefer a multiple standards and protocol compliant solution that was previously not possible. Providers of RF receivers face the design challenge of providing this flexibility to the system designer without any increase in power consumption, or any loss of performance quality or competitiveness.

***Power Consumption.*** Power consumption is an important consideration for consumers and a critical design specification for system designers. For example, in battery-operated devices such as mobile handsets, netbooks and notebooks, long battery life is a differentiating device attribute. In addition, government sponsored programs, such as Energy Star in the U.S., induce consumers to purchase more energy efficient products. For example, in September 2009, the U.S. Environmental Protection Agency announced that Energy Star compliant televisions would be required to be 40% more energy efficient than their noncompliant counterparts. The addition of one or more RF receivers to a system in order to enable digital TV functionality significantly increases the overall power consumption budget. In fact, in some multiple receiver system designs, a majority of the system's overall power consumption is attributable to the RF receiver and related components. Providers of RF receivers and RF receiver SoCs are confronted with the design challenge of lowering power consumption while maintaining or improving device performance.

## **Table of Contents**

**Size.** The size of electronic components, such as RF receivers, is a key consideration for system designers and service providers. In the mobile market, size is a determining factor for whether or not a particular component, such as an RF receiver is designed into the product. In the past, traditional RF receivers were unable to meet the stringent size requirements required in the mobile market and broadcast television functionality was not incorporated in mobile phones. In the television market, as system designers create thinner flat-screen displays, the size of RF receivers is becoming a significant consideration, especially when multiple RF receivers are incorporated in a single system.

### ***Limitations of Existing RF Receiver Solutions***

For the past several decades, the RF receiver technology of choice has been the electro-mechanical can tuner. Despite field-proven performance attributes such as signal clarity, can tuners are often prohibitively large in size and have high power consumption, low reliability and high cost, especially in systems requiring multiple RF receivers in a single device. Further, can tuners utilize multiple external discrete components that limit the use of a system design to a single region or standard. Regional or standard specific customization can be tedious, time consuming and costly for the system designers.

Silicon RF receiver solutions eliminate some of the mechanical and discrete electronic components found in can tuners. However, existing silicon RF receivers typically have been designed using a conventional radio system architecture that employs multiple external discrete components, although fewer than in traditional can-tuners. In addition, these silicon RF receivers have been fabricated using expensive, special purpose semiconductor manufacturing processes such as gallium arsenide and silicon germanium process technologies. The use of multiple components and exotic semiconductor manufacturing process technologies increases system design complexity and overall cost. It reduces the feasibility of further integrating digital baseband circuits on the same chip as the RF receiver. We believe that a new RF receiver technology is required to address the drawbacks of traditional can-tuners and silicon receivers for the cable, consumer, mobile and automotive TV markets.

### **Our Solution**

We are a provider of highly integrated, mixed-signal semiconductor solutions for broadband communications applications. Our products are deployed in a wide range of electronic devices, including cable and terrestrial set top boxes, digital televisions, mobile handsets, personal computers, netbooks and in-vehicle entertainment devices. We combine our high performance analog and mixed-signal semiconductor design skills with our expertise in digital communications systems, software and embedded systems to develop RF receivers and RF receiver SoCs. We integrate our RF receivers with digital demodulation and other communications functions in standard CMOS process technology. Our solutions have the following key features:

***Proprietary Radio Architecture.*** Digital signal processing is at the core of our RF receivers and RF receiver SoCs. Using our proprietary CMOS-based radio architecture, we leverage both analog and digital signal processing to improve system performance across multiple products. The partitioning of the signal processing in the chip between analog and digital domains is designed to deliver high performance, small die size and low power for a given application. Moreover, our architecture is implemented in standard CMOS process technology, which enables us to realize the integration benefits of analog and digital circuits on the same IC. This allows us to predictably scale the on-chip digital circuits in successive advanced CMOS process technologies. Our solutions have been designed into products in markets with extremely stringent specifications for quality, performance and reliability, such as the automotive market. We believe that our success in these markets demonstrates that our solution can be implemented successfully across multiple markets and applications.

***High Signal Clarity Performance.*** We design our RF receivers and RF receiver SoCs to provide high signal clarity performance regardless of the application in which they are employed. For example, in the mobile and automotive markets, we implement diversity combining of signals to eliminate picture and audio degradation that can occur when moving at high speeds. In the set top

box market, we deploy

## **Table of Contents**

our core RF and mixed-signal CMOS process technology platform and radio system architecture to overcome the interference from in-home networks that can degrade cable broadband signals. We believe that signal clarity is more critical in television compared to other communications applications such as voice and data, because signal loss and interference have a more adverse impact on the end user experience.

***Highly Integrated Solution.*** Our products integrate on a single chip the functionality associated with traditional analog and digital integrated circuits and other expensive discrete components. This high level of integration has the cost benefits associated with smaller silicon die area, fewer external components and lower power. Our CMOS-based RF receiver SoC eliminates analog interface circuit blocks and external components situated at the interface between discrete analog and digital demodulator chips and reduces the cost associated with multiple integrated circuit packages and related test costs. We are also able to integrate multiple RF receivers along with a demodulator onto a single die to create application-specific configurations for our customers. Thus, our highly integrated solution reduces the technical difficulties associated with overcoming the undesired interactions between multiple discrete analog and digital integrated circuits comprising a single system. Our solutions reduce the technical burden on system designers in deploying enhanced television functionality in their products.

***Low Power.*** Our products enable our customers to reduce power consumption in consumer electronic devices without compromising the stringent performance requirements of applications such as broadcast television. For example, our MxL5007T receiver for terrestrial digital television consumes only 300 milliwatts of power, while many competing products consume as much as four times the same power. In addition, our products enable our customers to decrease overall system costs by reducing the power consumption and heat dissipation requirements in their systems. For example, in cable boxes supporting voice applications, low power consumption may enable a reduction in the number of batteries required to support standby and lifeline telephony. In certain set top boxes, reduced overall power consumption may allow the system designer to eliminate one or more cooling fans required to dissipate the heat generated by high power consumption. The benefits of low power consumption increase with the number of RF receivers included in a system.

***Scalable Platform.*** Our product families share a highly modular, core radio system architecture, which enables us to offer RF receiver and RF receiver SoC solutions that meet the requirements of a wide variety of geographies, broadcast standards and applications. This is in contrast to legacy solutions that require significant customization to conform to regional standards, technical performance and feature requirements. Moreover, by leveraging our flexible core architecture platform, our integrated circuit solutions can be deployed across multiple device categories. As a result, our customers can minimize the design resources required to develop applications for multiple market segments. In addition, our

## **Table of Contents**

engineering resources can be deployed more efficiently to design products for larger addressable markets. We believe that our core technology platform also can be applied to other communications markets with similar performance requirements.

***Space Efficient Solution.*** Our highly integrated CMOS-based RF receivers and RF receiver SoCs have an extremely small silicon die size, require minimal external components and consume very little power. This enables our customers to design multi-receiver applications, such as cable set top boxes, in an extremely small form factor. In addition, our products are easily adopted into space constrained devices such as mobile handsets, netbooks, laptops and portable media players.

## **Our Strategy**

Our objective is to be the leading provider of mixed-signal RF receivers and RF receiver SoCs for stationary and mobile broadband video and data communications applications and, in the future, to leverage this core competency to expand into other communications markets with similar performance requirements. The key elements of our strategy are:

***Extend Technology Leadership in RF Receivers and RF Receiver SoCs.*** We believe that our success has been, and will continue to be, largely attributable to our RF and mixed-signal design capability, which we leverage to develop high-performance, low-cost semiconductor solutions for broadband communications applications. The broadband RF receiver market presents significant opportunities for innovation through the further integration of RF and mixed-signal functionality with digital signal processing capability in CMOS process technology. By doing so, we will be able to deliver products with lower power consumption, superior performance and increased cost benefits to system designers and service providers. We believe that our core competencies and design expertise in this market will enable us to acquire more customers and design wins over time. We will continue to invest in this capability and strive to be an innovation leader in this market.

***Leverage and Expand our Existing Customer Base.*** We target customers who are leaders in their respective markets. We intend to continue to focus on sales to customers who are leaders in our current target markets, and to build on our relationships with these leading customers to define and enhance our product roadmap. By solving the specific problems faced by our existing large customers, we can minimize the risks associated with our customers' adoption of our new integrated circuit products, and reduce the length of time from the start of product design to customer revenue. Further, our engagements with market leaders will enable us to participate in emerging technology trends and new industry standards.

***Target Additional High-Growth Markets.*** Our core competency is in analog and mixed-signal integrated circuit design in CMOS process technology for broadband communications applications. Several of the technological challenges involved in developing RF solutions for video broadcasting are common to a majority of broadband communication markets. We intend to leverage our core competency in developing highly integrated RF receiver and RF receiver SoCs in standard CMOS process technology to address additional segments of the broadband communication and connectivity markets that we believe offer high growth potential.

***Expand Global Presence.*** Due to the global nature of our supply chain and customer locations, we intend to continue to expand our sales, design and technical support organization both in the United States and overseas. In particular, we expect to increase the number of employees in Asia, Europe and the United States to provide regional support to our increasing base of customers. We believe that our customers will increasingly expect this kind of local capability and support.

***Attract and Retain Top Talent.*** We are committed to recruiting and retaining highly talented personnel with proven expertise in the design, development, marketing and sales of communications integrated circuits. We believe that we have assembled a high quality team in all the areas of expertise required at a semiconductor communications company. We provide an attractive work environment for all of our





## **Table of Contents**

employees. We believe that our ability to attract the best engineers is a critical component of our future growth and success in our chosen markets.

## **Products**

Our products are integrated into a wide range of electronic devices, including cable and terrestrial set top boxes, digital televisions, mobile handsets, personal computers, netbooks and in-vehicle entertainment devices. We are currently shipping production volumes of RF receiver and RF receiver SoCs that incorporate the third generation of our core technology platform. We provide customers guidelines known as reference designs so that they can efficiently use our products in their product designs. We currently provide two types of semiconductors:

***RF Receivers.*** These semiconductor products combine RF receiver technology that traditionally required multiple external discrete components, such as VHF and UHF tracking filters, SAW filters, IF amplifiers, low noise amplifiers and transformers. All of these external components have been either eliminated or integrated into a single semiconductor produced entirely in standard CMOS process technology.

***RF Receiver SoCs.*** These semiconductor products combine the functionality of our RF receivers with that of a demodulator in a single chip. In some configurations, these products may incorporate multiple RF receivers and single or multiple demodulators in a single chip to provide application or market specific solutions to customers.

**Table of Contents**

The chart below sets out key product lines, descriptions and target markets for each of the successive generations of our products:

## **Table of Contents**

### **Customers**

We sell our products, directly and indirectly, to OEMs, module makers and ODMs. By providing a highly integrated reference design solution that our customers can incorporate in their products with minimal modifications, we enable our customers to design cost-effective high performance digital RF receiver and RF receiver SoC solutions rapidly. During the year ended December 31, 2009, we sold our products to more than 35 customers, including Panasonic, Murata, MTC, Alps, Mico and Sony.

We currently rely, and expect to continue to rely, on a limited number of customers for a significant portion of our revenue. During the year ended December 31, 2009 and the year ended December 31, 2008, ten customers accounted for approximately 83% and 96% of our net revenue, respectively. For the year ended December 31, 2009, Panasonic, Murata and MTC represented 23%, 13% and 12% of revenue, respectively. In 2008, Panasonic, Murata, Alps and Sony represented 28%, 28%, 16% and 12% of net revenue, respectively. At Panasonic, we sell our products into several applications, including modules for digital TV sets, automotive navigation displays and mobile handsets.

Substantially all of our sales are made to customers outside the United States, and we anticipate that such sales will continue to be a significant portion of our revenue. Sales to end customers in Asia accounted for 99% of our net revenue in the year ended December 31, 2009 and 97% of our net revenue in the year ended December 31, 2008. Sales to end customers in Japan accounted for 54% of our net revenue in the year ended December 31, 2009 and 87% of our net revenue in the year ended December 31, 2008. Sales to end customers in China accounted for 39% of our net revenue in the year ended December 31, 2009. Although a significant portion of our sales are to customers in Asia, the end users who purchase products incorporating our integrated circuits may be in locations different than our own sales destination. See Note 1 to our consolidated financial statements for a discussion of total revenue by geographical region for 2007, 2008 and 2009.

### **Sales and Marketing**

We sell our products worldwide through multiple channels, using both our direct sales force and a network of domestic and international distributors. We have direct sales personnel covering the United States, Europe and Asia, and operate sales offices in Carlsbad, California and in Shenzhen, China. In addition, in each of these locations, we employ a staff of field applications engineers to provide direct engineering support locally to our customers. We also provide many of our customers with access to individualized, web-based support.

Our distributors are independent entities that assist us in identifying and servicing customers in a particular territory, usually on a non exclusive basis. Sales through distributors accounted for approximately 96% of our net revenue in the year ended December 31, 2009 and 93% of our net revenue in the year ended December 31, 2008.

In October 2005, we entered into a non-exclusive distributor agreement with Tomen Electronics Corporation, or Tomen, for distribution of our products in Japan. Our distributor agreement with Tomen is effective for one year, unless it is terminated earlier by either party for any or no reason with written notice provided three months prior to the expiration of the agreement or by failure of the breaching party to cure a material breach within fifteen days following written notice of such material breach by the non-breaching party. Our agreement with Tomen will automatically renew for additional successive one-year terms unless at least three months before the end of the then-current term either party provides written notice to the other party that it elects not to renew the agreement. In June 2009, we entered into a non-exclusive distributor agreement with Moly Tech Limited, or Moly Tech, for distribution of our products in China, Hong Kong and Taiwan. Our distributor agreement with Moly Tech is effective for one year, unless it is terminated earlier by either party for any or no reason within sixty days of prior written notice or by failure to cure a material breach within thirty days following written notice of such material breach by the non-breaching party. Our agreement with Moly Tech will automatically renew for additional successive one-year terms unless at least sixty days before the end of the

then-current term either party provides written notice to the other party that it elects not to renew the agreement. In

## **Table of Contents**

August 2009, we entered into a non-exclusive distributor agreement with Lestina International Limited, or Lestina, for distribution of our products in China and Taiwan. Our distributor agreement with Lestina is effective for one year, unless it is terminated earlier by either party for any or no reason within sixty days of prior written notice or by failure to cure a material breach within thirty days following written notice of such material breach by the non-breaching party. Our agreement with Lestina will automatically renew for additional successive one-year terms unless at least sixty days before the end of the then-current term either party provides written notice to the other party that it elects not to renew the agreement.

Our sales cycles typically require a significant amount of time and a substantial expenditure of resources before we can realize revenue from the sale of products, if any. Our typical sales cycle consists of a multi-month sales and development process involving our customers' system designers and management. The typical time from early engagement by our sales force to actual product introduction runs from nine to twelve months for the consumer market, to as much as 12 to 36 months for the automotive TV display market. If successful, this process culminates in a customer's decision to use our products in its system, which we refer to as a design-win. Volume production may begin within three to nine months after a design-win, depending on the complexity of our customer's product and other factors upon which we may have little or no influence. Once our products have been incorporated into a customer's design, they are likely to be used for the life cycle of the customer's product. Thus, a design-win may result in an extended period of revenue generation. Conversely, a design-loss to our competitors, may adversely impact our financial results for an extended period of time.

Our sales, generally, are made to purchase orders received approximately six to twelve weeks prior to the scheduled product delivery date. These purchase orders may be cancelled without charge upon notification, received within an agreed period of time in advance of the delivery date. Because of the scheduling requirements of our foundries and assembly and test contractors, we generally provide our contractors production forecasts, and place firm orders for products with our suppliers, up to thirteen weeks prior to the anticipated delivery date, often without a purchase order from our own customers. Our standard warranty provides that products containing defects in materials, workmanship or product performance may be returned for a refund of the purchase price or for replacement, at our discretion.

