

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
For the quarterly period ended September 26, 2009.

or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934  
For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number 000-06217



INTEL CORPORATION

(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)

94-1672743  
(I.R.S. Employer  
Identification No.)

2200 Mission College Boulevard, Santa Clara, California  
(Address of principal executive offices)

95054-1549  
(Zip Code)

(408) 765-8080  
(Registrant's telephone number, including area code)

N/A  
(Former name, former address and former fiscal year, if changed since last report)

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

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.

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

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

Shares outstanding of the Registrant's common stock:

Class  
Common stock, \$0.001 par value

Outstanding as of October 23, 2009  
5,522 million

## PART I — FINANCIAL INFORMATION

## ITEM 1. FINANCIAL STATEMENTS

INTEL CORPORATION  
CONSOLIDATED CONDENSED STATEMENTS OF OPERATIONS (Unaudited)

(In Millions, Except Per Share Amounts)	Three Months Ended		Nine Months Ended	
	Sept. 26, 2009	Sept. 27, 2008	Sept. 26, 2009	Sept. 27, 2008
<b>Net revenue</b>	<b>\$ 9,389</b>	<b>\$ 10,217</b>	<b>\$ 24,558</b>	<b>\$ 29,360</b>
Cost of sales	3,985	4,198	11,837	12,885
<b>Gross margin</b>	<b>5,404</b>	<b>6,019</b>	<b>12,721</b>	<b>16,475</b>
Research and development	1,430	1,471	4,050	4,406
Marketing, general and administrative	1,320	1,415	5,213	4,191
Restructuring and asset impairment charges	63	34	228	459
Amortization of acquisition-related intangibles and costs	12	1	16	4
<b>Operating expenses</b>	<b>2,825</b>	<b>2,921</b>	<b>9,507</b>	<b>9,060</b>
<b>Operating income</b>	<b>2,579</b>	<b>3,098</b>	<b>3,214</b>	<b>7,415</b>
Gains (losses) on equity method investments, net	(59)	(365)	(175)	(460)
Gains (losses) on other equity investments, net	(20)	(31)	(86)	(104)
Interest and other, net	32	131	158	466
<b>Income before taxes</b>	<b>2,532</b>	<b>2,833</b>	<b>3,111</b>	<b>7,317</b>
Provision for taxes	676	819	1,024	2,259
<b>Net income</b>	<b>\$ 1,856</b>	<b>\$ 2,014</b>	<b>\$ 2,087</b>	<b>\$ 5,058</b>
<b>Basic earnings per common share</b>	<b>\$ 0.34</b>	<b>\$ 0.36</b>	<b>\$ 0.37</b>	<b>\$ 0.89</b>
<b>Diluted earnings per common share</b>	<b>\$ 0.33</b>	<b>\$ 0.35</b>	<b>\$ 0.37</b>	<b>\$ 0.87</b>
<b>Cash dividends declared per common share</b>	<b>\$ 0.28</b>	<b>\$ 0.28</b>	<b>\$ 0.56</b>	<b>\$ 0.548</b>
<b>Weighted average common shares outstanding:</b>				
Basic	5,537	5,603	5,568	5,696
Diluted	5,616	5,692	5,643	5,790

See accompanying notes.

**INTEL CORPORATION**  
**CONSOLIDATED CONDENSED BALANCE SHEETS (Unaudited)**

<b>(In Millions)</b>	<b>Sept. 26, 2009</b>	<b>Dec. 27, 2008<sup>1</sup></b>
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 4,109	\$ 3,350
Short-term investments	5,150	5,331
Trading assets	3,671	3,162
Accounts receivable, net	2,025	1,712
Inventories	2,490	3,744
Deferred tax assets	1,260	1,390
Other current assets	542	1,182
<b>Total current assets</b>	<b><u>19,247</u></b>	<b><u>19,871</u></b>
<b>Property, plant and equipment, net of accumulated depreciation of \$31,261 (\$30,544 as of December 27, 2008)</b>	<b>17,354</b>	<b>17,574</b>
Marketable equity securities	766	352
Other long-term investments	3,611	2,924
Goodwill	4,421	3,932
Other long-term assets	5,597	5,819
<b>Total assets</b>	<b><u>\$ 50,996</u></b>	<b><u>\$ 50,472</u></b>
<b>Liabilities and stockholders' equity</b>		
Current liabilities:		
Short-term debt	\$ 23	\$ 102
Accounts payable	1,907	2,390
Accrued compensation and benefits	1,758	2,015
Accrued advertising	763	807
Deferred income on shipments to distributors	602	463
Other accrued liabilities	2,225	1,901
Income taxes payable	471	140
<b>Total current liabilities</b>	<b><u>7,749</u></b>	<b><u>7,818</u></b>
<b>Long-term income taxes payable</b>	<b>386</b>	<b>736</b>
<b>Long-term debt</b>	<b>2,201</b>	<b>1,185</b>
<b>Other long-term liabilities</b>	<b>1,627</b>	<b>1,187</b>
<b>Contingencies (Note 24)</b>		
Stockholders' equity:		
Preferred stock	—	—
Common stock and capital in excess of par value, 5,520 shares issued and outstanding (5,562 as of December 27, 2008)	14,763	13,402
Accumulated other comprehensive income (loss)	233	(393)
Retained earnings	24,037	26,537
<b>Total stockholders' equity</b>	<b><u>39,033</u></b>	<b><u>39,546</u></b>
<b>Total liabilities and stockholders' equity</b>	<b><u>\$ 50,996</u></b>	<b><u>\$ 50,472</u></b>

<sup>1</sup> As adjusted due to changes to the accounting for convertible debt instruments. See "Note 2: Accounting Changes."

See accompanying notes.

**INTEL CORPORATION**  
**CONSOLIDATED CONDENSED STATEMENTS OF CASH FLOWS (Unaudited)**

<b>(In Millions)</b>	<b>Nine Months Ended</b>	
	<b>Sept. 26, 2009</b>	<b>Sept. 27, 2008</b>
<b>Cash and cash equivalents, beginning of period</b>	<b>\$ 3,350</b>	<b>\$ 7,307</b>
Cash flows provided by (used for) operating activities:		
Net income	2,087	5,058
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation	3,572	3,203
Share-based compensation	689	659
Restructuring, asset impairment, and net loss on retirement of assets	331	516
Excess tax benefit from share-based payment arrangements	(6)	(30)
Amortization of intangibles and other acquisition-related costs	219	194
(Gains) losses on equity method investments, net	175	460
(Gains) losses on other equity investments, net	86	104
(Gains) losses on divestitures	—	(59)
Deferred taxes	181	(415)
Changes in assets and liabilities:		
Trading assets	299	83
Accounts receivable	(287)	(471)
Inventories	1,236	(60)
Accounts payable	(482)	146
Accrued compensation and benefits	(388)	(624)
Income taxes payable and receivable	775	(281)
Other assets and liabilities	(722)	(153)
Total adjustments	5,678	3,272
<b>Net cash provided by operating activities</b>	<b>7,765</b>	<b>8,330</b>
Cash flows provided by (used for) investing activities:		
Additions to property, plant and equipment	(3,434)	(3,432)
Acquisitions, net of cash acquired	(853)	(9)
Purchases of available-for-sale investments	(5,375)	(5,152)
Maturities and sales of available-for-sale investments	5,084	6,519
Purchases of trading assets	(2,505)	(2,173)
Maturities and sales of trading assets	1,879	642
Loans receivable	(243)	—
Investments in non-marketable equity investments	(165)	(564)
Return of equity method investments	348	193
Proceeds from divestitures	—	75
Other investing activities	68	25
<b>Net cash used for investing activities</b>	<b>(5,196)</b>	<b>(3,876)</b>
Cash flows provided by (used for) financing activities:		
Increase (decrease) in short-term debt, net	(77)	325
Proceeds from government grants	—	2
Excess tax benefit from share-based payment arrangements	6	30
Issuance of long-term debt	1,980	—
Proceeds from sales of shares through employee equity incentive plans	367	1,103
Repurchase and retirement of common stock	(1,752)	(7,195)
Payment of dividends to stockholders	(2,334)	(2,322)
<b>Net cash used for financing activities</b>	<b>(1,810)</b>	<b>(8,057)</b>
<b>Net increase (decrease) in cash and cash equivalents</b>	<b>759</b>	<b>(3,603)</b>
<b>Cash and cash equivalents, end of period</b>	<b>\$ 4,109</b>	<b>\$ 3,704</b>
Supplemental disclosures of cash flow information:		
Cash paid during the period for:		
Interest, net of capitalized interest	\$ 4	\$ 4
Income taxes, net of refunds	\$ 52	\$ 2,941

See accompanying notes.

**INTEL CORPORATION**  
**NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS — Unaudited**

**Note 1: Basis of Presentation**

We prepared our interim consolidated condensed financial statements that accompany these notes in conformity with U.S. generally accepted accounting principles, consistent in all material respects with those applied in our Annual Report on Form 10-K for the year ended December 27, 2008, except for changes in the accounting for convertible debt as a result of new accounting standards. Prior year balances have been retrospectively adjusted. See “Note 2: Accounting Changes” and “Note 18: Borrowings” for further discussion.

We have made estimates and judgments affecting the amounts reported in our consolidated condensed financial statements and the accompanying notes. Our actual results may differ materially from these estimates. The accounting estimates that require our most significant, difficult, and subjective judgments include:

- the valuation of non-marketable equity investments and the determination of other-than-temporary impairments;
- the valuation of investments in debt instruments and the determination of other-than-temporary impairments;
- the assessment of recoverability of long-lived assets;
- the recognition and measurement of current and deferred income taxes (including the measurement of uncertain tax positions); and
- the valuation of inventory.

The interim financial information is unaudited, but reflects all normal adjustments that are, in our opinion, necessary to provide a fair statement of results for the interim periods presented. This interim information should be read in conjunction with the consolidated financial statements in our Annual Report on Form 10-K for the year ended December 27, 2008.

We have evaluated subsequent events through the date that the financial statements were issued on November 2, 2009.

**Note 2: Accounting Changes**

In the first quarter of 2009, we adopted new standards that changed the accounting for convertible debt instruments with cash settlement features. As of adoption, these new standards applied to our junior subordinated convertible debentures issued in 2005 (the 2005 debentures). Under the previous standards, our 2005 debentures were recognized entirely as a liability at historical value. In accordance with adopting these new standards, we retrospectively recognized both a liability and an equity component of the 2005 debentures at fair value. The liability component is recognized as the fair value of a similar instrument that does not have a conversion feature at issuance. The equity component, which is the value of the conversion feature at issuance, is recognized as the difference between the proceeds from the issuance of the 2005 debentures and the fair value of the liability component, after adjusting for the deferred tax impact. The 2005 debentures were issued at a coupon rate of 2.95%, which was below that of a similar instrument that does not have a conversion feature (6.45%). Therefore, the valuation of the debt component, using the income approach, resulted in a debt discount. The debt discount is reduced over the expected life of the debt, which is also the stated life of the debt. These new standards are also applicable in accounting for our convertible debt issued during the third quarter of 2009. See “Note 18: Borrowings” for further discussion.

As a result of applying these new standards retrospectively to all periods presented, we recognized the following incremental effects on individual line items on the consolidated condensed balance sheets:

<b>(In millions)</b>	<b>December 27, 2008</b>		
	<b>Before Adoption</b>	<b>Adjustments</b>	<b>After Adoption</b>
Property, plant and equipment, net	\$ 17,544	\$ 30	\$ 17,574
Other long-term assets <sup>1</sup>	\$ 6,092	\$ (273)	\$ 5,819
Long-term debt	\$ 1,886	\$ (701)	\$ 1,185
Common stock and capital in excess of par value	\$ 12,944	\$ 458	\$ 13,402

<sup>1</sup> Primarily relates to the adjustment made to the net deferred tax asset.

The adoption of these new standards did not result in a change to our prior-period consolidated condensed statements of operations, as the interest associated with our debt issuances is capitalized and added to the cost of qualified assets. The adoption of these new standards did not result in a significant change to depreciation expense or earnings per common share for the third quarter or the first nine months of 2009.

**INTEL CORPORATION**  
**NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS — Unaudited (Continued)**

In the first quarter of 2009, we adopted revised standards for business combinations. These revised standards generally require an entity to recognize the assets acquired, liabilities assumed, contingencies, and contingent consideration at their fair value on the acquisition date. In circumstances where the acquisition-date fair value for a contingency cannot be determined during the measurement period and it is concluded that it is probable that an asset or liability exists as of the acquisition date and the amount can be reasonably estimated, a contingency is recognized as of the acquisition date based on the estimated amount. It further requires that acquisition-related costs be recognized separately from the acquisition and expensed as incurred, restructuring costs generally be expensed in periods subsequent to the acquisition date, and changes in accounting for deferred tax asset valuation allowances and acquired income tax uncertainties after the measurement period impact income tax expense. In addition, acquired in-process research and development is capitalized as an intangible asset and amortized over its estimated useful life. These new standards are applicable to business combinations on a prospective basis beginning in the first quarter of 2009. Our acquisitions completed in the third quarter of 2009 have been accounted for using these revised standards. See “Note 14: Acquisitions.”

In the first quarter of 2009, we adopted new standards that specified the way in which fair value measurements should be made for non-financial assets and non-financial liabilities that are not measured and recorded at fair value on a recurring basis, and specified additional disclosures related to these fair value measurements. The adoption of these new standards did not have a significant impact on our consolidated financial statements.

In the second quarter of 2009, we adopted new standards that provide guidance on how to determine the fair value of assets and liabilities when the volume and level of activity for the asset/liability has significantly decreased. These new standards also provide guidance on identifying circumstances that indicate a transaction is not orderly. In addition, we are required to disclose in interim and annual periods the inputs and valuation techniques used to measure fair value and a discussion of changes in valuation techniques. The adoption of these new standards did not have a significant impact on our consolidated financial statements.

In the second quarter of 2009, we adopted new standards for the recognition and measurement of other-than-temporary impairments for debt securities that replaced the pre-existing “intent and ability” indicator. These new standards specify that if the fair value of a debt security is less than its amortized cost basis, an other-than-temporary impairment is triggered in circumstances where (1) an entity has an intent to sell the security, (2) it is more likely than not that the entity will be required to sell the security before recovery of its amortized cost basis, or (3) the entity does not expect to recover the entire amortized cost basis of the security (that is, a credit loss exists). Other-than-temporary impairments are separated into amounts representing credit losses, which are recognized in earnings, and amounts related to all other factors, which are recognized in other comprehensive income (loss). The adoption of these new standards did not have a significant impact on our consolidated financial statements. See “Note 6: Available-for-Sale Investments” for further discussion.

**Note 3: Recent Accounting Standards**

In December 2008, the FASB issued additional disclosure requirements for plan assets of defined benefit pension or other postretirement plans. The required disclosures include a description of our investment policies and strategies, the fair value of each major category of plan assets, the inputs and valuation techniques used to measure the fair value of plan assets, the effect of fair value measurements using significant unobservable inputs on changes in plan assets, and the significant concentrations of risk within plan assets. These additional disclosures do not change the accounting treatment for postretirement benefits plans and are effective for us for fiscal year 2009.

In June 2009, the FASB issued new standards for the accounting for transfers of financial assets. These new standards eliminate the concept of a qualifying special-purpose entity; remove the scope exception from applying the accounting standards that address the consolidation of variable interest entities to qualifying special-purpose entities; change the standards for derecognizing financial assets; and require enhanced disclosure. These new standards are effective for us beginning in the first quarter of fiscal year 2010 and are not expected to have a significant impact on our consolidated financial statements.

In June 2009, the FASB issued amended standards for determining whether to consolidate a variable interest entity. These amended standards eliminate a mandatory quantitative approach to determine whether a variable interest gives the entity a controlling financial interest in a variable interest entity in favor of a qualitatively focused analysis, and require an ongoing reassessment of whether an entity is the primary beneficiary. These amended standards are effective for us beginning in the first quarter of fiscal year 2010 and we are currently evaluating the impact that adoption will have on our consolidated financial statements.

In August 2009, the FASB issued amended standards for the fair value measurement of liabilities. These amended standards clarify that in circumstances in which a quoted price in an active market for the identical liability is not available, we are required to use the quoted price of the identical liability when traded as an asset, quoted prices for similar liabilities, or quoted prices for similar liabilities when traded as assets. If these quoted prices are not available, we are required to use another valuation technique, such as an income approach or a market approach. These amended standards are effective for us beginning in the fourth quarter of fiscal year 2009 and are not expected to have a significant impact on our consolidated financial statements.

**INTEL CORPORATION**  
**NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS — Unaudited (Continued)**

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.

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.

**Note 4: Fair Value**

Fair value is the price that would be received from selling an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. When determining fair value, we consider the principal or most advantageous market in which we would transact, and we consider assumptions that market participants would use when pricing the asset or liability, such as inherent risk, transfer restrictions, and risk of non-performance.

Our financial instruments are measured and recorded at fair value, except for equity method investments, cost method investments, and most of our long-term debt. We measure our equity method and cost method investments at fair value quarterly; however, they are only recorded at fair value when an impairment charge is recognized. Our non-financial assets, such as intangible assets and property, plant and equipment, are measured at fair value when the carrying amount exceeds the undiscounted cash flows and are recorded at fair value only when an impairment charge is recognized.

Financial instruments that are not recorded at fair value are measured at fair value quarterly for disclosure purposes. The fair value of our non-marketable equity investments exceeded the carrying value by approximately \$1.8 billion as of September 26, 2009 (the fair value exceeded the carrying value by approximately \$300 million as of December 27, 2008). As of September 26, 2009, we had non-marketable equity investments in an unrealized loss position of approximately \$50 million that had a fair value of approximately \$280 million (unrealized loss position of approximately \$100 million on non-marketable equity investments with a fair value of approximately \$270 million as of December 27, 2008). The fair value of these investments takes into account the movements of the equity and venture capital markets as well as changes in the interest rate environment, and other economic variables. The fair value of our long-term debt was approximately \$140 million higher than the long-term debt carrying value as of September 26, 2009 on our consolidated condensed balance sheet (approximately \$35 million lower than the long-term debt carrying value as of December 27, 2008). The fair value of our long-term debt takes into consideration credit rating changes, interest rate changes, and other economic variables.

**Fair Value Hierarchy**

The three levels of inputs that may be used to measure fair value are as follows:

*Level 1.* Quoted prices in active markets for identical assets or liabilities.

*Level 2.* Observable inputs other than Level 1 prices, such as quoted prices for similar assets or liabilities, quoted prices in markets with insufficient volume or infrequent transactions (less active markets), or model-derived valuations in which all significant inputs are observable or can be derived principally from or corroborated with observable market data for substantially the full term of the assets or liabilities. Level 2 inputs also include non-binding market consensus prices that can be corroborated with observable market data as well as quoted prices that were adjusted for security-specific restrictions.

*Level 3.* Unobservable inputs to the valuation methodology that are significant to the measurement of the fair value of assets or liabilities. Level 3 inputs also include non-binding market consensus prices or non-binding broker quotes that we were unable to corroborate with observable market data.

**INTEL CORPORATION**  
**NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS — Unaudited (Continued)**

*Assets/Liabilities Measured and Recorded at Fair Value on a Recurring Basis*

Assets and liabilities measured and recorded at fair value on a recurring basis, excluding accrued interest components, consisted of the following types of instruments as of September 26, 2009 and December 27, 2008:

(In Millions)	September 26, 2009				December 27, 2008			
	Fair Value Measured and Recorded at Reporting Date Using				Fair Value Measured and Recorded at Reporting Date Using			
	Level 1	Level 2	Level 3	Total	Level 1	Level 2	Level 3	Total
<b>Assets</b>								
Commercial paper	\$ —	\$ 5,096	\$ —	\$ 5,096	\$ —	\$ 4,387	\$ —	\$ 4,387
Bank time deposits	—	1,309	—	1,309	—	633	—	633
Money market fund deposits	21	17	—	38	373	49	—	422
Floating-rate notes	435	5,523	460	6,418	126	6,366	392	6,884
Corporate bonds	216	1,407	171	1,794	26	225	163	414
Asset-backed securities	—	—	870	870	—	—	1,083	1,083
Municipal bonds	—	391	—	391	—	383	—	383
Marketable equity securities	720	46	—	766	308	44	—	352
Equity securities offsetting deferred compensation	—	—	—	—	299	—	—	299
Loans receivable	—	258	—	258	—	—	—	—
Derivative assets	—	197	18	215	—	158	15	173
<b>Total assets measured and recorded at fair value</b>	<b>\$ 1,392</b>	<b>\$ 14,244</b>	<b>\$ 1,519</b>	<b>\$ 17,155</b>	<b>\$ 1,132</b>	<b>\$ 12,245</b>	<b>\$ 1,653</b>	<b>\$ 15,030</b>
<b>Liabilities</b>								
Long-term debt	\$ —	\$ —	\$ 122	\$ 122	\$ —	\$ —	\$ 122	\$ 122
Derivative liabilities	—	181	70	251	—	274	25	299
<b>Total liabilities measured and recorded at fair value</b>	<b>\$ —</b>	<b>\$ 181</b>	<b>\$ 192</b>	<b>\$ 373</b>	<b>\$ —</b>	<b>\$ 274</b>	<b>\$ 147</b>	<b>\$ 421</b>

The tables below present reconciliations for all assets and liabilities measured and recorded at fair value on a recurring basis, excluding accrued interest components, using significant unobservable inputs (Level 3) for the three and nine months ended September 26, 2009:

(In Millions)	Fair Value Measured and Recorded Using Significant Unobservable Inputs (Level 3)						Total Gains (Losses)
	Floating-Rate Notes	Corporate Bonds	Asset-Backed Securities	Derivative Assets	Derivative Liabilities	Long-Term Debt	
<b>Balance as of June 27, 2009</b>	<b>\$ 382</b>	<b>\$ 134</b>	<b>\$ 895</b>	<b>\$ 17</b>	<b>\$ (48)</b>	<b>\$ (124)</b>	
Total gains or losses (realized and unrealized):							
Included in earnings <sup>1</sup>	—	3	11	(1)	(9)	2	6
Included in other comprehensive income (loss)	4	34	5	—	—	—	43
Purchases, sales, issuances, and settlements, net	125	—	(41)	2	—	—	
Transfers in and/or out of Level 3	(51)	—	—	—	(13)	—	
<b>Balance as of September 26, 2009</b>	<b>\$ 460</b>	<b>\$ 171</b>	<b>\$ 870</b>	<b>\$ 18</b>	<b>\$ (70)</b>	<b>\$ (122)</b>	

Changes in unrealized gains or losses included in earnings related to assets and liabilities still held as of September 26, 2009 <sup>1</sup>	\$ —	\$ 3	\$ 11	\$ (1)	\$ (9)	\$ 2	\$ 6
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<sup>1</sup> Gains and losses (realized and unrealized) included in earnings for the three and nine months ended September 26, 2009 are primarily reported in interest and other, net on the consolidated condensed statements of operations.



**INTEL CORPORATION**  
**NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS — Unaudited (Continued)**

**Fair Value Measured and Recorded Using Significant Unobservable Inputs (Level 3)**

<b>(In Millions)</b>	<b>Floating-Rate Notes</b>	<b>Corporate Bonds</b>	<b>Asset-Backed Securities</b>	<b>Derivative Assets</b>	<b>Derivative Liabilities</b>	<b>Long-Term Debt</b>	<b>Total Gains (Losses)</b>
<b>Balance as of December 27, 2008</b>	\$ 392	\$ 163	\$ 1,083	\$ 15	\$ (25)	\$ (122)	
Total gains or losses (realized and unrealized):							
Included in earnings <sup>1</sup>	—	4	51	(6)	11	—	60
Included in other comprehensive income (loss)	—	23	(14)	—	—	—	9
Purchases, sales, issuances, and settlements, net	482	(19)	(250)	9	—	—	
Transfers in and/or out of Level 3	(414)	—	—	—	(56)	—	
<b>Balance as of September 26, 2009</b>	<b>\$ 460</b>	<b>\$ 171</b>	<b>\$ 870</b>	<b>\$ 18</b>	<b>\$ (70)</b>	<b>\$ (122)</b>	

Changes in unrealized gains or losses included in earnings related to assets and liabilities still held as of September 26, 2009<sup>1</sup>

\$ —	\$ —	\$ 50	\$ (5)	\$ 11	\$ —	\$ 56
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<sup>1</sup> Gains and losses (realized and unrealized) included in earnings for the three and nine months ended September 26, 2009 are primarily reported in interest and other, net on the consolidated condensed statements of operations.

The tables below present reconciliations for all assets and liabilities measured and recorded at fair value on a recurring basis, excluding accrued interest components, using significant unobservable inputs (Level 3) for the three and nine months ended September 27, 2008:

**Fair Value Measured and Recorded Using Significant Unobservable Inputs (Level 3)**

<b>(In Millions)</b>	<b>Floating-Rate Notes</b>	<b>Corporate Bonds</b>	<b>Asset-Backed Securities</b>	<b>Municipal Bonds</b>	<b>Derivative Assets</b>	<b>Derivative Liabilities</b>	<b>Long-Term Debt</b>	<b>Total Gains (Losses)</b>
<b>Balance as of June 28, 2008</b>	\$ 564	\$ 206	\$ 1,641	\$ 16	\$ 22	\$ (26)	\$ (126)	
Total gains or losses (realized and unrealized):								
Included in earnings <sup>1</sup>	—	(4)	(27)	—	(1)	6	1	(25)
Included in other comprehensive income (loss)	(2)	(13)	(2)	—	—	—	—	(17)
Purchases, sales, issuances, and settlements, net	—	(7)	(276)	—	(1)	—	—	
Transfers in and/or out of Level 3	(100)	18	—	(16)	(2)	—	—	
<b>Balance as of September 27, 2008</b>	<b>\$ 462</b>	<b>\$ 200</b>	<b>\$ 1,336</b>	<b>\$ —</b>	<b>\$ 18</b>	<b>\$ (20)</b>	<b>\$ (125)</b>	

Changes in unrealized gains or losses included in earnings related to assets and liabilities still held as of September 27, 2008<sup>1</sup>

\$ —	\$ (4)	\$ (27)	\$ —	\$ (1)	\$ 6	\$ 1	\$ (25)
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<sup>1</sup> Gains and losses (realized and unrealized) included in earnings for the three and nine months ended September 27, 2008 are primarily reported in interest and other, net on the consolidated condensed statements of operations.

**INTEL CORPORATION**  
**NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS — Unaudited (Continued)**

(In Millions)	Fair Value Measured and Recorded Using Significant Unobservable Inputs (Level 3)						Total Gains (Losses)
	Floating-Rate Notes	Corporate Bonds	Asset-Backed Securities	Derivative Assets	Derivative Liabilities	Long-Term Debt	
<b>Balance as of December 29, 2007</b>	\$ 553	\$ 180	\$ 1,840	\$ 18	\$ (15)	\$ (125)	
Total gains or losses (realized and unrealized):							
Included in earnings <sup>1</sup>	(1)	6	(46)	3	(5)	—	(43)
Included in other comprehensive income (loss)	(13)	(13)	(2)	—	—	—	(28)
Purchases, sales, issuances, and settlements, net	621	9	(456)	(6)	—	—	
Transfers in and/or out of Level 3	(698)	18	—	3	—	—	
<b>Balance as of September 27, 2008</b>	<u>\$ 462</u>	<u>\$ 200</u>	<u>\$ 1,336</u>	<u>\$ 18</u>	<u>\$ (20)</u>	<u>\$ (125)</u>	
Changes in unrealized gains or losses included in earnings related to assets and liabilities still held as of September 27, 2008 <sup>1</sup>	\$ (1)	\$ 6	\$ (46)	\$ 3	\$ (5)	\$ —	\$ (43)

<sup>1</sup> Gains and losses (realized and unrealized) included in earnings for the three and nine months ended September 27, 2008 are primarily reported in interest and other, net on the consolidated condensed statements of operations.

**Fair Value Option for Financial Assets/Liabilities**

Under new accounting standards issued in 2008, all of our non-convertible long-term debt was eligible to be accounted for at fair value. However, we elected this fair value option only for the bonds issued in 2007 by the Industrial Development Authority of the City of Chandler, Arizona (2007 Arizona bonds). In connection with the 2007 Arizona bonds, we entered into a total return swap agreement that effectively converts the fixed rate obligation on the bonds to a floating U.S.-dollar LIBOR-based rate. As a result, changes in the fair value of this debt are largely offset by changes in the fair value of the total return swap agreement, without the need to apply hedge accounting provisions. We did not elect this fair value option for our Arizona bonds issued in 2005, since the bonds were carried at amortized cost and were not eligible to apply hedge accounting provisions due to the use of non-derivative hedging instruments. The 2007 Arizona bonds are included within the long-term debt balance on our consolidated condensed balance sheets. As of September 26, 2009 and December 27, 2008, no other instruments were similar to the long-term debt instrument for which we elected fair value treatment.

The fair value of the 2007 Arizona bonds approximated carrying value at the time we elected the fair value option; therefore, we did not record a cumulative-effect adjustment to the beginning balance of retained earnings or to the deferred tax liability. As of September 26, 2009, the fair value of the 2007 Arizona bonds did not significantly differ from the contractual principal balance. The fair value of the 2007 Arizona bonds was determined using inputs that are observable in the market or that can be derived from or corroborated with observable market data as well as unobservable inputs which were significant to the fair value. Gains and losses on the 2007 Arizona bonds are recorded in interest and other, net on the consolidated condensed statements of operations. We capitalize interest associated with the 2007 Arizona bonds. We add capitalized interest to the cost of qualified assets and amortize it over the estimated useful lives of the assets.

We elected the fair value option for loans made in the second quarter of 2009. Our loans receivable are denominated in euros and mature in 2012-2013. In connection with our loans receivable, we entered into a currency interest rate swap agreement that effectively converts the euro-denominated fixed-rate loans receivable to a floating U.S.-dollar LIBOR-based rate. As a result, changes in the fair value are largely offset by changes in the fair value of the currency interest rate swap agreement, without the need to apply hedge accounting provisions. As of September 26, 2009, the fair value of our loans receivable did not significantly differ from the contractual principal balance. These loans receivable are classified within other long-term assets. Fair value is determined using a discounted cash flow model with all significant inputs derived from or corroborated with observable market data. Gains and losses from changes in fair value, as well as interest income, are recorded in interest and other, net on the consolidated condensed statements of operations. We measure interest income using the interest method, which is based on the effective yield of the loans receivable rather than the stated coupon rate. During the third quarter of 2009 and the first nine months of 2009, gains from fair value changes of our loans receivable were offset by losses from fair value changes of the currency interest rate swap, resulting in a negligible net impact on our consolidated condensed statements of operations. Gains and losses attributable to changes in credit risk were not significant during the third quarter of 2009 and the first nine months of 2009. Gains and losses attributable to changes in credit risk are determined using observable credit default spreads for comparable companies.

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**NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS — Unaudited (Continued)**

*Assets Measured and Recorded at Fair Value on a Nonrecurring Basis*

The following table presents the financial instruments and non-financial assets that were measured and recorded at fair value on a non-recurring basis during the nine months ended September 26, 2009, and the gains (losses) recorded during the three and nine months ended September 26, 2009 on those assets:

<b>(In Millions)</b>	<b>Net Carrying Value as of Sept. 26, 2009</b>	<b>Fair Value Measured and Recorded Using</b>			<b>Total Gains (Losses) for Three Months Ended Sept. 26, 2009</b>	<b>Total Gains (Losses) for Nine Months Ended Sept. 26, 2009</b>
		Level 1	Level 2	Level 3		
		Level 1	Level 2	Level 3		
Non-marketable equity investments <sup>1</sup>	\$ 217	\$ —	\$ —	\$ 221	\$ (50)	\$ (162)
Property, plant and equipment <sup>2</sup>	33	—	22	15	(7)	(17)
<b>Total gains (losses) for assets held as of September 26, 2009</b>					<b>\$ (57)</b>	<b>\$ (179)</b>
Gains (losses) for property, plant and equipment assets no longer held					\$ (49)	\$ (101)
Gains (losses) for non-marketable equity investments no longer held					—	(6)
<b>Total gains (losses) for recorded non-recurring measurement</b>					<b>\$ (106)</b>	<b>\$ (286)</b>

<sup>1</sup> Our carrying value as of September 26, 2009 did not equal our fair value measurement at the time of impairment due to the subsequent recognition of equity method adjustments.