## **Manufacturing**

We use third-party foundries and assembly and test contractors to manufacture, assemble and test our semiconductor products. This outsourced manufacturing approach allows us to focus our resources on the design, sale and marketing of our products. Our engineers work closely with our foundries and other contractors to increase yield, lower manufacturing costs and improve product quality.

*Wafer Fabrication.* We have selected standard CMOS process technology for our integrated circuit production. We currently manufacture our products in 0.18 $\mu$ , 0.13 $\mu$  and 0.11 $\mu$  silicon wafer production process geometries at our principal foundry, United Microelectronics Corporation, or UMC, in Taiwan, and in Singapore.

*Package and Assembly.* Upon the completion of silicon processing at the foundry, we forward the finished silicon wafers to our third-party assemblers for packaging and assembly. We and our customers have qualified multiple package and assembly vendors. Currently, Advanced Semiconductor Engineering Inc., Siliconware Precision Industries Co., Ltd., or SPIL, and Unisem (M) Berhad are our vendors for conventional chip packaging technologies. Jiangyin Changdian Advanced Packaging Co., Ltd., SPIL and Casio Micronics Co., Ltd. are our vendors for advanced chip packaging technologies, such as wafer level chip scale packages, or WLCSP.

*Test.* At the last stage of integrated circuit production, our third-party test service providers test the packaged and assembled integrated circuits. Currently, we have qualified two test service providers, Giga Solution Technology Co., Ltd. and SIGURD Microelectronics Corp. We are in the

process of qualifying one additional third-party test service provider, King Yuan Electronics Co., Ltd.

## **Table of Contents**

*Quality Assurance.* We have implemented significant quality assurance procedures to assure high levels of product quality for our customers. We closely monitor the work-in-progress information and production records maintained by our suppliers, and communicate with our third-party contractors to assure high levels of product quality and an efficient manufacturing time cycle. Upon successful completion of the quality assurance procedures, all of our products are stored and shipped to our customers or distributors directly from our third-party contractors in accordance with our shipping instructions.

## **Research and Development**

We believe that our future success depends on our ability to both improve our existing products and to develop new products for both existing and new markets. We direct our research and development efforts largely to the development of new high performance, mixed-signal semiconductor solutions for broadband communications applications. We target applications that require stringent overall system performance and low power consumption. As new and challenging communication applications proliferate, we believe that many of these applications will benefit from our SoC solutions combining analog and mixed-signal processing with digital signal processing functions. We have assembled a team of highly skilled semiconductor and embedded software design engineers with expertise in broadband RF and mixed-signal integrated circuit design, digital signal processing, communications systems and SoC design. We currently have 137 employees in our research and development group, which includes 14 employees in our operations and semiconductor technology department, including 46 with Ph.Ds and 60 with Masters degrees. Our engineering design teams are located in Carlsbad and Irvine in California, and in Shanghai, China. Our research and development expense was \$9.9 million in 2007, \$14.3 million in 2008 and \$19.8 million in 2009.

## **Competition**

We compete with both established and development-stage semiconductor companies that design, manufacture and market analog and mixed-signal broadband RF receiver products. Our competitors include companies with much longer operating histories, greater name recognition, access to larger customer bases and substantially greater financial, technical and operational resources. Our competitors may develop products that are similar or superior to ours. We consider our primary competitors to be companies with a proven track record of supporting market leaders and the technical capability to develop and bring to market competing broadband RF receiver and RF receiver SoC products. Our primary competitors include Analog Devices, Inc., Broadcom Corporation, Entropic Communications, Inc., Maxim Integrated Products, Inc., Microtune, Inc., Newport Media Inc., NXP B.V., Silicon Laboratories Inc. and Xceive Corporation. In addition, we believe that a number of other public and private companies, including some of our customers, are developing competing products for digital TV and other broadband communications applications.

The market for analog and mixed-signal semiconductor products is highly competitive, and we believe that it will grow more competitive as a result of continued technological advances. We believe that the principal competitive factors in our markets include the following:

product performance;

features and functionality;

energy efficiency;



size;

ease of system design;

customer support;

product roadmap;

reputation;

## **Table of Contents**

reliability; and

price.

We believe that we compete favorably as measured against each of these criteria. However, our ability to compete in the future will depend upon the successful design, development and marketing of compelling RF and mixed-signal semiconductor integrated solutions for high growth communications markets. In addition, our competitive position will depend on our ability to continue to attract and retain talent while protecting our intellectual property.

## **Intellectual Property Rights**

Our success and ability to compete depend, in part, upon our ability to establish and adequately protect our proprietary technology and confidential information. To protect our technology and confidential information, we rely on a combination of intellectual property rights, including patents, trade secrets, copyrights and trademarks. We also protect our proprietary technology and confidential information through the use of internal and external controls, including contractual protections with employees, contractors, business partners, consultants and advisors. Protecting mask works, or the topography or semiconductor material designs, of our integrated circuit products is of particular importance to our business and we seek to prevent or limit the ability of others to copy, reproduce or distribute our mask works.

We have two issued patents and 48 patent applications pending in the United States. We also have seven issued foreign patents and 34 other pending foreign patent applications, based on our issued patents and pending patent applications in the United States. The two issued patents in the United States will expire in 2025 and 2026, respectively. The seven issued foreign patents will expire in 2025.

We are the owner of two registered trademarks in the United States, MxL and digIQ, and we claim common law rights in certain other trademarks that are not registered.

We may not gain any competitive advantages from our patents and other intellectual property rights. Our existing and future patents may be circumvented, designed around, blocked or challenged as to inventorship, ownership, scope, validity or enforceability. It is possible that we may be provided with information in the future that could negatively affect the scope or enforceability of either our present or future patents. Furthermore, our pending and future patent applications may or may not be granted under the scope of the claims originally submitted in our patent applications. The scope of the claims submitted or granted may or may not be sufficiently broad to protect our proprietary technologies. Moreover, we have adopted a strategy of seeking limited patent protection with respect to the technologies used in or relating to our products.

We are a party to license agreements with Texas Instruments and NEC Electronics relating to demodulator technologies that are licensed specifically for the use in our products for cable set top boxes and mobile television handsets for the ISDB-T segment market in Japan and South America, respectively. The license agreement with Texas Instruments has a perpetual term, but Texas Instruments may terminate the agreement for our uncured material breach or for our bankruptcy. The license agreement with NEC Electronics allows us to incorporate the licensed technology in our products for a term of three years. The development term of three years expires on April 6, 2012. In addition, NEC Electronics may terminate the agreement for our uncured material breach or for our insolvency or bankruptcy. If either agreement is terminated, we would not be able to manufacture or sell products that contain the demodulator technology licensed from either Texas Instruments or NEC Electronics and there would be a delay in the shipment of our products containing the demodulator technology until we find a replacement for the demodulator technology in the marketplace on commercially reasonable terms or we developed the demodulator technology itself. We believe we could find a substitute for the currently licensed demodulator technology in the marketplace on commercially reasonable terms or develop



## **Table of Contents**

the demodulator technology ourselves. In either case, obtaining new licenses or replacing existing technology could have a material adverse effect on our business, as described in **Risk Factors** **Risks Related to Our Business**. We utilize a significant amount of intellectual property in our business. If we are unable to protect our intellectual property, our business could be adversely affected.

The semiconductor industry is characterized by frequent litigation and other vigorous offensive and protective enforcement actions over rights to intellectual property. Moreover, there are numerous patents in the semiconductor industry, and new patents are being granted rapidly worldwide. Our competitors may obtain patents that block or limit our ability to develop new technology and/or improve our existing products. If our products were found to infringe any patents or other intellectual property rights held by third parties, we could be prevented from selling our products or be subject to litigation fees, statutory fines and/or other significant expenses. We may be required to initiate litigation in order to enforce any patents issued to us, or to determine the scope or validity of a third-party's patent or other proprietary rights. We may in the future be contacted by third parties suggesting that we seek a license to intellectual property rights that they may believe we are infringing. In addition, in the future, we may be subject to lawsuits by third parties seeking to enforce their own intellectual property rights, as described in **Risk Factors** **Risks Related to Our Business**. We may face claims of intellectual property infringement, which could be time-consuming, costly to defend or settle and result in the loss of significant rights.

## **Employees**

As of March 4, 2010, we had 177 employees, including 123 in research and development, 21 in sales and marketing, 14 in operations and semiconductor technology and 19 in administration. None of our employees is represented by a labor organization or under any collective bargaining arrangement, and we have never had a work stoppage. We consider our employee relations to be good.

## **Facilities**

Our corporate headquarters occupy approximately 29,000 square feet in Carlsbad, California under a lease that expires in August 2014. All of our business and engineering functions are represented at our corporate headquarters, including three laboratories for research and development and manufacturing operations. In addition to our principal office space in Carlsbad, we have leased facilities for use as design centers in Irvine, California and Shanghai, China. We also have a local sales support office in Shenzhen, China. We believe that our current facilities are adequate to meet our ongoing needs and that additional facilities are available for lease to meet our future needs.

## **Legal Proceedings**

We are not currently a party to any material litigation, and we are not aware of any pending or threatened litigation against us that we believe would adversely affect our business, operating results, financial condition or cash flows. The semiconductor industry is characterized by frequent claims and litigation, including claims regarding patent and other intellectual property rights as well as improper hiring practices. As a result, in the future, we may be involved in various legal proceedings from time to time.

**Table of Contents****MANAGEMENT****Executive Officers and Directors**

The following table sets forth the names, ages and positions of our executive officers and directors as of March 3, 2010:

<b>Name</b>	<b>Age</b>	<b>Position</b>
Kishore Seendripu, Ph.D. <sup>(1)</sup>	40	Chairman, President and Chief Executive Officer
Joe D. Campa	52	Vice President, Finance and Treasurer
Patrick E. McCready	51	Chief Accounting Officer and Controller
John M. Graham	48	Vice President, Marketing
Kimihiko Imura	52	Vice President, Semiconductor Technology and Operations
Michael C. Kastner	47	Vice President, Sales
Curtis Ling, Ph.D. <sup>(1)</sup>	44	Chief Technical Officer and Director
Madhukar Reddy, Ph.D.	40	Vice President, IC and RF Systems Engineering
Brendan Walsh	36	Vice President, Business Development
Edward E. Alexander <sup>(2)</sup>	45	Director
Kenneth P. Lawler <sup>(4)</sup>	50	Director
David Liddle, Ph.D. <sup>(3)</sup>	65	Director
Albert J. Moyer <sup>(2)(4)</sup>	66	Director
Thomas E. Pardun <sup>(2)(3)</sup>	66	Director (Lead Director)
Donald E. Schrock <sup>(3)(4)</sup>	64	Director

- (1) Class B common stock Director
- (2) Member of the Audit Committee
- (3) Member of the Compensation Committee
- (4) Member of the Nominating and Governance Committee

**Executive Officers**

*Kishore Seendripu, Ph.D.* is a co-founder and has served as our Chairman, President and Chief Executive Officer since our inception in September 2003. From July 1998 to July 2002, Dr. Seendripu served in senior engineering roles, most recently as the director of RF & Mixed-Signal IC Design at Silicon Wave, Inc., a designer and developer of radio frequency systems-on-chip for use in wireless and broadband communication systems and products. From December 1997 to July 1998, Dr. Seendripu served as a member of the technical staff at Broadcom Corporation, a manufacturer of networking and communications integrated circuits for data, voice and video applications. From 1996 to December 1997, Dr. Seendripu served as a radio frequency integrated circuit, or RFIC, design engineer at Rockwell Semiconductor Systems, a provider of semiconductor system solutions for personal communications electronics. From 1990 to 1992 Dr. Seendripu served as a research assistant at the Lawrence Berkeley National Laboratories. Dr. Seendripu received an M.S. in Materials Sciences Engineering and a Ph.D. in Electrical Engineering from the University of California at Berkeley, a B. Tech degree from the Indian Institute of Technology, Bombay, India, and an M.B.A. from the Wharton School, University of Pennsylvania.

*Joe D. Campa* has served as our Vice President, Finance and Treasurer since January 2010. From March 2008 to January 2010, Mr. Campa served as our Chief Financial Officer. From October 2007 to March 2008, Mr. Campa served as a consultant for us. From September 2002 to June 2007, Mr. Campa served as the chief financial officer of Jaalaa, Inc., a wireless semiconductor company. From August 2000 to July 2002, Mr. Campa

---

**Table of Contents**

served as the Chief Financial Officer and Vice President of Corporate Strategy of Transillica, Inc., a Bluetooth wireless semiconductor company. Prior to August 2000, Mr. Campa served as chief investment officer and portfolio manager for institutional investment management firms. Mr. Campa received a B.A. in Economics and an M.B.A. from Stanford University.

*Patrick E. McCready* has served as our Chief Accounting Officer and Controller since January 2010. He joined us as our corporate controller in December 2009. From December 2008 to August 2009, Mr. McCready served as Chief Financial Officer of RAD Electronics, Inc., a manufacturing services company specializing in electronic equipment. From September 2006 to November 2008, he served as Chief Financial Officer of Channell Commercial Corporation, a designer and manufacturer of telecommunications equipment. From April 1991 to April 2006, Mr. McCready was employed with Pulse Engineering, Inc., a designer and manufacturer of magnetics-based electronic components, serving as their corporate controller from 1991 to 1995 and as their Vice President of Finance from 1995 to 2006. Mr. McCready received a Bachelor of Business Administration degree from the University of Notre Dame.

*John M. Graham* has served as our Vice President, Marketing since November 2008. From March 2005 to November 2008, Mr. Graham served as Vice President of Marketing at Entropic Communications, a provider of silicon and software solutions to enable home networking of digital entertainment. From October 2003 to March 2005, Mr. Graham served as the Vice President of World Wide Sales at picoChip Designs Limited, a supplier of processor array chips for wireless infrastructure applications. From January 2003 to June 2003, he served as Executive Vice President for Transitive Technologies Inc., a central processing unit emulation software company, and from September 2000 to December 2002, Mr. Graham served as the President and Chief Executive Officer of the company. From June 1996 to September 2000, he served as General Manager and Vice President of Marketing for Conexant Systems, Inc., a semiconductor company. From January 1993 to June 1996, Mr. Graham served as the General Manager of the Graphics Business Unit and a Sales Manager at Brooktree Corporation, a producer of integrated circuits for consumer products, including networking, digital video, cordless technology, fax machines, modems and set top boxes. Mr. Graham received a B.S. in Electrical and Electronic Engineering from the University of Nottingham, England and an M.B.A. from the University of San Diego.

*Kimihiko Imura* is a co-founder and has served as our Vice President, Semiconductor Technology and Operations since January 2004. From April 1985 to March 1995, Mr. Imura served as a senior member of technical staff of Compound Semiconductor Device Development at Japan Energy Corporation, a producer and distributor of crude oil. From April 1995 to July 2001, he served as the Technology Development Manager at AMI Semiconductors (now ON Semiconductor). From August 2001 to December 2003, he served as a senior member of technical staff at Silicon Wave, Inc., a semiconductor company (now RF Micro Devices, a Qualcomm Bluetooth Division). Mr. Imura received a B.S. in Engineering from Tokushima University and an M.S. in Materials Science from Hiroshima University in Japan.

*Michael C. Kastner* has served as our Vice President, Sales since September 2008. From July 2004 to April 2008, Mr. Kastner served as Vice President of Worldwide Sales for Impinj, Inc., a radio-frequency identification systems solutions and semiconductor company. From June 2002 to July 2004, Mr. Kastner served as the Director of Sales, Global Account Management for Skyworks Solutions, Inc., a wireless handset chip supplier. From September 1996 to January 1999, Mr. Kastner held various positions in sales management at Conexant Systems, Inc., a semiconductor company and Rockwell International, a manufacturing company. From June 1987 to September 1996, Mr. Kastner was a Product Line Manager at Brooktree Corporation. Mr. Kastner received a B.S. in Electrical Engineering from Cleveland State University and has completed executive programs at the University of California, San Diego and the University of California, Irvine.