<sup>2</sup> Our carrying value as of September 26, 2009 did not equal our fair value measurement at the time of impairment due to the subsequent recognition of depreciation expense.

The following table presents the financial instruments that were measured and recorded at fair value on a non-recurring basis during the nine months ended September 27, 2008, and the gains (losses) recorded during the three and nine months ended September 27, 2008 on those assets:

<b>(In Millions)</b>	<b>Net Carrying Value as of Sept. 27, 2008</b>	<b>Fair Value Measured and Recorded Using</b>			<b>Total Gains (Losses) for Three Months Ended Sept. 27, 2008</b>	<b>Total Gains (Losses) for Nine Months Ended Sept. 27, 2008</b>
		Level 1	Level 2	Level 3		
		Level 1	Level 2	Level 3		
Non-marketable equity investments	\$ 527	\$ —	\$ —	\$ 527	\$ (281)	\$ (325)
<b>Total gains (losses) for assets held as of September 27, 2008</b>					<b>\$ (281)</b>	<b>\$ (325)</b>

A portion of our non-marketable equity investments were measured and recorded at fair value in the first nine months of 2009 and 2008 due to events or circumstances that significantly impacted the fair value of these investments, resulting in other-than-temporary impairment charges.

We recorded a \$250 million impairment charge on our investment in Numonyx B.V. during the third quarter of 2008 to write down our investment to its fair value. Estimates for revenue, earnings, and future cash flows were revised lower due to a general decline in the NOR flash memory market segment. We measured the fair value of our investment in Numonyx using a combination of the income approach and the market approach. The income approach included the use of a weighted average of multiple discounted cash flow scenarios of Numonyx, which required the use of unobservable inputs, including assumptions of projected revenue, expenses, capital spending, and other costs, as well as a discount rate calculated based on the risk profile of the flash memory market segment comparable to our investment in Numonyx. The market approach included using financial metrics and ratios of comparable public companies, such as projected revenues, earnings, and comparable performance multiples. The impairment charge was included in gains (losses) on equity method investments, net on the consolidated condensed statements of operations.

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**NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS — Unaudited (Continued)**

We also measured and recorded other non-marketable equity investments at fair value in the first nine months of 2009 and 2008 when we recognized other-than-temporary impairment charges. We classified these measurements as Level 3, as we used unobservable inputs to the valuation methodologies that were significant to the fair value measurements, and the valuations required management judgment due to the absence of quoted market prices and inherent lack of liquidity. We calculated these fair value measurements using the market approach and/or the income approach. The market approach includes the use of financial metrics and ratios of comparable public companies. The selection of comparable companies requires management judgment and is based on a number of factors, including comparable companies' sizes, growth rates, industries, development stages, and other relevant factors. The income approach includes the use of a discounted cash flow model, which requires the following significant estimates for the investee: revenue, based on assumed market segment size and assumed market segment share; estimated costs; and appropriate discount rates based on the risk profile of comparable companies. Estimates of market segment size, market segment share, and costs are developed by the investee and/or Intel using historical data and available market data. The valuation of these non-marketable equity investments also takes into account movements of the equity and venture capital markets, recent financing activities by the investees, changes in the interest rate environment, the investee's capital structure, liquidation preferences for the investee's capital, and other economic variables.

Additionally, certain of our property, plant and equipment were measured and recorded at fair value in the first nine months of 2009 due to events or circumstances we identified that indicated that the carrying value of the assets or the asset grouping was not recoverable, resulting in other-than-temporary impairment charges. Most of these asset impairments relate to manufacturing assets.

**Note 5: Trading Assets**

Trading assets at fair value at the end of each period were as follows:

<b>(In Millions)</b>	<b>September 26, 2009</b>		<b>Dec. 27, 2008</b>	
	<b>Net Unrealized Gains (Losses)</b>	<b>Fair Value</b>	<b>Net Unrealized Gains (Losses)</b>	<b>Fair Value</b>
Marketable debt instruments	\$ 65	\$ 3,671	\$ (96)	\$ 2,863
Equity securities offsetting deferred compensation	—	—	(41)	299
<b>Total trading assets</b>	<b>\$ 65</b>	<b>\$ 3,671</b>	<b>\$ (137)</b>	<b>\$ 3,162</b>

During the third quarter of 2009, we sold our equity securities offsetting deferred compensation and entered into derivative instruments that seek to offset changes in liabilities related to these deferred compensation arrangements. These deferred compensation liabilities were \$496 million as of September 26, 2009 (\$332 million as of December 27, 2008) and are included in other accrued liabilities. See "Note 8: Derivative Financial Instruments" for further information on our equity market risk management programs. Gross realized gains and losses on the sale of these equity securities offsetting deferred compensation were insignificant. Net losses on equity securities offsetting deferred compensation arrangements still held at the reporting date were \$36 million in the third quarter of 2008 and \$96 million in the first nine months of 2008.

Net gains on marketable debt instruments that we classified as trading assets held at the reporting date were \$73 million in the third quarter of 2009 and \$149 million in the first nine months of 2009 (losses of \$107 million in the third quarter of 2008 and \$98 million in the first nine months of 2008). Net losses on the related derivatives were \$47 million in the third quarter of 2009 and \$55 million in the first nine months of 2009 (gains of \$64 million in the third quarter of 2008 and \$36 million in the first nine months of 2008).

**INTEL CORPORATION**  
**NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS — Unaudited (Continued)**

**Note 6: Available-for-Sale Investments**

Available-for-sale investments as of September 26, 2009 and December 27, 2008 were as follows:

(In Millions)	September 26, 2009				December 27, 2008			
	Adjusted Cost	Gross Unrealized Gains	Gross Unrealized Losses <sup>1</sup>	Fair Value	Adjusted Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
Floating-rate notes	\$ 5,881	\$ 11	\$ (22)	\$ 5,870	\$ 6,599	\$ 3	\$ (133)	\$ 6,469
Commercial paper	4,630	—	—	4,630	3,244	4	—	3,248
Bank time deposits <sup>2</sup>	1,215	1	—	1,216	606	2	—	608
Money market fund deposits	22	—	—	22	419	—	—	419
Marketable equity securities	405	361	—	766	393	2	(43)	352
Asset-backed securities	249	2	(54)	197	374	—	(43)	331
Corporate bonds	285	25	—	310	270	4	(6)	268
<b>Total available-for-sale investments</b>	<b>\$ 12,687</b>	<b>\$ 400</b>	<b>\$ (76)</b>	<b>\$ 13,011</b>	<b>\$ 11,905</b>	<b>\$ 15</b>	<b>\$ (225)</b>	<b>\$ 11,695</b>

<sup>1</sup> As of September 26, 2009, unrealized non-credit components of other-than-temporary impairments recognized on available-for-sale investments were not significant.

<sup>2</sup> Bank time deposits were primarily issued by institutions outside the U.S. as of September 26, 2009 and December 27, 2008.

The available-for-sale investments that were in an unrealized loss position as of September 26, 2009 and December 27, 2008, aggregated by length of time that individual securities had been in a continuous loss position, were as follows:

(In Millions)	September 26, 2009					
	Less than 12 Months		12 Months or Greater		Total	
	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses	Fair Value
Floating-rate notes	\$ (6)	\$ 902	\$ (16)	\$ 1,788	\$ (22)	\$ 2,690
Asset-backed securities	—	—	(54)	159	(54)	159
<b>Total</b>	<b>\$ (6)</b>	<b>\$ 902</b>	<b>\$ (70)</b>	<b>\$ 1,947</b>	<b>\$ (76)</b>	<b>\$ 2,849</b>

  

(In Millions)	December 27, 2008					
	Less than 12 Months		12 Months or Greater		Total	
	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses	Fair Value
Floating-rate notes	\$ (70)	\$ 2,933	\$ (63)	\$ 1,701	\$ (133)	\$ 4,634
Marketable equity securities	(43)	322	—	—	(43)	322
Asset-backed securities	—	—	(43)	312	(43)	312
Corporate bonds	(1)	6	(5)	77	(6)	83
<b>Total</b>	<b>\$ (114)</b>	<b>\$ 3,261</b>	<b>\$ (111)</b>	<b>\$ 2,090</b>	<b>\$ (225)</b>	<b>\$ 5,351</b>

Substantially all of our unrealized losses on our available-for-sale marketable debt instruments can be attributed to fair value fluctuations that occurred in an unstable credit environment that resulted in a decrease in the liquidity for these debt instruments. As of September 26, 2009, a substantial majority of our available-for-sale investments in an unrealized loss position were rated AA-/Aa3 or better. With the exception of a limited amount of investments for which we have recognized other-than-temporary impairments, we have not seen significant liquidation delays, and for those that have matured we have received the full par value of our original debt investments. We do not intend to sell our debt investments that have unrealized losses in accumulated other comprehensive income (loss). In addition, it is not more likely than not that we will be required to sell our debt investments that have unrealized losses in accumulated other comprehensive income (loss) before we recover the principal amounts invested, based on our evaluation of available evidence as of September 26, 2009.

**INTEL CORPORATION**  
**NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS — Unaudited (Continued)**

The amortized cost and fair value of available-for-sale debt investments as of September 26, 2009, by contractual maturity, were as follows:

<b>(In Millions)</b>	<b>Cost</b>	<b>Fair Value</b>
Due in 1 year or less	\$ 8,576	\$ 8,578
Due in 1-2 years	1,545	1,552
Due in 2-5 years	1,879	1,884
Due after 5 years	11	12
Instruments not due at a single maturity date <sup>1</sup>	271	219
<b>Total</b>	<b>\$ 12,282</b>	<b>\$ 12,245</b>

<sup>1</sup> Includes asset-backed securities and money market fund deposits.

We sold available-for-sale investments, primarily marketable equity securities, for proceeds of \$5 million in the third quarter of 2009 and \$67 million in the first nine months of 2009 (\$210 million in the third quarter of 2008 and \$1.1 billion in the first nine months of 2008, primarily marketable debt instruments). The gross realized gains on sales of available-for-sale investments were not significant in the third quarter of 2009 and \$12 million in the first nine months of 2009 (\$5 million in the third quarter of 2008 and \$27 million in the first nine months of 2008) and were primarily related to our sales of marketable equity securities. We determine the cost of the investment sold based on the specific identification method. Impairment charges recognized on available-for-sale investments were not significant in the third quarter of 2009 and \$9 million in the first nine months of 2009 (\$45 million in the third quarter of 2008 and \$140 million in the first nine months of 2008). The 2008 impairment charges were primarily related to \$97 million of impairment charges on our investment in Micron Technology, Inc. Gross realized losses on sales were insignificant during the third quarter of 2009 and 2008 and the first nine months of 2009 and 2008.

The before-tax net unrealized holding gains (losses) on available-for-sale investments that have been included in accumulated other comprehensive income (loss) and the before-tax net gains (losses) reclassified from accumulated other comprehensive income (loss) into earnings were as follows:

<b>(In Millions)</b>	<b>Three Months Ended</b>		<b>Nine Months Ended</b>	
	<b>Sept. 26, 2009</b>	<b>Sept. 27, 2008</b>	<b>Sept. 26, 2009</b>	<b>Sept. 27, 2008</b>
Net unrealized holding gains (losses) included in accumulated other comprehensive income (loss)	\$ 314	\$ (269)	\$ 537	\$ (628)
Net gains (losses) reclassified from accumulated other comprehensive income (loss) into earnings	\$ —	\$ (7)	\$ (8)	\$ (73)

***Other-Than-Temporary Impairment of Marketable Debt Instruments***

If the fair value of an available-for-sale debt instrument is less than its amortized cost basis, an other-than-temporary impairment is triggered in circumstances where (1) we intend to sell the instrument, (2) it is more likely than not that we will be required to sell the instrument before recovery of its amortized cost basis, or (3) we do not expect to recover the entire amortized cost basis of the instrument (that is, a credit loss exists). If we intend to sell or it is more likely than not that we will be required to sell the available-for-sale debt instrument before recovery of its amortized cost basis, we recognize an other-than-temporary impairment in earnings equal to the entire difference between the debt instrument's amortized cost basis and its fair value. For available-for-sale debt instruments that are considered other-than-temporarily impaired due to the existence of a credit loss, we separate the amount of the impairment into the amount that is credit related and the amount due to all other factors. The credit loss component is recognized in earnings and is the difference between the debt instrument's amortized cost basis and the present value of its expected future cash flows. The difference between the debt instrument's fair value and the present value of future expected cash flows is due to factors that are not credit related and is recognized in other comprehensive income (loss). In the third quarter of 2009, the credit and non-credit components of other-than-temporary impairments recognized on available-for-sale debt instruments were not significant.

**INTEL CORPORATION**  
**NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS — Unaudited (Continued)**

**Note 7: Inventories**

Inventories at the end of each period were as follows:

<u>(In Millions)</u>	<u>Sept. 26, 2009</u>	<u>Dec. 27, 2008</u>
Raw materials	\$ 398	\$ 608
Work in process	1,072	1,577
Finished goods	1,020	1,559
<b>Total inventories</b>	<b>\$ 2,490</b>	<b>\$ 3,744</b>

**Note 8: Derivative Financial Instruments**

Our primary objective for holding derivative financial instruments is to manage currency exchange rate risk and interest rate risk, and to a lesser extent, equity market risk and commodity price risk.

We currently do not enter into derivative instruments to manage credit risk; however, we manage our exposure to credit risk through our policies. We generally enter into derivative transactions with high-credit-quality counterparties and, by policy, limit the amount of credit exposure to any one counterparty based on our analysis of that counterparty's relative credit standing. The amounts subject to credit risk related to derivative instruments are generally limited to the amounts, if any, by which a counterparty's obligations exceed our obligations with that counterparty, because we enter into master netting arrangements with counterparties when possible to mitigate credit risk in derivative transactions. A master netting arrangement may allow counterparties to net settle amounts owed to each other as a result of multiple, separate derivative transactions.

**Currency Exchange Rate Risk**

We are exposed to currency exchange rate risk on our non-U.S.-dollar-denominated investments in debt instruments and loans receivable, which are generally hedged with offsetting currency forward contracts, currency options, or currency interest rate swaps. A majority of our revenue, expense, and capital purchasing activities are transacted in U.S. dollars. However, certain operating expenditures and capital purchases are incurred in or exposed to other currencies, primarily the euro, the Israeli shekel, the Chinese yuan, and the Japanese yen. We have established balance sheet and forecasted transaction currency risk management programs to protect against fluctuations in fair value and the volatility of future cash flows caused by changes in exchange rates. These programs reduce, but do not always entirely eliminate, the impact of currency exchange movements.

Our currency risk management programs include:

- *Currency derivatives with cash flow hedge accounting designation* that utilize currency forward contracts and currency options to hedge exposures to the variability in the U.S.-dollar equivalent of anticipated non-U.S.-dollar-denominated cash flows. These instruments generally mature within 12 months. For these derivatives, we report the after-tax gain or loss from the effective portion of the hedge as a component of accumulated other comprehensive income (loss) in stockholders' equity and reclassify it into earnings in the same period or periods in which the hedged transaction affects earnings, and within the same line item on the consolidated condensed statements of operations as the impact of the hedged transaction.
- *Currency derivatives with fair value hedge accounting designation* that utilize currency forward contracts and currency options to hedge the fair value exposure of recognized foreign-currency-denominated assets or liabilities, or previously unrecognized firm commitments. For fair value hedges, we recognize gains or losses in earnings to offset fair value changes in the hedged asset/liability. As of September 26, 2009 and December 27, 2008, we did not have any derivatives designated as foreign currency fair value hedges.
- *Currency derivatives without hedge accounting designation* that utilize currency forward contracts, currency options, or currency interest rate swaps to economically hedge the functional currency equivalent cash flows of recognized monetary assets and liabilities and non-U.S.-dollar-denominated debt instruments classified as trading assets. The maturity of these instruments generally occurs within 12 months, except for derivatives associated with certain long-term equity-related investments and our loans receivable that generally mature within five years. Changes in the U.S.-dollar-equivalent cash flows of the underlying assets and liabilities are approximately offset by the changes in fair values of the related derivatives. We record net gains or losses in the line item on the consolidated condensed statements of operations most closely associated with the economic underlying, primarily in interest and other, net, except for equity-related gains or losses, which we primarily record in gains (losses) on other equity investments, net.

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**NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS — Unaudited (Continued)**

***Interest Rate Risk***

Our primary objective for holding investments in debt instruments is to preserve principal while maximizing yields. We generally swap the returns on our investments in fixed-rate debt instruments with remaining maturities longer than six months into U.S. dollar three-month LIBOR-based returns unless management specifically approves otherwise.

Our interest rate risk management programs include:

- *Interest rate derivatives with cash flow hedge accounting designation* that utilize interest rate swap agreements to modify the interest characteristics of debt instruments. For these derivatives, we report the after-tax gain or loss from the effective portion of the hedge as a component of accumulated other comprehensive income (loss) and reclassify it into earnings in the same period or periods in which the hedged transaction affects earnings, and within the same line item on the consolidated condensed statements of operations as the impact of the hedged transaction.
- *Interest rate derivatives with fair value hedge accounting designation* that utilize interest rate swap agreements to hedge the fair values of debt instruments. We recognize the gains or losses from the changes in fair value of these instruments, as well as the offsetting change in the fair value of the hedged debt instruments, in interest expense. As of September 26, 2009 and December 27, 2008, we did not have any interest rate derivatives designated as fair value hedges.
- *Interest rate derivatives without hedge accounting designation* that utilize interest rate swaps and currency interest rate swaps in economic hedging transactions, including hedges of non-U.S.-dollar-denominated debt instruments classified as trading assets. Floating interest rates on the swaps are reset on a monthly, quarterly, or semiannual basis. Changes in fair value of the debt instruments classified as trading assets are generally offset by changes in fair value of the related derivatives, both of which are recorded in interest and other, net.

***Equity Market Risk***

Our marketable investments include marketable equity securities and equity derivative instruments such as warrants and options. To the extent that our marketable equity securities have strategic value, we typically do not attempt to reduce or eliminate our equity market exposure through hedging activity; however, for our investments in strategic equity derivative instruments, including warrants, we may enter into transactions to reduce or eliminate the equity market risks. For securities that we no longer consider strategic, we evaluate legal, market, and economic factors in our decision on the timing of disposal and whether it is possible and appropriate to hedge the equity market risk. Prior to the third quarter of 2009, we held equity securities, which were classified as trading assets, to generate returns that sought to offset changes in liabilities related to the equity market risk of certain deferred compensation arrangements. In the third quarter of 2009, we sold these securities and began utilizing derivative instruments to offset the equity market risks of these deferred compensation arrangements. The gains and losses on the derivative instruments are intended to more closely offset changes in the liabilities related to the deferred compensation arrangements than our previous method of investing in equity securities.

Our equity market risk management programs include:

- *Equity derivatives with hedge accounting designation* that utilize equity options, swaps, or forward contracts to hedge the equity market risk of marketable equity securities when these investments are not considered to have strategic value. These derivatives are generally designated as fair value hedges. We recognize the gains or losses from the change in fair value of these equity derivatives, as well as the offsetting change in the fair value of the underlying hedged equity securities, in gains (losses) on other equity investments, net. As of September 26, 2009 and December 27, 2008, we did not have any equity derivatives designated as fair value hedges.
- *Equity derivatives without hedge accounting designation* that utilize equity derivatives, such as warrants, equity options, or other equity derivatives. We recognize changes in the fair value of such derivatives in gains (losses) on other equity investments, net. We also utilize total return swaps to offset changes in liabilities related to the equity market risks of certain deferred compensation arrangements. Gains and losses from changes in fair value of these total return swaps are generally offset by the gains and losses on the related liabilities, both of which are recorded in interest and other, net.

***Commodity Price Risk***

We operate facilities that consume commodities, and we have established forecasted transaction risk management programs to protect against fluctuations in fair value and the volatility of future cash flows caused by changes in commodity prices, such as those for natural gas. These programs reduce, but do not always entirely eliminate, the impact of commodity price movements.

Our commodity price risk management program includes:

- *Commodity derivatives with cash flow hedge accounting designation* that utilize commodity swap contracts to hedge future cash flow exposures to the variability in commodity prices. These instruments generally mature within 12 months. For these derivatives, we report the after-tax gain (loss) from the effective portion of the hedge as a component of accumulated other comprehensive income (loss) in stockholders' equity and reclassify it into earnings in the same period or periods in which the hedged transaction affects earnings, and within the same line item on the consolidated condensed statements of operations as the impact of the hedged transaction.



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***Credit Risk***

We typically do not hold derivative instruments for the purpose of managing credit risk, since we limit the amount of credit exposure to any one counterparty and generally enter into derivative transactions with high-credit-quality counterparties. As of September 26, 2009 and December 27, 2008, our credit risk management program did not include credit derivatives.

***Volume of Derivative Activity***

Total gross notional amounts for outstanding derivatives (recorded at fair value) were as follows:

<u>(In Millions)</u>	<u>Sept. 26, 2009</u>	<u>Dec. 27, 2008</u>	<u>Sept. 27, 2008</u>
Currency forwards	\$ 3,717	\$ 4,331	\$ 4,511
Embedded debt derivative	3,600	1,600	1,600
Currency interest rate swaps	1,455	612	649
Interest rate swaps	1,254	1,209	1,187
Total return swaps	480	125	125
Currency options	281	—	—
Other	100	163	174
<b>Total</b>	<b><u>\$ 10,887</u></b>	<b><u>\$ 8,040</u></b>	<b><u>\$ 8,246</u></b>

The gross notional amounts for currency forwards, currency interest rate swaps, and currency options, presented by currency, were as follows:

<u>(In Millions)</u>	<u>Sept. 26, 2009</u>	<u>Dec. 27, 2008</u>	<u>Sept. 27, 2008</u>
Euro	\$ 2,707	\$ 1,819	\$ 2,288
Israeli shekel	625	680	730
British pound sterling	620	366	375
Japanese yen	605	909	575
Chinese yuan	335	491	489
Malaysian ringgit	241	326	295
Other	320	352	408
<b>Total</b>	<b><u>\$ 5,453</u></b>	<b><u>\$ 4,943</u></b>	<b><u>\$ 5,160</u></b>

We utilize a rolling hedge strategy for the majority of our currency forward contracts with cash flow hedge accounting designation that hedge exposures to the variability in the U.S.-dollar equivalent of anticipated non-U.S.-dollar-denominated cash flows. All of our currency forward contracts are single delivery, which are settled at maturity involving one cash payment exchange.

We use interest rate swaps and currency interest rate swaps to hedge interest rate and currency exchange rate risk components for our fixed-rate debt instruments with remaining maturities longer than six months and for debt instruments denominated in currencies other than the U.S. dollar. These swaps have multiple deliveries, which are settled at various interest payment times involving cash payments at each interest and principal payment date, with the majority of the contracts having quarterly payments.

***Credit-Risk-Related Contingent Features***

An insignificant amount of our derivative instruments contain credit-risk-related contingent features, such as provisions that require our debt to maintain an investment grade credit rating from each of the major credit rating agencies. As of September 26, 2009 and December 27, 2008, we did not have any derivative instruments with credit-risk-related contingent features that were in a significant net liability position.

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*Fair Values of Derivative Instruments in the Consolidated Condensed Balance Sheets*

The fair values of our derivative instruments as of September 26, 2009 and December 27, 2008 were as follows:

(In Millions)	Sept. 26, 2009				Dec. 27, 2008			
	Other Current Assets	Other Long-Term Assets	Other Accrued Liabilities	Other Long-Term Liabilities	Other Current Assets	Other Long-Term Assets	Other Accrued Liabilities	Other Long-Term Liabilities
<b>Derivatives designated as hedging instruments</b>								
Currency forwards	\$ 120	\$ 2	\$ 7	\$ —	\$ 83	\$ —	\$ 122	\$ 2
Other	1	—	5	—	1	—	4	—
<b>Total derivatives designated as hedging instruments</b>	<b>\$ 121</b>	<b>\$ 2</b>	<b>\$ 12</b>	<b>\$ —</b>	<b>\$ 84</b>	<b>\$ —</b>	<b>\$ 126</b>	<b>\$ 2</b>
<b>Derivatives not designated as hedging instruments</b>								
Currency forwards	\$ 12	\$ —	\$ 8	\$ —	\$ 38	\$ —	\$ 38	\$ —
Interest rate swaps	16	—	83	—	—	—	62	—
Currency interest rate swaps	—	—	73	15	38	—	25	—
Embedded debt derivative	—	—	—	43	—	—	—	36
Total return swaps	40	4	—	—	—	2	—	—
Other	6	14	17	—	1	10	10	—
<b>Total derivatives not designated as hedging instruments</b>	<b>\$ 74</b>	<b>\$ 18</b>	<b>\$ 181</b>	<b>\$ 58</b>	<b>\$ 77</b>	<b>\$ 12</b>	<b>\$ 135</b>	<b>\$ 36</b>
<b>Total derivatives</b>	<b>\$ 195</b>	<b>\$ 20</b>	<b>\$ 193</b>	<b>\$ 58</b>	<b>\$ 161</b>	<b>\$ 12</b>	<b>\$ 261</b>	<b>\$ 38</b>

*Derivatives in Cash Flow Hedging Relationships*

The before-tax effects of derivative instruments in cash flow hedging relationships for the three months ended September 26, 2009 and September 27, 2008 were as follows:

(In Millions)	Gains (Losses) Recognized in OCI on Derivatives (Effective Portion)		Gains (Losses) Reclassified From Accumulated OCI Into Income (Effective Portion)			Gains (Losses) Recognized in Income on Derivatives (Ineffective Portion and Amount Excluded From Effectiveness Testing)		
	Q3 2009	Q3 2008	Location	Q3 2009	Q3 2008	Location	Q3 2009	Q3 2008
	Currency forwards	\$ 101	\$ (139)	Cost of sales	\$ (4)	\$ 15	Interest and other, net	\$ (1)
			R&D	(4)	12			
			MG&A	1	4			
Other	(4)	(1)	Cost of sales	(2)	—			
<b>Total</b>	<b>\$ 97</b>	<b>\$ (140)</b>		<b>\$ (9)</b>	<b>\$ 31</b>		<b>\$ (1)</b>	<b>\$ —</b>

<sup>1</sup> Gains (losses) related to the ineffective portion of the hedges were not significant in the third quarters of 2009 and 2008.

The before-tax effects of derivative instruments in cash flow hedging relationships for the nine months ended September 26, 2009 and September 27, 2008 were as follows:

(In Millions)	Gains (Losses) Recognized in OCI on Derivatives (Effective Portion)		Gains (Losses) Reclassified From Accumulated OCI Into Income (Effective Portion)			Gains (Losses) Recognized in Income on Derivatives (Ineffective Portion and Amount Excluded From Effectiveness Testing)		
	2009	2008	Location	2009	2008	Location	2009	2008
	Currency forwards	\$ 42	\$ 33	Cost of sales	\$ (34)	\$ 79	Interest and other, net	\$ 1
			R&D	(34)	40			
			MG&A	(22)	25			
Other	(11)	—	Cost of sales	(10)	—			
<b>Total</b>	<b>\$ 31</b>	<b>\$ 33</b>		<b>\$ (100)</b>	<b>\$ 144</b>		<b>\$ 1</b>	<b>\$ (10)</b>

<sup>1</sup> Gains (losses) related to the ineffective portion of the hedges were not significant in the first nine months of 2009 and 2008.

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We estimate that we will reclassify approximately \$110 million (before taxes) of net derivative gains included in other accumulated comprehensive income (loss) into earnings within the next 12 months. For all periods presented, there was not a significant impact on results of operations from discontinued cash flow hedges as a result of forecasted transactions that did not occur.

**Derivatives Not Designated as Hedging Instruments**

The effects of derivative instruments not designated as hedging instruments on the consolidated condensed statements of operations were as follows:

(In Millions)	Location of Gains (Losses) Recognized in Income on Derivative	Three Months Ended		Nine Months Ended	
		Sept. 26, 2009	Sept. 27, 2008	Sept. 26, 2009	Sept. 27, 2008
Currency forwards	Interest and other, net	\$ 40	\$ 7	\$ 13	\$ 24
Interest rate swaps	Interest and other, net	(5)	5	12	4
Currency interest rate swaps	Interest and other, net	(46)	39	(51)	16
Total return swaps	Interest and other, net	41	1	42	3
Other	Interest and other, net	(6)	3	(1)	(7)
Other	Gains (losses) on other equity investments, net	(5)	(2)	2	(2)
<b>Total</b>		<b>\$ 19</b>	<b>\$ 53</b>	<b>\$ 17</b>	<b>\$ 38</b>

**Note 9: Other Long-Term Assets**

Other long-term assets at the end of each period were as follows:

(In Millions)	Sept. 26, 2009	Dec. 27, 2008
Non-marketable equity method investments	\$ 2,520	\$ 3,032
Non-marketable cost method investments	990	1,021
Identified intangible assets	972	775
Other	1,115	991
<b>Total other long-term assets</b>	<b>\$ 5,597</b>	<b>\$ 5,819</b>

Long-term loans receivable are included in "Other" in the table above. See "Note 4: Fair Value" for further discussion on our loans receivable.

**Note 10: Equity Method Investments**

**IMFT/IMFS**

Micron and Intel formed IM Flash Technologies, LLC (IMFT) in January 2006 and IM Flash Singapore, LLP (IMFS) in February 2007. We established these joint ventures to manufacture NAND flash memory products for Micron and Intel. We own a 49% interest in each of these ventures. Initial production at the IMFS fabrication facility, including the purchase and installation of manufacturing equipment, remains on hold.

These joint ventures are variable interest entities. All costs of the joint ventures will be passed on to Micron and Intel through our purchase agreements. IMFT and IMFS are dependent upon Micron and Intel for any additional cash requirements. Our known maximum exposure to loss approximated our investment balances as of September 26, 2009, which were \$1.4 billion in IMFT and \$305 million in IMFS (\$1.7 billion in IMFT and \$329 million in IMFS as of December 27, 2008). Our investments in these ventures are classified within other long-term assets. As of September 26, 2009, except for the amount due to IMFT and IMFS for product purchases and services, we did not incur any additional liabilities in connection with our interests in these joint ventures. In addition to the potential loss of our existing investments, our actual losses could be higher, as Intel and Micron are liable for other future operating costs and/or obligations of IMFT and IMFS. In addition, future cash calls could increase our investment balance and the related exposure to loss. Finally, as we are currently committed to purchasing 49% of IMFT's production output and production-related services, we may be required to purchase products at a cost in excess of realizable value.

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**NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS — Unaudited (Continued)**

Our portion of IMFT's costs, primarily related to product purchases and start-up costs, was approximately \$140 million during the third quarter of 2009 and approximately \$535 million during the first nine months of 2009 (approximately \$290 million during the third quarter of 2008 and approximately \$815 million during the first nine months of 2008). The amount due to IMFT for product purchases and services provided was approximately \$60 million as of September 26, 2009 and approximately \$190 million as of December 27, 2008. During the first nine months of 2009, \$324 million was returned to Intel by IMFT, which is reflected as a return of equity method investment within investing activities on the consolidated condensed statements of cash flows (\$193 million during the first nine months of 2008).

Micron and Intel are considered related parties under the accounting standards for consolidating variable interest entities. As a result, the primary beneficiary is the entity that is most closely associated with the joint ventures. To make that determination, we reviewed several factors. The most important factors were consideration of the size and nature of the joint ventures' operations relative to Micron and Intel, and which party had the majority of economic exposure under the purchase agreements. Based on those factors, we have determined that we are not most closely associated with the joint ventures; therefore, we account for our interests using the equity method of accounting and do not consolidate these joint ventures.