*Curtis Ling, Ph.D.* is a co-founder and has served as our Chief Technical Officer since April 2006. From March 2004 to July 2006, Dr. Ling served as our Chief Financial Officer, and from September 2003 to March 2004, as a co-founder, he consulted for us. From July 1999 to July 2003, Dr. Ling served as a principal engineer at Silicon

## **Table of Contents**

Wave, Inc. From August 1993 to May 1999, Dr. Ling served as a professor at the Hong Kong University of Science and Technology. Dr. Ling received a B.S. in Electrical Engineering from the California Institute of Technology and an M.S. and Ph.D. in Electrical Engineering from the University of Michigan, Ann Arbor.

*Madhukar Reddy, Ph.D.* has served as our Vice President, IC and RF Systems Engineering since November 2006. From January 2005 to November 2006, Dr. Reddy served as our Director, RF/Mixed-Signal IC Design. From July 2002 to January 2005, he served as Manager, RFIC Design at Skyworks Solutions. From January 1999 to July 2002, he served as RFIC Design Engineer and Group Leader at Conexant Systems. From January 1997 to December 1998, he served as RFIC Designer at Rockwell Semiconductor Systems. Since 2005, Dr. Reddy has been a member of the Technical Program Committee of the IEEE RFIC Symposium. Dr. Reddy received a B. Tech degree from the Indian Institute of Technology, Madras, India, and an M.S. and Ph.D. in Electrical Engineering from the University of California, Santa Barbara.

*Brendan Walsh* has served as our Vice President, Business Development since November 2008. From September 2004 to October 1, 2007, he served as our Vice President of Sales, Marketing and Business Development. From October 2008 to November 2008, he served as our Vice President of Marketing and Business Development. From October 2000 to August 2004, Mr. Walsh was the Director of Business Development and Venture Investment in the corporate mergers and acquisitions department of Philips Electronics N.V., an electronics company. From August 1999 to October 2000, he served as a strategic investment manager for Hikari Tsushin Inc., a retailer of mobile devices and venture capital firm focusing on mobile technologies. Mr. Walsh received a B.A. from the University of California, Davis and an M.B.A. from the Wharton School, University of Pennsylvania.

## **Board of Directors**

*Edward E. Alexander* has served as a member of our Board of Directors since November 2004. Since January 2000, Mr. Alexander has served as a Managing Partner of Mission Ventures, a venture capital investment firm focused on early stage technology investments throughout Southern California. He joined Mission Ventures as an associate in August 1997. Previously, Mr. Alexander was a platoon commander in the U.S. Navy SEALs and a division officer aboard a U.S. Navy destroyer. Mr. Alexander received a B.S. in Engineering from the United States Naval Academy and an M.B.A. from Duke University.

*Kenneth P. Lawler* has served as a member of our Board of Directors since November 2006. Since February 1995, Mr. Lawler has served as a general partner of the Battery Ventures fund organization, a venture capital investment firm. Mr. Lawler is a managing member of Battery Partner Ventures VII, L.L.C., which is the sole general partner of Battery Ventures VII, L.P. and the sole managing member of Battery Investment Partners VII, L.L.C. Prior to working at Battery Ventures, Mr. Lawler held various positions, including vice president, at Patricof & Co. Ventures, now known as Apax Partners, and also held various positions, including principal, at Berkeley International Capital Corporation, both venture capital firms. Prior to 1985, he worked in product management at Advanced Micro Devices, Inc. and in engineering management at Teradyne, Inc. and Fairchild Semiconductor International, Inc., all semiconductor companies. Mr. Lawler also serves on the Venture Capital Advisory Board for the Global Semiconductor Alliance. Mr. Lawler received a B.S. and an M.S. in Industrial Engineering from Stanford University and an M.B.A. from the University of California, Los Angeles.

*David Liddle, Ph.D.* has served as a member of our Board of Directors since November 2004. Since January 2000, Dr. Liddle has been associated with U.S. Venture Partners, a venture capital investment firm. Dr. Liddle is a managing member of Presidio Management Group VIII, L.L.C., or PMG VIII, the general partner of U.S. Venture Partners VIII, L.P. and certain other venture partner investment funds which together with PMG VIII are collectively referred to as U.S. Venture Partners, or USVP. From March 1992 to December 1999, Dr. Liddle co-founded and served as the President and Chief Executive Officer of Interval Research Corporation, a computer-related research laboratory based in Palo Alto, California. From November 1991 to March 1992, he served as Vice President of New Systems Business Development, Personal Systems, for International Business





---

**Table of Contents**

Machines Corporation, a computer and office equipment manufacturer. Dr. Liddle also serves on the board of the New York Times Company, a publishing company. Dr. Liddle received a B.S. in Electrical Engineering from the University of Michigan and a Ph.D. in Electrical Engineering and Computer Science from the University of Toledo.

*Albert J. Moyer* has served as a member of our Board of Directors since October 2009. Since 2000, Mr. Moyer has served as a private financial consultant. From March 1998 to February 2000, Mr. Moyer served as Executive Vice President and Chief Financial Officer of QAD Inc., a publicly held software company that is a provider of enterprise resource planning software applications, and he subsequently served as a consultant to QAD Inc., assisting in the Sales Operations of the Americas Region. From August 1995 to March 1998, Mr. Moyer served as Chief Financial Officer of Allergan Inc., a specialty pharmaceutical company. Previously, Mr. Moyer served as Chief Financial Officer of National Semiconductor Corporation, a semiconductor company. Mr. Moyer also served as Chief Financial Officer of Western Digital Corporation, a manufacturer of hard-disk drives for the personal computer and home entertainment markets. Mr. Moyer also serves on the board of each of CalAmp Corp., a provider of wireless communications solutions, Collectors Universe, Inc., a third-party grading and authentication service for high-value collectibles, Virco Manufacturing Corporation, a manufacturer of educational furniture, LaserCard Corporation, a provider of secure identification solutions, and Occam Networks, Inc., a developer of broadband networking equipment. Mr. Moyer received his B.S. in finance from Duquesne University and graduated from the Advanced Management Program at the University of Texas, Austin. In November 2008, Mr. Moyer earned a Professional Director Certification from the Corporate Directors Group, an accredited provider of RiskMetrics ISS director education.

*Thomas E. Pardun* has served as a member of our Board of Directors since July 2009. Since April 2007, Mr. Pardun has served as chairman of the board of directors of Western Digital Corporation. Mr. Pardun has served as a director of Western Digital Corporation since January 1993 and from January 2000 to November 2001 he previously served as chairman of the board of directors of Western Digital Corporation. From May 1996 to July 2000, Mr. Pardun served as president of MediaOne International, Asia-Pacific (formerly US West Asia-Pacific), an owner/operator of international properties in cable television, telephone services and wireless communications. From May 1993 to April 1996, Mr. Pardun served as president and chief executive officer of US West Multimedia Communications, Inc., a communications company, and from June 1988 to April 1993 held numerous other executive positions with US West, Inc. From June 1986 to May 1988, Mr. Pardun was president of the Central Group for Sprint, Inc. as well as president of Sprint's West Division. From September 1984 to May 1986 he also served as senior vice president of United Telecommunications, a predecessor company to Sprint. From June 1965 to August 1984, he held various positions at International Business Machines Corporation. In addition to Western Digital Corporation, Mr. Pardun also serves on the boards of each of CalAmp Corp., Finisar Corporation and Occam Networks, Inc. Mr. Pardun received a B.B.A. in Economics and Marketing from the University of Iowa and Management School Certificates from Harvard Business School, Stanford University and The Tuck School of Business at Dartmouth College.

*Donald E. Schrock* has served as a member of our Board of Directors since October 2009. Mr. Schrock retired as Executive Vice President and President of Qualcomm Incorporated's CDMA Technologies Group in 2003. Mr. Schrock began his career with Qualcomm in January 1996 as Corporate Vice President. Prior to joining Qualcomm, Mr. Schrock was Group Vice President and Division Manager with GM Hughes Electronics. Prior to working at Hughes, Mr. Schrock was Vice President of Operations with Applied Micro Circuit Corporation. Mr. Schrock also held positions as Vice President / Division Manager at Burr-Brown Corporation and spent 15 years with Motorola Semiconductor. Mr. Schrock has served on the board of directors of Patriot Scientific Corporation, a public intellectual property licensing company since April 2008, as well as the board of directors of Integrated Devices Technology Inc., a designer and fabricator of semiconductor components, since October 2009. He also previously served on the board of directors of the Fabless Semiconductor Association. Mr. Schrock holds a BSEE with honors from the University of Illinois, has completed the coursework for an MSEE from Arizona State University and has an Advanced Business Administration degree from the Arizona State University Center for Executive Development.

## **Table of Contents**

Each officer serves at the discretion of the Board of Directors and holds office until his successor is duly elected and qualified or until his or her earlier resignation or removal. There are no family relationships among any of our directors or executive officers.

## **Board Composition**

Our Board of Directors is currently composed of eight members. Our amended and restated certificate of incorporation and bylaws, which will become effective immediately following the completion of this offering, provide that the number of our directors shall be at least two and will be fixed from time to time by a resolution of the majority of our Board of Directors.

Two directors will be elected exclusively by the holders of the Class B common stock, voting as a separate class, or the Class B Directors. At least one of these directors must be an executive officer nominated by our nominating and governance committee, with the consent of the founders holding a majority-in-interest of the outstanding Class B common stock over which the founders then exercise voting control. The founders are Drs. Seendripu, Ling and Reddy, Messrs. Imura and Walsh, and several other employees named in our amended and restated certificate of incorporation. At the time of the offering, the Class B Directors will be Drs. Ling and Seendripu. The remaining directors will be elected by the holders of our Class A common stock and Class B common stock, voting together as a single class. Immediately prior to this offering, our Board of Directors will be divided into three staggered classes of directors. At each annual meeting of stockholders, a class of directors will be elected for a three-year term to succeed the class whose terms are then expiring. The terms of the directors will expire upon the election and qualification of successor directors at the annual meeting of stockholders to be held during the years 2011 for the Class I directors, 2012 for the Class II directors and 2013 for the Class III directors.

Our Class I directors will be Messrs. Alexander and Lawler and Dr. Liddle.

Our Class II directors will be Dr. Ling and Messrs Schrock and Moyer.

Our Class III directors will be Mr. Pardun and Dr. Seendripu.

## **Director Independence**

In October 2009, our Board of Directors undertook a review of the independence of our directors and considered whether any director has a material relationship with us that could compromise his ability to exercise independent judgment in carrying out his responsibilities. As a result of this review, our Board of Directors determined that Messrs. Alexander, Lawler, Moyer, Pardun and Schrock and Dr. Liddle, representing a majority of our directors, are independent directors as defined under the rules of the New York Stock Exchange, or NYSE.

## **Lead Director**

Our Board of Directors has established certain corporate governance principles in connection with this offering. Our Board of Directors determined as part of our corporate governance principles that one of our independent directors should serve as a lead director at any time when the title of chairman is held by an employee director. Because Dr. Seendripu is our Chairman, President and Chief Executive Officer, our Board

## Edgar Filing: MAXLINEAR INC - Form S-1/A

of Directors has appointed Mr. Pardun to serve as our lead director. As lead director, Mr. Pardun will, among other responsibilities, preside over periodic meetings of our independent directors, advise our Chairman as to the scheduling of board meetings, oversee the function of our Board of Directors and committees and perform such additional duties as our Board of Directors may otherwise determine and delegate.

### **Board Committees**

Our Board of Directors has an audit committee, a compensation committee and a nominating and governance committee, each of which has the composition and the responsibilities described below.

***Audit Committee.*** Our audit committee oversees our corporate accounting and financial reporting process and assists our Board of Directors in monitoring our financial systems and our legal and regulatory compliance. Our audit committee will also:

oversee the work of our independent auditors;

approve the hiring, discharging and compensation of our independent auditors;

**Table of Contents**

approve engagements of the independent auditors to render any audit or permissible non-audit services;

review the qualifications, independence and performance of the independent auditors;

review our financial statements and review our critical accounting policies and estimates;

review the adequacy and effectiveness of our internal controls; and

review and discuss with management and the independent auditors the results of our annual audit, our quarterly financial statements and our publicly filed reports.

The members of our audit committee are Messrs. Alexander, Moyer and Pardun. Mr. Moyer is our audit committee chairman. Mr. Moyer was appointed to our audit committee on October 16, 2009. Our Board of Directors has determined that each of the members of our audit committee is independent and financially literate under the current rules and regulations of the SEC and the NYSE and that Mr. Moyer qualifies as an audit committee financial expert within the meaning of the rules and regulations of the SEC. Our Board of Directors has determined that Mr. Moyer's simultaneous service on more than three audit committees does not impair the ability of Mr. Moyer to effectively serve as a member and chairman of our audit committee. We believe that our audit committee charter and the functioning of our audit committee comply with the applicable requirements of rules and regulations of the SEC and the NYSE.

***Compensation Committee.*** Our compensation committee oversees our corporate compensation programs. The compensation committee will also:

review and recommend policies relating to compensation and benefits of our officers and employees;

review and approve corporate goals and objectives relevant to compensation of our Chief Executive Officer and other senior officers;

evaluate the performance of our officers in light of established goals and objectives;

recommend compensation of our officers based on its evaluations; and

administer the issuance of stock options and other awards under our stock plans.

The members of our compensation committee are Messrs. Pardun and Schrock and Dr. Liddle. Mr. Pardun is the chairman of our compensation committee. Our Board of Directors has determined that each member of our compensation committee is independent under the current rules and regulations of the SEC and the NYSE. We believe that our compensation committee charter and the functioning of our compensation committee comply with the applicable requirements of the rules and regulations of the SEC and the NYSE.

## Edgar Filing: MAXLINEAR INC - Form S-1/A

***Nominating and Governance Committee.*** Our nominating and governance committee oversees and assists our Board of Directors in reviewing and recommending nominees for election as directors. The nominating and governance committee will also:

evaluate and make recommendations regarding the organization and governance of the Board of Directors and its committees;

assess the performance of members of the Board of Directors and make recommendations regarding committee and chair assignments;

recommend desired qualifications for Board of Directors membership and conduct searches for potential members of the Board of Directors; and

review and make recommendations with regard to our corporate governance guidelines.

The members of our nominating and governance committee are Messrs. Lawler, Moyer and Schrock. Mr. Schrock is the chairman of our nominating and governance committee. Our Board of Directors has determined that each member of our nominating and governance committee is independent under the current

**Table of Contents**

rules and regulations of the SEC and the NYSE. We believe that the nominating and corporate governance committee charter and the functioning of our compensation committee comply with the applicable requirements of rules and regulations of the SEC and the NYSE.

Our Board of Directors may from time to time establish other committees.

**Director Compensation**

Compensation paid or accrued for services rendered to us by Drs. Seendripu and Ling in their roles as executive officers is included in our disclosures related to executive compensation.

Three of our non-employee directors have received options to purchase shares of our Class B common stock under our 2004 Plan. In July 2009, we granted an option to purchase 34,575 shares of Class B common stock at an exercise price of \$4.26 per share to Mr. Pardun; in October 2009, we granted an option to purchase 34,575 shares of Class B common stock at an exercise price of \$6.55 per share to Mr. Moyer; and in October 2009, we granted an option to purchase 34,575 shares of Class B common stock at an exercise price of \$7.45 per share to Mr. Schrock. Each of these options vest with respect to twenty-five percent of the option one year from the date of grant and then vest in equal monthly installments over the next three years. Our 2004 Plan provides that in the event of our merger with or into another corporation or a change in control, as defined in the 2004 Plan, the successor corporation or its parent or subsidiary will assume or substitute an equivalent award for each outstanding award under the 2004 Plan. If there is no assumption or substitution of outstanding awards, such awards will become fully vested and exercisable and the administrator will provide notice to the recipient that he or she has the right to exercise such outstanding awards for a period of ten (10) days from the date of such notice, and the awards will terminate upon the expiration of such stated notice period.

We currently pay each of Messrs. Moyer, Pardun and Schrock a retainer of \$20,000 per year, payable quarterly. We have a policy of reimbursing directors for travel, lodging and other reasonable expenses incurred in connection with their attendance at board or committee meetings.

The following table sets forth information concerning compensation paid or accrued for services rendered to us by members of our Board of Directors for the year ended December 31, 2009. The table excludes Drs. Seendripu and Ling, who are executive officers and who did not receive any compensation from us in their roles as directors in the year ended December 31, 2009.

<b>Director Compensation</b>				
Name	Fees Earned or Paid in Cash (\$)	Option Awards (\$) <sup>(1)</sup>	All Other Compensation (\$)	Total (\$)
Edward E. Alexander				
Kenneth P. Lawler				
David Liddle, Ph.D.				
Albert J. Moyer	5,000	6,464		11,464
Thomas E. Pardun	10,000	8,570		18,570
Donald E. Schrock.	5,000	6,287		11,287

(1)

8.7

A-14

	Represents the aggregate expense recognized for financial statement reporting purposes for the fiscal year ended December 31, 2009, calculated in accordance with ASC 718 without regard to estimated forfeitures. See Note 6 to Consolidated Financial Statements for a discussion of assumptions	Nontransferability of Restricted Stock Award Rights
9.	Terms and Conditions of Performance Awards	A-14
9.1	Types of Performance Awards	
	Authorized	A-14
9.2	Initial Value of Performance Shares and Performance Units	A-15
9.3	Establishment of Performance Period, Performance Goals and Performance Award Formula	A-15
9.4	Measurement of Performance Goals	A-15
9.5	Settlement of Performance Awards	A-16
9.6	Voting Rights; Dividend Equivalent Rights and Distributions	A-16
9.7	Effect of Termination of Service	A-17
9.8	Nontransferability of Performance Awards	A-17
10.	Terms and Conditions of Restricted Stock Unit Awards	A-17
10.1	Grant of Restricted Stock Unit Awards	A-17
10.2	Vesting	A-18
10.3	Voting Rights, Dividend Equivalent Rights and Distributions	A-18
10.4	Effect of Termination of Service	A-18
10.5	Settlement of Restricted Stock Unit Awards	A-18
10.6	Nontransferability of Restricted Stock Unit Awards	A-18
11.	Deferred Compensation Awards	A-19
11.1	Establishment of Deferred Compensation Award Programs	A-19
11.2	Terms and Conditions of Deferred Compensation Awards	A-19

A-ii



12.	Other Stock-Based Awards		A-20
13.	Effect of Change in Control on Options and SARs		A-20
	13.1	Accelerated Vesting	A-20
	13.2	Assumption or Substitution	A-20
	13.3	Effect of Change in Control on Restricted Stock and Other Type of Awards	A-21
14.	Compliance with Securities Law		A-21
15.	Tax Withholding		A-21
	15.1	Tax Withholding in General	A-21
	15.2	Withholding in Shares	A-21
16.	Amendment or Termination of Plan		A-22
17.	Miscellaneous Provisions		A-22
	17.1	Repurchase Rights	A-22
	17.2	Provision of Information	A-22
	17.3	Rights as Employee, Consultant or Director	A-22
	17.4	Rights as a Stockholder	A-22
	17.5	Fractional Shares	A-22
	17.6	Severability	A-22
	17.7	Beneficiary Designation	A-23
	17.8	Unfunded Obligation	A-23

A-iii

---

## AXT, Inc. 2007 Equity Incentive Plan

### 1. ESTABLISHMENT, PURPOSE AND TERM OF PLAN.

1.1 **Establishment.** The AXT, Inc. 2007 Equity Incentive Plan (the *Plan*) is hereby adopted April [30], 2007 subject to approval by the stockholders of the Company (the date of such approval, the *Effective Date*). The Plan is an amendment and restatement of the AXT, Inc. 1997 Stock Option Plan. An Award under the Plan shall be subject to the terms of the Plan and governing Agreements in effect on the date of the Award's grant.

1.2 **Purpose.** The purpose of the Plan is to advance the interests of the Participating Company Group and its stockholders by providing an incentive to attract and retain the best qualified personnel to perform services for the Participating Company Group, by motivating such persons to contribute to the growth and profitability of the Participating Company Group, by aligning their interests with interests of the Company's stockholders, and by rewarding such persons for their services by tying a significant portion of their total compensation package to the success of the Company. The Plan seeks to achieve this purpose by providing for Awards in the form of Options, Stock Appreciation Rights, Restricted Stock Awards, Performance Shares, Performance Units, Restricted Stock Units, Deferred Compensation Awards and other Stock-Based Awards as described below.

1.3 **Term of Plan.** The Plan shall continue in effect until the earlier of its termination by the Board or the date on which all of the shares of Stock available for issuance under the Plan have been issued and all restrictions on such shares under the terms of the Plan and the agreements evidencing Awards granted under the Plan have lapsed. However, Awards shall not be granted later than ten (10) years from the Effective Date. The Company intends that the Plan comply with Section 409A of the Code (including any amendments to or replacements of such section), and the Plan shall be so construed.

### 2. DEFINITIONS AND CONSTRUCTION.

2.1 **Definitions.** Whenever used herein, the following terms shall have their respective meanings set forth below:

(a) **Affiliate** means (i) an entity, other than a Parent Corporation, that directly, or indirectly through one or more intermediary entities, controls the Company or (ii) an entity, other than a Subsidiary Corporation, that is controlled by the Company directly, or indirectly through one or more intermediary entities. For this purpose, the term *control* (including the term *controlled by*) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the relevant entity, whether through the ownership of voting securities, by contract or otherwise; or shall have such other meaning assigned such term for the purposes of registration on Form S-8 under the Securities Act.

(b) **Award** means any Option, SAR, Restricted Stock Award, Performance Share, Performance Unit, Restricted Stock Unit or Deferred Compensation Award or other Stock-Based Award granted under the Plan.

(c) **Award Agreement** means a written agreement between the Company and a Participant setting forth the terms, conditions and restrictions of the Award granted to the Participant.

(d) **Board** means the Board of Directors of the Company.

A-1

---

- (e) **Change in Control** means, unless such term or an equivalent term is otherwise defined with respect to an Award by the Participant's Award Agreement or written contract of employment or service, the occurrence of any of the following:
- (i) an Ownership Change Event or a series of related Ownership Change Events (collectively, a **Transaction**) in which the stockholders of the Company immediately before the Transaction do not retain immediately after the Transaction, in substantially the same proportions as their ownership of shares of the Company's voting stock immediately before the Transaction, direct or indirect beneficial ownership of more than fifty percent (50%) of the total combined voting power of the outstanding voting securities of the Company or, in the case of an Ownership Change Event described in Section 2.1(y)(iii), the entity to which the assets of the Company were transferred (the **Transferee**), as the case may be; or
- (ii) the liquidation or dissolution of the Company.

For purposes of the preceding sentence, indirect beneficial ownership shall include, without limitation, an interest resulting from ownership of the voting securities of one or more corporations or other business entities which own the Company or the Transferee, as the case may be, either directly or through one or more subsidiary corporations or other business entities. The Board shall have the right to determine whether multiple sales or exchanges of the voting securities of the Company or multiple Ownership Change Events are related, and its determination shall be final, binding and conclusive.

- (f) **Code** means the Internal Revenue Code of 1986, as amended, and any applicable regulations promulgated thereunder.
- (g) **Committee** means the Compensation Committee or other committee of the Board duly appointed to administer the Plan and having such powers as shall be specified by the Board. If no committee of the Board has been appointed to administer the Plan, the Board shall exercise all of the powers of the Committee granted herein, and, in any event, the Board may in its discretion exercise any or all of such powers, *provided, however*, that any discretionary grants to non-Employee Directors shall only be made by a Board committee comprised solely of independent directors.. The Committee shall have the exclusive authority to administer the Plan and shall have all of the powers granted herein, including, without limitation, the power to amend or terminate the Plan at any time, subject to the terms of the Plan and any applicable limitations imposed by law.
- (h) **Company** means AXT, Inc., a Delaware corporation, or any Successor.
- (i) **Consultant** means a person engaged to provide consulting or advisory services (other than as an Employee or a member of the Board) to a Participating Company.
- (j) **Deferred Compensation Award** means an award of Stock Units granted to a Participant pursuant to Section 11 of the Plan.
- (k) **Director** means a member of the Board or of the board of directors of any Participating Company.
- (l) **Disability** means the permanent and total disability of the Participant, within the meaning of Section 22(e)(3) of the Code.
- (m) **Dividend Equivalent** means a credit, made at the discretion of the Committee or as otherwise provided by the Plan, to the account of a Participant in an amount equal to the cash dividends paid on one share of Stock for each share of Stock represented by an Award held by such Participant.
- (n) **Employee** means any person treated as an employee (including an Officer or a member of the Board who is also treated as an employee) in the records of a Participating Company and, with respect to any Incentive Stock Option granted to such person, who is an employee for purposes of

Section 422 of the Code; provided, however, that neither service as a member of the Board nor payment of a director's fee shall be sufficient to constitute employment for purposes of the Plan. The Company shall determine in good faith and in the exercise of its discretion whether an individual has become or has ceased to be an Employee and the effective date of such individual's employment or termination of employment, as the case may be. For purposes of an individual's rights, if any, under the Plan as of the time of the Company's determination, all such determinations by the Company shall be final, binding and conclusive, notwithstanding that the Company or any court of law or governmental agency subsequently makes a contrary determination.

(o) **Exchange Act** means the Securities Exchange Act of 1934, as amended.

(p) **Fair Market Value** means, as of any date, the value of a share of Stock or other property as determined by the Committee, in its discretion, or by the Company, in its discretion, if such determination is expressly allocated to the Company herein, subject to the following:

(i) Except as otherwise determined by the Committee, if, on such date, the Stock is listed on a national or regional securities exchange or market system, the Fair Market Value of a share of Stock shall be the closing price of a share of Stock as quoted on such national or regional securities exchange or market system constituting the primary market for the Stock on the last trading day prior to the day of determination, as reported in The Wall Street Journal or such other source as the Company deems reliable. If there is no such closing price on the day of determination, the Fair Market Value of a share of Stock under this Section 2.1(p)(i) shall be the closing price of a share of Stock on the next trading day following the day of determination.

(ii) Notwithstanding the foregoing, the Committee may, in its discretion, determine the Fair Market Value on the basis of the closing, high, low or average sale price of a share of Stock or the actual sale price of a share of Stock received by a Participant, on such date, the preceding trading day, the next succeeding trading day or an average determined over a period of trading days. The Committee may vary its method of determination of the Fair Market Value as provided in this Section for different purposes under the Plan.

(iii) If, on such date, the Stock is not listed on a national or regional securities exchange or market system, the Fair Market Value of a share of Stock shall be as determined by the Committee in good faith without regard to any restriction other than a restriction which, by its terms, will never lapse.

(q) **Incentive Stock Option** means an Option intended to be (as set forth in the Award Agreement) and which qualifies as an incentive stock option within the meaning of Section 422(b) of the Code.

(r) **Insider** means an Officer, a Director or any other person whose transactions in Stock are subject to Section 16 of the Exchange Act.

(s) **Non-Control Affiliate** means any entity in which any Participating Company has an ownership interest and which the Committee shall designate as a Non-Control Affiliate.

(t) **Nonemployee Director** means a Director who is not an Employee.

(u) **Nonstatutory Stock Option** means an Option not intended to be (as set forth in the Award Agreement) an incentive stock option within the meaning of Section 422(b) of the Code.

(v) **Officer** means any person designated by the Board as an officer of the Company.

(w) **Option** means the right to purchase Stock at a stated price for a specified period of time granted to a Participant pursuant to Section 6 of the Plan. An Option may be either an Incentive Stock Option or a Nonstatutory Stock Option.

A-3

---

- (x) **Option Expiration Date** means the date of expiration of the Option's term as set forth in the Award Agreement.
- (y) An **Ownership Change Event** shall be deemed to have occurred if any of the following occurs with respect to the Company: (i) the direct or indirect sale or exchange in a single or series of related transactions by the stockholders of the Company of more than fifty percent (50%) of the voting stock of the Company; (ii) a merger or consolidation in which the Company is a party; or (iii) the sale, exchange, or transfer of all or substantially all, as determined by the Board in its discretion, of the assets of the Company.
- (z) **Parent Corporation** means any present or future parent corporation of the Company, as defined in Section 424(e) of the Code.
- (aa) **Participant** means any eligible person who has been granted one or more Awards.
- (bb) **Participating Company** means the Company or any Parent Corporation, Subsidiary Corporation or Affiliate.
- (cc) **Participating Company Group** means, at any point in time, all entities collectively which are then Participating Companies.
- (dd) **Performance Award** means an Award of Performance Shares or Performance Units.
- (ee) **Performance Award Formula** means, for any Performance Award, a formula or table established by the Committee pursuant to Section 9.3 of the Plan which provides the basis for computing the value of a Performance Award at one or more threshold levels of attainment of the applicable Performance Goal(s) measured as of the end of the applicable Performance Period.
- (ff) **Performance Goal** means a performance goal established by the Committee pursuant to Section 9.3 of the Plan.
- (gg) **Performance Period** means a period established by the Committee pursuant to Section 9.3 of the Plan at the end of which one or more Performance Goals are to be measured.
- (hh) **Performance Share** means a bookkeeping entry representing a right granted to a Participant pursuant to Section 9 of the Plan to receive a payment equal to the value of a Performance Share, as determined by the Committee, based on performance.
- (ii) **Performance Unit** means a bookkeeping entry representing a right granted to a Participant pursuant to Section 9 of the Plan to receive a payment equal to the value of a Performance Unit, as determined by the Committee, based upon performance.
- (jj) **Restricted Stock Award** means an Award of Restricted Stock.
- (kk) **Restricted Stock Unit** or **Stock Unit** means a bookkeeping entry representing a right granted to a Participant pursuant to Section 10 or Section 11 of the Plan, respectively, to receive a share of Stock on a date determined in accordance with the provisions of Section 10 or Section 11, as applicable, and the Participant's Award Agreement.
- (ll) **Restriction Period** means the period established in accordance with Section 8.4 of the Plan during which shares subject to a Restricted Stock Award are subject to Vesting Conditions.
- (mm) **Rule 16b-3** means Rule 16b-3 under the Exchange Act, as amended from time to time, or any successor rule or regulation.
- (nn) **SAR** or **Stock Appreciation Right** means a bookkeeping entry representing, for each share of Stock subject to such SAR, a right granted to a Participant pursuant to Section 7 of the Plan to receive payment in any combination of shares of Stock or cash of an amount equal to the excess, if

any, of the Fair Market Value of a share of Stock on the date of exercise of the SAR over the exercise price.

(oo) **Section 162(m)** means Section 162(m) of the Code.

(pp) **Securities Act** means the Securities Act of 1933, as amended.

(qq) **Service** means a Participant's employment or service with the Participating Company Group, whether in the capacity of an Employee, a Director or a Consultant. Unless otherwise provided by the Committee, a Participant's Service shall not be deemed to have terminated merely because of a change in the capacity in which the Participant renders such Service or a change in the Participating Company for which the Participant renders such Service, provided that there is no interruption or termination of the Participant's Service. Furthermore, a Participant's Service shall not be deemed to have terminated if the Participant takes any military leave, sick leave, or other bona fide leave of absence approved by the Company. However, if any such leave taken by a Participant exceeds ninety (90) days, then on the ninety-first (91st) day following the commencement of such leave the Participant's Service shall be deemed to have terminated, unless the Participant's right to return to Service is guaranteed by statute or contract. Notwithstanding the foregoing, unless otherwise designated by the Company or required by law, a leave of absence shall not be treated as Service for purposes of determining vesting under the Participant's Award Agreement. A Participant's Service shall be deemed to have terminated either upon an actual termination of Service or upon the entity for which the Participant performs Service ceasing to be a Participating Company. Subject to the foregoing, the Company, in its discretion, shall determine whether the Participant's Service has terminated and the effective date of such termination.