We determine the fair value of our investments in IMFT and IMFS and related intangible assets using the income approach, based on a weighted average of multiple discounted cash flow scenarios of our NAND Solutions Group business. The assumptions that most significantly affect the fair value determination are the estimates for projected revenue and discount rate. Estimates used in the fair value determination could change and result in an impairment of our investments.

**Numonyx**

In 2008, we divested our NOR flash memory business in exchange for a 45.1% ownership interest in Numonyx. As of September 26, 2009, our investment balance in Numonyx was \$438 million and is included within other long-term assets (\$484 million as of December 27, 2008). Our investment in Numonyx is accounted for under the equity method of accounting, and our proportionate share of the income or loss is recognized on a one-quarter lag. During the third quarter of 2008, we recorded a \$250 million impairment charge on our investment in Numonyx within gains (losses) on equity method investments, net. See "Note 4: Fair Value" for further discussion.

In 2008, Numonyx entered into an unsecured, four-year senior credit facility of up to \$550 million, consisting of a \$450 million term loan and a \$100 million revolving loan. Intel and STMicroelectronics N.V. have each provided the lenders with a guarantee of 50% of the payment obligations of Numonyx under the senior credit facility. A demand on our guarantee can be triggered if Numonyx is unable to meet its obligations under the credit facility. Acceleration of the obligations of Numonyx under the credit facility could be triggered by a monetary default of Numonyx or, in certain circumstances, by events affecting the creditworthiness of STMicroelectronics. The maximum amount of future undiscounted payments that we could be required to make under the guarantee is \$275 million plus accrued interest, expenses of the lenders, and penalties. As of September 26, 2009, the carrying amount of the liability associated with the guarantee was \$79 million, unchanged from the amount initially recorded in 2008, and is included in other accrued liabilities.

**Clearwire LLC**

As of September 26, 2009, our investment balance in Clearwire Communications, LLC (Clearwire LLC) was \$195 million and is included within other long-term assets (\$238 million as of December 27, 2008). Our investment in Clearwire LLC is accounted for under the equity method of accounting, and our proportionate share of the income or loss is recognized on a one-quarter lag. As of September 26, 2009, the carrying value of our investment in Clearwire LLC is approximately \$380 million below our share of the book value of the net assets of Clearwire Corporation, and a substantial majority of this difference has been assigned to Clearwire spectrum assets, a majority of which have an indefinite life.

**Note 11: Gains (Losses) on Equity Method Investments, Net**

Gains (losses) on equity method investments, net included:

<b>(In Millions)</b>	<b>Three Months Ended</b>		<b>Nine Months Ended</b>	
	Sept. 26, 2009	Sept. 27, 2008	Sept. 26, 2009	Sept. 27, 2008
Equity method losses, net	\$ (41)	\$ (120)	\$ (144)	\$ (212)
Impairment charges	(19)	(257)	(32)	(261)
Other, net	1	12	1	13
<b>Total gains (losses) on equity method investments, net</b>	<b>\$ (59)</b>	<b>\$ (365)</b>	<b>\$ (175)</b>	<b>\$ (460)</b>

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**NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS — Unaudited (Continued)**

**Note 12: Gains (Losses) on Other Equity Investments, Net**

Gains (losses) on other equity investments, net included:

<u>(In Millions)</u>	<u>Three Months Ended</u>		<u>Nine Months Ended</u>	
	<u>Sept. 26, 2009</u>	<u>Sept. 27, 2008</u>	<u>Sept. 26, 2009</u>	<u>Sept. 27, 2008</u>
Impairment charges	\$ (31)	\$ (55)	\$ (136)	\$ (173)
Gains on sales	6	15	16	49
Other, net	5	9	34	20
<b>Total gains (losses) on other equity investments, net</b>	<b><u>\$ (20)</u></b>	<b><u>\$ (31)</u></b>	<b><u>\$ (86)</u></b>	<b><u>\$ (104)</u></b>

**Note 13: Interest and Other, Net**

The components of interest and other, net were as follows:

<u>(In Millions)</u>	<u>Three Months Ended</u>		<u>Nine Months Ended</u>	
	<u>Sept. 26, 2009</u>	<u>Sept. 27, 2008</u>	<u>Sept. 26, 2009</u>	<u>Sept. 27, 2008</u>
Interest income	\$ 34	\$ 126	\$ 144	\$ 461
Interest expense	—	—	(1)	(8)
Other, net	(2)	5	15	13
<b>Total interest and other, net</b>	<b><u>\$ 32</u></b>	<b><u>\$ 131</u></b>	<b><u>\$ 158</u></b>	<b><u>\$ 466</u></b>

**Note 14: Acquisitions**

Consideration for acquisitions that qualify as business combinations includes the net cash paid and the fair value of any vested share-based awards assumed. During the third quarter of 2009, we completed two acquisitions qualifying as business combinations for total consideration of \$885 million (net of \$59 million cash acquired). Substantially all of this amount related to the acquisition of Wind River Systems Inc., a leading vendor of software for embedded devices, completed by acquiring all issued and outstanding Wind River common shares. The acquisition of Wind River will enable the introduction of leading-edge products for the embedded and handheld market segments resulting in synergistic benefits for our existing operations.

The combined consideration for acquisitions completed in the third quarter of 2009 was allocated as follows:

<u>(In Millions)</u>	
Fair value of net tangible assets acquired	\$ 47
Goodwill	489
Acquired developed technology	148
Other identified intangible assets	169
Share-based awards assumed	32
<b>Total</b>	<b><u>\$ 885</u></b>

The completed acquisitions in the third quarter of 2009 were not significant to our consolidated results of operations.

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**Note 15: Goodwill**

Goodwill activity by reportable operating segment for the first nine months of 2009 was as follows:

<u>(In Millions)</u>	<u>Digital Enterprise Group</u>	<u>Mobility Group</u>	<u>All Other</u>	<u>Total</u>
<b>Goodwill, net</b>				
<b>December 27, 2008</b>	<b>\$ 3,515</b>	<b>\$ 248</b>	<b>\$ 169</b>	<b>\$ 3,932</b>
Additions due to business combinations	192	142	155	489
<b>September 26, 2009</b>	<b>\$ 3,707</b>	<b>\$ 390</b>	<b>\$ 324</b>	<b>\$ 4,421</b>

In the third quarter of 2009, we completed the acquisition of Wind River (see “Note 14: Acquisitions”). Goodwill recognized from this acquisition was assigned to our Digital Enterprise Group, our Mobility Group, our Digital Home Group, and our Wind River Software Group based on the relative expected fair value provided by the acquisition. The assignment to our Digital Enterprise Group, our Mobility Group, and our Digital Home Group was based on the proportionate synergistic benefits expected to be generated for each group resulting from enhanced market presence for existing businesses. The goodwill assigned to our Wind River Software Group represents most of the amount reflected under the “All Other” category in the table above.

No goodwill was impaired during the first nine months of 2009 and 2008, and the accumulated impairment losses as of December 27, 2008 and September 26, 2009 was \$713 million, substantially all of which was related to our Digital Enterprise Group.

**Note 16: Identified Intangible Assets**

We classify identified intangible assets within other long-term assets on the consolidated condensed balance sheets. Identified intangible assets consisted of the following as of September 26, 2009:

<u>(In Millions)</u>	<u>Gross Assets</u>	<u>Accumulated Amortization</u>	<u>Net</u>
Intellectual property assets	\$ 1,190	\$ (578)	\$ 612
Acquisition-related developed technology	166	(18)	148
Other intangible assets	509	(297)	212
<b>Total identified intangible assets</b>	<b>\$ 1,865</b>	<b>\$ (893)</b>	<b>\$ 972</b>

Identified intangible assets consisted of the following as of December 27, 2008:

<u>(In Millions)</u>	<u>Gross Assets</u>	<u>Accumulated Amortization</u>	<u>Net</u>
Intellectual property assets	\$ 1,206	\$ (582)	\$ 624
Acquisition-related developed technology	22	(8)	14
Other intangible assets	340	(203)	137
<b>Total identified intangible assets</b>	<b>\$ 1,568</b>	<b>\$ (793)</b>	<b>\$ 775</b>

During the first nine months of 2009, we acquired intellectual property assets for \$99 million with a weighted average life of 6 years. During the first nine months of 2009, as a result of our acquisition of Wind River, we recorded acquisition-related developed technology for \$148 million with a weighted average life of 4 years and additions to other intangible assets of \$169 million. The substantial majority of other intangible assets recorded were associated with customer relationships and the Wind River trade name with a weighted average life of 7 years. The remaining amount included in other intangible assets is related to acquired in-process research and development.

**INTEL CORPORATION**  
**NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS — Unaudited (Continued)**

We recorded the amortization of identified intangible assets on the consolidated condensed statements of operations as follows: intellectual property assets generally in cost of sales; acquisition-related developed technology in amortization of acquisition-related intangibles and costs; and other intangible assets as either a reduction of revenue or in amortization of acquisition-related intangibles and costs. The amortization expense was as follows:

<u>(In Millions)</u>	<u>Three Months Ended</u>		<u>Nine Months Ended</u>	
	<u>Sept. 26, 2009</u>	<u>Sept. 27, 2008</u>	<u>Sept. 26, 2009</u>	<u>Sept. 27, 2008</u>
Intellectual property assets	\$ 37	\$ 41	\$ 111	\$ 122
Acquisition-related developed technology	\$ 11	\$ 2	\$ 14	\$ 4
Other intangible assets	\$ 34	\$ 25	\$ 94	\$ 68

Based on identified intangible assets recorded as of September 26, 2009, and assuming the underlying assets will not be impaired in the future, we expect amortization expense for each period to be as follows:

<u>(In Millions)</u>	<u>2009<sup>1</sup></u>	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
Intellectual property assets	\$ 37	\$ 147	\$ 95	\$ 84	\$ 67
Acquisition-related developed technology	\$ 15	\$ 54	\$ 45	\$ 24	\$ 10
Other intangible assets	\$ 35	\$ 26	\$ 20	\$ 24	\$ 23

<sup>1</sup> Reflects the remaining three months of 2009.

**Note 17: Restructuring and Asset Impairment Charges**

The following table summarizes restructuring and asset impairment charges by plan:

<u>(In Millions)</u>	<u>Three Months Ended</u>		<u>Nine Months Ended</u>	
	<u>Sept. 26, 2009</u>	<u>Sept. 27, 2008</u>	<u>Sept. 26, 2009</u>	<u>Sept. 27, 2008</u>
2009 restructuring program	\$ 63	\$ —	\$ 212	\$ —
2006 efficiency program	—	34	16	459
<b>Total restructuring and asset impairment charges</b>	<b>\$ 63</b>	<b>\$ 34</b>	<b>\$ 228</b>	<b>\$ 459</b>

We may incur additional restructuring charges in the future for employee severance and benefit arrangements, and facility-related or other exit activities.

**2009 Restructuring Program**

In the first quarter of 2009, management approved plans to restructure some of our manufacturing and assembly and test operations. These plans include closing two assembly and test facilities in Malaysia, one facility in the Philippines, and one facility in China; stopping production at a 200mm wafer fabrication facility in Oregon; and ending production at our 200mm wafer fabrication facility in California. Restructuring and asset impairment charges were as follows:

<u>(In Millions)</u>	<u>Three Months Ended</u>		<u>Nine Months Ended</u>	
	<u>Sept. 26, 2009</u>	<u>Sept. 27, 2008</u>	<u>Sept. 26, 2009</u>	<u>Sept. 27, 2008</u>
Employee severance and benefit arrangements	\$ 63	\$ —	\$ 205	\$ —
Asset impairment charges	—	—	7	—
<b>Total restructuring and asset impairment charges</b>	<b>\$ 63</b>	<b>\$ —</b>	<b>\$ 212</b>	<b>\$ —</b>

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The following table summarizes the restructuring and asset impairment activity for the 2009 restructuring program during the first nine months of 2009:

<u>(In Millions)</u>	<u>Employee Severance and Benefits</u>	<u>Asset Impairments</u>	<u>Total</u>
<b>Accrued restructuring balance as of December 27, 2008</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ —</b>
Additional accruals	208	7	215
Adjustments	(3)	—	(3)
Cash payments	(134)	—	(134)
Non-cash settlements	—	(7)	(7)
<b>Accrued restructuring balance as of September 26, 2009</b>	<b>\$ 71</b>	<b>\$ —</b>	<b>\$ 71</b>

We recorded the additional accruals, net of adjustments, as restructuring and asset impairment charges. The remaining accrual as of September 26, 2009 was related to severance benefits that are recorded within accrued compensation and benefits.

The net charges above include \$205 million that relate to employee severance and benefit arrangements for approximately 6,500 employees.

**2006 Efficiency Program**

In the third quarter of 2006, management approved several actions as part of a restructuring plan designed to improve operational efficiency and financial results. Restructuring and asset impairment charges were as follows:

<u>(In Millions)</u>	<u>Three Months Ended</u>		<u>Nine Months Ended</u>	
	<u>Sept. 26, 2009</u>	<u>Sept. 27, 2008</u>	<u>Sept. 26, 2009</u>	<u>Sept. 27, 2008</u>
Employee severance and benefit arrangements	\$ —	\$ 29	\$ 8	\$ 125
Asset impairment charges	—	5	8	334
<b>Total restructuring and asset impairment charges</b>	<b>\$ —</b>	<b>\$ 34</b>	<b>\$ 16</b>	<b>\$ 459</b>

During the first quarter of 2008, we incurred \$275 million in additional asset impairment charges related to assets that we sold in the second quarter of 2008 in conjunction with the divestiture of our NOR flash memory business. We determined the impairment charges using the revised fair value of the equity and note receivable that we received upon completion of the divestiture, less selling costs. The lower fair value was primarily a result of a decline in the outlook for the flash memory market segment. We had previously incurred \$85 million in asset impairment charges in 2007 related to assets that we sold in the second quarter of 2008 in conjunction with the divestiture of our NOR flash memory business. We determined the impairment charges based on the fair value, less selling costs, that we expected to receive upon completion of the divestiture.

The following table summarizes the restructuring and asset impairment activity for the 2006 efficiency program during the first nine months of 2009:

<u>(In Millions)</u>	<u>Employee Severance and Benefits</u>	<u>Asset Impairments</u>	<u>Total</u>
<b>Accrued restructuring balance as of December 27, 2008</b>	<b>\$ 57</b>	<b>\$ —</b>	<b>\$ 57</b>
Additional accruals	18	8	26
Adjustments	(10)	—	(10)
Cash payments	(65)	—	(65)
Non-cash settlements	—	(8)	(8)
<b>Accrued restructuring balance as of September 26, 2009</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ —</b>

We recorded the additional accruals, net of adjustments, as restructuring and asset impairment charges. The 2006 efficiency program is substantially complete as of September 26, 2009.

From the third quarter of 2006 through the third quarter of 2009, we incurred a total of \$1.6 billion in restructuring and asset impairment charges related to this plan. These charges included a total of \$686 million related to employee severance and benefit arrangements for approximately 11,300 employees, and \$896 million in asset impairment charges.



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**NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS — Unaudited (Continued)**

**Note 18: Borrowings**

We have an ongoing authorization from our Board of Directors to borrow up to \$3.0 billion, including through the issuance of commercial paper. Maximum borrowings under our commercial paper program during the first nine months of 2009 were approximately \$610 million, although no commercial paper remained outstanding as of September 26, 2009.

In 2005, we issued \$1.6 billion of junior subordinated convertible debentures (the 2005 debentures) due in 2035. During the third quarter of 2009, we issued \$2.0 billion of junior subordinated convertible debentures (the 2009 debentures) due in 2039. Both the 2005 and 2009 debentures pay a fixed rate of interest semiannually. We capitalized all interest associated with these debentures during the periods presented.

	<u>2005 Debentures</u>	<u>2009 Debentures</u>
Coupon interest rate	2.95%	3.25%
Effective interest rate <sup>1</sup>	6.45%	7.20%
Maximum amount of contingent interest that will accrue per year <sup>2</sup>	0.40%	0.50%

<sup>1</sup> The effective rate is based on the rate for a similar instrument that does not have a conversion feature.

<sup>2</sup> Both the 2005 and 2009 debentures have a contingent interest component that will require us to pay interest based on certain thresholds and for certain events commencing on December 15, 2010 and August 1, 2019, for the 2005 and 2009 debentures, respectively, as outlined in the indentures governing the 2005 and 2009 debentures. The fair value of the related embedded derivative was \$27 million and \$16 million as of September 26, 2009 for the 2005 and 2009 debentures, respectively (\$36 million as of December 27, 2008 for the 2005 debentures).

Both the 2005 and 2009 debentures are convertible, subject to certain conditions, into shares of our common stock. Holders can surrender the 2005 debentures for conversion at any time. We can settle any conversion or repurchase of the 2005 debentures in cash or stock at our option. However, we will settle any conversion or repurchase of the 2009 debentures in cash up to the face value and any amount in excess of face value will be settled in cash or stock at our option. On or after December 15, 2012, we can redeem, for cash, all or part of the 2005 debentures for the principal amount, plus any accrued and unpaid interest, if the closing price of Intel common stock has been at least 130% of the conversion price then in effect for at least 20 trading days during any 30 consecutive trading-day period prior to the date on which we provide notice of redemption. On or after August 5, 2019, we can redeem, for cash, all or part of the 2009 debentures for the principal amount, plus any accrued and unpaid interest, if the closing price of Intel common stock has been at least 150% of the conversion price then in effect for at least 20 trading days during any 30 consecutive trading-day period prior to the date on which we provide notice of redemption. If certain events occur in the future, the indentures governing the 2005 and 2009 debentures provide that each holder of the debentures can, for a pre-defined period of time, require us to repurchase the holder's debentures for the principal amount plus any accrued and unpaid interest. Both the 2005 and 2009 debentures are subordinated in right of payment to our existing and future senior debt and to the other liabilities of our subsidiaries. We concluded that both the 2005 and 2009 debentures are not conventional convertible debt instruments and that the embedded stock conversion options qualify as derivatives. In addition, we have concluded that the embedded conversion options would be classified in stockholders' equity if they were freestanding derivative instruments. As such, the embedded conversion options are not accounted for separately as derivatives.

<u>(In Millions, Except Per Share Amounts)</u>	<u>2005 Debentures</u>		<u>2009 Debentures</u>
	<u>Sept. 26, 2009</u>	<u>Dec. 27, 2008</u>	<u>Sept. 26, 2009</u>
Outstanding Principal	\$ 1,600	\$ 1,600	\$ 2,000
Equity component carrying amount	\$ 466	\$ 466	\$ 613
Unamortized discount <sup>1</sup>	\$ 694	\$ 701	\$ 955
Net debt carrying amount	\$ 893	\$ 886	\$ 1,028
Conversion rate (shares of common stock per \$1,000 principal amount of debentures) <sup>2</sup>	32.1175	31.1762	44.0917
Effective conversion price (per share of common stock)	\$ 31.14	\$ 31.53	\$ 22.68

<sup>1</sup> The remaining amortization periods for the 2005 and 2009 debentures are approximately 26 and 30 years, respectively, as of September 26, 2009.

<sup>2</sup> The conversion rate adjusts for certain events outlined in the indentures governing the 2005 and 2009 debentures, such as quarterly dividend distributions in excess of 10 cents and 14 cents per share, for the 2005 and 2009 debentures, respectively, but does not adjust for accrued interest. In addition, the conversion rate will increase for a holder of either the 2005 or 2009 debentures who elects to convert the debentures in connection with certain share exchanges, mergers, or consolidations involving Intel, as described in the indentures governing the 2005 and 2009 debentures.

**INTEL CORPORATION**  
**NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS — Unaudited (Continued)**

**Note 19: Employee Equity Incentive Plans**

Our equity incentive plans are broad-based, long-term retention programs intended to attract and retain talented employees and align stockholder and employee interests.

In May 2009, stockholders approved an extension of the 2006 Equity Incentive Plan (the 2006 Plan). Stockholders approved 134 million additional shares for issuance, increasing the total shares of common stock available for issuance as equity awards to employees and non-employee directors to 428 million shares. The approval also extended the expiration date of the 2006 Plan to June 2012. The maximum shares to be awarded as non-vested shares (restricted stock) or non-vested share units (restricted stock units) were increased to 253 million shares. As of September 26, 2009, 207 million shares remained available for future grant under the 2006 Plan.

In addition, stockholders approved an employee stock option exchange program (Option Exchange). On September 28, 2009, we commenced the Option Exchange to allow employees (not listed officers) the opportunity to exchange eligible stock options for a lesser number of new stock options that have approximately the same fair value as the options surrendered. The exchange offer expired at 8 p.m. Pacific Time on October 30, 2009. The number of common shares subject to outstanding options will reduce as a result of the exchange offer. However, as of the date the financial statements were issued, the impact of the Option Exchange was still being determined. The new stock options granted as part of the exchange will vest in equal annual increments over a four-year period from date of grant and expire seven years from the grant date.

In the second quarter of 2009, we began issuing restricted stock units with both a market condition and a service condition (market-based restricted stock units), which were referred to in our 2009 Proxy Statement as outperformance stock units, to a small group of senior officers. In the third quarter of 2009, we issued market-based restricted stock units to our non-employee directors. The number of shares of Intel common stock to be received at vesting will range from 33% to 200% of the target amount, based on total shareholder return (TSR) on Intel common stock measured against the benchmark TSR of a peer group over a three year period. TSR is a measure of stock price appreciation plus any dividends paid in this performance period. As of September 26, 2009, there were 2 million market-based restricted stock units outstanding. These market-based restricted stock units accrue dividend equivalents and vest three years and one month from the grant date.

In connection with our completed acquisition of Wind River, we assumed Wind River's equity incentive plans and issued replacement awards in the third quarter of 2009. The stock options and restricted stock units issued generally retain the terms and conditions of the respective plans under which they were originally granted. We will not grant additional shares under these plans.

The 2006 Stock Purchase Plan allows eligible employees to purchase shares of our common stock at 85% of the average of the high and low price of our common stock on specific dates. Under the 2006 Stock Purchase Plan, 240 million shares of common stock were made available for issuance through August 2011. As of September 26, 2009, 157 million shares are available for issuance under the 2006 Stock Purchase Plan.

**Share-Based Compensation**

Share-based compensation recognized in the third quarter of 2009 was \$218 million and \$689 million for the first nine months of 2009 (\$197 million in the third quarter of 2008 and \$659 million for the first nine months of 2008).

We estimate the fair value of restricted stock unit awards with time-based vesting using the value of our common stock on the date of grant, reduced by the present value of dividends expected to be paid on our common stock prior to vesting. We estimate the fair value of market-based restricted stock units using a Monte Carlo simulation model on the date of grant. We based the weighted average estimated values, as well as the weighted average assumptions that we used in calculating the fair value, on estimates at the date of grant, as follows:

	Three Months Ended		Nine Months Ended	
	Sept. 26, 2009	Sept. 27, 2008	Sept. 26, 2009	Sept. 27, 2008
Estimated values	\$ 17.98	\$ 20.42	\$ 14.55	\$ 20.72
Risk-free interest rate	1.1%	2.5%	0.9%	2.1%
Dividend yield	3.0%	2.6%	3.5%	2.5%
Volatility	34%	n/a	46%	n/a

**INTEL CORPORATION**  
**NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS — Unaudited (Continued)**

We use the Black-Scholes option pricing model to estimate the fair value of options granted under our equity incentive plans and rights to acquire stock granted under our stock purchase plan. We based the weighted average estimated values of employee stock option grants and rights granted under the stock purchase plan, as well as the weighted average assumptions used in calculating these values, on estimates at the date of grant, as follows:

	Stock Options				Stock Purchase Plan <sup>1</sup>			
	Three Months Ended		Nine Months Ended		Three Months Ended		Nine Months Ended	
	Sept. 26, 2009	Sept. 27, 2008	Sept. 26, 2009	Sept. 27, 2008	Sept. 26, 2009	Sept. 27, 2008	Sept. 26, 2009	Sept. 27, 2008
Estimated values	\$ 4.40	\$ 6.10	\$ 4.72	\$ 5.82	\$ 4.56	\$ 5.50	\$ 4.14	\$ 5.32
Expected life (in years)	4.8	4.8	4.9	4.9	.5	.5	.5	.5
Risk free interest rate	2.4%	3.3%	1.8%	2.9%	0.4%	1.9%	0.4%	2.1%
Volatility	34%	36%	46%	34%	33%	36%	44%	35%
Dividend yield	3.0%	2.6%	3.6%	2.5%	2.9%	2.5%	3.6%	2.5%

<sup>1</sup> Under the stock purchase plan, rights to purchase shares are only granted during the first and third quarters of each year.

**Restricted Stock Unit Awards**

Activity with respect to outstanding restricted stock units for the first nine months of 2009 was as follows:

(In Millions, Except Per Share Amounts)	Number of Shares	Weighted Average Grant- Date Fair Value	Aggregate Fair Value <sup>1</sup>
<b>December 27, 2008</b>	<b>67.3</b>	<b>\$ 20.18</b>	
Granted	59.1	\$ 14.55	
Assumed in acquisition	1.6	\$ 17.52	
Vested <sup>2</sup>	(18.2)	\$ 20.09	\$ 281
Forfeited	(2.8)	\$ 18.47	
<b>September 26, 2009</b>	<b>107.0</b>	<b>\$ 17.10</b>	

<sup>1</sup> Represents the value of Intel common stock on the date that the restricted stock units vest. On the grant date, the fair value for these vested awards was \$366 million.

<sup>2</sup> The number of restricted stock units vested includes shares that we withheld on behalf of employees to satisfy the minimum statutory tax withholding requirements.

**Stock Option Awards**

Activity with respect to outstanding stock options for the first nine months of 2009 was as follows:

(In Millions, Except Per Share Amounts)	Number of Shares	Weighted Average Exercise Price	Aggregate Intrinsic Value <sup>1</sup>
<b>December 27, 2008</b>	<b>612.0</b>	<b>\$ 27.70</b>	
Grants	35.1	\$ 15.55	
Assumed in acquisition	9.0	\$ 15.42	
Exercises	(2.0)	\$ 14.66	\$ 9
Cancellations and forfeitures	(23.4)	\$ 27.95	
Expirations	(33.0)	\$ 31.09	
<b>September 26, 2009</b>	<b>597.7</b>	<b>\$ 26.65</b>	
Options exercisable as of:			
December 27, 2008	517.0	\$ 28.78	
September 26, 2009	506.2	\$ 27.98	

<sup>1</sup> Represents the difference between the exercise price and the value of Intel common stock at the time of exercise.

**INTEL CORPORATION**  
**NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS — Unaudited (Continued)**

**Stock Purchase Plan**

Employees purchased 30.9 million shares in the first nine months of 2009 (25.9 million shares in the first nine months of 2008) for \$344 million (\$453 million in the first nine months of 2008) under the 2006 Stock Purchase Plan.

**Note 20: Common Stock Repurchases**

**Common Stock Repurchase Program**

We have an ongoing authorization, amended in November 2005, from our Board of Directors to repurchase up to \$25 billion in shares of our common stock in open market or negotiated transactions. As of September 26, 2009, \$5.7 billion remained available for repurchase under the existing repurchase authorization. We utilized the majority of the proceeds from the issuance of the 2009 debentures to repurchase 88.2 million shares at a cost of \$1.7 billion during the third quarter and the first nine months of 2009. We repurchased 93.4 million shares at a cost of \$2.1 billion during the third quarter of 2008 and 324.1 million shares at a cost of \$7.1 billion during the first nine months of 2008. We have repurchased and retired 3.4 billion shares at a cost of approximately \$69 billion since the program began in 1990. Our repurchases in 2009 and a portion of our repurchases in 2008 were executed in privately negotiated transactions.

**Restricted Stock Unit Withholdings**

We issue restricted stock units as part of our equity incentive plans. For the majority of restricted stock units granted, the number of shares issued on the date the restricted stock units vest is net of the minimum statutory withholding requirements that we pay in cash to the appropriate taxing authorities on behalf of our employees. During the first nine months of 2009, we withheld 5.3 million shares (3.5 million shares during the first nine months of 2008) to satisfy \$81 million (\$78 million during the first nine months of 2008) of employees' tax obligations. Although shares withheld are not issued, they are treated as common stock repurchases in our financial statements, as they reduce the number of shares that would have been issued upon vesting.

**Note 21: Earnings Per Share**

We computed our basic and diluted earnings per common share as follows:

<b>(In Millions, Except Per Share Amounts)</b>	<b>Three Months Ended</b>		<b>Nine Months Ended</b>	
	<b>Sept. 26, 2009</b>	<b>Sept. 27, 2008</b>	<b>Sept. 26, 2009</b>	<b>Sept. 27, 2008</b>
<b>Net income available to common shareholders<sup>1</sup></b>	<b>\$ 1,856</b>	<b>\$ 2,014</b>	<b>\$ 2,087</b>	<b>\$ 5,058</b>
<b>Weighted average common shares outstanding — basic</b>	<b>5,537</b>	<b>5,603</b>	<b>5,568</b>	<b>5,696</b>
Dilutive effect of employee equity incentive plans	28	38	24	43
Dilutive effect of convertible debt	51	51	51	51
<b>Weighted average common shares outstanding — diluted</b>	<b>5,616</b>	<b>5,692</b>	<b>5,643</b>	<b>5,790</b>
<b>Basic earnings per common share</b>	<b>\$ 0.34</b>	<b>\$ 0.36</b>	<b>\$ 0.37</b>	<b>\$ 0.89</b>
<b>Diluted earnings per common share</b>	<b>\$ 0.33</b>	<b>\$ 0.35</b>	<b>\$ 0.37</b>	<b>\$ 0.87</b>

<sup>1</sup> Net income available to participating securities was not significant for the third quarter and first nine months of 2009.

We computed our basic earnings per common share using net income available to common shareholders and the weighted average number of common shares outstanding during the period. We computed diluted earnings per common share using net income available to common shareholders and the weighted average number of common shares outstanding plus potentially dilutive common shares outstanding during the period. Potentially dilutive common shares from employee incentive plans are determined by applying the treasury stock method to the assumed exercise of outstanding stock options, the assumed vesting of outstanding restricted stock units, and the assumed issuance of common stock under the stock purchase plan. Potentially dilutive common shares are determined by applying the if-converted method for the 2005 debentures. However, as our 2009 debentures requires settlement of the principal amount of the debt in cash upon conversion, with the conversion premium paid in cash or stock at our option, potentially dilutive common shares is determined by applying the treasury stock method for these debentures. For further details on the specific conversion features of our 2005 and 2009 debentures, see "Note 18: Borrowings."

**INTEL CORPORATION**  
**NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS — Unaudited (Continued)**

For the third quarter of 2009, we excluded 540 million outstanding weighted average stock options (565 million for the first nine months of 2009) from the calculation of diluted earnings per common share because the exercise prices of these stock options were greater than or equal to the average market value of the common shares (462 million for the third quarter of 2008 and 473 million for the first nine months of 2008). These options could be included in the calculation in the future if the average market value of the common shares increases and is greater than the exercise price of these options. We also excluded our 2009 debentures from the calculation of diluted earnings per common share because the conversion option of these debentures was antidilutive. In the future we could have potentially dilutive shares if the average market price is above the conversion price.

**Note 22: Comprehensive Income**

The components of total comprehensive income were as follows:

<u>(In Millions)</u>	Three Months Ended		Nine Months Ended	
	Sept 26, 2009	Sept. 27, 2008	Sept 26, 2009	Sept. 27, 2008
Net income	\$ 1,856	\$ 2,014	\$ 2,087	\$ 5,058
Change in net unrealized holding gain (loss) on available-for-sale investments	201	(166)	348	(351)
Change in deferred tax asset valuation allowance <sup>2</sup>	92	—	143	—
Change in net unrealized holding gain (loss) on derivatives	93	(99)	124	(46)
Change in net actuarial loss	—	—	11	—
<b>Total comprehensive income</b>	<b>\$ 2,242</b>	<b>\$ 1,749</b>	<b>\$ 2,713</b>	<b>\$ 4,661</b>

<sup>1</sup> Beginning in the second quarter of 2009, non-credit-related other-than-temporary impairment losses are included as a component of other comprehensive income.