(rr) **Stock** means the common stock of the Company, as adjusted from time to time in accordance with Section 4.2 of the Plan.

(ss) **Stock-Based Awards** means any award that is valued in whole or in part by reference to, or is otherwise based on, the Stock, including dividends on the Stock, but not limited to those Awards described in Sections 6 through 11 of the Plan.

(tt) **Subsidiary Corporation** means any present or future subsidiary corporation of the Company, as defined in Section 424(f) of the Code.

(uu) **Successor** means a corporation into or with which the Company is merged or consolidated or which acquires all or substantially all of the assets of the Company and which is designated by the Board as a Successor for purposes of the Plan.

(vv) **Ten Percent Owner** means a Participant who, at the time an Option is granted to the Participant, owns stock possessing more than ten percent (10%) of the total combined voting power of all classes of stock of a Participating Company (other than an Affiliate) within the meaning of Section 422(b)(6) of the Code.

(ww) **Vesting Conditions** mean those conditions established in accordance with Section 8.4 or Section 10.2 of the Plan prior to the satisfaction of which shares subject to a Restricted Stock Award or Restricted Stock Unit Award, respectively, remain subject to forfeiture or a repurchase option in favor of the Company upon the Participant's termination of Service.

**2.2 Construction.** Captions and titles contained herein are for convenience only and shall not affect the meaning or interpretation of any provision of the Plan. Except when otherwise indicated by the context, the singular shall include the plural and the plural shall include the singular. Use of the term "or" is not intended to be exclusive, unless the context clearly requires otherwise.

A-5

**3. ADMINISTRATION.**

**3.1 Administration by the Committee.** The Plan shall be administered by the Committee. All questions of interpretation of the Plan or of any Award shall be determined by the Committee, and such determinations shall be final and binding upon all persons having an interest in the Plan or such Award.

**3.2 Authority of Officers.** Any Officer shall have the authority to act on behalf of the Company with respect to any matter, right, obligation, determination or election which is the responsibility of or which is allocated to the Company herein, provided the Officer has apparent authority with respect to such matter, right, obligation, determination or election.

**3.3 Administration with Respect to Insiders.** With respect to participation by Insiders in the Plan, at any time that any class of equity security of the Company is registered pursuant to Section 12 of the Exchange Act, the Plan shall be administered in compliance with the requirements, if any, of Rule 16b-3.

**3.4 Committee Complying with Section 162(m).** While the Company is a publicly held corporation within the meaning of Section 162(m), the Board may establish a Committee of outside directors within the meaning of Section 162(m) to approve the grant of any Award which might reasonably be anticipated to result in the payment of employee remuneration that would otherwise exceed the limit on employee remuneration deductible for income tax purposes pursuant to Section 162(m).

**3.5 Powers of the Committee.** In addition to any other powers set forth in the Plan and subject to the provisions of the Plan, the Committee shall have the full and final power and authority, in its discretion:

- (a) to determine the persons to whom, and the time or times at which, Awards shall be granted and the number of shares of Stock or units to be subject to each Award;
- (b) to determine the type of Award granted and to designate Options as Incentive Stock Options or Nonstatutory Stock Options;
- (c) to determine the Fair Market Value of shares of Stock or other property;
- (d) to determine the terms, conditions and restrictions applicable to each Award (which need not be identical) and any shares acquired pursuant thereto, including, without limitation, (i) the exercise or purchase price of shares purchased pursuant to any Award, (ii) the method of payment for shares purchased pursuant to any Award, (iii) the method for satisfaction of any tax withholding obligation arising in connection with Award, including by the withholding or delivery of shares of Stock, (iv) the timing, terms and conditions of the exercisability or vesting of any Award or any shares acquired pursuant thereto, (v) the Performance Award Formula and Performance Goals applicable to any Award and the extent to which such Performance Goals have been attained, (vi) the time of the expiration of any Award, (vii) the effect of the Participant's termination of Service on any of the foregoing, and (viii) all other terms, conditions and restrictions applicable to any Award or shares acquired pursuant thereto not inconsistent with the terms of the Plan;
- (e) to determine whether an Award will be settled in shares of Stock, cash, or in any combination thereof;
- (f) to approve one or more forms of Award Agreement;
- (g) to amend, modify, extend, cancel or renew any Award or to waive any restrictions or conditions applicable to any Award or any shares acquired pursuant thereto;
- (h) to accelerate, continue, extend or defer the exercisability or vesting of any Award or any shares acquired pursuant thereto, including with respect to the period following a Participant's termination of Service;

A-6

---

(i) without the consent of the affected Participant and notwithstanding the provisions of any Award Agreement to the contrary, to unilaterally substitute at any time a Stock Appreciation Right providing for settlement solely in shares of Stock in place of any outstanding Option, provided that such Stock Appreciation Right covers the same number of shares of Stock and provides for the same exercise price (subject in each case to adjustment in accordance with Section 4.2) as the replaced Option and otherwise provides substantially equivalent terms and conditions as the replaced Option, as determined by the Committee;

(j) to prescribe, amend or rescind rules, guidelines and policies relating to the Plan, or to adopt sub-plans or supplements to, or alternative versions of, the Plan, including, without limitation, as the Committee deems necessary or desirable to comply with the laws or regulations of or to accommodate the tax policy, accounting principles or custom of, foreign jurisdictions whose citizens may be granted Awards;

(k) to correct any defect, supply any omission or reconcile any inconsistency in the Plan or any Award Agreement and to make all other determinations and take such other actions with respect to the Plan or any Award as the Committee may deem advisable to the extent not inconsistent with the provisions of the Plan or applicable law; and

(l) to delegate to any proper Officer the authority to grant one or more Awards, without further approval of the Committee, to any person eligible pursuant to Section 5, other than a person who, at the time of such grant, is an Insider; provided, however, that (i) the exercise price per share of each such Option shall be equal to the Fair Market Value per share of the Stock on the effective date of grant, and (ii) each such Award shall be subject to the terms and conditions of the appropriate standard form of Award Agreement approved by the Committee and shall conform to the provisions of the Plan and such other guidelines as shall be established from time to time by the Committee.

**3.6 Indemnification.** In addition to such other rights of indemnification as they may have as members of the Board or the Committee or as officers or employees of the Participating Company Group, members of the Board or the Committee and any officers or employees of the Participating Company Group to whom authority to act for the Board, the Committee or the Company is delegated shall be indemnified by the Company against all reasonable expenses, including attorneys' fees, actually and necessarily incurred in connection with the defense of any action, suit or proceeding, or in connection with any appeal therein, to which they or any of them may be a party by reason of any action taken or failure to act under or in connection with the Plan, or any right granted hereunder, and against all amounts paid by them in settlement thereof (provided such settlement is approved by independent legal counsel selected by the Company) or paid by them in satisfaction of a judgment in any such action, suit or proceeding, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such person is liable for gross negligence, bad faith or intentional misconduct in duties; provided, however, that within sixty (60) days after the institution of such action, suit or proceeding, such person shall offer to the Company, in writing, the opportunity at its own expense to handle and defend the same.

**3.7 Arbitration.** Any dispute or claim concerning any Awards granted (or not granted) pursuant to this Plan and any other disputes or claims relating to or arising out of the Plan shall be fully, finally and exclusively resolved by binding arbitration conducted pursuant to the Commercial Arbitration Rules of the American Arbitration Association. By accepting an Award, Participants and the Company waive their respective rights to have any such disputes or claims tried by a judge or jury.

**3.8 Repricing Prohibited.** Without the affirmative vote of holders of a majority of the shares of Stock cast in person or by proxy at a meeting of the stockholders of the Company at which a quorum representing a majority of all outstanding shares of Stock is present or represented by proxy, the Committee shall not approve a program providing for either (a) the cancellation of outstanding Options or SARs and the grant in substitution therefore of new Awards having a lower exercise price or (b) the amendment of outstanding Options or SARs to reduce the exercise price thereof. This paragraph shall not

A-7



be construed to apply to the issuance or assumption of an Award in a transaction to which Code section 424(a) applies, within the meaning of Section 424 of the Code.

**4. SHARES SUBJECT TO PLAN.**

**4.1 Maximum Number of Shares Issuable.** Subject to adjustment as provided in Section 4.2, the maximum aggregate number of shares of Stock that may be issued under the Plan shall be seven million one hundred thousand (7,100,000) (including the shares of Stock issuable under the Plan prior to the Effective Date) and shall consist of authorized but unissued or reacquired shares of Stock or any combination thereof. Any shares of Stock that are Subject to Awards of Options or SARs shall be counted against the limit as one (1) share for every one (1) share granted. Any shares of Stock that are subject to Awards (other than Options or SARs) shall be counted against this limit as two (2) shares for every one (1) share granted. If an outstanding Award for any reason expires or is terminated or canceled without having been exercised or settled in full, or if shares of Stock acquired pursuant to an Award subject to forfeiture or repurchase are forfeited or repurchased by the Company, the shares of Stock allocable to the terminated portion of such Award or such forfeited or repurchased shares of Stock shall again be available for issuance under the Plan. When a SAR settled in shares of Stock is exercised, the total number of shares subject to the SAR Agreement with respect to which the exercise occurs shall count against the limit, regardless of the number of shares actually issued in settlement of the SAR. Shares used to pay the exercise price of an option shall not again become available for future grant or issuance under the Plan. Shares used to satisfy tax withholding obligations shall not become available for future grant or issuance under the Plan. To the extent an Award is settled in cash rather than shares of Stock, such cash payment shall not reduce the number of shares available for issuance under the Plan.

**4.2 Adjustments for Changes in Capital Structure.** Subject to any required action by the stockholders of the Company, in the event of any change in the Stock effected without receipt of consideration by the Company, whether through merger, consolidation, reorganization, reincorporation, recapitalization, reclassification, stock dividend, stock split, reverse stock split, split-up, split-off, spin-off, combination of shares, exchange of shares, or similar change in the capital structure of the Company, or in the event of payment of a dividend or distribution to the stockholders of the Company in a form other than Stock (excepting normal cash dividends) that has a material effect on the Fair Market Value of shares of Stock, appropriate adjustments shall be made in the number and kind of shares subject to the Plan and to any outstanding Awards, in the Award limits set forth in Section 5.4, and in the exercise or purchase price per share under any outstanding Award in order to prevent dilution or enlargement of Participants' rights under the Plan. For purposes of the foregoing, conversion of any convertible securities of the Company shall not be treated as effected without receipt of consideration by the Company. If a majority of the shares which are of the same class as the shares that are subject to outstanding Awards are exchanged for, converted into, or otherwise become (whether or not pursuant to an Ownership Change Event) shares of another corporation (the *New Shares*), the Committee may unilaterally amend the outstanding Options to provide that such Options are exercisable for New Shares. In the event of any such amendment, the number of shares subject to, and the exercise price per share of, the outstanding Awards shall be adjusted in a fair and equitable manner as determined by the Board, in its discretion. Any fractional share resulting from an adjustment pursuant to this Section 4.2 shall be rounded down to the nearest whole number. The Committee in its sole discretion, may also make such adjustments in the terms of any Award to reflect, or related to, such changes in the capital structure of the Company or distributions as it deems appropriate, including modification of Performance Goals, Performance Award Formulas and Performance Periods. The adjustments determined by the Committee pursuant to this Section 4.2 shall be final, binding and conclusive.

A-8

---

5. ELIGIBILITY AND AWARD LIMITATIONS.

5.1 **Persons Eligible for Awards.** Awards may be granted only to Employees, Consultants and Directors. For purposes of the foregoing sentence, Employees, Consultants and Directors shall include prospective Employees, prospective Consultants and prospective Directors to whom Awards are offered to be granted in connection with written offers of an employment or other service relationship with the Participating Company Group; provided, however, that no Stock subject to any such Award shall vest, become exercisable or be issued prior to the date on which such person commences Service.

5.2 **Participation.** Awards are granted solely at the discretion of the Committee, other than Nonemployee Director Awards that may be granted by the Committee or a subcommittee of independent members of the Board. Eligible persons may be granted more than one Award. However, eligibility in accordance with this Section shall not entitle any person to be granted an Award, or, having been granted an Award, to be granted an additional Award.

5.3 **Incentive Stock Option Limitations.**

(a) **Persons Eligible.** An Incentive Stock Option may be granted only to a person who, on the effective date of grant, is an Employee of the Company, a Parent Corporation or a Subsidiary Corporation (each being an **ISO-Qualifying Corporation**). Any person who is not an Employee of an ISO-Qualifying Corporation on the effective date of the grant of an Option to such person may be granted only a Nonstatutory Stock Option. An Incentive Stock Option granted to a prospective Employee upon the condition that such person become an Employee of an ISO-Qualifying Corporation shall be deemed granted effective on the date such person commences Service with an ISO-Qualifying Corporation, with an exercise price determined as of such date in accordance with Section 6.1.

(b) **Fair Market Value Limitation.** To the extent that options designated as Incentive Stock Options (granted under all stock option plans of the Participating Company Group, including the Plan) become exercisable by a Participant for the first time during any calendar year for stock having a Fair Market Value greater than One Hundred Thousand Dollars (\$100,000), the portion of such options which exceeds such amount shall be treated as Nonstatutory Stock Options. For purposes of this Section, options designated as Incentive Stock Options shall be taken into account in the order in which they were granted, and the Fair Market Value of stock shall be determined as of the time the option with respect to such stock is granted. If the Code is amended to provide for a limitation different from that set forth in this Section, such different limitation shall be deemed incorporated herein effective as of the date and with respect to such Options as required or permitted by such amendment to the Code. If an Option is treated as an Incentive Stock Option in part and as a Nonstatutory Stock Option in part by reason of the limitation set forth in this Section, the Participant may designate which portion of such Option the Participant is exercising. In the absence of such designation, the Participant shall be deemed to have exercised the Incentive Stock Option portion of the Option first. Upon exercise, shares issued pursuant to each such portion shall be separately identified.

5.4 **Award Limits.**

(a) **Maximum Number of Shares Issuable Pursuant to Incentive Stock Options.** Subject to adjustment as provided in Section 4.2, the maximum aggregate number of shares of Stock that may be issued under the Plan pursuant to the exercise of Incentive Stock Options shall not exceed seven million one hundred thousand (7,100,000) shares. The maximum aggregate number of shares of Stock that may be issued under the Plan pursuant to all Awards other than Incentive Stock Options shall be the number of shares determined in accordance with Section 4.1, subject to adjustment as provided in Section 4.2.

(b) **Limits on Full Value Awards.** Any Restricted Stock Awards, Restricted Stock Unit Awards and Performance Awards ( *Full Value Awards* ) which vest on the basis of the Participant continued Service shall not provide for vesting which is any moer rapid than annual pro rata vesting over a three (3) year period and any Full Value Awards which vest upon the attainment of Performance Goals shall provide for a Performance Period of at least twelve (12) months. There shall be no acceleration of vesting of such Full Value Awards except in connection with death, Disability or Change in Control.

(c) **Section 162(m) Award Limits.** The following limits shall apply to the grant of any Award if, at the time of grant, the Company is a publicly held corporation within the meaning of Section 162(m).

(i) **Options and SARs.** Subject to adjustment as provided in Section 4.2, no Employee shall be granted within any fiscal year of the Company one or more Options or Freestanding SARs which in the aggregate are for more than five hundred thousand (500,000) shares of Stock reserved for issuance under the Plan.

(ii) **Restricted Stock, Restricted Stock Unit Awards and Performance Shares.** Subject to adjustment as provided in Section 4.2, no Employee shall be granted within any fiscal year of the Company one or more Restricted Stock Awards or Restricted Stock Unit Awards, subject to Vesting Conditions based on the attainment of Performance Goals, or Performance Shares, for more than three hundred thousand shares (300,000) shares of Stock in the aggregate under the Plan.

(iii) **Performance Units.** Subject to adjustment as provided in Section 4.2, no Employee shall be granted Performance Units which could result in such Employee receiving more than two million dollars (\$2,000,000) for each full fiscal year of the Company contained in the Performance Period for such Award. No Participant may be granted more than one Performance Award for the same Performance Period.

## 6. TERMS AND CONDITIONS OF OPTIONS.

Options shall be evidenced by Award Agreements specifying the number of shares of Stock covered thereby, in such form as the Committee shall from time to time establish. No Option or purported Option shall be a valid and binding obligation of the Company unless evidenced by a fully executed Award Agreement. Award Agreements evidencing Options may incorporate all or any of the terms of the Plan by reference and shall comply with and be subject to the following terms and conditions:

6.1 **Exercise Price.** The exercise price for each Option shall be established in the discretion of the Committee; provided, however, that (a) the exercise price per share shall be not less than the Fair Market Value of a share of Stock on the effective date of grant of the Option and (b) no Incentive Stock Option granted to a Ten Percent Owner shall have an exercise price per share less than one hundred ten percent (110%) of the Fair Market Value of a share of Stock on the effective date of grant of the Option. Notwithstanding the foregoing, an Option (whether an Incentive Stock Option or a Nonstatutory Stock Option) may be granted with an exercise price lower than the minimum exercise price set forth above if such Option is granted pursuant to an assumption or substitution for another option in a manner qualifying under the provisions of Section 424(a) of the Code.

### 6.2 **Exercisability and Term of Options.**

(a) **Option Vesting and Exercisability.** Options shall be exercisable at such time or times, or upon such event or events, and subject to such terms, conditions, performance criteria and restrictions as shall be determined by the Committee and set forth in the Award Agreement evidencing such Option; provided, however, that (a) no Option shall be exercisable after the expiration of ten (10) years after the effective date of grant of such Option, (b) no Incentive Stock Option granted to a Ten

Percent Owner shall be exercisable after the expiration of five (5) years after the effective date of grant of such Option, (c) no Option shall become fully vested in a period of less than three (3) years from the date of grant, other than in connection with a termination of Service without cause or a Change in Control or in the case of an option granted to a Nonemployee Director, and (d) no Option offered or granted to a prospective Employee, prospective Consultant or prospective Director may become exercisable prior to the date on which such person commences Service, and . Subject to the foregoing, unless otherwise specified by the Committee in the grant of an Option, any Option granted hereunder shall terminate ten (10) years after the effective date of grant of the Option, unless earlier terminated in accordance with its provisions, or the terms of the Plan.

(b) **Participant Responsibility for Exercise of Option.** Each Participant is responsible for taking any and all actions as may be required to exercise any Option in a timely manner, and for properly executing any documents as may be required for the exercise of an Option in accordance with such rules and procedures as may be established from time to time. By signing an Option Agreement each Participant acknowledges that information regarding the procedures and requirements for the exercise of any Option is available upon such Participant's request. The Company shall have no duty or obligation to notify any Participant of the expiration date of any Option.

### 6.3 Payment of Exercise Price.

(a) **Forms of Consideration Authorized.** Except as otherwise provided below, payment of the exercise price for the number of shares of Stock being purchased pursuant to any Option shall be made (i) in cash, by check or in cash equivalent, (ii) by tender to the Company, or attestation to the ownership, of shares of Stock owned by the Participant having a Fair Market Value not less than the exercise price, (iii) provided that the Participant is an Employee, and not an Officer or Director (unless otherwise not prohibited by law, including, without limitation, any regulation promulgated by the Board of Governors of the Federal Reserve System) and in the Company's sole and absolute discretion at the time the Option is exercised, by delivery of the Participant's promissory note in a form approved by the Company for the aggregate exercise price, provided that, if the Company is incorporated in the State of Delaware, the Participant shall pay in cash that portion of the aggregate exercise price not less than the par value of the shares being acquired, (iv) by such other consideration as may be approved by the Committee from time to time to the extent permitted by applicable law, or (v) by any combination thereof. The Committee may at any time or from time to time grant Options which do not permit all of the foregoing forms of consideration to be used in payment of the exercise price or which otherwise restrict one or more forms of consideration.

(b) **Limitations on Forms of Consideration.**

(i) **Tender of Stock.** Notwithstanding the foregoing, an Option may not be exercised by tender to the Company, or attestation to the ownership, of shares of Stock to the extent such tender or attestation would constitute a violation of the provisions of any law, regulation or agreement restricting the redemption of the Company's stock.

(ii) **Payment by Promissory Note.** No promissory note shall be permitted if the exercise of an Option using a promissory note would be a violation of any law. Any permitted promissory note shall be on such terms as the Committee shall determine. The Committee shall have the authority to permit or require the Participant to secure any promissory note used to exercise an Option with the shares of Stock acquired upon the exercise of the Option or with other collateral acceptable to the Company. Unless otherwise provided by the Committee, if the Company at any time is subject to the regulations promulgated by the Board of Governors of the Federal Reserve System or any other governmental entity affecting the extension of credit in connection with the Company's securities, any promissory note shall comply with such applicable regulations, and the Participant shall pay the unpaid principal and accrued interest, if any, to the extent necessary to comply with such applicable regulations.

A-11

#### 6.4 Effect of Termination of Service.

(a) **Option Exercisability.** Subject to earlier termination of the Option as otherwise provided herein and unless otherwise provided by the Committee, an Option shall be exercisable after a Participant's termination of Service only during the applicable time periods provided in the Award Agreement.

(b) **Extension if Exercise Prevented by Law.** Notwithstanding the foregoing, unless the Committee provides otherwise in the Award Agreement, if the exercise of an Option within the applicable time periods is prevented by the provisions of Section 14 below, the Option shall remain exercisable until three (3) months (or such longer period of time as determined by the Committee, in its discretion) after the date the Participant is notified by the Company that the Option is exercisable, but in any event no later than the Option Expiration Date.

(c) **Extension if Participant Subject to Section 16(b).** Notwithstanding the foregoing, if a sale within the applicable time periods of shares acquired upon the exercise of the Option would subject the Participant to suit under Section 16(b) of the Exchange Act, the Option shall remain exercisable until the earliest to occur of (i) the tenth (10th) day following the date on which a sale of such shares by the Participant would no longer be subject to such suit, (ii) the one hundred and ninetieth (190th) day after the Participant's termination of Service, or (iii) the Option Expiration Date.

**6.5 Transferability of Options.** During the lifetime of the Participant, an Option shall be exercisable only by the Participant or the Participant's guardian or legal representative. Prior to the issuance of shares of Stock upon the exercise of an Option, the Option shall not be subject in any manner to anticipation, alienation, sale, exchange, transfer, assignment, pledge, encumbrance, or garnishment by creditors of the Participant or the Participant's beneficiary, except transfer by will or by the laws of descent and distribution. Notwithstanding the foregoing, to the extent permitted by the Committee, in its discretion, and set forth in the Award Agreement evidencing such Option, a Nonstatutory Stock Option shall be assignable or transferable subject to the applicable limitations, if any, described in the General Instructions to Form S-8 Registration Statement under the Securities Act.

#### 7. TERMS AND CONDITIONS OF STOCK APPRECIATION RIGHTS.

Stock Appreciation Rights shall be evidenced by Award Agreements specifying the number of shares of Stock subject to the Award, in such form as the Committee shall from time to time establish. No SAR or purported SAR shall be a valid and binding obligation of the Company unless evidenced by a fully executed Award Agreement. Award Agreements evidencing SARs may incorporate all or any of the terms of the Plan by reference and shall comply with and be subject to the following terms and conditions:

**7.1 Types of SARs Authorized.** SARs may be granted in tandem with all or any portion of a related Option (a **Tandem SAR**) or may be granted independently of any Option (a **Freestanding SAR**). A Tandem SAR may be granted either concurrently with the grant of the related Option or at any time thereafter prior to the complete exercise, termination, expiration or cancellation of such related Option.

**7.2 Exercise Price.** The exercise price for each SAR shall be established in the discretion of the Committee; provided, however, that (a) the exercise price per share subject to a Tandem SAR shall be the exercise price per share under the related Option and (b) the exercise price per share subject to a Freestanding SAR shall be not less than the Fair Market Value of a share of Stock on the effective date of grant of the SAR.

#### 7.3 Exercisability and Term of SARs.

(a) **Tandem SARs.** Tandem SARs shall be exercisable only at the time and to the extent, and only to the extent, that the related Option is exercisable, subject to such provisions as the Committee

A-12

may specify where the Tandem SAR is granted with respect to less than the full number of shares of Stock subject to the related Option.

(b) **Freestanding SARs.** Freestanding SARs shall be exercisable at such time or times, or upon such event or events, and subject to such terms, conditions, performance criteria and restrictions as shall be determined by the Committee and set forth in the Award Agreement evidencing such SAR; provided, however, that no Freestanding SAR shall be exercisable after the expiration of ten (10) years after the effective date of grant of such SAR. No SAR shall become fully vested in a period of less than three (3) years from the date of grant, other than in connection with a termination of Service or a Change in Control or in the case of an SAR granted to a Nonemployee Director.

7.4 **Deemed Exercise of SARs.** If, on the date on which an SAR would otherwise terminate or expire, the SAR by its terms remains exercisable immediately prior to such termination or expiration and, if so exercised, would result in a payment to the holder of such SAR, then any portion of such SAR which has not previously been exercised shall automatically be deemed to be exercised as of such date with respect to such portion.

7.5 **Effect of Termination of Service.** Subject to earlier termination of the SAR as otherwise provided herein and unless otherwise provided by the Committee in the grant of an SAR and set forth in the Award Agreement, an SAR shall be exercisable after a Participant's termination of Service only as provided in the Award Agreement.

7.6 **Nontransferability of SARs.** During the lifetime of the Participant, an SAR shall be exercisable only by the Participant or the Participant's guardian or legal representative. Prior to the exercise of an SAR, the SAR shall not be subject in any manner to anticipation, alienation, sale, exchange, transfer, assignment, pledge, encumbrance, or garnishment by creditors of the Participant or the Participant's beneficiary, except transfer by will or by the laws of descent and distribution.

## 8. TERMS AND CONDITIONS OF RESTRICTED STOCK AWARDS.

Restricted Stock Awards shall be evidenced by Award Agreements specifying the number of shares of Stock subject to the Award, in such form as the Committee shall from time to time establish. No Restricted Stock Award or purported Restricted Stock Award shall be a valid and binding obligation of the Company unless evidenced by a fully executed Award Agreement. Award Agreements evidencing Restricted Stock Awards may incorporate all or any of the terms of the Plan by reference and shall comply with and be subject to the following terms and conditions:

8.1 **Types of Restricted Stock Awards Authorized.** Restricted Stock Awards may or may not require the payment of cash compensation for the stock. Restricted Stock Awards may be granted upon such conditions as the Committee shall determine, including, without limitation, upon the attainment of one or more Performance Goals described in Section 9.4. If either the grant of a Restricted Stock Award or the lapsing of the Restriction Period is to be contingent upon the attainment of one or more Performance Goals, the Committee shall follow procedures substantially equivalent to those set forth in Sections 9.3 through 9.5(a).

8.2 **Purchase Price.** The purchase price, if any, for shares of Stock issuable under each Restricted Stock Award and the means of payment shall be established by the Committee in its discretion.

8.3 **Purchase Period.** A Restricted Stock Award requiring the payment of cash consideration shall be exercisable within a period established by the Committee; provided, however, that no Restricted Stock Award granted to a prospective Employee, prospective Consultant or prospective Director may become exercisable prior to the date on which such person commences Service.

A-13

---

**8.4 Vesting and Restrictions on Transfer.** Shares issued pursuant to any Restricted Stock Awards will be subject to Vesting Conditions as described in 5.4(b), and may be based upon the satisfaction of such Service requirements, conditions, restrictions or performance criteria, including, without limitation, Performance Goals as described in Section 9.4, as shall be established by the Committee and set forth in the Award Agreement evidencing such Award. During any Restriction Period in which shares acquired pursuant to a Restricted Stock Award remain subject to Vesting Conditions, such shares may not be sold, exchanged, transferred, pledged, assigned or otherwise disposed of other than as provided in the Award Agreement or as provided in Section 8.7. Upon request by the Company, each Participant shall execute any agreement evidencing such transfer restrictions prior to the receipt of shares of Stock hereunder.

**8.5 Voting Rights; Dividends and Distributions.** Except as provided in this Section, Section 8.4 and any Award Agreement, during the Restriction Period applicable to shares subject to a Restricted Stock Award, the Participant shall have all of the rights of a stockholder of the Company holding shares of Stock, including the right to vote such shares and to receive all dividends and other distributions paid with respect to such shares. However, in the event of a dividend or distribution paid in shares of Stock or any other adjustment made upon a change in the capital structure of the Company as described in Section 4.2, any and all new, substituted or additional securities or other property (other than normal cash dividends) to which the Participant is entitled by reason of the Participant's Restricted Stock Award shall be immediately subject to the same Vesting Conditions as the shares subject to the Restricted Stock Award with respect to which such dividends or distributions were paid or adjustments were made.

**8.6 Effect of Termination of Service.** Unless otherwise provided by the Committee in the grant of a Restricted Stock Award and set forth in the Award Agreement, if a Participant's Service terminates for any reason, whether voluntary or involuntary (including the Participant's death or disability), then the Participant shall forfeit to the Company any shares acquired by the Participant pursuant to a Restricted Stock Award which remain subject to Vesting Conditions as of the date of the Participant's termination of Service in exchange for the payment of the purchase price, if any, paid by the Participant. The Company shall have the right to assign at any time any repurchase right it may have, whether or not such right is then exercisable, to one or more persons as may be selected by the Company.

**8.7 Nontransferability of Restricted Stock Award Rights.** Prior to the issuance of shares of Stock pursuant to a Restricted Stock Award, rights to acquire such shares shall not be subject in any manner to anticipation, alienation, sale, exchange, transfer, assignment, pledge, encumbrance or garnishment by creditors of the Participant or the Participant's beneficiary, except transfer by will or the laws of descent and distribution. All rights with respect to a Restricted Stock Award granted to a Participant hereunder shall be exercisable during his or her lifetime only by such Participant or the Participant's guardian or legal representative.

## **9. TERMS AND CONDITIONS OF PERFORMANCE AWARDS.**

Performance Awards shall be evidenced by Award Agreements in such form as the Committee shall from time to time establish. No Performance Award or purported Performance Award shall be a valid and binding obligation of the Company unless evidenced by a fully executed Award Agreement. Award Agreements evidencing Performance Awards may incorporate all or any of the terms of the Plan by reference and shall comply with and be subject to the following terms and conditions:

**9.1 Types of Performance Awards Authorized.** Performance Awards may be in the form of either Performance Shares or Performance Units. Each Award Agreement evidencing a Performance Award shall specify the number of Performance Shares or Performance Units subject thereto, the Performance Award Formula, the Performance Goal(s) and Performance Period applicable to the Award, and the other terms, conditions and restrictions of the Award.

**9.2 Initial Value of Performance Shares and Performance Units.** Unless otherwise provided by the Committee in granting a Performance Award, each Performance Share shall have an initial value equal to the Fair Market Value of one (1) share of Stock, subject to adjustment as provided in Section 4.2, on the effective date of grant of the Performance Share. Each Performance Unit shall have an initial value determined by the Committee. The final value payable to the Participant in settlement of a Performance Award determined on the basis of the applicable Performance Award Formula will depend on the extent to which Performance Goals established by the Committee are attained within the applicable Performance Period established by the Committee.