<sup>2</sup> Amount relates to the reversal of a portion of our deferred tax asset valuation allowance attributed to changes in unrealized holding gains on our available-for-sale equity securities.

The components of accumulated other comprehensive income, net of tax, at the end of each period were as follows:

<u>(In Millions)</u>	Sept 26, 2009	Dec. 27, 2008
Accumulated net unrealized holding gain (loss) on available-for-sale investments	\$ 209	\$ (139)
Accumulated net change in deferred tax asset valuation allowance	143	—
Accumulated net unrealized holding gain (loss) on derivatives	172	48
Accumulated net prior service costs	(10)	(10)
Accumulated net actuarial losses	(279)	(290)
Accumulated transition obligation	(2)	(2)
<b>Total accumulated other comprehensive income (loss)</b>	<b>\$ 233</b>	<b>\$ (393)</b>

<sup>1</sup> As of September 26, 2009, accumulated unrealized non-credit-related other-than-temporary impairment losses on available-for-sale debt instruments were not significant.

**INTEL CORPORATION**  
**NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS — Unaudited (Continued)**

**Note 23: Taxes**

***Provision for Taxes***

Our effective income tax rate was 26.7% in the third quarter of 2009 compared to 28.9% in the third quarter of 2008. The effective tax rate for the third quarter of 2009 was positively impacted by a higher percentage of our profits being derived from lower-tax jurisdictions compared to the third quarter of 2008 and the U.S R&D income tax credit that was reinstated in the fourth quarter of 2008. The third quarter of 2009 effective tax rate was negatively impacted by adjustments for differences between our finalized tax return and the provision recorded, and other adjustments to tax provisions from prior years, which were partially offset by settlements and effective settlements of various uncertain tax positions.

Our effective income tax rate for the first nine months of 2009 was 32.9%, compared to 30.9% for the first nine months of 2008. Based on our analysis, the European Commission (EC) fine recorded in the second quarter of 2009 is not tax deductible. For further information on the EC fine, see "Note 24: Contingencies." The EC fine of \$1.447 billion, with no associated reduction in the provision for taxes, significantly increased our effective tax rate in the first nine months of 2009. The impact of the EC fine was partially offset by a higher percentage of our profits being derived from lower-tax jurisdictions compared to the first nine months of 2008 and the U.S. R&D income tax credit that was reinstated in the fourth quarter of 2008. In addition, the effective tax rate was also positively impacted by settlements and effective settlements of various uncertain tax positions, partially offset by adjustments for differences between our finalized tax return and the provision recorded, and other adjustments to tax provisions from prior years.

***Unrecognized Tax Benefits***

Our gross unrecognized tax benefits were \$377 million as of September 26, 2009 (\$744 million as of December 27, 2008). The decrease in gross unrecognized tax benefits is primarily related to settlements, effective settlements, and reductions in tax positions taken during prior periods related to issues settled in U.S. federal, U.S. state, and non-U.S. tax returns.

Although the timing of the resolution and/or closure on audits is highly uncertain, it is reasonably possible that the balance of gross unrecognized tax benefits could significantly change in the next 12 months. Given the number of years remaining subject to examination and the number of matters being examined, we are unable to estimate the full range of possible adjustments to the balance of gross unrecognized tax benefits. However, we can reasonably expect a minimum reduction of approximately \$200 million of our existing gross unrealized tax benefits upon settlement or effective settlement with the various tax authorities, the closure of certain audits, and the lapse of statute of limitations within the next 12 months.

**Note 24: Contingencies**

***Legal Proceedings***

We are currently a party to various legal proceedings, including those noted in this section. While management presently believes that the ultimate outcome of these proceedings, individually and in the aggregate, will not materially harm the company's financial position, cash flows, or overall trends in results of operations, legal proceedings are subject to inherent uncertainties, and unfavorable rulings could occur. An unfavorable ruling could include money damages or, in matters for which injunctive relief or other conduct remedies are sought, an injunction prohibiting us from selling one or more products at all or in particular ways. Were unfavorable final outcomes to occur, there exists the possibility of a material adverse impact on our business, results of operation, financial position, and overall trends. Except as may be otherwise indicated, the outcomes in these matters are not reasonably estimable.

***Advanced Micro Devices, Inc. (AMD) and AMD International Sales & Service, Ltd. v. Intel Corporation and Intel Kabushiki Kaisha, and Related Consumer Class Actions and Government Investigations***

A number of proceedings, described below, generally challenge certain of our competitive practices, contending generally that we improperly condition price rebates and other discounts on our microprocessors on exclusive or near exclusive dealing by some of our customers. We believe that we compete lawfully and that our marketing practices benefit our customers and our stockholders, and we will continue to vigorously defend ourselves. The distractions caused by challenges to our business practices, however, are undesirable, and the legal and other costs associated with defending our position have been and continue to be significant. We assume, as should investors, that these challenges could continue for a number of years and may require the investment of substantial additional management time and substantial financial resources to explain and defend our position. While management presently believes that the ultimate outcome of these proceedings, individually and in the aggregate, will not materially harm the company's financial position, cash flows, or overall trends in results of operations, these litigation matters and the related government investigations are subject to inherent uncertainties, and unfavorable rulings could occur. An unfavorable ruling could include substantial money damages and, in matters in which injunctive relief or other conduct remedies are sought, an injunction or other order prohibiting us from selling one or more products at all or in particular ways. Were unfavorable final outcomes to occur, our business, results of operations, financial position, and overall trends could be materially harmed.

**INTEL CORPORATION**  
**NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS — Unaudited (Continued)**

In June 2005, AMD filed a complaint in the United States District Court for the District of Delaware alleging that we and our Japanese subsidiary engaged in various actions in violation of the Sherman Act and the California Business and Professions Code, including, among other things, providing discounts and rebates to our manufacturer and distributor customers conditioned on exclusive or near exclusive dealing that allegedly unfairly interfered with AMD's ability to sell its microprocessors, interfering with certain AMD product launches, and interfering with AMD's participation in certain industry standards-setting groups. AMD's complaint seeks unspecified treble damages, punitive damages, an injunction requiring Intel to cease any conduct found to be unlawful, and attorneys' fees and costs. We have answered the complaint, denying the material allegations and asserting various affirmative defenses. In February 2007, we reported to the Court that we had discovered certain lapses in our retention of electronic documents. We then stipulated to a court order requiring us to further investigate and report on those lapses, as well as develop a plan to remediate the issues. We completed the investigation and provided detailed information to the Court and AMD throughout 2007 and 2008. The Court also approved our remediation plan, which is now completed. The Court granted our request for an order to permit discovery against AMD in order to investigate its retention practices, including potential lapses in AMD's retention of electronic documents. On October 14, 2009, Intel and AMD both filed motions against the other seeking sanctions for alleged lapses in the other party's document retention efforts. We anticipate that the Special Master will rule on those motions in the first quarter of 2010. Discovery closed on June 12, 2009. The AMD litigation currently is scheduled for trial to commence on March 29, 2010.

AMD's Japanese subsidiary also filed suits in the Tokyo High Court and the Tokyo District Court against our Japanese subsidiary, asserting violations of Japan's Antimonopoly Law and alleging damages in each suit of approximately \$55 million, plus various other costs and fees. Proceedings in those matters are ongoing.

In addition, at least 82 separate class actions have been filed in the U.S. District Courts for the Northern District of California, Southern District of California, District of Idaho, District of Nebraska, District of New Mexico, District of Maine, and District of Delaware, as well as in various California, Kansas, and Tennessee state courts. These actions generally repeat AMD's allegations and assert various consumer injuries, including that consumers in various states have been injured by paying higher prices for computers containing our microprocessors. All of the federal class actions and the Kansas and Tennessee state court class actions have been consolidated by the Multidistrict Litigation Panel to the District of Delaware and are being coordinated for pre-trial purposes with the AMD litigation. The putative class in the coordinated actions has moved for class certification, which we are in the process of opposing. All California class actions have been consolidated to the Superior Court of California in Santa Clara County. The plaintiffs in the California actions have moved for class certification, which we are in the process of opposing. At our request, the Court in the California actions has agreed to delay ruling on this motion until after the Delaware Federal Court rules on the similar motion in the coordinated actions.

We dispute AMD's claims and the class-action claims, and intend to defend the lawsuits vigorously.

We are also subject to certain antitrust regulatory inquiries. In 2001, the European Commission (EC) commenced an investigation regarding claims by AMD that we used unfair business practices to persuade clients to buy our microprocessors. Since that time, we have received numerous requests for information and documents from the EC, and we have responded to each of those requests. The EC issued a Statement of Objections in July 2007 and held a hearing on that Statement in March 2008. The EC issued a Supplemental Statement of Objections in July 2008.

On May 13, 2009, the EC issued a decision finding that we had violated Article 82 of the EC Treaty and Article 54 of the European Economic Area (EEA) Agreement. In general, the EC found that we violated Article 82 by offering alleged "conditional rebates and payments" that required Intel customers to purchase all or most of their x86 microprocessors from us. The EC also found that we violated Article 82 by making alleged "payments to prevent sales of specific rival products." The EC imposed a fine on us in the amount of €1.06 billion (\$1.447 billion as of May 13, 2009), which we subsequently paid during the third quarter of 2009, and also ordered us to "immediately bring to an end the infringement referred to in" the EC decision. We strongly disagree with the EC's decision and we have appealed the decision to the Court of First Instance.

In June 2005, we received an inquiry from the Korea Fair Trade Commission (KFTC) requesting documents from our Korean subsidiary related to marketing and rebate programs that we entered into with Korean PC manufacturers. In February 2006, the KFTC initiated an inspection of documents at our offices in Korea. In September 2007, the KFTC served us an Examination Report alleging that sales to two customers during parts of 2002-2005 violated Korea's Monopoly Regulation and Fair Trade Act. In December 2007, we submitted our written response to the KFTC. In February 2008, the KFTC's examiner submitted a written reply to our response. In March 2008, we submitted a further response. In April 2008, we participated in a pre-hearing conference before the KFTC, and we participated in formal hearings in May and June 2008. In June 2008, the KFTC announced its intent to fine us approximately \$25 million for providing discounts to Samsung Electronics Co., Ltd. and TriGem Computer Inc. On November 7, 2008, the KFTC issued a final written decision concluding that Intel's discounts had violated Korean antitrust law and imposing a fine on Intel of approximately \$20 million, which Intel paid in January 2009. On December 9, 2008, Intel appealed this decision by filing a lawsuit in the Seoul High Court seeking to overturn the KFTC's decision. The KFTC through its attorneys filed its answer to Intel's complaint in March 2009. Thereafter Intel and the KFTC will provide arguments to the court in sequential briefs.

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**NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS — Unaudited (Continued)**

In January 2008, we received a subpoena from the Attorney General of the State of New York requesting documents and information to assist in its investigation of whether there have been any agreements or arrangements establishing or maintaining a monopoly in the sale of microprocessors in violation of federal or New York antitrust laws. The investigation is ongoing and the Attorney General's office has recently requested additional meetings with us to discuss various issues. We continue to cooperate and provide requested information in connection with this investigation.

In June 2008, the U.S. Federal Trade Commission announced a formal investigation into our sales practices. The investigation is ongoing and the FTC has recently requested additional information from and meetings with us regarding various issues. We continue to cooperate and provide requested information in connection with this investigation.

We dispute any claims made in these investigations that Intel has acted unlawfully. We intend to cooperate with and respond to these investigations as appropriate and we expect that these matters will be acceptably resolved.

*Intel/AMD Cross-License Agreement*

Intel and AMD entered into a patent cross license on January 1, 2001. Under that license, Intel granted AMD a limited license to certain Intel patents, subject to the terms of that agreement. On October 7, 2008, AMD announced its intention to form a joint venture called "The Foundry Company" (later renamed to GlobalFoundries Inc.) with two investment entities of the Emirate of Abu Dhabi. On March 2, 2009, AMD announced that it has closed this transaction. AMD has claimed that GlobalFoundries is entitled to a license to Intel patents under the 2001 Intel/AMD cross license. Intel disagrees with that claim. Intel has notified AMD that it has breached the terms of the cross license, and Intel has initiated the formal dispute resolution process outlined in the cross license. AMD and Intel have agreed to extend the time period for this process.

*Martin Smilow v. Craig R. Barrett et al. & Intel Corporation; Christine Del Gaizo v. Paul S. Otellini et al. & Intel Corporation*

In February 2008, Martin Smilow, an Intel stockholder, filed a putative derivative action in the United States District Court for the District of Delaware against members of our Board of Directors. The complaint alleges generally that the Board allowed the company to violate antitrust and other laws, as described in AMD's antitrust lawsuits against us, and that those Board-sanctioned activities have harmed the company. The complaint repeats many of AMD's allegations and references various investigations by the European Community, the KFTC, and others. In February 2008, a second plaintiff, Evan Tobias, filed a derivative suit in the same court against the Board containing many of the same allegations as in the Smilow suit. On July 30, 2008, the District Court entered an order directing Smilow and Tobias to file a single, consolidated complaint by August 7, 2008 and directing us to respond within 30 days thereafter. An amended consolidated complaint was filed on August 7, 2008. On June 4, 2009, the Court granted the defendants' motion to dismiss the plaintiffs' consolidated complaint, with prejudice.

On June 27, 2008, a third plaintiff, Christine Del Gaizo, filed a derivative suit in the Santa Clara County Superior Court against the Board, a former director of the Board, and six of our officers, containing many of the same allegations as in the Smilow and Tobias suits. On August 27, 2008, the parties in the California derivative suit entered into a stipulation to stay the action pending further order of the Court, and the Court entered an order to that effect on September 2, 2008. We deny the allegations and intend to defend the lawsuits vigorously.

In addition to the foregoing proceedings, Intel subsequently has received demands from two individual stockholders (including Christine Del Gaizo) requesting that we commence investigations and potentially bring claims against one or more of our directors, officers, and employees, arising out of the facts and circumstances of the underlying antitrust investigations and proceedings in the U.S. and foreign jurisdictions. Intel, through its Audit Committee, is in the process of evaluating these stockholder demands.

*Intel Corporation v. Commonwealth Scientific and Industrial Research Organisation (CSIRO)*

In May 2005, Intel filed a lawsuit in the United States District Court for the Northern District of California against CSIRO, an Australian research institute. CSIRO had sent letters to Intel customers claiming that products compliant with the IEEE 802.11a and 802.11g standards infringe CSIRO's U.S. Patent No. 5,487,069 (the '069 patent). Intel's lawsuit sought a declaration that the CSIRO patent is invalid and that no Intel product infringes it. Dell Inc. is a co-declaratory judgment plaintiff with Intel; Microsoft Corporation, Netgear Inc., and Hewlett-Packard Company filed a similar, separate lawsuit against CSIRO. In its amended answer, CSIRO claimed that various Intel products that practice the IEEE 802.11a, 802.11g, and/or draft 802.11n standards infringe the '069 patent. In the first quarter of 2009, we entered into a settlement agreement with CSIRO pursuant to which, among other things, we will make payments to CSIRO in exchange for a license to certain patents. The settlement agreement did not significantly impact our results of operations or cash flows.



**INTEL CORPORATION**  
**NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS — Unaudited (Continued)**

*Saxon Innovations, LLC v. Intel Corporation*

On August 21, 2008, Saxon Innovations, LLC, filed an action for patent infringement against six personal computer OEMs, Apple, Gateway, Acer, HP, Dell and ASUS in the U.S. District Court for the Eastern District of Texas. The asserted patents are U.S. Patent No. 5,592,555, entitled “Wireless Communications Privacy Method and System”, U.S. Patent No. 5,502,689, entitled “Clock Generator Capable of Shut-Down Mode and Clock Generation Method”, U.S. Patent No. 5,530,597, entitled “Apparatus and Method for Disabling Interrupt Masks in Processors or the Like”, U.S. Patent No. 5,247,621, entitled “System and Method for Processor Bus Use”, U.S. Patent No. 5,235,635, entitled “Keypad Monitor with Keypad Activity-Based Activation.” The complaint seeks unspecified damages and a permanent injunction. In September 2008, Intel filed an unopposed motion to intervene in the case. In response, Saxon filed a counterclaim against Intel, accusing Intel of infringing the patents listed above, and asserting two additional patents against Intel — U.S. Patent No. 5,422,832 entitled “Variable Thermal Sensor” and U.S. Patent No. 5,829,031 entitled “Microprocessor Configured to Detect a Group of Instructions and to Perform a Specific Function upon Detection.” Intel disputes Saxon’s claims and intends to defend the lawsuit vigorously.

*Frank T. Shum v. Intel Corporation, Jean-Marc Verdiell and LightLogic, Inc.*

Intel acquired LightLogic, Inc. in May 2001. Frank Shum has sued Intel, LightLogic, and LightLogic’s founder, Jean-Marc Verdiell, claiming that much of LightLogic’s intellectual property is based on alleged inventions that Shum conceived while he and Verdiell were partners at Radiance Design, Inc. Shum has alleged claims for fraud, breach of fiduciary duty, fraudulent concealment, and breach of contract. Shum also seeks alleged correction of inventorship of seven patents acquired by Intel as part of the LightLogic acquisition. In January 2005, the U.S. District Court for the Northern District of California denied Shum’s inventorship claim, and thereafter granted Intel’s motion for summary judgment on Shum’s remaining claims. In August 2007, the United States Court of Appeals for the Federal Circuit vacated the District Court’s rulings and remanded the case for further proceedings. In October 2008, the District Court granted Intel’s motion for summary judgment on Shum’s claims for breach of fiduciary duty and fraudulent concealment, but denied Intel’s motion on Shum’s remaining claims. A jury trial on Shum’s remaining claims took place in November and December 2008. In pre-trial proceedings and at trial, Shum requested monetary damages against the defendants in amounts ranging from \$31 million to \$931 million, and his final request to the jury was for as much as \$175 million. Following deliberations, the jury was unable to reach a verdict on most of the claims. With respect to Shum’s claim that he is the proper inventor on certain LightLogic patents now assigned to Intel, the jury agreed with Shum on some of those claims. But the jury was unable to reach a verdict on the breach of contract, fraud, or unjust enrichment claims. On April 30, 2009, the court granted defendants’ motions for judgment as a matter of law. Shum has appealed that ruling to the United States Court of Appeals for the Federal Circuit.

*Wisconsin Alumni Research Foundation v. Intel Corporation*

On February 5, 2008, the Wisconsin Alumni Research Foundation filed an action for patent infringement against Intel in the U.S. District Court for the Western District of Wisconsin. The complaint generally alleged that Intel infringed U.S. Patent No. 5,781,752 by making, using, offering for sale, importing, and/or selling certain of Intel’s microprocessors including the Intel® Core™2 Duo microarchitecture with Smart Memory Access and any other microprocessor using the same or a similar memory disambiguation technique. We entered into a settlement agreement pursuant to which, among other things, we made a payment to the Wisconsin Alumni Research Foundation in exchange for a license to certain patents. The settlement agreement did not significantly impact our results of operations or cash flows in the third quarter of 2009.

**INTEL CORPORATION**  
**NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS — Unaudited (Continued)**

**Note 25: Operating Segment Information**

Our operating segments in effect as of September 26, 2009 include the Digital Enterprise Group, Mobility Group, NAND Solutions Group, Digital Home Group, Digital Health Group, Software and Services Group, and Wind River Software Group. Prior-period amounts have been adjusted retrospectively to reflect minor reorganizations.

The Chief Operating Decision Maker (CODM) is our President and Chief Executive Officer. The CODM allocates resources to and assesses the performance of each operating segment using information about its revenue and operating income (loss).

We report the financial results of the following operating segments:

- *Digital Enterprise Group.* Includes microprocessors and related chipsets and motherboards designed for the desktop (including high-end enthusiast PCs), nettop, and enterprise computing market segments; microprocessors and related chipsets for embedded applications; network processors; wired connectivity devices; and products for network and server storage.
- *Mobility Group.* Includes microprocessors and related chipsets designed for the notebook and netbook market segments, wireless connectivity products, and products designed for the ultra-mobile market segment, which includes various handheld devices.

The NAND Solutions Group, Digital Home Group, Digital Health Group, Software and Services Group, and Wind River Software Group operating segments do not qualify as reportable segments and are included within the all other category.

We have sales and marketing, manufacturing, finance, and administration groups. Expenses for these groups are generally allocated to the operating segments, and the expenses are included in the operating results reported below. Revenue for the all other category is primarily related to the sale of NAND flash memory products, software for embedded devices by our Wind River Software Group, microprocessors and related chipsets by the Digital Home Group, and NOR flash memory products. In the second quarter of 2008, we completed the divestiture of our NOR flash memory assets to Numonyx. At that time, we entered into supply and service agreements to provide products, services, and support to Numonyx following the close of the transaction. Revenue and expenses related to the supply and service agreements are included in the all other category. For further information on Numonyx, see "Note 10: Equity Method Investments."

In the second quarter of 2009, we incurred charges of \$1.447 billion (€1.06 billion) as result of the fine from the EC. For further information on the EC fine, see "Note 24: Contingencies." This charge was included in the all other category. Additionally, the all other category includes certain corporate-level operating expenses and charges. These expenses and charges include:

- amounts included within restructuring and asset impairment charges;
- a portion of profit-dependent compensation and other expenses not allocated to the operating segments;
- results of operations of seed businesses that support our initiatives; and
- acquisition-related costs, including amortization and any impairment of acquisition-related intangibles and goodwill.

The CODM does not evaluate operating segments using discrete asset information. Operating segments do not record inter-segment revenue, and, accordingly, there is none to be reported. We do not allocate gains and losses from equity investments, interest and other income, or taxes to operating segments. Although the CODM uses operating income to evaluate the segments, operating costs included in one segment may benefit other segments. Except as discussed above, the accounting policies for segment reporting are the same as for Intel as a whole.

**INTEL CORPORATION**  
**NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS — Unaudited (Continued)**

Segment information is summarized as follows:

<u>(In Millions)</u>	Three Months Ended		Nine Months Ended	
	Sept. 26, 2009	Sept. 27, 2008	Sept. 26, 2009	Sept. 27, 2008
<b>Net revenue</b>				
<b>Digital Enterprise Group</b>				
Microprocessor revenue	\$ 3,873	\$ 4,069	\$ 10,549	\$ 12,413
Chipset, motherboard and other revenue	1,040	1,249	2,677	3,719
	<b>4,913</b>	<b>5,318</b>	<b>13,226</b>	<b>16,132</b>
<b>Mobility Group</b>				
Microprocessor revenue	2,924	3,387	7,666	8,855
Chipset and other revenue	1,207	1,294	2,860	3,292
	<b>4,131</b>	<b>4,681</b>	<b>10,526</b>	<b>12,147</b>
<b>All other</b>	<b>345</b>	<b>218</b>	<b>806</b>	<b>1,081</b>
<b>Total net revenue</b>	<b>\$ 9,389</b>	<b>\$ 10,217</b>	<b>\$ 24,558</b>	<b>\$ 29,360</b>
<b>Operating income (loss)</b>				
Digital Enterprise Group	\$ 1,512	\$ 1,766	\$ 3,115	\$ 5,238
Mobility Group	1,350	1,851	2,413	4,269
All other	(283)	(519)	(2,314)	(2,092)
<b>Total operating income</b>	<b>\$ 2,579</b>	<b>\$ 3,098</b>	<b>\$ 3,214</b>	<b>\$ 7,415</b>

In September 2009, we announced a broad reorganization to better align our business around the core competencies of Intel Architecture and our manufacturing operations. We are currently in the process of making these changes to our organization and our systems. Given the scope and size of the business lines being impacted, this reorganization is expected to be in effect and reported in our Annual Report on Form 10-K for the year ended December 26, 2009. Under the new operating structure, our reportable operating segments will include the PC Client Group and Data Center Group. The PC Client Group will include our mobile and desktop products and the Data Center Group will include our server and workstation products.

## ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Our Management's Discussion and Analysis of Financial Condition and Results of Operations (MD&A) is provided in addition to the accompanying consolidated condensed financial statements and notes to assist readers in understanding our results of operations, financial condition, and cash flows. MD&A is organized as follows:

- *Overview.* Discussion of our business and overall analysis of financial and other highlights affecting the company in order to provide context for the remainder of MD&A.
- *Strategy.* Our overall strategy.
- *Critical Accounting Estimates.* Accounting estimates that we believe are most important to understanding the assumptions and judgments incorporated in our reported financial results and forecasts.
- *Results of Operations.* An analysis of our financial results comparing the three and nine months ended September 26, 2009 to the three and nine months ended September 27, 2008.
- *Business Outlook.* Our expectations for selected financial items for the fourth quarter of 2009 and the 2009 full year.
- *Liquidity and Capital Resources.* An analysis of changes in our balance sheets and cash flows, and discussion of our financial condition including the credit quality of our investment portfolio and potential sources of liquidity.
- *Fair Value of Financial Instruments.* Discussion of the methodologies used in the valuation of our financial instruments.

The various sections of this MD&A contain a number of forward-looking statements. Words such as "expects," "goals," "plans," "believes," "continues," "may," "will," and variations of such words and similar expressions are intended to identify such forward-looking statements. In addition, any statements that refer to projections of our future financial performance, our anticipated growth and trends in our businesses, and other characterizations of future events or circumstances are forward-looking statements. Such statements are based on our current expectations and could be affected by the uncertainties and risk factors described throughout this filing and particularly in the "Business Outlook" section (see also "Risk Factors" in Part II, Item 1A of this Form 10-Q). Our actual results may differ materially, and these forward-looking statements do not reflect the potential impact of any divestitures, mergers, acquisitions, or other business combinations that had not been completed as of November 2, 2009.

### Overview

Our goal is to be the preeminent provider of semiconductor chips and platforms for the worldwide digital economy. Our primary component-level products include microprocessors, chipsets, and flash memory. Net revenue, gross margin, operating income (loss), and net income (loss) for the second and third quarters of 2009 and the third quarter of 2008 were as follows:

<u>(In Millions)</u>	<u>Q3 2009</u>	<u>Q2 2009</u>	<u>Q3 2008</u>
Net revenue	\$ 9,389	\$ 8,024	\$ 10,217
Gross margin	\$ 5,404	\$ 4,079	\$ 6,019
Operating income (loss)	\$ 2,579	\$ (12)	\$ 3,098
Net income (loss)	\$ 1,856	\$ (398)	\$ 2,014

We delivered strong financial results in the third quarter with revenue up 17% and our gross margin percentage up 7 points from the second quarter. Better than expected demand for microprocessors and chipsets led to the largest third quarter sequential revenue increase in over 30 years. We saw growth in all geographies as the recovering global economy was led by consumer demand and continued replenishment of supply chain inventory. Microprocessors and chipsets designed for notebooks outpaced the unit growth of our Intel® Atom™ processors and chipsets. Microprocessors and chipsets designed for notebooks were one of the primary drivers of our revenue growth in the third quarter and we expect that to continue in the future. The average selling prices for microprocessors declined slightly compared to the second quarter of 2009, as the mix of microprocessors sold in this consumer driven recovery have a lower average selling price than the microprocessors traditionally sold to businesses. Compared to the third quarter of 2008 revenue was down 8%, an improvement from 15% and 26% year over year declines in the second and first quarters of 2009 respectively. We expect that revenue in the fourth quarter will increase from the third quarter in line with seasonal patterns. Our inventories are down \$1.3 billion from year end 2008; however, we do not expect shortages that would impact our revenue outlook.

Our gross margin percentage for the third quarter compared to the second quarter was positively impacted by higher microprocessor sales volume, lower microprocessor unit costs, lower factory underutilization charges, and lower startup costs as we transition into production using our 32nm process technology. These improvements to our gross margin percentage were partially offset by inventory write-offs of our new 32nm microprocessor products that were not yet qualified for sale. As we move into the fourth quarter we expect our gross margin percentage to increase further as 32nm products built in the fourth quarter are qualified for sale. In addition, our gross margin percentage is expected to increase due to higher microprocessor sales volume and lower factory underutilization charges on increased production.

## MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (Continued)

Our strong third quarter financial results emphasizes that we have the right product offerings in the marketplace at the right cost. In the third quarter we began volume production using our new 32nm processor technology that features our 2<sup>nd</sup> generation Hi-k metal gate transistors. This process technology will allow us to improve upon our microprocessor portfolio by offering products with increased performance and lower power consumption that cost less to produce. The 32nm process technology will also allow us to significantly expand our system on chip products offerings which we believe will help us succeed in our key growth areas.

From a financial condition perspective, we ended the third quarter of 2009 with a high credit quality investment portfolio of \$12.9 billion, consisting of cash and cash equivalents, debt instruments included in trading assets, and short term investments. During the third quarter of 2009 we generated \$4.0 billion in cash from operations despite paying the €1.06 billion (\$1.447 billion) European Commission fine recorded in the second quarter of 2009. During the third quarter we issued \$2.0 billion of convertible debt and utilized the proceeds from the convertible debt to repurchase \$1.7 billion of common stock through our common stock repurchase program. In addition, during the third quarter we completed the purchase of Wind River Systems, Inc., returned \$771 million to shareholders through dividends, and paid \$944 million for capital assets. We continue to make significant investment in capital assets to meet our strategic objectives, however, based on capital reuse and efficiencies, we now estimate that total capital expenditures in 2009 will be less than depreciation incurred in 2009. In September, our Board of Directors declared a dividend of \$0.14 per common share to be paid in December.

Finally, in September we announced a broad reorganization to better align our business around the core competencies of Intel Architecture and our manufacturing operations. We are currently in the process of making these changes to our organization and our systems.

### Strategy

Our goal is to be the preeminent provider of semiconductor chips and platforms for the worldwide digital and Internet connected economy. As part of our overall strategy to compete in each relevant market segment, we use our core competencies in the design and manufacture of integrated circuits, as well as our financial resources, global presence, and brand recognition. We believe that we have the scale, capacity, and global reach to establish new technologies and respond to customers' needs quickly.

Some of our key focus areas are listed below:

- *Customer Orientation.* Our strategy focuses on developing our next generation of products based on the needs and expectations of our customers. In turn, our products help enable the design and development of new form factors and usage models for businesses and consumers. We offer platforms that incorporate various components designed and configured to work together to provide an optimized user computing solution, compared to components that are used separately.
- *Architecture and Platforms.* We are developing integrated platform solutions by moving the memory controller and graphics functionality from the chipset to the microprocessor. This platform repartitioning is designed to provide improved performance due to higher integration, lower power consumption, and reduced platform size. In addition, we are focusing on improved energy-efficient performance for computing and communications systems and devices. Improved energy-efficient performance involves balancing improved performance with lower power consumption. We continue to develop multi-core microprocessors with an increasing number of cores, which can enable improved multitasking and energy efficient performance by distributing computing tasks across multiple cores.
- *Silicon and Manufacturing Technology Leadership.* Our strategy for developing microprocessors with improved performance is to synchronize the introduction of a new microarchitecture with improvements in silicon process technology. We plan to introduce a new microarchitecture approximately every two years and ramp the next generation of silicon process technology in the intervening years. This coordinated schedule allows us to develop and introduce new products based on a common microarchitecture quickly, without waiting for the next generation of silicon process technology. We refer to this as our "tick-tock" technology development cadence.
- *Strategic Investments.* We make equity investments in companies around the world that we believe will generate financial returns, further our strategic objectives, and support our key business initiatives. Our investments, including those made through our Intel Capital program, generally focus on investing in companies and initiatives to stimulate growth in the digital economy, create new business opportunities for Intel, and expand global markets for our products. Our current investments primarily focus on the following areas: advancing flash memory products, enabling mobile wireless devices, advancing the digital home, enhancing the digital enterprise, advancing high-performance communications infrastructures, and developing the next generation of silicon process technologies. Our focus areas and investment activities tend to develop and change over time due to rapid advancements in technology and changes in the economic climate.

## MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (Continued)

- *Business Environment and Software.* We believe that we are well positioned in the technology industry to help drive innovation, foster collaboration, and promote industry standards that will yield innovation and improved technologies for users. We plan to continue to cultivate new businesses and work to encourage the industry to offer products that take advantage of the latest market trends and usage models. We frequently participate in industry initiatives designed to discuss and agree upon technical specifications and other aspects of technologies that could be adopted as standards by standards-setting organizations. In addition, we work collaboratively with other companies to protect digital content and the consumer. Through our Software and Services Group (SSG), we help enable and advance the computing ecosystem by providing development tools and support to help software developers create software applications and operating systems that take advantage of our platforms. Through our Wind River Software Group, which we acquired in the third quarter of 2009, we license software products and provide services that are optimized for the needs of customers in the embedded and handheld market segments. We believe that the expertise of our Wind River Software Group in the embedded and handheld market segments will expedite our growth strategy in these market segments.

We believe that the proliferation of the Internet, including user demand for premium content and rich media, drives the need for greater performance in PCs and servers. Older PCs are increasingly incapable of handling the tasks that users demand, such as streaming video, uploading photos, and online gaming. As these tasks become even more demanding and require more computing power, we believe that users will need and want to buy new PCs to perform everyday tasks on the Internet. We also believe that increased Internet traffic and the increasing use of cloud computing, where a group of linked servers provide a variety of applications and data to users over the Internet, create a need for greater server infrastructure, including server products optimized for energy-efficient performance and virtualization.

In September 2009, we announced a broad reorganization to better align our business around the core competencies of Intel Architecture and our manufacturing operations. We are currently in the process of making these changes to our organization and our systems. Given the scope and size of the business lines being impacted, this reorganization is expected to be in effect and reported in our Annual Report on Form 10-K for the year ended December 26, 2009. Under the new operating structure, our reportable operating segments will include the PC Client Group and Data Center Group. The PC Client Group will include our mobile and desktop products and the Data Center Group will include our server and workstation products.

We believe the trend of mobile microprocessor unit growth outpacing the growth in desktop microprocessor units will continue. We believe that the demand for mobile microprocessors will result in the increased development of products with form factors and uses that require low-power microprocessors. We also believe that these products will result in demand that is incremental to that of microprocessors designed for notebook and desktop computers, as a growing number of households have multiple devices for different computing functions. Our silicon and manufacturing technology leadership allows us to develop low-power microprocessors for these and other new uses and form factors. We believe that Intel Atom processors give us the ability to extend Intel architecture and drive growth in new market segments, including a growing number of products that require processors specifically designed for embedded devices, handhelds, consumer electronics devices, nettops, and netbooks. We also believe that our Intel Atom Developer Program, which we expect to spur new applications that run on products using Intel Atom processors, will expedite our growth strategy in these new market segments. We believe that the common elements for products in these new market segments are low power consumption and the ability to access the Internet.

To meet the demands of new and evolving mobile, consumer electronics, and various embedded market segments, we also offer, and are continuing to develop, System on Chip (SoC) products that integrate the core processing functionality of our Intel Atom processors with specific components, such as graphics, audio, and video, onto a single chip. This integration reduces cost, power consumption, and size. We are collaborating with Taiwan Semiconductor Manufacturing Company, Ltd. (TSMC), a large semiconductor foundry, in an effort to broaden the market opportunities for Intel Atom processors in SoC products by integrating our Intel Atom processor cores with TSMC's process technology platform.

We are also focusing on the development of a new highly scalable, many-core architecture aimed at parallel processing, the simultaneous use of multiple cores to execute a computing task. This architecture will initially be used in developing discrete graphics processors designed for gaming and media creation. Over time, this architecture may be utilized in the development of products for scientific and professional workstations as well as high-performance computing applications.

## MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (Continued)

### Critical Accounting Estimates

The methods, estimates, and judgments that we use in applying our accounting policies have a significant impact on the results that we report in our financial statements. Some of our accounting policies require us to make difficult and subjective judgments, often as a result of the need to make estimates regarding matters that are inherently uncertain. Our most critical accounting estimates include:

- the valuation of non-marketable equity investments and the determination of other-than-temporary impairments, which impact gains (losses) on equity method investments, net, or gains (losses) on other equity investments, net when we record impairments;
- the valuation of investments in debt instruments and the determination of other-than-temporary impairments, which impact our investment portfolio balance when we assess fair value, and interest and other, net when we record other-than-temporary impairments of available-for-sale debt instruments within earnings;
- the assessment of recoverability of long-lived assets, which primarily impacts gross margin or operating expenses when we record asset impairments or accelerate their depreciation;
- the recognition and measurement of current and deferred income taxes (including the measurement of uncertain tax positions), which impact our provision for taxes; and
- the valuation of inventory, which impacts gross margin.

Below, we discuss these policies further, as well as the estimates and judgments involved. We also have other policies that we consider key accounting policies, such as those for revenue recognition, including the deferral of revenue on sales to distributors; however, these policies typically do not require us to make estimates or judgments that are difficult or subjective.

### Non-Marketable Equity Investments

The carrying value of our non-marketable equity investment portfolio, excluding equity derivatives, totaled \$3.5 billion as of September 26, 2009 (\$4.1 billion as of December 27, 2008). The majority of this balance as of September 26, 2009 was concentrated in companies in the flash memory market segment. Our flash memory market segment investments include our investment in IM Flash Technologies, LLC (IMFT) of \$1.4 billion (\$1.7 billion as of December 27, 2008), our investment in IM Flash Singapore, LLP (IMFS) of \$305 million (\$329 million as of December 27, 2008), and our investment in Numonyx B.V. of \$438 million (\$484 million as of December 27, 2008). In addition, we regularly invest in non-marketable equity instruments of private companies, which range from early-stage companies that are often still defining their strategic direction to more mature companies with established revenue streams and business models. For additional information, see "Note 10: Equity Method Investments" in the Notes to Consolidated Condensed Financial Statements of this Form 10-Q.

Our non-marketable equity investments are recorded using adjusted cost basis or the equity method of accounting, depending on the facts and circumstances of each investment. Our non-marketable equity investments are classified in other long-term assets on the consolidated condensed balance sheets.

Non-marketable equity investments are inherently risky, and a number of the companies in which we invest are likely to fail. Their success is dependent on product development, market acceptance, operational efficiency, and other key business factors. Depending on their future prospects, the companies may not be able to raise additional funds when the funds are needed or they may receive lower valuations, with less favorable investment terms than in previous financings, and our investments would likely become impaired. Additionally, financial markets and credit markets are volatile, which could negatively affect the prospects of the companies we invest in, their ability to raise additional capital, and the likelihood of our being able to realize value in our investments through liquidity events such as initial public offerings, mergers, and private sales. For further information about our investment portfolio risks, see "Risk Factors" in Part II, Item 1A of this Form 10-Q.

We measure the fair value of our non-marketable equity investments quarterly for disclosure purposes; however, the investments are only recorded at fair value when an impairment charge is recognized. For non-marketable equity investments, the measurement of fair value requires significant judgment and includes quantitative and qualitative analysis of events or circumstances identified that impact the fair value of the investment, including:

- the investee's revenue and earnings trends relative to predefined milestones and overall business prospects;
- the technological feasibility of the investee's products and technologies;
- the general market conditions in the investee's industry or geographic area, including adverse regulatory or economic changes;
- factors related to the investee's ability to remain in business, such as the investee's liquidity, debt ratios, and the rate at which the investee is using its cash; and
- the investee's receipt of additional funding at a lower valuation.

## MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (Continued)

If the fair value of an investment is below our carrying value, we determine if the investment is other than temporarily impaired based on our qualitative and quantitative analysis, which includes assessing the severity and duration of the impairment. If the investment is considered to be other than temporarily impaired, we write down the investment to its fair value. With the exception of Clearwire Communications, LLC (Clearwire LLC), the fair value of our non-marketable investments are classified as Level 3 when impaired, as we use unobservable inputs to the valuation methodology that are significant to the fair value measurement, and the valuation requires management judgment due to the absence of quoted market prices and inherent lack of liquidity. If impaired, the fair value of our investment in Clearwire LLC would be classified as Level 2, as the unobservable inputs to the valuation methodology would not be significant to the fair value measurement.

Impairments of non-marketable equity investments were \$50 million in the third quarter of 2009 (\$168 million in the first nine months of 2009). Over the past 12 quarters, including the third quarter of 2009, impairments of non-marketable equity investments have ranged from \$11 million to \$896 million per quarter. This range includes impairments of \$896 million during the fourth quarter of 2008, which were primarily related to a \$762 million impairment charge on our investment in Clearwire LLC.

The following is a discussion of the methods, estimates, and judgments that management uses in our analysis to determine if our non-marketable equity investments are other than temporarily impaired.

### *IMFT/IMFS*

IMFT and IMFS are variable interest entities that are designed to manufacture and sell NAND products to Intel and Micron Technology, Inc. at manufacturing cost. Our NAND Solutions Group operating segment purchases 49% of these NAND products from IMFT and sells them to our customers. As a result, we generate cash flows from these investments and our intangible assets related to the NAND product designs through our NAND Solutions Group business. Therefore, we determine the fair value of our investments in IMFT and IMFS using the income approach, based on a weighted average of multiple discounted cash flow scenarios of our NAND Solutions Group business.

The discounted cash flow scenarios require the use of unobservable inputs, including assumptions of projected revenues (based on expectations for product volume, product mix, and average selling prices), expenses, capital spending, and other costs, as well as a discount rate. Estimates of projected revenues, expenses, capital spending, and other costs are developed by IMFT, IMFS, and Intel using historical data and available market data. Management also determines how multiple discounted cash flow scenarios are weighted in the fair value determination. Additionally, the development of several inputs used in our income model (such as discount rate) requires the selection of comparable companies within the NAND flash memory market segment. The selection of comparable companies requires management judgment and is based on a number of factors, including NAND products and services lines within the flash memory market segment, comparable companies' sizes, growth rates, and other relevant factors.

Changes in management estimates to the unobservable inputs would change the fair value of the investments. The estimates for projected revenue and discount rate are the assumptions that most significantly affect the fair value determination. We did not have an other-than-temporary impairment on our investments in IMFT and IMFS in the first nine months of 2009 or the first nine months of 2008. It is reasonably possible that the estimates used in the fair value determination could change in the near term and result in an impairment of our investments.

### *Numonyx*

We determine the fair value of our investment in Numonyx using a combination of the income approach and the market approach. The income approach includes the use of a weighted average of multiple discounted cash flow scenarios of Numonyx, which requires the use of unobservable inputs, including assumptions of projected revenues, expenses, capital spending, and other costs, as well as a discount rate calculated based on the risk profile of the flash memory market segment comparable to our investment in Numonyx. Estimates of projected revenues, expenses, capital spending, and other costs are developed by Numonyx and Intel. The market approach includes using financial metrics and ratios of comparable public companies, such as projected revenues, earnings, and comparable performance multiples. The selection of comparable companies used in the market approach requires management judgment and is based on a number of factors, including NOR products and services lines within the flash memory market segment, comparable companies' sizes, growth rates, and other relevant factors.



## MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (Continued)

Changes in management estimates to the unobservable inputs in our valuation models would change the fair value of the investment. The estimated projected revenue is the assumption that most significantly affects the fair value determination. Management judgment is also involved in determining how the income approach and the market approach are weighted in the fair value determination. We did not have an other-than-temporary impairment on our investment in Numonyx in the first nine months of 2009. We recorded a \$250 million impairment charge on our investment in Numonyx during the third quarter of 2008 to write down our investment to its fair value. Estimates for revenue, earnings, and future cash flows were revised lower due to a general decline in the NOR flash memory market segment. It is reasonably possible that the estimates used in the fair value determination could change in the near term and result in an additional impairment of our investment.

### *Other Non-Marketable Equity Investments*

We determine the fair value of these non-marketable equity investments using the market approach and/or the income approach. The market approach includes the use of financial metrics and ratios of comparable public companies. The selection of comparable companies requires management judgment and is based on a number of factors, including comparable companies' sizes, growth rates, industries, development stages, and other relevant factors. The income approach includes the use of a discounted cash flow model, which requires the following significant estimates for the investee: revenue, based on assumed market segment size and assumed market segment share; estimated costs; and appropriate discount rates based on the risk profile of comparable companies. Estimates of market segment size, market segment share, and costs are developed by the investee and/or Intel using historical data and available market data. The valuation of our other non-marketable investments also takes into account movements of the public equity and venture capital markets, recent financing activities by the investees, changes in the interest rate environment, the investee's capital structure, differences in seniority and preferences for instruments issued by investees, and other economic variables.

### *Investments in Debt Instruments*

#### *Fair Value*

The assessment of the fair value of debt instruments can be difficult and subjective. Changes occurring in financial markets can lead to changes in the fair value of financial instruments in relatively short periods of time. There are three levels of inputs that may be used to measure fair value (see "Note 4: Fair Value" in the Notes to Consolidated Condensed Financial Statements of this Form 10-Q). Each level of input has different levels of subjectivity and difficulty involved in determining fair value.

Level 1 instruments represent quoted prices in active markets. Therefore, determining fair value for Level 1 instruments does not require significant management judgment, and the estimation is not difficult.

Level 2 instruments include observable inputs other than Level 1 prices, such as quoted prices for identical instruments in markets with insufficient volume or infrequent transactions (less active markets), issuer credit ratings, non-binding market consensus prices that can be corroborated with observable market data, model-derived valuations in which all significant inputs are observable or can be derived principally from or corroborated with observable market data for substantially the full term of the assets or liabilities, or quoted prices for similar assets or liabilities. These Level 2 instruments require more management judgment and subjectivity compared to Level 1 instruments, including:

- Determining which instruments are most similar to the instrument being priced requires management to identify a sample of similar securities based on the coupon rates, maturity, issuer, credit rating, and instrument type, and subjectively select an individual security or multiple securities that are deemed most similar to the security being priced.
- Determining whether a market is considered active requires management judgment. Our assessment of an active market for our marketable debt instruments generally takes into consideration activity during each week of the one-month period prior to the valuation date of each individual instrument, including the number of days each individual instrument trades and the average weekly trading volume in relation to the total outstanding amount of the issued instrument.
- Determining which model-derived valuations to use in determining fair value requires management judgment. When observable market prices for identical securities or similar securities are not available, we price our marketable debt instruments using non-binding market consensus prices that are corroborated with observable market data or pricing models, such as discounted cash flow models, with all significant inputs derived from or corroborated with observable market data.

## MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (Continued)

Level 3 instruments include unobservable inputs to the valuation methodology that are significant to the measurement of fair value of assets or liabilities. The determination of fair value for Level 3 instruments requires the most management judgment and subjectivity. Most of our marketable debt instruments classified as Level 3 are valued using a non-binding market consensus price or a non-binding broker quote, both of which we corroborate with unobservable data. Non-binding market consensus prices are based on the proprietary valuation models of pricing providers or brokers. These valuation models incorporate a number of inputs, including non-binding and binding broker quotes; observable market prices for identical and/or similar securities; and the internal assumptions of pricing providers or brokers that use observable market inputs, and to a lesser degree non-observable market inputs. Adjustments to the fair value of instruments priced using non-binding market consensus prices and non-binding broker quotes, and classified as Level 3, were not significant in the third quarter of 2009.

### *Other-Than-Temporary Impairment*

After determining the fair value of our available-for-sale debt instruments, gains or losses on these investments are recorded to other comprehensive income (loss), until either the investment is sold or we determine that the decline in value is other-than-temporary. Determining whether the decline in fair value is other-than-temporary requires management judgment based on the specific facts and circumstances of each investment. For investments in debt instruments, these judgments primarily consider the financial condition and liquidity of the issuer, the issuer's credit rating, and any specific events that may cause us to believe that the debt instrument will not mature and be paid in full; if we have the intent to sell the investment; and if it is more likely than not that we will be required to sell an investment that has unrealized losses in accumulated other comprehensive income before we recover the amortized cost basis. Given changing market conditions, we may recognize other-than-temporary impairments on these investments in the future.

For available-for-sale debt instruments that are considered other-than-temporarily impaired and that we do not intend to sell and will not be required to sell prior to recovery of our amortized cost basis, we separate the amount of the impairment into the amount that is credit related and the amount due to all other factors. The credit loss component is recognized in earnings and is the difference between the debt instrument's amortized cost basis and the present value of its expected future cash flows. The remaining difference between the debt instrument's fair value and the present value of future expected cash flows is due to factors that are not credit related and is recognized in other comprehensive income.

As of September 26, 2009, our investments included \$12.2 billion of available-for-sale debt instruments. We have recognized less than \$55 million of credit-related other-than-temporary impairment losses in earnings on our available-for-sale debt instruments cumulatively since the beginning of 2008. As of September 26, 2009, our cumulative unrealized losses related to debt instruments classified as available-for-sale were approximately \$90 million (approximately \$215 million as of December 27, 2008). As of September 26, 2009, this amount included approximately \$35 million of unrecognized losses that could be recognized in the future.

### *Long-Lived Assets*

We assess the impairment of long-lived assets when events or changes in circumstances indicate that the carrying value of the assets or the asset grouping may not be recoverable. Factors that we consider in deciding when to perform an impairment review include significant under-performance of a business or product line in relation to expectations, significant negative industry or economic trends, and significant changes or planned changes in our use of the assets. We measure the recoverability of assets that will continue to be used in our operations by comparing the carrying value of the asset grouping to our estimate of the related total future undiscounted net cash flows. If an asset grouping's carrying value is not recoverable through the related undiscounted cash flows, the asset grouping is considered to be impaired. The impairment is measured by comparing the difference between the asset grouping's carrying value and its fair value. Fair value is the price that would be received from selling an asset in an orderly transaction between market participants at the measurement date. Long-lived assets such as goodwill; intangible assets; and property, plant and equipment are considered non-financial assets, and are recorded at fair value only when an impairment charge is recognized.

Impairments of long-lived assets are determined for groups of assets related to the lowest level of identifiable independent cash flows. Due to our asset usage model and the interchangeable nature of our semiconductor manufacturing capacity, we must make subjective judgments in determining the independent cash flows that can be related to specific asset groupings. In addition, as we make manufacturing process conversions and other factory planning decisions, we must make subjective judgments regarding the remaining useful lives of assets, primarily process-specific semiconductor manufacturing tools and building improvements. When we determine that the useful lives of assets are shorter than we had originally estimated, we accelerate the rate of depreciation over the assets' new, shorter useful lives. Over the past 12 quarters, including the third quarter of 2009, impairments and accelerated depreciation of long-lived assets ranged from \$40 million to \$320 million per quarter. For further discussion on asset impairment charges, see "Note 17: Restructuring and Asset Impairment Charges" in the Notes to Consolidated Condensed Financial Statements of this Form 10-Q.

## MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (Continued)

### *Income Taxes*

We must make certain estimates and judgments in determining income tax expense for financial statement purposes. These estimates and judgments occur in the calculation of tax credits, benefits, and deductions, and in the calculation of certain tax assets and liabilities, which arise from differences in the timing of recognition of revenue and expense for tax and financial statement purposes, as well as the interest and penalties related to uncertain tax positions. Significant changes to these estimates may result in an increase or decrease to our tax provision in a subsequent period.

We must assess the likelihood that we will be able to recover our deferred tax assets. If recovery is not likely, we must increase our provision for taxes by recording a valuation allowance against the deferred tax assets that we estimate will not ultimately be recoverable. We believe that we will ultimately recover a majority of the deferred tax assets recorded on our consolidated condensed balance sheets. However, should there be a change in our ability to recover our deferred tax assets, our tax provision would increase in the period in which we determined that the recovery was not likely. Changes in management's plans with respect to holding or disposing of investments could affect our future provision for taxes.

The calculation of our tax liabilities involves dealing with uncertainties in the application of complex tax regulations. We recognize liabilities for uncertain tax positions based on a two-step process. The first step is to evaluate the tax position for recognition by determining if the weight of available evidence indicates that it is more likely than not that the position will be sustained on audit, including resolution of related appeals or litigation processes, if any. If we determine that a tax position will more likely than not be sustained on audit, the second step requires us to estimate and measure the tax benefit as the largest amount that is more than 50% likely to be realized upon ultimate settlement. It is inherently difficult and subjective to estimate such amounts, as we have to determine the probability of various possible outcomes. We reevaluate these uncertain tax positions on a quarterly basis. This evaluation is based on factors including, but not limited to, changes in facts or circumstances, changes in tax law, effectively settled issues under audit, and new audit activity. Our gross unrecognized tax benefits were \$377 million as of September 26, 2009. It is reasonably possible that the balance of gross unrecognized tax benefits could significantly change in the next 12 months. Such a change in recognition or measurement would result in the recognition of a tax benefit or an additional charge to the tax provision. Given the number of years remaining subject to examination and the number of matters being examined, we are unable to estimate the full range of possible adjustments to the balance of gross unrecognized tax benefits. However, we can reasonably expect a minimum reduction of approximately \$200 million of our existing gross unrealized tax benefits upon settlement or effective settlement with the various tax authorities, the closure of certain audits, and the lapse of statute of limitations within the next 12 months.

### *Inventory*

The valuation of inventory requires us to estimate obsolete or excess inventory as well as inventory that is not of saleable quality. The determination of obsolete or excess inventory requires us to estimate the future demand for our products. The estimate of future demand is compared to work in process and finished goods inventory levels to determine the amount, if any, of obsolete or excess inventory. As of September 26, 2009, we had total work-in-process inventory of \$1,072 million and total finished goods inventory of \$1,020 million. The demand forecast is included in the development of our short-term manufacturing plans to enable consistency between inventory valuation and build decisions. Product-specific facts and circumstances reviewed in the inventory valuation process include a review of the customer base, the stage of the product life cycle of our products, consumer confidence, and customer acceptance of our products, as well as an assessment of the selling price in relation to the product cost. If our demand forecast for specific products is greater than actual demand and we fail to reduce manufacturing output accordingly, or if we fail to forecast the demand accurately, we could be required to write off inventory, which would negatively impact our gross margin. In order to determine what costs can be included in the valuation of inventory we must determine normal capacity at our manufacturing and assembly and test facilities. If the factory loadings are below normal capacity a portion of our manufacturing overhead costs will not be included in the cost of inventory, and therefore, will be recognized as cost of sales in that period, which negatively impacts our gross margin.

### **Accounting Changes and Recent Accounting Standards**

For a description of accounting changes and recent accounting standards, including the expected dates of adoption and estimated effects, if any, on our consolidated condensed financial statements, see "Note 2: Accounting Changes" and "Note 3: Recent Accounting Standards" in the Notes to Consolidated Condensed Financial Statements of this Form 10-Q.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (Continued)

Results of Operations - Third Quarter of 2009 Compared to Third Quarter of 2008

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

(Dollars in Millions, Except Per Share Amounts)	Q3 2009		Q3 2008	
	Dollars	% of Net Revenue	Dollars	% of Net Revenue
<b>Net revenue</b>	<b>\$ 9,389</b>	<b>100.0%</b>	<b>\$ 10,217</b>	<b>100.0%</b>
Cost of sales	3,985	42.4%	4,198	41.1%
<b>Gross margin</b>	<b>5,404</b>	<b>57.6%</b>	<b>6,019</b>	<b>58.9%</b>
Research and development	1,430	15.2%	1,471	14.4%
Marketing, general and administrative	1,320	14.1%	1,415	13.9%
Restructuring and asset impairment charges	63	0.7%	34	0.3%
Amortization of acquisition-related intangibles and costs	12	0.1%	1	—%
<b>Operating income</b>	<b>2,579</b>	<b>27.5%</b>	<b>3,098</b>	<b>30.3%</b>
Gains (losses) on equity method investments, net	(59)	(0.6)%	(365)	(3.6)%
Gains (losses) on other equity investments, net	(20)	(0.2)%	(31)	(0.3)%
Interest and other, net	32	0.3%	131	1.3%
<b>Income before taxes</b>	<b>2,532</b>	<b>27.0%</b>	<b>2,833</b>	<b>27.7%</b>
Provision for taxes	676	7.2%	819	8.0%
<b>Net income</b>	<b>\$ 1,856</b>	<b>19.8%</b>	<b>\$ 2,014</b>	<b>19.7%</b>
<b>Diluted earnings per common share</b>	<b>\$ 0.33</b>		<b>\$ 0.35</b>	

The following table sets forth information of geographic regions for the periods indicated:

(Dollars In Millions)	Q3 2009		Q3 2008	
	Revenue	% of Total	Revenue	% of Total
Asia-Pacific	\$ 5,322	57%	\$ 5,389	53%
Americas	1,822	19%	1,887	19%
Europe <sup>1</sup>	1,328	14%	1,883	18%
Japan	917	10%	1,058	10%
<b>Total</b>	<b>\$ 9,389</b>	<b>100%</b>	<b>\$ 10,217</b>	<b>100%</b>

<sup>1</sup> Region includes Europe, the Middle East, and Africa.

Our net revenue for Q3 2009 decreased 8% compared to Q3 2008. The majority of our microprocessor and chipset products had unit sale decreases compared to Q3 2008. However, with the ramp of Intel Atom processors and chipsets, overall microprocessor and chipset units were flat. Average selling prices for microprocessors and chipsets decreased compared to Q3 2008 primarily due to the ramp of Intel Atom processors and chipsets, which generally have lower average selling prices than our other microprocessor and chipset products. In addition, a decrease in average selling prices for microprocessors within the Mobility Group operating segment was partially offset by an increase in average selling prices for enterprise microprocessors within the Digital Enterprise Group operating segment. Declines in revenue from the sale of communication products, primarily as a result of prior divestitures, and from the sale of wireless connectivity products were offset by an increase in revenue from the sale of NAND flash memory products.

Revenue in the Europe, Japan, and Americas regions decreased by 29%, 13%, and 3%, respectively compared to Q3 2008, while revenue in the Asia-Pacific region was flat compared to Q3 2008.

Our overall gross margin dollars for Q3 2009 decreased \$615 million, or 10%, compared to Q3 2008. Our overall gross margin percentage decreased to 57.6% in Q3 2009, from 58.9% in Q3 2008. The decrease in gross margin percentage was primarily attributable to the gross margin percentage decrease in the Mobility Group operating segment. This was partially offset by the gross margin percentage increase in the NAND Solutions Group operating segment. We derived the substantial majority of our overall gross margin dollars in Q3 2009 and most of our overall gross margin dollars in Q3 2008 from the sales of microprocessors in the Digital Enterprise Group and Mobility Group operating segments. See "Business Outlook" for a discussion of gross margin expectations.

**MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (Continued)****Digital Enterprise Group**

The revenue and operating income for the Digital Enterprise Group (DEG) operating segment for Q3 2009 and Q3 2008 were as follows:

<u>(In Millions)</u>	<u>Q3 2009</u>	<u>Q3 2008</u>
Microprocessor revenue	\$ 3,873	\$ 4,069
Chipset, motherboard, and other revenue	1,040	1,249
<b>Net revenue</b>	<b>\$ 4,913</b>	<b>\$ 5,318</b>
<b>Operating income</b>	<b>\$ 1,512</b>	<b>\$ 1,766</b>

Net revenue for the DEG operating segment decreased by \$405 million, or 8%, in Q3 2009 compared to Q3 2008. Microprocessors within DEG include microprocessors designed for the desktop and enterprise computing market segments as well as embedded microprocessors. The decrease in microprocessor revenue was primarily due to lower unit sales. Higher enterprise average selling prices were partially offset by lower desktop average selling prices. The decrease in chipset, motherboard, and other revenue was due to lower chipset average selling prices, lower revenue from the sale of communications products, and to a lesser extent, lower motherboard unit sales.

Operating income decreased by \$254 million, or 14%, in Q3 2009 compared to Q3 2008. The decrease in operating income was primarily due to lower revenue. In addition, during the third quarter of 2009 we recorded approximately \$60 million of factory underutilization charges, primarily relating to microprocessors.

**Mobility Group**

The revenue and operating income for the Mobility Group (MG) operating segment for Q3 2009 and Q3 2008 were as follows:

<u>(In Millions)</u>	<u>Q3 2009</u>	<u>Q3 2008</u>
Microprocessor revenue	\$ 2,924	\$ 3,387
Chipset and other revenue	1,207	1,294
<b>Net revenue</b>	<b>\$ 4,131</b>	<b>\$ 4,681</b>
<b>Operating income</b>	<b>\$ 1,350</b>	<b>\$ 1,851</b>

Net revenue for the MG operating segment decreased by \$550 million, or 12%, in Q3 2009 compared to Q3 2008. The decrease in microprocessor revenue was due to lower microprocessor average selling prices, partially offset by higher microprocessor unit sales. The increase in unit sales and a significant portion of the decrease in average selling prices were due to the ramp of Intel Atom processors. The decrease in chipset and other revenue was primarily due to lower revenue from the sale of wireless connectivity products.

Operating income decreased by \$501 million, or 27%, in Q3 2009 compared to Q3 2008. The decrease was primarily due to lower microprocessor revenue. In addition, inventory write-offs of our new 32nm microprocessor products not yet qualified for sale and approximately \$70 million of factory underutilization charges recorded during the third quarter of 2009 decreased our operating income. These decreases were primarily offset by lower chipset unit costs and lower operating expenses.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (Continued)

*Operating Expenses*

Operating expenses for Q3 2009 and Q3 2008 were as follows:

<u>(In Millions)</u>	<u>Q3 2009</u>	<u>Q3 2008</u>
Research and development	\$ 1,430	\$ 1,471
Marketing, general and administrative	\$ 1,320	\$ 1,415
Restructuring and asset impairment charges	\$ 63	\$ 34
Amortization of acquisition-related intangibles and costs	\$ 12	\$ 1

*Research and Development.* R&D spending decreased slightly by \$41 million, or 3%, in Q3 2009 compared to Q3 2008 primarily due to lower product development costs.

*Marketing, General and Administrative.* Marketing, general and administrative expenses decreased \$95 million, or 7%, in Q3 2009 compared to Q3 2008. Advertising expenses, including cooperative advertising expenses, were lower in Q3 2009 compared to Q3 2008. This was partially offset by expenses related to our Wind River Software Group operating segment.

R&D, combined with marketing, general and administrative expenses, were 29% of net revenue in Q3 2009 (28% of net revenue in Q3 2008).

*Restructuring and Asset Impairment Charges.* The following table summarizes restructuring and asset impairment charges by plan for Q3 2009 and Q3 2008:

<u>(In Millions)</u>	<u>Q3 2009</u>	<u>Q3 2008</u>
2009 restructuring program	\$ 63	\$ —
2006 efficiency program	—	34
<b>Total restructuring and asset impairment charges</b>	<b>\$ 63</b>	<b>\$ 34</b>

See Management's Discussion and Analysis of Financial Condition and Results of Operations "First nine months of 2009 compared to first nine months of 2008" of this Form 10-Q for further discussion.

*Amortization of acquisition-related intangibles and costs.* The increase of \$11 million was due to amortization of intangibles and costs related to the acquisition of Wind River completed in the third quarter of 2009. See "Note 14: Acquisitions" in the Notes to Consolidated Condensed Financial Statements of this Form 10-Q.