**9.3 Establishment of Performance Period, Performance Goals and Performance Award Formula.** In granting each Performance Award, the Committee shall establish in writing the applicable Performance Period, Performance Award Formula and one or more Performance Goals which, when measured at the end of the Performance Period, shall determine on the basis of the Performance Award Formula the final value of the Performance Award to be paid to the Participant. To the extent compliance with the requirements under Section 162(m) with respect to performance-based compensation is desired, the Committee shall establish the Performance Goal(s) and Performance Award Formula applicable to each Performance Award no later than the earlier of (a) the date ninety (90) days after the commencement of the applicable Performance Period or (b) the date on which 25% of the Performance Period has elapsed, and, in any event, at a time when the outcome of the Performance Goals remains substantially uncertain. Once established, the Performance Goals and Performance Award Formula shall not be changed during the Performance Period. The Company shall notify each Participant granted a Performance Award of the terms of such Award, including the Performance Period, Performance Goal(s) and Performance Award Formula.

**9.4 Measurement of Performance Goals.** Performance Goals shall be established by the Committee on the basis of targets to be attained ( *Performance Targets* ) with respect to one or more measures of business or financial performance (each, a *Performance Measure* ), subject to the following:

(a) *Performance Measures.* Performance Measures shall have the same meanings as used in the Company's financial statements, or, if such terms are not used in the Company's financial statements, they shall have the meaning applied pursuant to generally accepted accounting principles, or as used generally in the Company's industry. Performance Measures shall be calculated with respect to the Company and each Subsidiary Corporation consolidated therewith for financial reporting purposes or such division or other business unit as may be selected by the Committee. For purposes of the Plan, the Performance Measures applicable to a Performance Award shall be calculated in accordance with generally accepted accounting principles, but prior to the accrual or payment of any Performance Award for the same Performance Period and excluding the effect (whether positive or negative) of any change in accounting standards or any extraordinary, unusual or nonrecurring item, as determined by the Committee, occurring after the establishment of the Performance Goals applicable to the Performance Award. Each such adjustment, if any, shall be made solely for the purpose of providing a consistent basis from period to period for the calculation of Performance Measures in order to prevent the dilution or enlargement of the Participant's rights with respect to a Performance Award. Performance Measures may be one or more of the following, as determined by the Committee: (i) sales revenue; (ii) gross margin; (iii) operating margin; (iv) operating income; (v) pre-tax profit; (vi) earnings before stock-based compensation expense, interest, taxes and depreciation and amortization; (vii) earnings before interest, taxes and depreciation and amortization; (viii) earnings before interest and taxes; (ix) net income; (x) expenses; (xi) the market price of the Stock; (xii) stock price; (xiii) earnings per share; (xiv) return on stockholder equity; (xv) return on capital; (xvi) return on net assets; (xvii) economic value added; (xviii) market share; (xix) customer service; (xx) customer satisfaction; (xxi) safety; (xxii) total stockholder return; (xxiii) free cash flow; (xxiv) net operating income; (xxv) operating cash flow; (xxvi) return on investment; (xxvii) employee satisfaction;

A-15

---



(xxviii) employee retention; (xxix) balance of cash, cash equivalents and marketable securities; (xxx) product development; (xxxi) research and development expenses; (xxxii) completion of an identified special project; (xxxiii) completion of a joint venture or other corporate transaction; (xxxiv) inventory balance; (xxxv) inventory turnover ratio; or (xxxvi) such other measures as determined by the Committee consistent with this Section 9.4(a).

(b) **Performance Targets.** Performance Targets may include a minimum, maximum, target level and intermediate levels of performance, with the final value of a Performance Award determined under the applicable Performance Award Formula by the level attained during the applicable Performance Period. A Performance Target may be stated as an absolute value or as a value determined relative to a standard selected by the Committee.

#### 9.5 Settlement of Performance Awards.

(a) **Determination of Final Value.** As soon as practicable following the completion of the Performance Period applicable to a Performance Award, the Committee shall certify in writing the extent to which the applicable Performance Goals have been attained and the resulting final value of the Award earned by the Participant and to be paid upon its settlement in accordance with the applicable Performance Award Formula.

(b) **Discretionary Adjustment of Award Formula.** In its discretion, the Committee may, either at the time it grants a Performance Award or at any time thereafter, provide for the positive or negative adjustment of the Performance Award Formula applicable to a Performance Award that is not intended to constitute qualified performance based compensation to a covered employee within the meaning of Section 162(m) (a **Covered Employee**) to reflect such Participant's individual performance in his or her position with the Company or such other factors as the Committee may determine. With respect to a Performance Award intended to constitute qualified performance-based compensation to a Covered Employee, the Committee shall have the discretion to reduce some or all of the value of the Performance Award that would otherwise be paid to the Covered Employee upon its settlement notwithstanding the attainment of any Performance Goal and the resulting value of the Performance Award determined in accordance with the Performance Award Formula.

(c) **Payment in Settlement of Performance Awards.** As soon as practicable following the Committee's determination and certification in accordance with Sections 9.5(a) and (b), payment shall be made to each eligible Participant (or such Participant's legal representative or other person who acquired the right to receive such payment by reason of the Participant's death) of the final value of the Participant's Performance Award. Payment of such amount shall be made in cash in a lump sum or in installments, shares of Stock (either fully vested or subject to vesting), or a combination thereof, as determined by the Committee.

**9.6 Voting Rights; Dividend Equivalent Rights and Distributions.** Participants shall have no voting rights with respect to shares of Stock represented by Performance Share Awards until the date of the issuance of such shares, if any (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company). However, the Committee, in its discretion, may provide in the Award Agreement evidencing any Performance Share Award that the Participant shall be entitled to receive Dividend Equivalents with respect to the payment of cash dividends on Stock having a record date prior to the date on which the Performance Shares are settled or forfeited. Such Dividend Equivalents, if any, shall be credited to the Participant in the form of additional whole Performance Shares as of the date of payment of such cash dividends on Stock. The number of additional Performance Shares (rounded to the nearest whole number) to be so credited shall be determined by dividing (a) the amount of cash dividends paid on such date with respect to the number of shares of Stock represented by the Performance Shares previously credited to the Participant by (b) the Fair Market Value per share of Stock on such date. Dividend Equivalents may be paid currently or may be accumulated and paid to the extent that

Performance Shares become nonforfeitable, as determined by the Committee. Settlement of Dividend Equivalents may be made in cash, shares of Stock, or a combination thereof as determined by the Committee, and may be paid on the same basis as settlement of the related Performance Share as provided in Section 9.5. Dividend Equivalents shall not be paid with respect to Performance Units. In the event of a dividend or distribution paid in shares of Stock or any other adjustment made upon a change in the capital structure of the Company as described in Section 4.2, appropriate adjustments shall be made in the Participant's Performance Share Award so that it represents the right to receive upon settlement any and all new, substituted or additional securities or other property (other than normal cash dividends) to which the Participant would be entitled by reason of the shares of Stock issuable upon settlement of the Performance Share Award, and all such new, substituted or additional securities or other property shall be immediately subject to the same Performance Goals as are applicable to the Award.

**9.7 Effect of Termination of Service.** Unless otherwise provided by the Committee in the grant of a Performance Award and set forth in the Award Agreement, the effect of a Participant's termination of Service on the Performance Award shall be as follows:

(a) **Death or Disability.** If the Participant's Service terminates because of the death or Disability of the Participant before the completion of the Performance Period applicable to the Performance Award, the final value of the Participant's Performance Award shall be determined by the extent to which the applicable Performance Goals have been attained with respect to the entire Performance Period and shall be prorated based on the number of months of the Participant's Service during the Performance Period. Payment shall be made following the end of the Performance Period in any manner permitted by Section 9.5.

(b) **Other Termination of Service.** If the Participant's Service terminates for any reason except death or Disability before the completion of the Performance Period applicable to the Performance Award, such Award shall be forfeited in its entirety; provided, however, that in the event of an involuntary termination of the Participant's Service, the Committee, in its sole discretion, may waive the automatic forfeiture of all or any portion of any such Award.

**9.8 Nontransferability of Performance Awards.** Prior to settlement in accordance with the provisions of the Plan, no Performance Award shall be subject in any manner to anticipation, alienation, sale, exchange, transfer, assignment, pledge, encumbrance, or garnishment by creditors of the Participant or the Participant's beneficiary, except transfer by will or by the laws of descent and distribution. All rights with respect to a Performance Award granted to a Participant hereunder shall be exercisable during his or her lifetime only by such Participant or the Participant's guardian or legal representative.

## **10. TERMS AND CONDITIONS OF RESTRICTED STOCK UNIT AWARDS.**

Restricted Stock Unit Awards shall be evidenced by Award Agreements specifying the number of Restricted Stock Units subject to the Award, in such form as the Committee shall from time to time establish. No Restricted Stock Unit Award or purported Restricted Stock Unit Award shall be a valid and binding obligation of the Company unless evidenced by a fully executed Award Agreement. Award Agreements evidencing Restricted Stock Units may incorporate all or any of the terms of the Plan by reference and shall comply with and be subject to the following terms and conditions:

**10.1 Grant of Restricted Stock Unit Awards.** Restricted Stock Unit Awards may be granted upon such conditions as the Committee shall determine, including, without limitation, upon the attainment of one or more Performance Goals described in Section 9.4. If either the grant of a Restricted Stock Unit Award or the Vesting Conditions with respect to such Award is to be contingent upon the attainment of one or more Performance Goals, the Committee shall follow procedures substantially equivalent to those set forth in Sections 9.3 through 9.5(a).

**10.2 Vesting.** Restricted Stock Units may or may not be made subject to Vesting Conditions based upon the satisfaction of such Service requirements, conditions, restrictions or performance criteria, including, without limitation, Performance Goals as described in Section 9.4, as shall be established by the Committee and set forth in the Award Agreement evidencing such Award.

**10.3 Voting Rights, Dividend Equivalent Rights and Distributions.** Participants shall have no voting rights with respect to shares of Stock represented by Restricted Stock Units until the date of the issuance of such shares (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company). However, the Committee, in its discretion, may provide in the Award Agreement evidencing any Restricted Stock Unit Award that the Participant shall be entitled to receive Dividend Equivalents with respect to the payment of cash dividends on Stock having a record date prior to the date on which Restricted Stock Units held by such Participant are settled. Such Dividend Equivalents, if any, shall be paid by crediting the Participant with additional whole Restricted Stock Units as of the date of payment of such cash dividends on Stock. The number of additional Restricted Stock Units (rounded to the nearest whole number) to be so credited shall be determined by dividing (a) the amount of cash dividends paid on such date with respect to the number of shares of Stock represented by the Restricted Stock Units previously credited to the Participant by (b) the Fair Market Value per share of Stock on such date. Such additional Restricted Stock Units shall be subject to the same terms and conditions and shall be settled in the same manner and at the same time (or as soon thereafter as practicable) as the Restricted Stock Units originally subject to the Restricted Stock Unit Award. In the event of a dividend or distribution paid in shares of Stock or any other adjustment made upon a change in the capital structure of the Company as described in Section 4.2, appropriate adjustments shall be made in the Participant's Restricted Stock Unit Award so that it represents the right to receive upon settlement any and all new, substituted or additional securities or other property (other than normal cash dividends) to which the Participant would be entitled by reason of the shares of Stock issuable upon settlement of the Award, and all such new, substituted or additional securities or other property shall be immediately subject to the same Vesting Conditions as are applicable to the Award.

**10.4 Effect of Termination of Service.** Unless otherwise provided by the Committee in the grant of a Restricted Stock Unit Award and set forth in the Award Agreement, if a Participant's Service terminates for any reason, whether voluntary or involuntary (including the Participant's death or disability), then the Participant shall forfeit to the Company any Restricted Stock Units pursuant to the Award which remain subject to Vesting Conditions as of the date of the Participant's termination of Service.

**10.5 Settlement of Restricted Stock Unit Awards.** The Company shall issue to a Participant on the date on which Restricted Stock Units subject to the Participant's Restricted Stock Unit Award vest or on such other date determined by the Committee, in its discretion, and set forth in the Award Agreement one (1) share of Stock (and/or any other new, substituted or additional securities or other property pursuant to an adjustment described in Section 10.3) for each Restricted Stock Unit then becoming vested or otherwise to be settled on such date, subject to the withholding of applicable taxes. Notwithstanding the foregoing, if permitted by the Committee and set forth in the Award Agreement, the Participant may elect in accordance with terms specified in the Award Agreement to defer receipt of all or any portion of the shares of Stock or other property otherwise issuable to the Participant pursuant to this Section.

**10.6 Nontransferability of Restricted Stock Unit Awards.** Prior to the issuance of shares of Stock in settlement of a Restricted Stock Unit Award, the Award shall not be subject in any manner to anticipation, alienation, sale, exchange, transfer, assignment, pledge, encumbrance, or garnishment by creditors of the Participant or the Participant's beneficiary, except transfer by will or by the laws of descent and distribution. All rights with respect to a Restricted Stock Unit Award granted to a Participant hereunder shall be exercisable during his or her lifetime only by such Participant or the Participant's guardian or legal representative.

A-18

---

**11. DEFERRED COMPENSATION AWARDS.**

**11.1 Establishment of Deferred Compensation Award Programs.** This Section 11 shall not be effective unless and until the Committee determines to establish a program pursuant to this Section. The Committee, in its discretion and upon such terms and conditions as it may determine, may establish one or more programs pursuant to the Plan under which:

(a) Participants designated by the Committee who are Insiders or otherwise among a select group of highly compensated Employees may irrevocably elect, prior to a date specified by the Committee, to reduce such Participant's compensation otherwise payable in cash (subject to any minimum or maximum reductions imposed by the Committee) and to be granted automatically at such time or times as specified by the Committee one or more Awards of Stock Units with respect to such numbers of shares of Stock as determined in accordance with the rules of the program established by the Committee and having such other terms and conditions as established by the Committee.

(b) Participants designated by the Committee who are Insiders or otherwise among a select group of highly compensated Employees may irrevocably elect, prior to a date specified by the Committee, to be granted automatically an Award of Stock Units with respect to such number of shares of Stock and upon such other terms and conditions as established by the Committee in lieu of:

(i) shares of Stock otherwise issuable to such Participant upon the exercise of an Option;

(ii) cash or shares of Stock otherwise issuable to such Participant upon the exercise of an SAR; or

(iii) cash or shares of Stock otherwise issuable to such Participant upon the settlement of a Performance Award or Performance Unit.

**11.2 Terms and Conditions of Deferred Compensation Awards.** Deferred Compensation Awards granted pursuant to this Section 11 shall be evidenced by Award Agreements in such form as the Committee shall from time to time establish. No such Deferred Compensation Award or purported Deferred Compensation Award shall be a valid and binding obligation of the Company unless evidenced by a fully executed Award Agreement. Award Agreements evidencing Deferred Compensation Awards may incorporate all or any of the terms of the Plan by reference and shall comply with and be subject to the following terms and conditions:

(a) ***Vesting Conditions.*** Deferred Compensation Awards shall not be subject to any vesting conditions.

(b) ***Terms and Conditions of Stock Units.***

(i) ***Voting Rights; Dividend Equivalent Rights and Distributions.*** Participants shall have no voting rights with respect to shares of Stock represented by Stock Units until the date of the issuance of such shares (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company). However, a Participant shall be entitled to receive Dividend Equivalents with respect to the payment of cash dividends on Stock having a record date prior to date on which Stock Units held by such Participant are settled. Such Dividend Equivalents shall be paid by crediting the Participant with additional whole and/or fractional Stock Units as of the date of payment of such cash dividends on Stock. The method of determining the number of additional Stock Units to be so credited shall be specified by the Committee and set forth in the Award Agreement. Such additional Stock Units shall be subject to the same terms and conditions and shall be settled in the same manner and at the same time (or as soon thereafter as practicable) as the Stock Units originally subject to the Stock Unit Award. In the event of a dividend or distribution paid in shares of Stock or any other adjustment made

upon a change in the capital structure of the Company as described in Section 4.2, appropriate adjustments shall be made in the Participant's Stock Unit Award so that it represent the right to receive upon settlement any and all new, substituted or additional securities or other property (other than normal cash dividends) to which the Participant would be entitled by reason of the shares of Stock issuable upon settlement of the Award.

(ii) **Settlement of Stock Unit Awards.** A Participant electing to receive an Award of Stock Units pursuant to this Section 11 shall specify at the time of such election a settlement date with respect to such Award. The Company shall issue to the Participant as soon as practicable following the earlier of the settlement date elected by the Participant or the date of termination of the Participant's Service, a number of whole shares of Stock equal to the number of whole Stock Units subject to the Stock Unit Award. Such shares of Stock shall be fully vested, and the Participant shall not be required to pay any additional consideration (other than applicable tax withholding) to acquire such shares. Any fractional Stock Unit subject to the Stock Unit Award shall be settled by the Company by payment in cash of an amount equal to the Fair Market Value as of the payment date of such fractional share.

(iii) **Nontransferability of Stock Unit Awards.** Prior to their settlement in accordance with the provision of the Plan, no Stock Unit Award shall be subject in any manner to anticipation, alienation, sale, exchange, transfer, assignment, pledge, encumbrance, or garnishment by creditors of the Participant or the Participant's beneficiary, except transfer by will or by the laws of descent and distribution. All rights with respect to a Stock Unit Award granted to a Participant hereunder shall be exercisable during his or her lifetime only by such Participant or the Participant's guardian or legal representative.

## 12. OTHER STOCK-BASED AWARDS.

In addition to the Awards set forth in Sections 6 through 11 above, the Committee, in its sole discretion, may carry out the purpose of this Plan by awarding Stock-Based Awards as it determines to be in the best interests of the Company and subject to such other terms and conditions as it deems necessary and appropriate.

## 13. EFFECT OF CHANGE IN CONTROL ON OPTIONS AND SARs.

13.1 **Accelerated Vesting.** The Committee, in its sole discretion, may provide in any Award Agreement or, in the event of a Change in Control, may take such actions as it deems appropriate to provide for the acceleration of the exercisability and vesting in connection with such Change in Control of any or all outstanding Options and SARs and shares acquired upon the exercise of such Options and SARs upon such conditions and to such extent as the Committee shall determine.

13.2 **Assumption or Substitution.** In the event of a Change in Control, the surviving, continuing, successor, or purchasing corporation or other business entity or parent thereof, as the case may be (the *Acquiring Corporation*), may, without the consent of the Participant, either assume the Company's rights and obligations under outstanding Options and SARs or substitute for outstanding Options and SARs substantially equivalent options or stock appreciation rights for the Acquiring Corporation's stock. Any Options or SARs which are neither assumed or substituted for by the Acquiring Corporation in connection with the Change in Control nor exercised as of the date of the Change in Control shall terminate and cease to be outstanding effective as of the date of the Change in Control. Notwithstanding the foregoing, shares acquired upon exercise of an Option or SAR prior to the Change in Control and any consideration received pursuant to the Change in Control with respect to such shares shall continue to be subject to all applicable provisions of the Award Agreement evidencing such Award except as otherwise provided in such Award Agreement. Furthermore, notwithstanding the foregoing, if the corporation the stock of which

is subject to the outstanding Options or SARs immediately prior to an Ownership Change Event described in Section 2.1(y)(i) constituting a Change in Control is the surviving or continuing corporation and immediately after such Ownership Change Event less than fifty percent (50%) of the total combined voting power of its voting stock is held by another corporation or by other corporations that are members of an affiliated group within the meaning of Section 1504(a) of the Code without regard to the provisions of Section 1504(b) of the Code, the outstanding Options and SARs shall not terminate unless the Board otherwise provides in its discretion.

**13.3 Effect of Change in Control on Restricted Stock and Other Type of Awards.** The Committee may, in its discretion, provide in any Award Agreement evidencing a Restricted Stock or Other Type of Award that, in the event of a Change in Control, the lapsing of any applicable Vesting Condition, Restriction Period or Performance Goal applicable to the shares subject to such Award held by a Participant whose Service has not terminated prior to the Change in Control shall be accelerated and/or waived effective immediately prior to the consummation of the Change in Control to such extent as specified in such Award Agreement. Any acceleration, waiver or the lapsing of any restriction that was permissible solely by reason of this Section 13.3 and the provisions of such Award Agreement shall be conditioned upon the consummation of the Change in Control.

#### **14. COMPLIANCE WITH SECURITIES LAW.**

The grant of Awards and the issuance of shares of Stock pursuant to any Award shall be subject to compliance with all applicable requirements of federal, state and foreign law with respect to such securities and the requirements of any stock exchange or market system upon which the Stock may then be listed. In addition, no Award may be exercised or shares issued pursuant to an Award unless (a) a registration statement under the Securities Act shall at the time of such exercise or issuance be in effect with respect to the shares issuable pursuant to the Award or (b) in the opinion of legal counsel to the Company, the shares issuable pursuant to the Award may be issued in accordance with the terms of an applicable exemption from the registration requirements of the Securities Act. The inability of the Company to obtain from any regulatory body having jurisdiction the authority, if any, deemed by the Company's legal counsel to be necessary to the lawful issuance and sale of any shares hereunder shall relieve the Company of any liability in respect of the failure to issue or sell such shares as to which such requisite authority shall not have been obtained. As a condition to issuance of any Stock, the Company may require the Participant to satisfy any qualifications that may be necessary or appropriate, to evidence compliance with any applicable law or regulation and to make any representation or warranty with respect thereto as may be requested by the Company.

#### **15. TAX WITHHOLDING.**

**15.1 Tax Withholding in General.** The Company shall have the right to deduct from any and all payments made under the Plan, or to require the Participant, through payroll withholding, cash payment or otherwise, including by means of a Cashless Exercise or Net Exercise of an Option, to make adequate provision for, the federal, state, local and foreign taxes, if any, required by law to be withheld by the Participating Company Group with respect to an Award or the shares acquired pursuant thereto. The Company shall have no obligation to deliver shares of Stock, to release shares of Stock from an escrow established pursuant to an Award Agreement, or to make any payment in cash under the Plan until the Participating Company Group's tax withholding obligations have been satisfied by the Participant.

**15.2 Withholding in Shares.** The Company shall have the right, but not the obligation, to deduct from the shares of Stock issuable to a Participant upon the exercise or settlement of an Award, or to accept from the Participant the tender of, a number of whole shares of Stock having a Fair Market Value, as determined by the Company, equal to all or any part of the tax withholding obligations of the Participating Company Group. The Fair Market Value of any shares of Stock withheld or tendered to satisfy any such

tax withholding obligations shall not exceed the amount determined by the applicable minimum statutory withholding rates.

**16. AMENDMENT OR TERMINATION OF PLAN.**

The Board or the Committee may amend, suspend or terminate the Plan at any time. However, without the approval of the Company's stockholders, there shall be (a) no increase in the maximum aggregate number of shares of Stock that may be issued under the Plan (except by operation of the provisions of Section 4.2), (b) no change in the class of persons eligible to receive Incentive Stock Options, (c) no removal of the stockholder approval requirement in Section 3.8 related to option and SAR repricings, and (d) no other amendment of the Plan that would require approval of the Company's stockholders under any applicable law, regulation or rule. No amendment, suspension or termination of the Plan shall affect any then outstanding Award unless expressly provided by the Board or the Committee. In any event, no amendment, suspension or termination of the Plan may adversely affect any then outstanding Award without the consent of the Participant unless necessary to comply with any applicable law, regulation or rule.

**17. MISCELLANEOUS PROVISIONS.**

**17.1 Repurchase Rights.** Shares issued under the Plan may be subject to one or more repurchase options, or other conditions and restrictions as determined by the Committee in its discretion at the time the Award is granted. The Company shall have the right to assign at any time any repurchase right it may have, whether or not such right is then exercisable, to one or more persons as may be selected by the Company. Upon request by the Company, each Participant shall execute any agreement evidencing such transfer restrictions prior to the receipt of shares of Stock hereunder and shall promptly present to the Company any and all certificates representing shares of Stock acquired hereunder for the placement on such certificates of appropriate legends evidencing any such transfer restrictions.

**17.2 Provision of Information.** Each Participant shall be given access to information concerning the Company equivalent to that information generally made available to the Company's common stockholders.

**17.3 Rights as Employee, Consultant or Director.** No person, even though eligible pursuant to Section 5, shall have a right to be selected as a Participant, or, having been so selected, to be selected again as a Participant. Nothing in the Plan or any Award granted under the Plan shall confer on any Participant a right to remain an Employee, Consultant or Director or interfere with or limit in any way any right of a Participating Company to terminate the Participant's Service at any time. To the extent that an Employee of a Participating Company other than the Company receives an Award under the Plan, that Award shall in no event be understood or interpreted to mean that the Company is the Employee's employer or that the Employee has an employment relationship with the Company.

**17.4 Rights as a Stockholder.** A Participant shall have no rights as a stockholder with respect to any shares covered by an Award until the date of the issuance of such shares (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company). No adjustment shall be made for dividends, distributions or other rights for which the record date is prior to the date such shares are issued, except as provided in Section 4.2 or another provision of the Plan.

**17.5 Fractional Shares.** The Company shall not be required to issue fractional shares upon the exercise or settlement of any Award.

**17.6 Severability.** If any one or more of the provisions (or any part thereof) of this Plan shall be held invalid, illegal or unenforceable in any respect, such provision shall be modified so as to make it valid,

A-22

legal and enforceable, and the validity, legality and enforceability of the remaining provisions (or any part thereof) of the Plan shall not in any way be affected or impaired thereby.

**17.7 Beneficiary Designation.** Subject to local laws and procedures, each Participant may file with the Company a written designation of a beneficiary who is to receive any benefit under the Plan to which the Participant is entitled in the event of such Participant's death before he or she receives any or all of such benefit. Each designation will revoke all prior designations by the same Participant, shall be in a form prescribed by the Company, and will be effective only when filed by the Participant in writing with the Company during the Participant's lifetime. If a married Participant designates a beneficiary other than the Participant's spouse, the effectiveness of such designation may be subject to the consent of the Participant's spouse. If a Participant dies without an effective designation of a beneficiary who is living at the time of the Participant's death, the Company will pay any remaining unpaid benefits to the Participant's legal representative.

**17.8 Unfunded Obligation.** Participants shall have the status of general unsecured creditors of the Company. Any amounts payable to Participants pursuant to the Plan shall be unfunded and unsecured obligations for all purposes, including, without limitation, Title I of the Employee Retirement Income Security Act of 1974. No Participating Company shall be required to segregate any monies from its general funds, or to create any trusts, or establish any special accounts with respect to such obligations. The Company shall retain at all times beneficial ownership of any investments, including trust investments, which the Company may make to fulfill its payment obligations hereunder. Any investments or the creation or maintenance of any trust or any Participant account shall not create or constitute a trust or fiduciary relationship between the Committee or any Participating Company and a Participant, or otherwise create any vested or beneficial interest in any Participant or the Participant's creditors in any assets of any Participating Company. The Participants shall have no claim against any Participating Company for any changes in the value of any assets which may be invested or reinvested by the Company with respect to the Plan. Each Participating Company shall be responsible for making benefit payments pursuant to the Plan on behalf of its Participants or for reimbursing the Company for the cost of such payments, as determined by the Company in its sole discretion. In the event the respective Participating Company fails to make such payment or reimbursement, a Participant's (or other individual's) sole recourse shall be against the respective Participating Company, and not against the Company. A Participant's acceptance of an Award pursuant to the Plan shall constitute agreement with this provision.

**PLAN HISTORY AND NOTES TO COMPANY**

April 13, 2007	Board adopts Plan with a reserve of seven million one hundred thousand (7,100,000) shares, including a pre Effective Date reserve of five million hundred thousand (5,800,000) shares.
, 2007	Stockholders approve Plan.

A-23

---



**PLEASE MARK REVOCABLE PROXY VOTES**

**AS IN THIS EXAMPLE**

**AXT, INC.**

**PROXY FOR 2007 ANNUAL MEETING OF**

**STOCKHOLDERS**

**SOLICITED BY THE BOARD OF DIRECTORS**

The undersigned hereby constitutes and appoints Philip C. S. Yin and Wilson W. Cheung, and each of them, as his or her true and lawful agents and proxies with full power of substitution and hereby authorizes them to represent the undersigned and to vote all of the shares of stock in AXT, Inc. which the undersigned is entitled to vote at the 2006 Annual Meeting of Stockholders to be held at 4281 Technology Drive, Fremont, California on May 22, 2007 at 10:00 a.m. Pacific Daylight Time, and at any adjournment thereof (1) as hereinafter specified upon the proposals listed below and as more particularly described in AXT's proxy statement, receipt of which is hereby acknowledged and (2) in their discretion upon such other matters as may properly come before the meeting.

1. Election of director listed below.

<b>For</b>	<b>With- hold</b>
<input type="radio"/>	<input type="radio"/>

*Nominee:*

**Class III Director:  
Leonard J. LeBlanc**

2. To approve the restatement of the AXT, Inc. 1997 Stock Option Plan as the AXT, Inc. 2007 Equity Incentive Plan.

<b>For</b>	<b>Against</b>	<b>Abstain</b>
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

3. To ratify the appointment of **Burr, Pilger & Mayer LLP** as AXT's independent registered public accounting firm for the fiscal year ending December 31, 2007.

<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
-----------------------	-----------------------	-----------------------

4. To transact such other business as may properly come before the meeting or any adjournment thereof.

This proxy when properly executed will be voted at the Annual Meeting and any continuations or adjournments thereof in the manner directed herein. If no direction is made, such shares shall be voted FOR the Company's nominee for election to the Board of Directors, FOR the restatement of the AXT, Inc. 1997 Stock Option Plan as the AXT, Inc. 2007 Equity Incentive Plan, and FOR ratification of Burr, Pilger & Mayer LLP as independent registered public accounting firm, or as said proxies deem advisable on such other matters as may properly come before the meeting.

WHETHER OR NOT YOU PLAN TO ATTEND THE MEETING IN PERSON, YOU ARE URGED TO SIGN AND PROMPTLY MAIL THIS PROXY IN THE RETURN ENVELOPE SO THAT YOUR STOCK MAY BE REPRESENTED AT THE ANNUAL MEETING.

Please be sure to sign and date this Proxy in the box below.      Date

THIS PROXY IS SOLICITED ON BEHALF OF THE BOARD OF DIRECTORS OF AXT, INC.

Stockholder sign above      Co-holder (if any) sign above

+

+

**Detach above card, sign, date and mail in postage paid envelope provided. AXT, INC.**

Sign exactly as your name(s) appears on your stock certificate. If shares of stock stand on record in the names of two or more persons or in the name of husband and wife, whether as joint tenants or otherwise, both or all of such persons should sign the above proxy. If shares of stock are held of record by a corporation, please print the full corporate name and indicate the capacity of the duly authorized officer executing on behalf of the corporation. If signer is a partnership, please print the full partnership name and indicate the capacity of the duly authorized person executing on behalf of the partnership. Executors or administrators or other fiduciaries who execute the above proxy for a deceased stockholder should give their full title. **Please date the proxy.**

## Edgar Filing: MAXLINEAR INC - Form S-1/A

Even if you are planning to attend the meeting in person, you are urged to sign and mail the proxy in the return envelope so that your stock may be represented at the meeting. If you hold shares through a bank or brokerage firm, you may be able to simplify your voting process and save the company expense by voting your shares by telephone or the internet twenty-four hours a day, seven days a week. The bank or brokerage firm through which you hold your shares will provide you with separate instructions on a form you will receive from them. Many such firms make telephone or Internet voting available, but the specific processes available will depend on those firms' individual arrangements.

**PLEASE ACT PROMPTLY**

**SIGN, DATE & MAIL YOUR PROXY CARD TODAY**

IF YOUR ADDRESS HAS CHANGED, PLEASE CORRECT THE ADDRESS IN THE SPACE PROVIDED BELOW AND RETURN THIS PORTION WITH THE PROXY IN THE ENVELOPE PROVIDED.

---