*Gains (Losses) on Equity Method Investments, Net*

Gains (losses) on equity method investments, net were as follows:

<u>(In Millions)</u>	<u>Q3 2009</u>	<u>Q3 2008</u>
Equity method losses, net	\$ (41)	\$ (120)
Impairment charges	(19)	(257)
Other, net	1	12
<b>Total gains (losses) on equity method investments, net</b>	<b>\$ (59)</b>	<b>\$ (365)</b>

We recognized lower impairment charges and lower equity method losses in Q3 2009 compared to Q3 2008. Impairment charges in Q3 2008 were primarily related to a \$250 million impairment charge recognized on our investment in Numonyx. Equity method losses were lower in Q3 2009 compared to Q3 2008 primarily due to approximately \$60 million of lower losses related to Numonyx.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (Continued)

*Gains (Losses) on Other Equity Investments, Net*

Gains (losses) on other equity investments, net were as follows:

<u>(In Millions)</u>	<u>Q3 2009</u>	<u>Q3 2008</u>
Impairment charges	\$ (31)	\$ (55)
Gains on sales	6	15
Other, net	5	9
<b>Total gains (losses) on other equity investments, net</b>	<b>\$ (20)</b>	<b>\$ (31)</b>

We recognized lower impairment charges on marketable equity securities in Q3 2009 compared to Q3 2008, partially offset by higher impairment charges on our non-marketable equity investments and lower gains on sales. Impairment charges in the third quarter of 2008 included a \$25 million impairment charge on our investment in Micron.

*Interest and Other, Net*

The components of interest and other, net were as follows:

<u>(In Millions)</u>	<u>Q3 2009</u>	<u>Q3 2008</u>
Interest income	\$ 34	\$ 126
Interest expense	—	—
Other, net	(2)	5
<b>Total interest and other, net</b>	<b>\$ 32</b>	<b>\$ 131</b>

We recognized lower interest income in Q3 2009 compared to Q3 2008 due to lower interest rates. The average interest rate earned during Q3 2009 decreased by approximately 2.3 percentage points compared to Q3 2008. Lower gains on divestitures (none in Q3 2009 and \$20 million in Q3 2008) were mostly offset by lower fair value losses on our trading assets.

*Provision for Taxes*

Our provision for taxes and effective tax rate were as follows:

<u>(Dollars in Millions)</u>	<u>Q3 2009</u>	<u>Q3 2008</u>
Income before taxes	\$ 2,532	\$ 2,833
Provision for taxes	\$ 676	\$ 819
Effective tax rate	26.7%	28.9%

The effective tax rate for Q3 2009 was positively impacted by a higher percentage of our profits being derived from lower-tax jurisdictions compared to Q3 2008 and the U.S R&D income tax credit that was reinstated in Q4 2008. The Q3 2009 effective tax rate was negatively impacted by adjustments for differences between our finalized tax return and the provision recorded, and other adjustments to tax provisions from prior years, which were partially offset by settlements and effective settlements of various uncertain tax positions.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (Continued)

Results of Operations - First Nine Months of 2009 Compared to First Nine Months of 2008

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

(Dollars in Millions, Except Per Share Amounts)	YTD 2009		YTD 2008	
	Dollars	% of Net Revenue	Dollars	% of Net Revenue
<b>Net revenue</b>	<b>\$ 24,558</b>	<b>100.0%</b>	<b>\$ 29,360</b>	<b>100.0%</b>
Cost of sales	11,837	48.2%	12,885	43.9%
<b>Gross margin</b>	<b>12,721</b>	<b>51.8%</b>	<b>16,475</b>	<b>56.1%</b>
Research and development	4,050	16.5%	4,406	15.0%
Marketing, general and administrative	5,213	21.2%	4,191	14.3%
Restructuring and asset impairment charges	228	0.9%	459	1.5%
Amortization of acquisition-related intangibles and costs	16	0.1%	4	—%
<b>Operating income</b>	<b>3,214</b>	<b>13.1%</b>	<b>7,415</b>	<b>25.3%</b>
Gains (losses) on equity method investments, net	(175)	(0.7)%	(460)	(1.6)%
Gains (losses) on other equity investments, net	(86)	(0.3)%	(104)	(0.4)%
Interest and other, net	158	0.6%	466	1.6%
<b>Income before taxes</b>	<b>3,111</b>	<b>12.7%</b>	<b>7,317</b>	<b>24.9%</b>
Provision for taxes	1,024	4.2%	2,259	7.7%
<b>Net income</b>	<b>\$ 2,087</b>	<b>8.5%</b>	<b>\$ 5,058</b>	<b>17.2%</b>
<b>Diluted earnings per common share</b>	<b>\$ 0.37</b>		<b>\$ 0.87</b>	

The following table sets forth information of geographic regions for the periods indicated:

(Dollars In Millions)	YTD 2009		YTD 2008	
	Revenue	% of Total	Revenue	% of Total
Asia-Pacific	\$ 13,378	54%	\$ 14,982	51%
Americas	5,030	21%	5,888	20%
Europe <sup>1</sup>	3,754	15%	5,487	19%
Japan	2,396	10%	3,003	10%
<b>Total</b>	<b>\$ 24,558</b>	<b>100%</b>	<b>\$ 29,360</b>	<b>100%</b>

<sup>1</sup> Region includes Europe, the Middle East, and Africa.

Our net revenue for the first nine months of 2009 decreased 16% compared to the first nine months of 2008. The majority of our microprocessor and chipset products had unit sale decreases compared to the first nine months of 2008. However, the ramp of Intel Atom processors and chipsets offset the majority of the decrease in overall microprocessor and chipset units. In addition, average selling prices for microprocessors and chipsets decreased compared to the first nine months of 2008 due to the ramp of Intel Atom processors and chipsets, which generally have lower average selling prices than our other microprocessor and chipset products. Revenue from the sale of NOR flash memory products and communication products declined approximately \$660 million, primarily as a result of the divestiture of these businesses. Additionally, revenue from the sale of wireless connectivity products declined.

Revenue in the Europe, Japan, Americas, and Asia-Pacific regions decreased by 32%, 20%, 15%, and 11%, respectively compared to the first nine months of 2008.

Our overall gross margin dollars for the first nine months of 2009 decreased \$3.8 billion, or 23%, compared to the first nine months of 2008. Our overall gross margin percentage decreased to 51.8% in the first nine months of 2009, from 56.1% in the first nine months of 2008. The decrease in gross margin percentage was primarily attributable to the gross margin percentage decrease in the Mobility Group and Digital Enterprise Group operating segments. This was partially offset by the gross margin percentage increase in the NAND Solutions Group operating segment. We derived most of our overall gross margin dollars in the first nine months of 2009 and 2008 from the sales of microprocessors in the Digital Enterprise Group and Mobility Group operating segments. See "Business Outlook" for a discussion of gross margin expectations.

The results for the first nine months of 2009 include a charge of \$1.447 billion incurred as a result of the fine imposed by the European Commission (see "Note 24: Contingencies" in the Notes to Consolidated Condensed Financial Statements of this Form 10-Q). The charge is included as part of marketing, general and administrative expense.



## MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (Continued)

### Digital Enterprise Group

The revenue and operating income for the Digital Enterprise Group (DEG) operating segment for the first nine months of 2009 and the first nine months of 2008 were as follows:

<u>(In Millions)</u>	<u>YTD 2009</u>	<u>YTD 2008</u>
Microprocessor revenue	\$ 10,549	\$ 12,413
Chipset, motherboard, and other revenue	2,677	3,719
<b>Net revenue</b>	<b>\$ 13,226</b>	<b>\$ 16,132</b>
<b>Operating income</b>	<b>\$ 3,115</b>	<b>\$ 5,238</b>

Net revenue for the DEG operating segment decreased by \$2.9 billion, or 18%, in the first nine months of 2009 compared to the first nine months of 2008. Microprocessors within DEG include microprocessors designed for the desktop and enterprise computing market segments as well as embedded microprocessors. The decrease in microprocessor revenue was primarily due to lower unit sales. Total average selling prices within the DEG operating segment were flat as higher enterprise average selling prices were offset by both lower desktop average selling prices and a lower mix of enterprise microprocessor units. The decrease in chipset, motherboard, and other revenue was due to lower chipset unit sales and average selling prices, and to a lesser extent, lower revenue from the sale of communications products and lower motherboard unit sales.

Operating income decreased by \$2.1 billion, or 41%, in the first nine months of 2009 compared to the first nine months of 2008. The decrease in operating income was primarily due to the lower revenue. In addition, during the first nine months of 2009 we recorded approximately \$420 million of factory underutilization charges.

### Mobility Group

The revenue and operating income for the Mobility Group (MG) operating segment for the first nine months of 2009 and the first nine months of 2008 were as follows:

<u>(In Millions)</u>	<u>YTD 2009</u>	<u>YTD 2008</u>
Microprocessor revenue	\$ 7,666	\$ 8,855
Chipset and other revenue	2,860	3,292
<b>Net revenue</b>	<b>\$ 10,526</b>	<b>\$ 12,147</b>
<b>Operating income</b>	<b>\$ 2,413</b>	<b>\$ 4,269</b>

Net revenue for the MG operating segment decreased by \$1.6 billion, or 13%, in the first nine months of 2009 compared to the first nine months of 2008. The decrease in microprocessor revenue was primarily due to lower microprocessor average selling prices, partially offset by higher microprocessor unit sales. The increase in unit sales and a majority of the decrease in average selling prices were due to the ramp of Intel Atom processors. The decrease in chipset and other revenue was primarily due to lower unit sales of wireless connectivity products, and to a lesser extent, lower chipset average selling prices.

Operating income decreased by \$1.9 billion, or 43%, in the first nine months of 2009 compared to the first nine months of 2008. The decrease was primarily due to lower microprocessor and chipset revenue and approximately \$710 million of factory underutilization charges recorded during the first nine months of 2009. In addition, lower chipset and microprocessor unit costs were offset by approximately \$190 million of higher start-up costs as well as inventory write-offs of our new 32nm microprocessor products not yet qualified for sale.

### Operating Expenses

Operating expenses for the first nine months of 2009 and the first nine months of 2008 were as follows:

<u>(In Millions)</u>	<u>YTD 2009</u>	<u>YTD 2008</u>
Research and development	\$ 4,050	\$ 4,406
Marketing, general and administrative	\$ 5,213	\$ 4,191
Restructuring and asset impairment charges	\$ 228	\$ 459
Amortization of acquisition-related intangibles and costs	\$ 16	\$ 4

*Research and Development.* R&D spending decreased \$356 million, or 8%, in the first nine months of 2009 compared to the first nine months of 2008. This decrease was primarily due to lower process development costs as we transitioned from research and development to manufacturing using our 32nm manufacturing process technology.

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

*Marketing, General and Administrative.* Marketing, general and administrative expenses increased \$1.0 billion, or 24%, in the first nine months of 2009 compared to the first nine months of 2008. This increase was due to the Q2 2009 charge of \$1.447 billion incurred as a result of the fine imposed by the EC (see "Note 24: Contingencies" in the Notes to Consolidated Condensed Financial Statements of this Form 10-Q). This increase was partially offset by lower advertising expenses, including cooperative advertising expenses.

R&D, combined with marketing, general and administrative expenses, were 38% of net revenue in the first nine months of 2009 (29% of net revenue in the first nine months of 2008). The EC fine was 6% of net revenue in the first nine months of 2009.

*Restructuring and Asset Impairment Charges.* The following table summarizes restructuring and asset impairment charges by plan for the first nine months of 2009 and the first nine months of 2008:

<u>(In Millions)</u>	<u>YTD 2009</u>	<u>YTD 2008</u>
2009 restructuring program	\$ 212	\$ —
2006 efficiency program	16	459
<b>Total restructuring and asset impairment charges</b>	<b>\$ 228</b>	<b>\$ 459</b>

We may incur additional restructuring charges in the future for employee severance and benefit arrangements, and facility-related or other exit activities. Our outlook for the fourth quarter of 2009 is for additional restructuring and asset impairment charges of \$40 million.

**2009 Restructuring Program**

In the first quarter of 2009, management approved plans to restructure some of our manufacturing and assembly and test operations. These plans include closing two assembly and test facilities in Malaysia, one facility in the Philippines, and one facility in China; stopping production at a 200mm wafer fabrication facility in Oregon; and ending production at our 200mm wafer fabrication facility in California. Restructuring and asset impairment charges were as follows:

<u>(In Millions)</u>	<u>YTD 2009</u>	<u>YTD 2008</u>
Employee severance and benefit arrangements	\$ 205	\$ —
Asset impairment charges	7	—
<b>Total restructuring and asset impairment charges</b>	<b>\$ 212</b>	<b>\$ —</b>

The following table summarizes the restructuring and asset impairment activity for the 2009 restructuring program during the first nine months of 2009:

<u>(In Millions)</u>	<u>Employee Severance and Benefits</u>	<u>Asset Impairments</u>	<u>Total</u>
<b>Accrued restructuring balance as of December 27, 2008</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ —</b>
Additional accruals	208	7	215
Adjustments	(3)	—	(3)
Cash payments	(134)	—	(134)
Non-cash settlements	—	(7)	(7)
<b>Accrued restructuring balance as of September 26, 2009</b>	<b>\$ 71</b>	<b>\$ —</b>	<b>\$ 71</b>

We recorded the additional accruals, net of adjustments, as restructuring and asset impairment charges. The remaining accrual as of September 26, 2009 was related to severance benefits that are recorded within accrued compensation and benefits.

The net charges above include \$205 million that relate to employee severance and benefit arrangements for approximately 6,500 employees, of which 4,100 employees have left the company as of September 26, 2009. Most of these employee actions occurred within manufacturing.

We estimate that these employee severance and benefit charges will result in gross annual savings of approximately \$330 million. The substantial majority of these savings will be realized within cost of sales.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (Continued)

2006 Efficiency Program

In the third quarter of 2006, management approved several actions as part of a restructuring plan designed to improve operational efficiency and financial results. Restructuring and asset impairment charges were as follows:

<u>(In Millions)</u>	<u>YTD 2009</u>	<u>YTD 2008</u>
Employee severance and benefit arrangements	\$ 8	\$ 125
Asset impairment charges	8	334
<b>Total restructuring and asset impairment charges</b>	<b>\$ 16</b>	<b>\$ 459</b>

During Q1 2008, we incurred \$275 million in additional asset impairment charges related to assets that we sold in Q2 2008 in conjunction with the divestiture of our NOR flash memory business. We determined the impairment charges using the revised fair value of the equity and note receivable that we received upon completion of the divestiture, less selling costs. The lower fair value was primarily a result of a decline in the outlook for the flash memory market segment. We had previously incurred \$85 million in asset impairment charges in 2007 related to assets that we sold in Q2 2008 in conjunction with the divestiture of our NOR flash memory business. We determined the impairment charges based on the fair value, less selling costs, that we expected to receive upon completion of the divestiture.

The following table summarizes the restructuring and asset impairment activity for the 2006 efficiency program during the first nine months of 2009:

<u>(In Millions)</u>	<u>Employee Severance and Benefits</u>	<u>Asset Impairments</u>	<u>Total</u>
<b>Accrued restructuring balance as of December 27, 2008</b>	<b>\$ 57</b>	<b>\$ —</b>	<b>\$ 57</b>
Additional accruals	18	8	26
Adjustments	(10)	—	(10)
Cash payments	(65)	—	(65)
Non-cash settlements	—	(8)	(8)
<b>Accrued restructuring balance as of September 26, 2009</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ —</b>

We recorded the additional accruals, net of adjustments, as restructuring and asset impairment charges. The 2006 efficiency program is substantially complete as of September 26, 2009.

From Q3 2006 through Q3 2009, we incurred a total of \$1.6 billion in restructuring and asset impairment charges related to this plan. These charges included a total of \$686 million related to employee severance and benefit arrangements for approximately 11,300 employees, of which substantially all employees had left the company as of September 26, 2009. A substantial majority of these employee actions affected employees within manufacturing, information technology, and marketing. The restructuring and asset impairment charges also included \$896 million in asset impairment charges.

*Amortization of acquisition-related intangibles and costs.* The increase of \$12 million was due to amortization of intangibles and costs related to the acquisition of Wind River completed in the third quarter of 2009. See "Note 14: Acquisitions" in the Notes to Consolidated Condensed Financial Statements of this Form 10-Q.

**Gains (Losses) on Equity Method Investments, Net**

Gains (losses) on equity method investments, net were as follows:

<u>(In Millions)</u>	<u>YTD 2009</u>	<u>YTD 2008</u>
Equity method losses, net	\$ (144)	\$ (212)
Impairment charges	(32)	(261)
Other, net	1	13
<b>Total gains (losses) on equity method investments, net</b>	<b>\$ (175)</b>	<b>\$ (460)</b>

We recognized lower impairment charges and lower equity method losses in the first nine months of 2009 compared to the first nine months of 2008. Impairment charges in the first nine months of 2008 were primarily related to a \$250 million impairment charge recognized on our investment in Numonyx. Our equity method losses include losses related to Numonyx (\$46 million in the first nine months of 2009 and \$68 million in the first nine months of 2008), Clearwire LLC (\$43 million in the first nine months of 2009), and Clearwire Corporation (\$118 million in the first nine months of 2008).

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (Continued)

*Gains (Losses) on Other Equity Investments, Net*

Gains (losses) on other equity investments, net were as follows:

<u>(In Millions)</u>	<u>YTD 2009</u>	<u>YTD 2008</u>
Impairment charges	\$ (136)	\$ (173)
Gains on sales	16	49
Other, net	34	20
<b>Total gains (losses) on other equity investments, net</b>	<b>\$ (86)</b>	<b>\$ (104)</b>

We recognized lower impairment charges on our marketable equity securities in the first nine months of 2009 compared to the first nine months of 2008, partially offset by higher impairment charges on our non-marketable equity investments. We also recognized lower gains on sales in the first nine months of 2009 compared to the first nine months of 2008. Impairment charges in the first nine months of 2008 included \$97 million of impairment charges on our investment in Micron.

*Interest and Other, Net*

The components of interest and other, net were as follows:

<u>(In Millions)</u>	<u>YTD 2009</u>	<u>YTD 2008</u>
Interest income	\$ 144	\$ 461
Interest expense	(1)	(8)
Other, net	15	13
<b>Total interest and other, net</b>	<b>\$ 158</b>	<b>\$ 466</b>

We recognized lower interest income in the first nine months of 2009 compared to the first nine months of 2008 as a result of lower interest rates and, to a lesser extent, lower average investment balances. The average interest rate earned during the first nine months of 2009 decreased by approximately 2.4 percentage points compared to the first nine months of 2008. In addition, lower gains on divestitures (none in the first nine months of 2009 and \$59 million in the first nine months of 2008) were more than offset by approximately \$55 million of fair value gains in the first nine months of 2009 on our trading assets, compared to approximately \$45 million of fair value losses in the first nine months of 2008.

*Provision for Taxes*

Our provision for taxes and effective tax rate were as follows:

<u>(Dollars in Millions)</u>	<u>YTD 2009</u>	<u>YTD 2008</u>
Income before taxes	\$ 3,111	\$ 7,317
Provision for taxes	\$ 1,024	\$ 2,259
Effective tax rate	32.9%	30.9%

Based on our analysis, the EC fine (recorded in Q2 2009) is not tax deductible. The EC fine of \$1.447 billion, with no associated reduction in the provision for taxes, significantly increased our effective tax rate in the first nine months of 2009. The impact of the EC fine was partially offset by a higher percentage of our profits being derived from lower-tax jurisdictions compared to the first nine months of 2008 and the U.S R&D income tax credit that was reinstated in Q4 2008. In addition, the effective tax rate was also positively impacted by settlements and effective settlements of various uncertain tax positions, partially offset by adjustments for differences between our finalized tax return and the provision recorded, and other adjustments to tax provisions from prior years.

## MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (Continued)

### Business Outlook

Our future results of operations and the topics of other forward-looking statements contained in this Form 10-Q, including this MD&A, involve a number of risks and uncertainties—in particular:

- changes in business and economic conditions;
- our goals and strategies;
- new product introductions;
- plans to cultivate new businesses;
- divestitures or investments;
- revenue and pricing;
- gross margin and costs;
- R&D expenses;
- marketing, general and administrative expenses;
- net gains (losses) from equity investments;
- interest and other, net;
- capital spending;
- depreciation;
- potential impairment of investments;
- our effective tax rate (including changes in uncertain tax positions); and
- pending legal proceedings.

In addition to the various important factors discussed above, a number of other important factors could cause actual results to differ materially from our expectations. See the risks described in “Risk Factors” in Part II, Item 1A of this Form 10-Q.

Our expectations for the remainder of 2009 are as follows:

#### *Q4 2009*

- *Revenue:* \$10.1 billion, plus or minus \$400 million.
- *Gross margin percentage:* 62% plus or minus three points.
- *Depreciation:* approximately \$1.2 billion.
- *Research and development plus marketing, general and administrative expenses:* approximately \$2.9 billion.
- *Restructuring and asset impairment charges:* approximately \$40 million.
- *Amortization of acquisition-related intangibles and costs:* approximately \$20 million.
- *Net gains (losses) from equity method investments, gains (losses) on other equity investments, and interest and other:* approximately zero.
- *Tax rate:* approximately 26% for the fourth quarter. The estimated effective tax rate is based on tax law in effect as of September 26, 2009 and current expected income.

#### *Full Year 2009*

- *Capital spending:* approximately \$4.5 billion, plus or minus \$100 million.

### Status of Business Outlook

We expect that our corporate representatives will, from time to time, meet privately with investors, investment analysts, the media, and others, and may reiterate the forward-looking statements contained in the “Business Outlook” section and elsewhere in this Form 10-Q, including any such statements that are incorporated by reference in this Form 10-Q. At the same time, we will keep this Form 10-Q and our most current business outlook publicly available on our Investor Relations web site at [www.intc.com](http://www.intc.com). The public can continue to rely on the business outlook published on the web site as representing our current expectations on matters covered, unless we publish a notice stating otherwise. The statements in the “Business Outlook” and other forward-looking statements in this Form 10-Q are subject to revision during the course of the year in our quarterly earnings releases and SEC filings and at other times.

From the close of business on November 25, 2009 until our quarterly earnings release is published, presently scheduled for January 14, 2010, we will observe a “quiet period.” During the quiet period, the “Business Outlook” and other forward-looking statements first published in our Form 8-K filed on October 13, 2009, as reiterated or updated as applicable, in this Form 10-Q, should be considered historical, speaking as of prior to the quiet period only and not subject to update. During the quiet period, our representatives will not comment on our business outlook or our financial results or expectations. The exact timing and duration of the routine quiet period, and any others that we utilize from time to time, may vary at our discretion.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (Continued)

**Liquidity and Capital Resources**

Cash and cash equivalents, short-term investments, debt instruments included in trading assets, and debt at the end of each period were as follows:

<u>(Dollars in Millions)</u>	<u>Sept. 26, 2009</u>	<u>Dec. 27, 2008</u>
Cash and cash equivalents, short-term investments, and debt instruments included in trading assets	\$ 12,930	\$ 11,544
Short-term and long-term debt	\$ 2,224	\$ 1,287
Debt as % of stockholders' equity	5.7%	3.3%

In summary, our cash flows were as follows:

<u>(In Millions)</u>	<u>Nine Months Ended</u>	
	<u>Sept. 26, 2009</u>	<u>Sept. 27, 2008</u>
Net cash provided by operating activities	\$ 7,765	\$ 8,330
Net cash used for investing activities	(5,196)	(3,876)
Net cash used for financing activities	(1,810)	(8,057)
<b>Net increase (decrease) in cash and cash equivalents</b>	<b><u>\$ 759</u></b>	<b><u>\$ (3,603)</u></b>

**Operating Activities**

Cash provided by operating activities is net income adjusted for certain non-cash items and changes in assets and liabilities.

Cash from operations for the first nine months of 2009 was \$7.8 billion, a decrease of \$565 million compared to the first nine months of 2008, primarily due to lower net income, partially offset by changes in our working capital. Income taxes paid, net of refunds in the first nine months of 2009 compared to the first nine months of 2008 were \$2.9 billion lower on lower income before taxes in 2009 and timing of payments. In addition, other changes in our working capital as of September 26, 2009 compared to December 27, 2008 were as follows:

- *Inventories* decreased due to lower chipset, microprocessor, and raw materials inventory.
- *Accounts payable* decreased due to lower production spending.
- *Accounts receivable* increased due to a higher proportion of sales at the end of the third quarter of 2009.
- *Other accrued liabilities* included \$62 million in customer credit balances as of September 26, 2009 (\$447 million as of December 27, 2008).

For the first nine months of 2009, our two largest customers accounted for 39% of net revenue (38% for the first nine months of 2008) with one of those customers accounting for 21% of our net revenue, and another customer accounting for 18% of our net revenue. These two largest customers accounted for 33% of net accounts receivable at September 26, 2009 (46% at December 27, 2008).

**Investing Activities**

Investing cash flows consist primarily of capital expenditures, net investment purchases, maturities, disposals, and cash used for acquisitions.

The increase in cash used for investing activities in the first nine months of 2009 compared to the first nine months of 2008 was driven primarily by a decrease in maturities and sales of available-for-sale investments and higher cash paid for acquisitions, partially offset by an increase in maturities and sales of trading assets.

**Financing Activities**

Financing cash flows consist primarily of repurchases and retirement of common stock, payment of dividends to stockholders, issuance of long-term debt, and proceeds from sales of shares through employee equity incentive plans.

The decrease in cash used for financing activities in the first nine months of 2009, compared to the first nine months of 2008, was primarily due to a decrease in repurchases and retirement of common stock and the issuance of long-term debt, partially offset by lower proceeds from sales of shares through employee equity incentive plans.

## MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (Continued)

We used the majority of the proceeds from the issuance of long-term debt to repurchase and retire common stock. During the first nine months of 2009 we repurchased 88.2 million shares at a cost of \$1.7 billion (324.1 million shares at a cost of \$7.1 billion during the first nine months of 2008) as part of our common stock repurchase program. As of September 26, 2009, \$5.7 billion remained available for repurchase under the existing repurchase authorization of \$25 billion. We base our level of stock repurchases on internal cash management decisions, and this level may fluctuate. Our dividend payments totaled \$2.3 billion for the first nine months of 2009, flat compared to the first nine months of 2008. Proceeds from the sale of shares pursuant to employee equity incentive plans totaled \$367 million for the first nine months of 2009 compared to \$1.1 billion for the first nine months of 2008, as a result of significantly lower volume of employee exercises of stock options.

### *Liquidity*

Cash generated by operations is used as our primary source of liquidity. As of September 26, 2009, cash and cash equivalents, debt instruments included in trading assets, and short-term investments totaled \$12.9 billion.

Our investment policy requires all investments with original maturities at the time of investment of up to 6 months to be rated at least A-1/P-1 by Standard & Poor's/Moody's, and specifies a higher minimum rating for investments with longer maturities. For instance, investments with maturities of greater than three years require a minimum rating of AA-/Aa3 at the time of investment. Government regulations imposed on investment alternatives of our non-U.S. subsidiaries, or the absence of A rated counterparties in certain countries, result in some minor exceptions. Substantially all of our investments in debt instruments are with A/A2 or better rated issuers, and a substantial majority of the issuers are rated AA-/Aa3 or better. Additionally, we limit the amount of credit exposure to any one counterparty based on our analysis of that counterparty's relative credit standing. As of September 26, 2009, the total credit exposure to any single counterparty did not exceed \$500 million.

Credit rating criteria for derivative instruments are similar to those for other investments. The amounts subject to credit risk related to derivative instruments are generally limited to the amounts, if any, by which a counterparty's obligations exceed our obligations with that counterparty, because we enter into master netting arrangements with counterparties when possible to mitigate credit risk in derivative transactions.

The credit quality of our investment portfolio remains high during this difficult credit environment, with credit-related other-than-temporary impairment losses on our available-for-sale debt instruments limited to less than \$55 million cumulatively since the beginning of 2008. In addition, we continue to be able to invest in high-credit-quality investments. With the exception of a limited amount of investments for which we have recognized other-than-temporary impairments, we have not seen significant liquidation delays, and for those that have matured we have received the full par value of our original debt investments. We do not intend to sell our debt investments that have unrealized losses in accumulated other comprehensive income (loss). In addition, it is not more likely than not that we will be required to sell our debt investments that have unrealized losses in accumulated other comprehensive income (loss) before we recover the amortized cost basis.

As of September 26, 2009, our balance of cash and cash equivalents, debt instruments included in trading assets, and short-term investments included \$10.7 billion with a remaining maturity of less than one year. As of September 26, 2009, our cumulative unrealized losses, net of corresponding hedging activities, related to debt instruments classified as trading assets were approximately \$50 million (approximately \$145 million as of December 27, 2008). As of September 26, 2009, our cumulative unrealized losses related to debt instruments classified as available-for-sale were approximately \$90 million (approximately \$215 million as of December 27, 2008). Substantially all of our unrealized losses can be attributed to fair value fluctuations that occurred in an unstable credit environment that resulted in a decrease in the liquidity for these debt instruments.

We continually monitor the credit risk in our portfolio and mitigate our credit and interest rate exposures in accordance with the policies approved by our Board of Directors. We intend to continue to closely monitor future developments in the credit markets and make appropriate changes to our investment policy as deemed necessary. Based on our ability to liquidate our investment portfolio and our expected operating cash flows, we do not anticipate any liquidity constraints as a result of either the current credit environment or potential investment fair value fluctuations.

Our commercial paper program provides another potential source of liquidity. We have an ongoing authorization from our Board of Directors to borrow up to \$3.0 billion, including through the issuance of commercial paper. Maximum borrowings under our commercial paper program during the first nine months of 2009 were approximately \$610 million, although no commercial paper remained outstanding as of September 26, 2009. Our commercial paper was rated A-1+ by Standard & Poor's and P-1 by Moody's as of September 26, 2009. We also have an automatic shelf registration statement on file with the SEC pursuant to which we may offer an unspecified amount of debt, equity, and other securities.

We believe that we have the financial resources needed to meet business requirements for the next 12 months, including capital expenditures for worldwide manufacturing and assembly and test, working capital requirements, and potential dividends, common stock repurchases, and acquisitions or strategic investments.

## MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (Continued)

### Fair Value of Financial Instruments

Fair value is the price that would be received from selling an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. When determining fair value, we consider the principal or most advantageous market in which we would transact, and we consider assumptions that market participants would use when pricing the asset or liability, such as inherent risk, transfer restrictions, and risk of non-performance.

Credit risk is factored into the valuation of financial instruments that we measure and record at fair value on a recurring basis. When fair value is determined using observable market prices, the credit risk is incorporated into the market price of the financial instrument. When fair value is determined using pricing models, such as a discounted cash flow model, the issuer's credit risk and/or Intel's credit risk is factored into the calculation of the fair value, as appropriate. During the first nine months of 2009, changes in counterparty credit risk and our own credit risk did not have a significant impact on the valuation of our assets and liabilities measured and recorded at fair value.

When values are determined using inputs that are both unobservable and significant to the values of the instruments being measured, we classify those instruments as Level 3. As of September 26, 2009, our financial instruments measured and recorded at fair value on a recurring basis included \$17.2 billion of assets, of which \$1.5 billion (9%) were classified as Level 3. In addition, our financial instruments measured and recorded at fair value on a recurring basis included \$373 million of liabilities, of which \$192 million (51%) were classified as Level 3. During the first nine months of 2009, we transferred approximately \$415 million of assets from Level 3 to Level 2. These assets consisted of floating-rate notes that were transferred from Level 3 to Level 2 due to a greater availability of observable market data and/or non-binding market consensus prices to value or corroborate the value of our instruments. During the first nine months of 2009, we recognized an insignificant amount of gains or losses on the assets that were transferred from Level 3 to Level 2.

During the first nine months of 2009, the Level 3 assets and liabilities that are measured and recorded at fair value on a recurring basis experienced net unrealized fair value gains totaling \$69 million. Of this amount, gains of \$60 million were recognized in our consolidated condensed statements of operations and gains of \$9 million were included in other comprehensive income. During the first nine months of 2009, we did not experience any significant realized gains (losses) related to the Level 3 assets or liabilities in our portfolio.

### Marketable Debt Instruments

As of September 26, 2009, our assets measured and recorded at fair value on a recurring basis included \$15.9 billion of marketable debt instruments. Of these instruments, \$672 million was classified as Level 1, \$13.7 billion as Level 2, and \$1.5 billion as Level 3.

When available, we use observable market prices for identical securities to value our marketable debt instruments. If observable market prices are not available, we use non-binding market consensus prices that we seek to corroborate with observable market data, if available, or non-observable market data. When prices from multiple sources are available for a given instrument, we use observable market quotes to price our instruments, in lieu of prices from other sources.

Our balance of marketable debt instruments that are measured and recorded at fair value on a recurring basis and classified as Level 1 was classified as such due to the usage of observable market prices for identical securities that are traded in active markets. Marketable debt instruments in this category generally include certain of our floating-rate notes, corporate bonds, and money market fund deposits. Management judgment was required to determine our policy that defines the levels at which sufficient volume and frequency of transactions are met for a market to be considered active. Our assessment of an active market for our marketable debt instruments generally takes into consideration activity during each week of the one-month period prior to the valuation date of each individual instrument, including the number of days each individual instrument trades and the average weekly trading volume in relation to the total outstanding amount of the issued instrument.



## MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS (Continued)

Approximately 10% of our balance of marketable debt instruments that are measured and recorded at fair value on a recurring basis and classified as Level 2 was classified as such due to the usage of observable market prices for identical securities that are traded in less active markets. When observable market prices for identical securities are not available, we price our marketable debt instruments using: non-binding market consensus prices that are corroborated with observable market data; quoted market prices for similar instruments; or pricing models, such as a discounted cash flow model, with all significant inputs derived from or corroborated with observable market data. Non-binding market consensus prices are based on the proprietary valuation models of pricing providers or brokers. These valuation models incorporate a number of inputs, including non-binding and binding broker quotes; observable market prices for identical and/or similar securities; and the internal assumptions of pricing providers or brokers that use observable market inputs and to a lesser degree non-observable market inputs. We corroborate the non-binding market consensus prices with observable market data using statistical models when observable market data exist. The discounted cash flow model uses observable market inputs, such as LIBOR-based yield curves, currency spot and forward rates, and credit ratings. Approximately 40% of our balance of marketable debt instruments that are measured and recorded at fair value on a recurring basis and classified as Level 2 was classified as such due to the usage of non-binding market consensus prices that are corroborated with observable market data and approximately 50% due to the usage of a discounted cash flow model. Marketable debt instruments classified as Level 2 generally include commercial paper, bank time deposits, municipal bonds, certain of our money market fund deposits, and a majority of floating-rate notes and corporate bonds.

Our marketable debt instruments that are measured and recorded at fair value on a recurring basis and classified as Level 3 were classified as such due to the lack of observable market data to corroborate either the non-binding market consensus prices or the non-binding broker quotes. When observable market data is not available, we corroborate the non-binding market consensus prices and non-binding broker quotes using unobservable data, if available. Marketable debt instruments in this category generally include asset-backed securities and certain of our floating-rate notes and corporate bonds. All of our investments in asset-backed securities were classified as Level 3, and substantially all of them were valued using non-binding market consensus prices that we were not able to corroborate with observable market data due to the lack of transparency in the market for asset-backed securities.

### *Equity Securities*

As of September 26, 2009, our portfolio of assets measured and recorded at fair value on a recurring basis included \$766 million of marketable equity securities. Of these securities, \$720 million was classified as Level 1 because the valuations were based on quoted prices for identical securities in active markets. Our assessment of an active market for our marketable equity securities generally takes into consideration activity during each week of the one-month period prior to the valuation date for each individual security, including the number of days each individual equity security trades and the average weekly trading volume in relation to the total outstanding shares of that security. The fair values of our investments in Clearwire Corporation (\$301 million) and VMware, Inc. (\$183 million) constituted a majority of the fair values of the marketable equity securities that we classified as Level 1. Marketable equity securities classified as Level 2 (\$46 million) were classified as such because their valuations were either based on quoted prices for identical securities in less active markets or adjusted for security-specific restrictions.

### **Contractual Obligations**

During the third quarter of 2009, we issued \$2.0 billion of junior subordinated convertible debentures (the 2009 debentures) due in 2039. The 2009 debentures pay a fixed annual rate of 3.25%, to be paid semiannually beginning February 1, 2010. Our total cash payments (including anticipated interest payments that are not recorded on the consolidated condensed balance sheets and excluding fair value adjustments that affect the amount recorded on the consolidated condensed balance sheets) over the life of this long-term debt obligation are expected to be approximately \$4.0 billion. Any future settlement of convertible debt would reduce total interest payments.

### ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

The information in this section should be read in connection with the information on financial market risk related to changes in interest rates in Part II, Item 7A, Quantitative and Qualitative Disclosures About Market Risk, in our Annual Report on Form 10-K for the year ended December 27, 2008. All of the potential changes noted below are based on sensitivity analyses performed on our financial positions as of September 26, 2009 and December 27, 2008. Actual results may differ materially.

#### Currency Exchange Rates

We generally hedge currency risks of non-U.S.-dollar-denominated investments in debt instruments and loans receivable with offsetting currency forward contracts, currency options, or currency interest rate swaps. Gains and losses on these non-U.S.-currency investments would generally be offset by corresponding losses and gains on the related hedging instruments, resulting in a negligible net exposure to loss.

A majority of our revenue, expense, and capital purchasing activities are transacted in U.S. dollars. However, certain operating expenditures and capital purchases are incurred in or exposed to other currencies, primarily the euro, the Israeli shekel, the Chinese yuan, and the Japanese yen. We have established balance sheet and forecasted transaction currency risk management programs to protect against fluctuations in fair value and the volatility of future cash flows caused by changes in exchange rates. We generally utilize currency forward contracts and, to a lesser extent, currency options in these hedging programs. Our hedging programs reduce, but do not always entirely eliminate, the impact of currency exchange rate movements (see "Risk Factors" in Part II, Item 1A of this Form 10-Q). We considered the historical trends in currency exchange rates and determined that it was reasonably possible that a weighted average adverse change of 20% in currency exchange rates could be experienced in the near term. Such an adverse change, after taking into account hedges and offsetting positions, would have resulted in an adverse impact on income before taxes of less than \$30 million as of September 26, 2009 (less than \$55 million as of December 27, 2008).

#### Equity Prices

Our marketable equity investments include marketable equity securities and equity derivative instruments such as warrants and options. To the extent that our marketable equity securities have strategic value, we typically do not attempt to reduce or eliminate our equity market exposure through hedging activities; however, for our investments in strategic equity derivative instruments, including warrants, we may enter into transactions to reduce or eliminate the equity market risks. For securities that we no longer consider strategic, we evaluate legal, market, and economic factors in our decision on the timing of disposal and whether it is possible and appropriate to hedge the equity market risk.

We hold derivative instruments that seek to offset changes in liabilities related to the equity market risks of certain deferred compensation arrangements. The gains and losses from changes in fair value of these derivatives are designed to offset the gains and losses on the related liabilities, resulting in a negligible net exposure to loss.

As of September 26, 2009, the fair value of our available-for-sale marketable equity securities and our equity derivative instruments, including hedging positions, was \$774 million (\$362 million as of December 27, 2008). Our investments in Clearwire Corporation and VMware constituted a majority of our marketable equity securities as of September 26, 2009, and were carried at a fair market value of \$301 million and \$183 million, respectively. To assess the market price sensitivity of our marketable equity investments, we analyzed the historical movements over the past several years of high-technology stock indices that we considered appropriate. Assuming a loss of 65% in market prices, and after reflecting the impact of hedges and offsetting positions, the aggregate value of our marketable equity investments could decrease by approximately \$505 million, based on the value as of September 26, 2009 (a decrease in value of approximately \$220 million, based on the value as of December 27, 2008 using an assumed loss of 60%).

Many of the same factors that could result in an adverse movement of equity market prices affect our non-marketable equity investments, although we cannot always quantify the impact directly. Financial markets and credit markets are volatile, which could negatively affect the prospects of the companies we invest in, their ability to raise additional capital, and the likelihood of our being able to realize value in our investments through liquidity events such as initial public offerings, mergers, and private sales. These types of investments involve a great deal of risk, and there can be no assurance that any specific company will grow or become successful; consequently, we could lose all or part of our investment. Our non-marketable equity investments, excluding investments accounted for under the equity method, had a carrying amount of \$990 million as of September 26, 2009 (\$1.0 billion as of December 27, 2008). As of September 26, 2009, the carrying amount of our non-marketable equity method investments was \$2.5 billion (\$3.0 billion as of December 27, 2008). A substantial majority of this balance as of September 26, 2009 was concentrated in companies in the flash memory market segment. Our flash memory market segment investments include our investment of \$1.4 billion in IMFT (\$1.7 billion as of December 27, 2008), \$305 million in IMFS (\$329 million as of December 27, 2008), and \$438 million in Numonyx (\$484 million as of December 27, 2008).

## **ITEM 4. CONTROLS AND PROCEDURES**

### **Evaluation of Disclosure Controls and Procedures**

Based on management's evaluation (with the participation of our Chief Executive Officer (CEO) and Chief Financial Officer (CFO)), as of the end of the period covered by this report, our CEO and CFO have concluded that our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended, (the Exchange Act)) are effective to provide reasonable assurance that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in Securities and Exchange Commission rules and forms and is accumulated and communicated to management, including our principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosure.

### **Changes in Internal Control over Financial Reporting**

There were no changes to our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) that occurred during the period covered by this report that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

### **Inherent Limitations on Effectiveness of Controls**

Our management, including the CEO and CFO, does not expect that our Disclosure Controls or our internal control over financial reporting will prevent or detect all error and all fraud. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the control system's objectives will be met. The design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Further, because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that misstatements due to error or fraud will not occur or that all control issues and instances of fraud, if any, have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty and that breakdowns can occur because of simple error or mistake. Controls can also be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the controls. The design of any system of controls is based in part on certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Projections of any evaluation of controls effectiveness to future periods are subject to risks. Over time, controls may become inadequate because of changes in conditions or deterioration in the degree of compliance with policies or procedures.

## PART II — OTHER INFORMATION

### ITEM 1. LEGAL PROCEEDINGS

For a discussion of legal proceedings, see “Note 24: Contingencies” in the Notes to Consolidated Condensed Financial Statements of this Form 10-Q.

### ITEM 1A. RISK FACTORS

We describe our business risk factors below. This description includes any material changes to and supersedes the description of the risk factors associated with our business previously disclosed in Part I, Item 1A of our Annual Report on Form 10-K for the year ended December 27, 2008.

***Fluctuations in demand for our products may harm our financial results and are difficult to forecast.***

If demand for our products fluctuates as a result of economic conditions or for other reasons, our revenue and profitability could be harmed. Important factors that could cause demand for our products to fluctuate include:

- changes in business and economic conditions, including downturns in the semiconductor industry and/or the overall economy;
- changes in consumer confidence caused by changes in market conditions, including changes in the credit market, expectations for inflation, and energy prices;
- changes in the level of customers’ components inventory;
- competitive pressures, including pricing pressures, from companies that have competing products, chip architectures, manufacturing technologies, and marketing programs;
- changes in customer product needs;
- strategic actions taken by our competitors; and
- market acceptance of our products.

If product demand decreases, our manufacturing or assembly and test capacity could be underutilized, and we may be required to record an impairment on our long-lived assets, including facilities and equipment, as well as intangible assets, which would increase our expenses. In addition, if product demand decreases or we fail to forecast demand accurately, we could be required to write off inventory or record underutilization charges, which would have a negative impact on our gross margin. Factory-planning decisions may shorten the useful lives of long-lived assets, including facilities and equipment, and cause us to accelerate depreciation. In the long term, if product demand increases, we may not be able to add manufacturing or assembly and test capacity fast enough to meet market demand. These changes in demand for our products, and changes in our customers’ product needs, could have a variety of negative effects on our competitive position and our financial results, and, in certain cases, may reduce our revenue, increase our costs, lower our gross margin percentage, or require us to recognize impairments of our assets.

***We may be subject to litigation proceedings that could harm our business.***

We may be subject to legal claims or regulatory matters involving stockholder, consumer, competition, and other issues on a global basis. As described in “Note 24: Contingencies” in the Notes to Consolidated Condensed Financial Statements of this Form 10-Q, we are currently engaged in a number of litigation matters, particularly with respect to competition. Litigation is subject to inherent uncertainties, and unfavorable rulings could occur. An unfavorable ruling could include monetary damages or, in cases for which injunctive relief is sought, an injunction prohibiting us from manufacturing or selling one or more products. If we were to receive an unfavorable ruling in a matter, our business and results of operations could be materially harmed.

***The semiconductor industry and our operations are characterized by a high percentage of costs that are fixed or difficult to reduce in the short term, and by product demand that is highly variable and subject to significant downturns that may harm our business, results of operations, and financial condition.***

The semiconductor industry and our operations are characterized by high costs, such as those related to facility construction and equipment, R&D, and employment and training of a highly skilled workforce, that are either fixed or difficult to reduce in the short term. At the same time, demand for our products is highly variable and there have been downturns, often in connection with maturing product cycles as well as downturns in general economic market conditions. These downturns have been characterized by reduced product demand, manufacturing overcapacity and resulting underutilization charges, high inventory levels, and lower average selling prices. The combination of these factors may cause our revenue, gross margin, cash flow, and profitability to vary significantly in both the short and long term.

***We operate in intensely competitive industries, and our failure to respond quickly to technological developments and incorporate new features into our products could harm our ability to compete.***

We operate in intensely competitive industries that experience rapid technological developments, changes in industry standards, changes in customer requirements, and frequent new product introductions and improvements. If we are unable to respond quickly and successfully to these developments, we may lose our competitive position, and our products or technologies may become uncompetitive or obsolete. To compete successfully, we must maintain a successful R&D effort, develop new products and production processes, and improve our existing products and processes at the same pace or ahead of our competitors. We may not be able to develop and market these new products successfully, the products we invest in and develop may not be well received by customers, and products developed and new technologies offered by others may affect demand for our products. These types of events could have a variety of negative effects on our competitive position and our financial results, such as reducing our revenue, increasing our costs, lowering our gross margin percentage, and requiring us to recognize impairments on our assets.

***We invest in companies for strategic reasons and may not realize a return on our investments.***

We make investments in companies around the world to further our strategic objectives and support our key business initiatives. Such investments include equity or debt instruments of public or private companies, and many of these instruments are non-marketable at the time of our initial investment. These companies range from early-stage companies that are often still defining their strategic direction to more mature companies with established revenue streams and business models. The success of these companies is dependent on product development, market acceptance, operational efficiency, and other key business factors. The companies in which we invest may fail because they may not be able to secure additional funding, obtain favorable investment terms for future financings, or take advantage of liquidity events such as public offerings, mergers, and private sales. The current economic environment may increase the risk of failure for many of the companies in which we invest due to limited access to credit and reduced frequency of liquidity events. If any of these private companies fail, we could lose all or part of our investment in that company. If we determine that an other-than-temporary decline in the fair value exists for an equity investment in a public or private company in which we have invested, we write down the investment to its fair value and recognize the related write-down as an investment loss. The majority of our non-marketable equity investment portfolio balance is concentrated in companies in the flash memory market segment, and declines in this market segment or changes in management's plans with respect to our investments in this market segment could result in significant impairment charges, impacting gains (losses) on equity method investments and gains (losses) on other equity investments.

Furthermore, when the strategic objectives of an investment have been achieved, or if the investment or business diverges from our strategic objectives, we may decide to dispose of the investment. Our non-marketable equity investments in private companies are not liquid, and we may not be able to dispose of these investments on favorable terms or at all. The occurrence of any of these events could harm our results of operations. Additionally, for cases in which we are required under equity method accounting to recognize a proportionate share of another company's income or loss, such income and loss may impact our earnings. Gains or losses from equity securities could vary from expectations depending on gains or losses realized on the sale or exchange of securities, gains or losses from equity method investments, and impairment charges related to debt instruments as well as equity and other investments.

***Our results of operations could vary as a result of the methods, estimates, and judgments that we use in applying our accounting policies.***

The methods, estimates, and judgments that we use in applying our accounting policies have a significant impact on our results of operations (see "Critical Accounting Estimates" in Part I, Item 2 of this Form 10-Q). Such methods, estimates, and judgments are, by their nature, subject to substantial risks, uncertainties, and assumptions, and factors may arise over time that lead us to change our methods, estimates, and judgments. Changes in those methods, estimates, and judgments could significantly affect our results of operations. The current volatility in the financial markets and overall economic uncertainty increase the risk that the actual amounts realized in the future on our debt and equity investments will differ significantly from the fair values currently assigned to them.

***Fluctuations in the mix of products sold may harm our financial results.***

Because of the wide price differences among and within mobile, desktop, and server microprocessors, the mix and types of performance capabilities of microprocessors sold affect the average selling price of our products and have a substantial impact on our revenue and gross margin. Our financial results also depend in part on the mix of other products that we sell, such as chipsets, flash memory, and other semiconductor products. In addition, more recently introduced products tend to have higher associated costs because of initial overall development and production ramp. Fluctuations in the mix and types of our products may also affect the extent to which we are able to recover the fixed costs and investments associated with a particular product, and as a result can harm our financial results.

***Our global operations subject us to risks that may harm our results of operations and financial condition.***

We have sales offices, R&D, manufacturing, and assembly and test facilities in many countries, and as a result, we are subject to risks associated with doing business globally. Our global operations may be subject to risks that may limit our ability to manufacture, assemble and test, design, develop, or sell products in particular countries, which could, in turn, harm our results of operations and financial condition, including:

- security concerns, such as armed conflict and civil or military unrest, crime, political instability, and terrorist activity;
- health concerns;
- natural disasters;
- inefficient and limited infrastructure and disruptions, such as large-scale outages or interruptions of service from utilities or telecommunications providers and supply chain interruptions;
- differing employment practices and labor issues;
- local business and cultural factors that differ from our normal standards and practices;
- regulatory requirements and prohibitions that differ between jurisdictions; and
- restrictions on our operations by governments seeking to support local industries, nationalization of our operations, and restrictions on our ability to repatriate earnings.

In addition, although most of our products are sold in U.S. dollars, we incur a significant amount of certain types of expenses, such as payroll, utilities, tax, and marketing expenses, as well as certain investing and financing activities, in local currencies. Our hedging programs reduce, but do not entirely eliminate, the impact of currency exchange rate movements, and therefore fluctuations in exchange rates could harm our business operating results and financial condition. In addition, changes in tariff and import regulations and in U.S. and non-U.S. monetary policies may harm our operating results and financial condition by increasing our expenses and reducing our revenue. Varying tax rates in different jurisdictions could harm our operating results and financial condition by increasing our overall tax rate.

We maintain a program of insurance coverage for various types of property, casualty, and other risks. We place our insurance coverage with various carriers in numerous jurisdictions. However, there is a risk that one or more of our insurance providers may be unable to pay a claim. The types and amounts of insurance that we obtain vary from time to time and from location to location, depending on availability, cost, and our decisions with respect to risk retention. The policies are subject to deductibles and exclusions that result in our retention of a level of risk on a self-insurance basis. Losses not covered by insurance may be substantial and may increase our expenses, which could harm our results of operations and financial condition.

***Failure to meet our production targets, resulting in undersupply or oversupply of products, may harm our business and results of operations.***

Production of integrated circuits is a complex process. Disruptions in this process can result from interruptions in our processes, errors, and difficulties in our development and implementation of new processes; defects in materials; disruptions in our supply of materials or resources; and disruptions at our fabrication and assembly and test facilities due to, for example, accidents, maintenance issues, or unsafe working conditions—all of which could affect the timing of production ramps and yields. We may not be successful or efficient in developing or implementing new production processes. The occurrence of any of the foregoing may result in our failure to meet or increase production as desired, resulting in higher costs or substantial decreases in yields, which could affect our ability to produce sufficient volume to meet specific product demand. The unavailability or reduced availability of certain products could make it more difficult to implement our platform strategy. We may also experience increases in yields. A substantial increase in yields could result in higher inventory levels and the possibility of resulting underutilization charges as we slow production to reduce inventory levels. The occurrence of any of these events could harm our business and results of operations.

***We may have difficulties obtaining the resources or products we need for manufacturing, assembling and testing our products, or operating other aspects of our business, which could harm our ability to meet demand for our products and may increase our costs.***

We have thousands of suppliers providing various materials that we use in the production of our products and other aspects of our business, and we seek, where possible, to have several sources of supply for all of those materials. However, we may rely on a single or a limited number of suppliers, or upon suppliers in a single country, for these materials. The inability of such suppliers to deliver adequate supplies of production materials or other supplies could disrupt our production processes or could make it more difficult for us to implement our business strategy. In addition, production could be disrupted by the unavailability of the resources used in production, such as water, silicon, electricity, and gases. The unavailability or reduced availability of the materials or resources that we use in our business may require us to reduce production of products or may require us to incur additional costs in order to obtain an adequate supply of those materials or resources. The occurrence of any of these events could harm our business and results of operations.

***Costs related to product defects and errata may harm our results of operations and business.***

Costs associated with unexpected product defects and errata (deviations from published specifications) due to, for example, unanticipated problems in our manufacturing processes, include:

- writing off the value of inventory of defective products;
- disposing of defective products that cannot be fixed;
- recalling defective products that have been shipped to customers;
- providing product replacements for, or modifications to, defective products; and/or
- defending against litigation related to defective products.

These costs could be substantial and may therefore increase our expenses and lower our gross margin. In addition, our reputation with our customers or users of our products could be damaged as a result of such product defects and errata, and the demand for our products could be reduced. These factors could harm our financial results and the prospects for our business.

***We may be subject to claims of infringement of third-party intellectual property rights, which could harm our business.***

From time to time, third parties may assert against us or our customers alleged patent, copyright, trademark, or other intellectual property rights to technologies that are important to our business. As described in “Note 24: Contingencies” in the Notes to Consolidated Condensed Financial Statements of this Form 10-Q, we are currently engaged in a number of litigation matters involving intellectual property rights. We may be subject to intellectual property infringement claims from certain individuals and companies who have acquired patent portfolios for the sole purpose of asserting such claims against other companies. Any claims that our products or processes infringe the intellectual property rights of others, regardless of the merit or resolution of such claims, could cause us to incur significant costs in responding to, defending, and resolving such claims, and may divert the efforts and attention of our management and technical personnel from our business. As a result of such intellectual property infringement claims, we could be required or otherwise decide that it is appropriate to:

- pay third-party infringement claims;
- discontinue manufacturing, using, or selling particular products subject to infringement claims;
- discontinue using the technology or processes subject to infringement claims;
- develop other technology not subject to infringement claims, which could be time-consuming and costly or may not be possible; and/or
- license technology from the third party claiming infringement, which license may not be available on commercially reasonable terms.

The occurrence of any of the foregoing could result in unexpected expenses or require us to recognize an impairment of our assets, which would reduce the value of our assets and increase expenses. In addition, if we alter or discontinue our production of affected items, our revenue could be harmed.

***We may not be able to enforce or protect our intellectual property rights, which may harm our ability to compete and harm our business.***

Our ability to enforce our patents, copyrights, software licenses, and other intellectual property rights is subject to general litigation risks, as well as uncertainty as to the enforceability of our intellectual property rights in various countries. When we seek to enforce our rights, we are often subject to claims that the intellectual property right is invalid, is otherwise not enforceable, or is licensed to the party against whom we are asserting a claim. In addition, our assertion of intellectual property rights often results in the other party seeking to assert alleged intellectual property rights of its own or assert other claims against us. If we are not ultimately successful in defending ourselves against these claims in litigation, we may not be able to sell a particular product or family of products due to an injunction, or we may have to pay damages that could, in turn, harm our results of operations. In addition, governments may adopt regulations or courts may render decisions requiring compulsory licensing of intellectual property to others, or governments may require that products meet specified standards that serve to favor local companies. Our inability to enforce our intellectual property rights under these circumstances may harm our competitive position and our business.

***Our licenses with other companies and our participation in industry initiatives may allow other companies, including our competitors, to use our patent rights.***

Companies in the semiconductor industry often rely on the ability to license patents from each other in order to compete. Many of our competitors have broad licenses or cross-licenses with us, and under current case law, some of these licenses may permit these competitors to pass our patent rights on to others. If one of these licensees becomes a foundry, our competitors might be able to avoid our patent rights in manufacturing competing products. In addition, our participation in industry initiatives may require us to license our patents to other companies that adopt certain industry standards or specifications, even when such organizations do not adopt standards or specifications proposed by us. As a result, our patents implicated by our participation in industry initiatives might not be available for us to enforce against others who might otherwise be deemed to be infringing those patents, our costs of enforcing our licenses or protecting our patents may increase, and the value of our intellectual property may be impaired.

***Decisions about the scope of operations of our business, could affect our results of operations and financial condition.***

Changes in the business environment could lead to changes in our decisions about the scope of operations of our business and these changes could result in restructuring and asset impairment charges. Factors that could cause actual results to differ materially from our expectations with regard to changing the scope of our operations include:

- timing and execution of plans and programs that may be subject to local labor law requirements, including consultation with appropriate work councils;
- changes in assumptions related to severance and postretirement costs;
- future dispositions;
- new business initiatives and changes in product roadmap, development, and manufacturing;
- changes in employment levels and turnover rates;
- changes in product demand and the business environment; and
- changes in the fair value of certain long-lived assets.

***In order to compete, we must attract, retain, and motivate key employees, and our failure to do so could harm our results of operations.***

In order to compete, we must attract, retain, and motivate executives and other key employees. Hiring and retaining qualified executives, scientists, engineers, technical staff, and sales representatives are critical to our business, and competition for experienced employees in the semiconductor industry can be intense. To help attract, retain, and motivate qualified employees, we use share-based incentive awards such as employee stock options and non-vested share units (restricted stock units). If the value of such stock awards does not appreciate as measured by the performance of the price of our common stock, or if our share-based compensation otherwise ceases to be viewed as a valuable benefit, our ability to attract, retain, and motivate employees could be weakened, which could harm our results of operations.

***Our failure to comply with applicable environmental laws and regulations worldwide could harm our business and results of operations.***

The manufacturing and assembling and testing of our products require the use of hazardous materials that are subject to a broad array of Environmental Health and Safety laws and regulations. Our failure to comply with any of these applicable laws or regulations could result in:

- regulatory penalties, fines, and legal liabilities;
- suspension of production;
- alteration of our fabrication and assembly and test processes; and
- curtailment of our operations or sales.

In addition, our failure to manage the use, transportation, emissions, discharge, storage, recycling, or disposal of hazardous materials could subject us to increased costs or future liabilities. Existing and future environmental laws and regulations could also require us to acquire pollution abatement or remediation equipment, modify our product designs, or incur other expenses associated with such laws and regulations. Many new materials that we are evaluating for use in our operations may be subject to regulation under existing or future environmental laws and regulations that may restrict our use of one or more of such materials in our manufacturing, assembly and test processes, or products. Any of these restrictions could harm our business and results of operations by increasing our expenses or requiring us to alter our manufacturing and assembly and test processes.

***Climate change poses both regulatory and physical risks that could harm our results of operations or affect the way we conduct our business.***

In addition to the possible direct economic impact that climate change could have on us, climate change mitigation programs and regulation can increase our costs. For example, the cost of perfluorocompounds (PFCs), a gas that we use in our manufacturing, could increase over time under some climate-change-focused emissions trading programs that may be imposed by government regulation. If the use of PFCs is prohibited, we would need to obtain substitute materials that may cost more or be less available for our manufacturing operations. We also see the potential for higher energy costs driven by climate change regulations. Our costs could increase if utility companies pass on their costs, such as those associated with carbon taxes, emission cap and trade programs, or renewable portfolio standards. While we maintain business recovery plans that are intended to allow us to recover from natural disasters or other events that can be disruptive to our business, we cannot be sure that our plans will fully protect us from all such disasters or events. Many of our operations are located in semi-arid regions, such as Israel and the southwestern United States. Some scenarios predict that these regions may become even more vulnerable to prolonged droughts due to climate change.



***Changes in our effective tax rate may harm our results of operations.***

A number of factors may increase our future effective tax rates, including:

- the jurisdictions in which profits are determined to be earned and taxed;
- the resolution of issues arising from tax audits with various tax authorities;
- changes in the valuation of our deferred tax assets and liabilities;
- adjustments to income taxes upon finalization of various tax returns;
- increases in expenses not deductible for tax purposes, including write-offs of acquired in-process research and development and impairments of goodwill in connection with acquisitions;
- changes in available tax credits;
- changes in tax laws or the interpretation of such tax laws, and changes in generally accepted accounting principles; and
- our decision to repatriate non-U.S. earnings for which we have not previously provided for U.S. taxes.

Any significant increase in our future effective tax rates could reduce net income for future periods.

***Interest and other, net could be harmed by macroeconomic and other factors.***

Factors that could cause interest and other, net in our consolidated condensed statements of operations to fluctuate include:

- fixed-income, equity, and credit market volatility;
- fluctuations in foreign currency exchange rates;
- fluctuations in interest rates;
- changes in our cash and investment balances; and
- changes in our hedge accounting treatment.

***Our acquisitions, divestitures, and other transactions could disrupt our ongoing business and harm our results of operations.***

In pursuing our business strategy, we routinely conduct discussions, evaluate opportunities, and enter into agreements regarding possible investments, acquisitions, divestitures, and other transactions, such as joint ventures. Acquisitions and other transactions involve significant challenges and risks, including risks that:

- we may not be able to identify suitable opportunities at terms acceptable to us;
- the transaction may not advance our business strategy;
- we may not realize a satisfactory return on the investment we make;
- we may not be able to retain key personnel of the acquired business; or
- we may experience difficulty in integrating new employees, business systems, and technology.

When we decide to sell assets or a business, we may encounter difficulty in finding or completing divestiture opportunities or alternative exit strategies on acceptable terms in a timely manner, and the agreed terms and financing arrangements could be renegotiated due to changes in business or market conditions. These circumstances could delay the accomplishment of our strategic objectives or cause us to incur additional expenses with respect to businesses that we want to dispose of, or we may dispose of a business at a price or on terms that are less favorable than we had anticipated, resulting in a loss on the transaction.

If we do enter into agreements with respect to acquisitions, divestitures, or other transactions, we may fail to complete them due to:

- failure to obtain required regulatory or other approvals;
- intellectual property or other litigation;
- difficulties that we or other parties may encounter in obtaining financing for the transaction; or
- other factors.

Further, acquisitions, divestitures, and other transactions require substantial management resources and have the potential to divert our attention from our existing business. These factors could harm our business and results of operations.

## ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

### Issuer Purchases of Equity Securities

We have an ongoing authorization, amended in November 2005, from our Board of Directors to repurchase up to \$25 billion in shares of our common stock in open market or negotiated transactions. As of September 26, 2009, \$5.7 billion remained available for repurchase under the existing repurchase authorization.

Common stock repurchase activity under our authorized plan during the third quarter of 2009 was as follows (in millions, except per share amounts):

Period	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans	Dollar Value of Shares that May Yet Be Purchased Under the Plans
June 28, 2009-July 25, 2009	—	\$ —	—	\$ 7,403
July 26, 2009-August 22, 2009 <sup>1</sup>	88.2	\$ 18.95	88.2	\$ 5,732
August 23, 2009-September 26, 2009	—	\$ —	—	\$ 5,732
<b>Total</b>	<b>88.2</b>	<b>\$ 18.95</b>	<b>88.2</b>	

<sup>1</sup> Shares were repurchased in privately negotiated transactions.

For the majority of restricted stock units granted, the number of shares issued on the date the restricted stock units vest is net of the minimum statutory withholding requirements that we pay in cash to the appropriate taxing authorities on behalf of our employees. These withheld shares are not considered common stock repurchases under our authorized plan.

**ITEM 6. EXHIBITS**

- 3.1 Intel Corporation Third Restated Certificate of Incorporation of Intel Corporation dated May 17, 2006 (incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K as filed on May 22, 2006)
- 3.2 Intel Corporation Bylaws, as amended on May 19, 2009 (incorporated by reference to Exhibit 3.1 to the Registrant's Current Report on Form 8-K as filed on May 22, 2009)
- 4.1 Indenture for the Registrant's 3.25% Junior Subordinated Convertible Debentures due 2039 between Intel Corporation and Wells Fargo Bank, National Association, dated as of July 27, 2009 (the "Convertible Note Indenture")
- 10.4 Intel Corporation 2006 Equity Incentive Plan As Amended and Restated Effective May 20, 2009 (incorporated by reference to Exhibit 99.1 of the Registrant's Current Report on Form S-8 as filed on June 26, 2009, File No. 333-160272).
- 12.1 Statement Setting Forth the Computation of Ratios of Earnings to Fixed Charges
- 31.1 Certification of Chief Executive Officer Pursuant to Rule 13a-14(a) of the Exchange Act
- 31.2 Certification of Chief Financial Officer and Principal Accounting Officer Pursuant to Rule 13a-14(a) of the Exchange Act
- 32.1 Certification of Chief Executive Officer and Chief Financial Officer and Principal Accounting Officer Pursuant to Rule 13a-14(b) of the Exchange Act and 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
- 101.INS XBRL Instance Document
- 101.SCH XBRL Taxonomy Extension Schema Document
- 101.CAL XBRL Taxonomy Extension Calculation Linkbase Document
- 101.DEF XBRL Taxonomy Extension Definition Linkbase Document
- 101.LAB XBRL Taxonomy Extension Label Linkbase Document
- 101.PRE XBRL Taxonomy Extension Presentation Linkbase Document

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*Intel, Intel logo, Intel Inside, Intel Atom, Celeron, Intel Centrino, Intel Core, Intel vPro, Intel Xeon, Itanium, and Pentium are trademarks of Intel Corporation in the U.S. and other countries.*

\* *Other names and brands may be claimed as the property of others.*

**SIGNATURES**

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

INTEL CORPORATION  
(Registrant)

Date: November 2, 2009

By: /s/ Stacy J. Smith  
Stacy J. Smith  
Vice President, Chief Financial Officer, and  
Principal Accounting Officer

INTEL CORPORATION

as Issuer

AND

WELLS FARGO BANK, NATIONAL ASSOCIATION

as Trustee

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**Indenture**

Dated as of July 27, 2009

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3.25% Junior Subordinated Convertible Debentures due 2039

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INDENTURE, dated as of July 27, 2009, between Intel Corporation, a corporation duly organized and existing under the laws of the State of Delaware, as Issuer (the “**Company**”), having its principal office at 2200 Mission College Boulevard, Santa Clara, California 95054 and Wells Fargo Bank, National Association, a national banking association, as Trustee (the “**Trustee**”).

#### RECITALS OF THE COMPANY

WHEREAS, the Company has duly authorized the creation of an issue of 3.25% Junior Subordinated Convertible Debentures due 2039 (each a “**Security**” and collectively, the “**Securities**”) of the tenor and amount hereinafter set forth, and to provide therefor the Company has duly authorized the execution and delivery of this Indenture; and

WHEREAS, all things necessary to make the Securities, when executed by the Company and authenticated and delivered hereunder and duly issued by the Company, the valid obligations of the Company, and to make this Indenture a valid agreement of the Company, in accordance with the terms of the Securities and the Indenture, have been done;

NOW, THEREFORE, THIS INDENTURE WITNESSETH, for and in consideration of the premises and the purchases of the Securities by the Holders thereof, it is mutually agreed, for the benefit of the Company and the equal and proportionate benefit of all Holders of the Securities, as follows:

#### ARTICLE 1

##### Definitions and Other Provisions of General Application

Section 1.01. *Definitions.* For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

- (i) the terms defined in this Article 1 have the meanings assigned to them in this Article 1 and include the plural as well as the singular;
  - (ii) all other terms used herein that are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein;
  - (iii) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP; and
-

(iv) the words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

“**105% Exception**” means, and shall be deemed applicable with respect to the definition of “Fundamental Change” in, any event in which the Last Reported Sale Price of the Company’s Common Stock for any 5 Trading Days within the 10 consecutive Trading Days ending immediately before the date of any Change of Control Event or Termination of Trading or the public announcement thereof equals or exceeds 105% of the applicable Conversion Price of the Securities immediately before such event or the public announcement thereof.

“**Acquiror Securities**” has the meaning specified in Section 8.01(d).

“**Act**,” when used with respect to any Holder, has the meaning specified in Section 1.04.

“**Additional Interest**” means all amounts, if any, payable pursuant to Section 10.03 hereof.

“**Additional Shares**” has the meaning specified in Section 9.07.

“**Adjustment Determination Date**” has the meaning specified in Section 9.03(l).

“**Adjustment Event**” has the meaning specified in Section 9.03(l).

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

“**Agent Members**” has the meaning specified in Section 3.08.

“**Bid Solicitation Agent**” means an independent nationally recognized securities dealer selected by the Company to solicit market bid quotations for the Securities, which shall in no event be an Affiliate of the Company.

“**Board of Directors**” means, with respect to any Person, either the board of directors of such Person or any duly authorized committee of that board.

“**Board Resolution**” means, with respect to any Person, a copy of a resolution certified by the Secretary or an Assistant Secretary of such Person to

have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification, and delivered to the Trustee.

“**Business Day**” means any day other than a Saturday, a Sunday, a day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed or a day on which banking institutions and the Corporate Trust Office are authorized by regulation or executive order to close.

“**Capital Stock**” means any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock and, with respect to partnerships, partnership interests (whether general or limited) and any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, such partnership.

“**Change of Control Event**” shall mean the occurrence of any of the following:

(i) a “person” or “group” within the meaning of Section 13(d) of the Exchange Act other than the Company, its Subsidiaries or the Company’s or its Subsidiaries’ employee benefit plans, files a Schedule TO or any schedule, form or report under the Exchange Act disclosing that such person or group has become the direct or indirect ultimate “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of more than 50% of the total voting power of all shares of the Company’s Capital Stock that are entitled to vote generally in the election of directors; or

(ii) consummation of any share exchange, consolidation or merger of the Company pursuant to which the Company’s Common Stock will be converted into cash, securities or other property or any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and its Subsidiaries, taken as a whole, to any person other than the Company or one of its Subsidiaries; *provided*, however, that a transaction where (1) the Company’s Common Stock is not changed or exchanged at all except to the extent necessary to reflect a change in the Company’s jurisdiction of incorporation or (2) the holders of more than 50% of all classes of the Company’s Common Stock immediately prior to such transaction own, directly or indirectly, more than 50% of the aggregate voting power of all shares of Capital Stock of the continuing or surviving corporation or transferee immediately after such event shall not be deemed a Change of Control Event.

(iii) “**Code**” means the Internal Revenue Code of 1986, as amended.

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

“**Common Stock**” means the shares of common stock, par value \$0.001 per share, of the Company as they exist on the date of this Indenture or any other shares of Capital Stock of the Company into which the Common Stock shall be reclassified or changed or, in the event of a merger, consolidation or other similar transaction involving the Company that is otherwise permitted hereunder in which the Company is not the surviving corporation, the common stock, common equity interests, ordinary shares or depositary shares or other certificates representing common equity interests of such surviving corporation or its direct or indirect parent corporation.

“**Company**” means the Person named as the “Company” in the first paragraph of this instrument until a successor Person shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Company” shall mean such successor Person.

“**Company Request**” or “**Company Order**” means a written request or order signed in the name of the Company by its Chairman of the Board of Directors, its Vice Chairman of the Board of Directors, its President or any Vice President, its Chief Financial Officer, its Treasurer, an Assistant Treasurer, its Secretary or an Assistant Secretary, and delivered to the Trustee.

“**Contingent Debt Regulations**” has the meaning specified in Section 6.15.

“**Contingent Interest**” has the meaning specified in Section 4.02(a).

“**Conversion Agent**” means the Trustee or such other office or agency designated by the Company where Securities may be presented for conversion.

“**Conversion Date**” has the meaning specified in Section 9.02(e).

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

“**Conversion Rate**” has the meaning specified in Section 9.01(a).

“**Conversion Value**” means, at any date, the product of (i) the Conversion Rate in effect on such date and (ii) the average of the Volume-Weighted Average Prices of the Company’s Common Stock for the five consecutive Trading Days ending on the Trading Day immediately preceding such date. In calculating the

Conversion Value of any Security, the Principal Amount of such Security shall be multiplied by the Conversion Value calculated in the preceding sentence and divided by 1,000.

“**Corporate Trust Office**” means the office of the Trustee at which the corporate trust business of the Trustee shall, at any particular time, be principally administered, which office is, at the date of this Indenture, located at Wells Fargo Bank, National Association, 707 Wilshire Blvd., 17<sup>th</sup> Floor, Los Angeles, CA 90017, Attention: Corporate Trust Services, and shall mean for purposes of Section 6.02, Wells Fargo Bank, National Association, 608 2<sup>nd</sup> Avenue South, Minneapolis, MN 55479, Attention: Bondholder Communications Dept.

“**Corporation**” means a corporation, association, company, joint-stock company or business trust.

“**Daily Conversion Value**” has the meaning specified in Section 9.02(a).

“**Daily Settlement Amount**” has the meaning specified in Section 9.02(a).

“**Default**” means any event that is or with the passage of time or the giving of notice or both would become an Event of Default.

“**Depository**” means The Depository Trust Company until a successor Depository shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Depository” shall mean such successor Depository.

“**Designated Senior Debt**” means, with respect to the Company, obligations under any Senior Debt in which the instrument creating or evidencing such Senior Debt or the assumption or guarantee thereof (or related agreements or documents to which the Company is a party) expressly provides that such Senior Debt shall be “Designated Senior Debt” for purposes of this Indenture. The instrument, agreement or other document evidencing any Designated Senior Debt may place limitations and conditions on the right of such Senior Debt to exercise the rights of Designated Senior Debt.

“**Distributed Property**” has the meaning specified in Section 9.03(c).

“**Downside Trigger**” means \$650 per \$1,000 Principal Amount of Securities during the period prior to February 1, 2020. Beginning on February 1, 2020, and ending on February 1, 2035, inclusive, the Downside Trigger will increase in increments of \$10 per \$1,000 Principal Amount of Securities per semi-annual ordinary interest period on August 1 and February 1 of each year within such period. After February 1, 2035, the downside trigger will remain at \$960 per \$1,000 principal amount of Securities. As an example, the Downside Trigger will

be \$710 per \$1,000 Principal Amount of Securities during the period commencing on August 1, 2022, and ending January 31, 2023.

“**Event of Default**” has the meaning specified in Section 10.01.

“**Ex-Dividend Date**” means, with respect to any dividend, distribution or issuance on the Common Stock or any other equity security, the first date on which the shares of Common Stock or such other equity security trade on the applicable exchange or in the applicable market, regular way, without the right to receive such dividend, distribution or issuance.

“**Exchange Act**” means the U.S. Securities Exchange Act of 1934, as amended.

“**Exchange Rate Contract**” means, with respect to any Person, any currency swap agreement, forward exchange rate agreement, foreign currency future or option, exchange rate collar agreement, exchange rate insurance or other agreement or arrangement, or combination thereof, the principal purpose of which is to provide protection against fluctuations in currency exchange rates. An Exchange Rate Contract may also include an Interest Rate Agreement.

“**Extraordinary Dividend**” has the meaning specified in Section 4.02(a).

“**Fundamental Change**” means any transaction or event resulting in either a Change of Control Event or a Termination of Trading;*provided*, however, that a Fundamental Change will not be deemed to have occurred if either (i) the 105% Exception is applicable or (ii) not less than 90% of the consideration, excluding cash payments for fractional shares and cash payments made in respect of dissenter’s rights, associated with any of the events described in clause (i) or (ii) of the definition of “Change of Control Event” consists of Publicly Traded Securities and as a result of such Change of Control Event the Securities become convertible into cash and, if applicable, such Publicly Traded Securities.

“**Fundamental Change Company Notice**” has the meaning specified in Section 8.01(b).

“**Fundamental Change Repurchase Date**” has the meaning specified in Section 8.01(a).

“**Fundamental Change Repurchase Notice**” has the meaning specified in Section 8.01(a).

“**Fundamental Change Repurchase Price**” has the meaning specified in Section 8.01(a).



“**GAAP**” means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, in each case, as in effect in the United States on the date hereof.

“**Global Security**” means a Security in global form registered in the Security Register in the name of a Depositary or a nominee thereof.

“**Holder**” or “**Securityholder**” means a Person in whose name a Security is registered in the Security Register.

“**Indebtedness**” means, with respect to any Person, without duplication, (i) any indebtedness or obligation, whether contingent or not, (1) evidenced by a credit or loan agreement, note, bond, debenture or similar written obligation or instrument (whether or not the recourse of the lender is to the whole of the assets of such Person or to only a portion thereof) or (2) for money borrowed, (ii) all obligations (1) as lessee under leases required to be capitalized on such Person’s balance sheet under GAAP or (2) as lessee under other leases for facilities, capital equipment or related assets, whether or not capitalized, entered into or leased for financing purposes, (iii) all obligations under Interest Rate Agreements, Exchange Rate Contracts, treasury management agreements or similar agreements or arrangements, (iv) all obligations and liabilities (contingent or otherwise) of such Person with respect to letters of credit, bankers’ acceptances and similar facilities (including reimbursement obligations with respect to the foregoing), (v) all obligations and liabilities (contingent or otherwise) of such Person issued or assumed as the deferred purchase price of any property or services (but excluding trade accounts payable and accrued liabilities arising in the ordinary course of business), (vi) obligations of the type described in clauses (i) through (v) above of any third party and all dividends of any third party payment of which, in either case, such Person has assumed or guaranteed, or for which the Person first referenced above is responsible or liable, directly or indirectly, jointly or severally, as obligor, guarantor or otherwise, or that are secured by a lien on such Person’s property and (vii) any and all renewals, extensions, modifications, replacements, restatements and refundings of, or any indebtedness or obligation issued in exchange for, any indebtedness, obligation or liability of the kinds described in clauses (i) through (vi). The amount of any Indebtedness outstanding as of any date shall be the accreted value thereof, in the case of any Indebtedness issued with original issue discount. The amount of any Indebtedness outstanding as of any date with respect to any Exchange Rate Contract or Interest Rate Agreement shall be the termination value thereof. Indebtedness shall not include liabilities for taxes of any kind.

“**Indenture**” means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof, including, for all purposes of this instrument and any such supplemental indenture, the provisions of the Trust Indenture Act that are deemed to be a part of and govern this instrument and any such supplemental indenture, respectively.

“**Initial Conversion Value**” means \$833.3331.

“**Initial Dividend Threshold**” has the meaning specified in 9.03(d).

“**Interest**” means (i) Regular Interest, (ii) Contingent Interest, if any and (iii) Additional Interest, if any.

“**Interest Payment Date**” means (i) with respect to any payment of Interest other than Interest payable upon designation of an Extraordinary Dividend, each August 1 and February 1 of each year, beginning February 1, 2010 and (ii) with respect to Interest payable upon designation of an Extraordinary Dividend, the date specified by the Company’s Board of Directors for the payment of such Interest in accordance with Section 4.02(a)(ii).

“**Interest Rate Agreement**” means, with respect to any Person, any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement or other similar agreement the principal purpose of which is to protect the party indicated therein against fluctuations in interest rates.

“**Investment Company Act**” means the Investment Company Act of 1940 and any statutory successor thereto, in each case as amended from time to time.

“**Issue Date**” means the date the Securities are originally issued as set forth on the face of the Security under this Indenture.

“**Last Reported Sale Price**” of the Company’s Common Stock (or Public Acquiror Common Stock, if applicable) on any date means the closing sale price per share (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions for the principal U.S. securities exchange on which the Company’s Common Stock (or Public Acquiror Common Stock, if applicable) is traded. If the Company’s Common Stock (or Public Acquiror Common Stock, if applicable) is not listed for trading on a U.S. national or regional securities exchange on the relevant date, the Last Reported Sale Price will be the last quoted bid price for the Company’s Common Stock (or Public Acquiror Common Stock, if applicable) in the over-the-counter market on the relevant date as reported by Pink Sheets LLC or a similar organization. If the Company’s Common Stock (or Public Acquiror

Common Stock, if applicable) is not so quoted, the Last Reported Sale Price will be the average of the mid-point of the last bid and ask prices for the Company's Common Stock (or Public Acquiror Common Stock, if applicable) on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose.

**"Majority Owned"** means, with respect to an entity, that another entity has "beneficial ownership" (as defined in Rule 13(d)(3) under the Exchange Act) of more than 50% of the total voting power of all shares of the first entity's Capital Stock that are entitled to vote generally in the election of directors. **"Majority Owner"** has the correlative meaning.

**"Make-Whole Effective Date"** has the meaning specified in Section 9.07(b).

**"Make-Whole Fundamental Change"** means any event described in clause (ii) of the definition of "Change of Control Event" that constitutes a Fundamental Change, determined without regard to the 105% Exception.

**"Market Disruption Event"** means (i) a failure by the primary United States national or regional securities exchange or market on which the Common Stock is listed or admitted to trading to open for trading during its regular trading session or (ii) the occurrence or existence prior to 1:00 p.m., New York City time, on any Scheduled Trading Day for the Common Stock for more than one half-hour period in the aggregate during regular trading hours of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant stock exchange or otherwise) in the Common Stock or in any options, contracts or future contracts relating to the Common Stock.

**"Maturity,"** when used with respect to any Security, means the date on which the principal, Redemption Price or Fundamental Change Repurchase Price of such Security becomes due and payable as therein or herein provided, whether at the Stated Maturity, on a Redemption Date or Fundamental Change Repurchase Date, by declaration of acceleration or otherwise.

**"Measurement Period"** has the meaning specified in Section 9.02(a)(ii).

**"Non-Payment Default"** has the meaning specified in Section 5.02(b).

**"Notice of Conversion"** has the meaning specified in Section 9.02(d).

**"Notice of Default"** has the meaning specified in Section 10.01.

**"Observation Period"** means, with respect to any Security, (i) if the relevant Conversion Date occurs prior to May 1, 2039, the 20 consecutive Trading Day period beginning on and including the second Trading Day after the related

Conversion Date; (ii) if the relevant Conversion Date occurs on or after May 1, 2039, the 20 consecutive Trading Days beginning on and including the 22nd Scheduled Trading Day immediately preceding August 1, 2039; and (iii) with respect to any Conversion Date occurring after the date of issuance of a notice of redemption pursuant to Section 7.03, the 20 consecutive Trading Days beginning on and including the 22nd Scheduled Trading Day prior to the applicable Redemption Date.

“**Officers’ Certificate**” means a certificate signed by the Chairman of the Board, the President or any Vice President, and by the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary, of the Company, and delivered to the Trustee. One of the officers signing an Officers’ Certificate given pursuant to Section 6.05 shall be the principal executive, financial or accounting officer of the Company.

“**Opinion of Counsel**” means a written opinion of counsel, who may be external or in-house counsel for the Company, and who shall be reasonably acceptable to the Trustee.

“**Outstanding**,” when used with respect to Securities, means, as of the date of determination, all Securities theretofore authenticated and delivered under this Indenture, except:

(i) Securities theretofore cancelled by the Trustee or accepted by the Trustee for cancellation;

(ii) Securities, or portions thereof, for whose payment, redemption or repurchase money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent) for the Holders of such Securities; *provided* that if such Securities are to be redeemed or repurchased prior to the maturity thereof, notice of such redemption or repurchase shall have been given to the Holders as herein provided, or provision satisfactory to a Responsible Officer of the Trustee shall have been made for giving such notice; and

(iii) Securities that have been paid or in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture;

*provided*, however, that, in determining whether the Holders of the requisite Principal Amount of the Outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Securities owned by the Company or any other obligor upon the Securities or any Affiliate of the

Company or of such other obligor shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities which a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded. Securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Securities and that the pledgee is not the Company or any other obligor upon the Securities or any Affiliate of the Company or of such other obligor.

“**Paying Agent**” means any Person (including the Company) authorized by the Company to pay the Principal Amount of, Interest on or Redemption Price or Fundamental Change Repurchase Price of, any Securities on behalf of the Company. The Trustee shall initially be the Paying Agent.

“**Payment Blockage Notice**” has the meaning specified in Section 5.02(b).

“**Payment Default**” has the meaning specified in Section 5.02(a).

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

“**Physical Securities**” means permanent certificated Securities in registered form issued in denominations of \$1,000 Principal Amount and integral multiples thereof.

“**Principal Amount**” of a Security means the Principal Amount as set forth on the face of the Security.

“**Public Acquiror Change of Control**” means a Fundamental Change in which the acquiror has Public Acquiror Common Stock.

“**Public Acquiror Common Stock**” means, in reference to a Fundamental Change, any class of common stock of the acquiror in respect of such Fundamental Change that is traded on any U.S. national securities exchange or quoted on the Nasdaq Global Select Market or which will be so traded or quoted when issued or exchanged in connection with such Fundamental Change. If an acquiror does not itself have a class of common stock satisfying the foregoing requirement, it shall be deemed to have Public Acquiror Common Stock if a corporation that directly or indirectly is the Majority Owner of the acquiror has a class of common stock satisfying the foregoing requirement; in such case, all

references to Public Acquiror Common Stock shall refer to such class of common stock.

“**Publicly Traded Securities**” means shares of Capital Stock that are traded on a U.S. national securities exchange or quoted on the Nasdaq Global Select Market or, with respect to a Change of Control Event, which will be so traded or quoted when issued or exchanged in connection with such event.

“**Purchase Agreement**” means the Purchase Agreement, dated July 21, 2009, entered into by the Company and, J.P. Morgan Securities Inc. and Credit Suisse Securities (USA) LLC, as representatives of the initial purchasers listed in Schedule I thereto, in connection with the sale of the Securities.

“**Qualified Institutional Buyer**” or “**QIB**” shall have the meaning specified in Rule 144A.

“**Record Date**” means (i) with respect to any payment of Interest other than Interest payable upon designation of an Extraordinary Dividend, each July 15 and January 15 (whether or not a Business Day) and (ii) with respect to the payment of Interest payable upon designation of an Extraordinary Dividend, the record date specified by the Company’s Board of Directors for the payment of such Interest in accordance with Section 4.02(a)(ii).

“**Regular Interest**” has the meaning specified in Section 4.01(a).

“**Redemption Date**” shall mean the date specified for redemption of the Securities in accordance with the terms of the Securities and Article 7 hereof.

“**Redemption Price**” has the meaning specified in Section 7.01.

“**Reference Property**” has the meaning specified in Section 9.08(a).

“**Representative**” means the (i) indenture trustee or other trustee, agent or representative for any Senior Debt or (ii) with respect to any Senior Debt that does not have any such trustee, agent or other representative, (1) in the case of such Senior Debt issued pursuant to an agreement providing for voting arrangements as among the holders or owners of such Senior Debt, any holder or owner of such Senior Debt acting with the consent of the required Persons necessary to bind such holders or owners of such Senior Debt and (2) in the case of all other such Senior Debt, the holder or owner of such Senior Debt.

“**Responsible Officer**” means any officer of the Trustee within the Corporate Trust Office of the Trustee with direct responsibility for the administration of this Indenture and also, with respect to a particular matter, any other officer of the Trustee to whom such matter is referred because of such officer’s knowledge and familiarity with the particular subject.

“**Restricted Global Security**” means a Global Security representing Restricted Securities.

“**Restricted Security**” or “**Restricted Securities**” has the meaning specified in Section 2.05.

“**Rule 144**” means Rule 144 under the Securities Act (including any successor rule thereto), as the same may be amended from time to time.

“**Rule 144A**” means Rule 144A under the Securities Act (including any successor rule thereto), as the same may be amended from time to time.

“**Rule 144A Information**” has the meaning specified in the Securities.

“**Scheduled Trading Day**” means a day that is scheduled to be a Trading Day on the primary United States national securities exchange or market on which the Common Stock is listed or admitted for trading. If the Common Stock is not so listed or admitted for trading, “**Scheduled Trading Day**” shall mean a Business Day.

“**Securities Act**” means the U.S. Securities Act of 1933, as amended, and the rules and regulations of the Commission promulgated thereunder.

“**Security**” or “**Securities**” has the meaning specified in the first paragraph of the Recitals of the Company.

“**Security Register**” and “**Security Registrar**” have the respective meanings specified in Section 3.05.

“**Senior Debt**” means, with respect to the Company, means the principal of (and premium, if any) and interest (including all interest accruing subsequent to the commencement of any bankruptcy or similar proceeding, whether or not a claim for post-petition interest is allowable as a claim in any such proceeding) on, and all fees and other amounts payable in connection with, any Indebtedness of the Company, whether absolute or contingent, secured or unsecured, due or to become due, outstanding on the date of this Indenture or thereafter created, incurred, assumed or guaranteed by the Company. Notwithstanding the foregoing, the term Senior Debt shall not include (i) the Securities, (ii) the Company’s 2.95% Junior Subordinated Convertible Debentures Due 2035, (iii) any Indebtedness, created, evidenced, assumed or guaranteed by an instrument that expressly provides that such Indebtedness shall not be senior in right of payment to the Securities or expressly provides that such Indebtedness is “pari passu” or “junior” to the Securities, (iv) any Indebtedness of the Company to any Subsidiary of the Company or (v) any Indebtedness of or amounts owed by the

Company for trade payables or otherwise for goods or materials purchased or services obtained in the ordinary course of business.

“**Settlement Amount**” has the meaning specified in Section 9.02(a).

“**Spin-Off**” has the meaning specified in Section 9.03(c).

“**Stated Maturity**,” when used with respect to any Security, means the date specified in such Security as the fixed date on which an amount equal to the Principal Amount of such Security together with accrued and unpaid Interest, if any, is due and payable.

“**Stock Price**” means, with respect to the Company’s Common Stock in connection with a Make-Whole Fundamental Change, (i) if holders of Common Stock receive only cash in such Make-Whole Fundamental Change, the cash amount paid per share of Common Stock and (ii) if holders of Common Stock receive any consideration other than cash in such Make-Whole Fundamental Change, the average of the Last Reported Sales Price of the Common Stock over the five Trading Day period ending on the Trading Day preceding the effective date of such Make-Whole Fundamental Change.

“**Stock Transfer Agent**” means Computershare Limited or such other Person as may be designated by the Company as the transfer agent for the Common Stock.

“**Subsidiary**” means a corporation more than 50% of the outstanding voting stock of which is owned, directly or indirectly, by the Company or by one or more other Subsidiaries, or by the Company and one or more other Subsidiaries. For the purposes of this definition, “voting stock” means stock which ordinarily has voting power for the election of directors, whether at all times or only so long as no senior class of stock has such voting power by reason of any contingency.

“**Surviving Entity**” has the meaning specified in Section 11.01.

“**Tax Triggering Event**” means the enactment of U.S. federal legislation, promulgation of Treasury regulations, issuance of a published ruling, notice, announcement or equivalent form of guidance by the Treasury or the Internal Revenue Service, or the issuance of a judicial decision if the Company determines, or receives an opinion of its outside counsel to the effect that, any such authority will have the effect of lowering the comparable yield or delaying or otherwise limiting the current deductibility of interest or original issue discount with respect to the Securities, provided that the Company determines that such reduction, delay, or limit is material.



“**Termination of Trading**” means that the Company’s Common Stock or other common stock into which the Securities are convertible is not listed for trading on a United States national securities exchange or quoted on the Nasdaq Global Select Market or another established automated over-the-counter trading market in the United States.

“**Trading Day**” means a day on which (i) trading of the Company’s Common Stock generally occurs on The Nasdaq Global Select Market, or if the Company’s Common Stock is not then listed on the Nasdaq Global Select Market on the principal other United States national or regional securities exchange on which the Company’s Common Stock is then listed or, if the Company’s Common Stock is not then listed on a United States national or regional securities exchange, on the principal other market on which the Company’s Common Stock is then traded, or (ii) a Last Reported Sale Price for the Company’s Common Stock is available on such securities exchange or market. If the Company’s Common Stock is not so listed or traded, “Trading Day” means any Business Day.

“**Trading Price**” of the Securities on any date of determination means the average of the secondary market bid quotations per \$1,000 Principal Amount of Securities obtained by the Bid Solicitation Agent (or for purposes of Section 4.02, the Trustee) for \$5,000,000 Principal Amount of Securities at approximately 3:30 p.m., New York City time, on such determination date from three independent nationally recognized securities dealers that are selected by the Company; *provided* that if at least three such bids cannot reasonably be obtained by the Bid Solicitation Agent (or for purposes of Section 4.02, the Trustee), but two such bids can reasonably be obtained, then the average of the two bids shall be used, and if only one such bid can reasonably be obtained, that one bid shall be used. For purposes of Section 4.02, if the Trustee cannot reasonably obtain at least one such bid for \$5,000,000 Principal Amount of Securities from a Bid Solicitation Agent selected by the Company or, in the reasonable judgment of the Company’s Board of Directors (acting through the board or a committee thereof), the bid quotations are not indicative of the secondary market value of the Securities, the Trading Price per \$1,000 Principal Amount of the Securities will be determined by the Company’s Board of Directors (acting through the board or a committee thereof) based on a good faith estimate of the fair value of the Securities.

“**Trading Price Condition**” has the meaning specified in Section 9.02(a)(ii).

“**Transfer Restricted Security**” means a Security required to bear the restricted legend set forth in the form of Security in Section 2.02.

“**Trigger Event**” has the meaning specified in Section 9.03(c).

“**Trust Indenture Act**” means the Trust Indenture Act of 1939 as in effect on the date as of which this Indenture was executed; *provided, however*, that in the event the Trust Indenture Act of 1939 is amended after such date, “Trust Indenture Act” means, to the extent required by any such amendment, the Trust Indenture Act of 1939 as so amended.

“**Trustee**” means the Person named as the “Trustee” in the first paragraph of this instrument until a successor Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Trustee” shall mean such successor Trustee.

“**Upside Trigger**” means \$1,500 per \$1,000 Principal Amount of Securities.

“**Vice President**,” when used with respect to the Company or the Trustee, means any vice president, whether or not designated by a number or a word or words added before or after the title “vice president.”

“**Valuation Period**” has the meaning specified in 9.03(c).

“**Volume-Weighted Average Price**” means the per share volume-weighted average price as displayed under the heading “Bloomberg VWAP” on Bloomberg page “INTC.UQ <equity> AQR” (or its equivalent successor if such page is not available) in respect of the period from scheduled open of trading until the scheduled close of trading of the primary trading session on such Trading Day (or if such volume-weighted average price is unavailable, the market value of one share of the Company’s Common Stock on such Trading Day determined, using a volume-weighted average method, by a nationally recognized independent investment banking firm retained for this purpose by the Company). Volume-Weighted Average Price will be determined without regard to after hours trading or any other trading outside of the regular trading session trading hours.

Section 1.02. *Compliance Certificates and Opinions.* Upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company shall furnish to the Trustee such certificates and opinions as may be required under the Trust Indenture Act. Each such certificate or opinion shall be given in the form of an Officers’ Certificate, if to be given by an officer of the Company, or an Opinion of Counsel, if to be given by counsel, and shall comply with the requirements of the Trust Indenture Act and any other requirement set forth in this Indenture.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include:

- (a) a statement that each individual signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;
- (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (c) a statement that, in the opinion of each such individual, such individual has made such examination or investigation as is necessary to enable such individual to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (d) a statement as to whether, in the opinion of each such individual, such condition or covenant has been complied with.

Section 1.03. *Form of Documents Delivered to Trustee.* In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any such certificate or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company stating that the information with respect to such factual matters is in the possession of the Company, unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to such matters are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

Section 1.04. *Acts of Holders; Record Dates.* (a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in

person or by agent duly appointed in writing and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as an “Act” of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and (subject to Section 12.01) conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section 1.04.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by a signer acting in a capacity other than his individual capacity, such certificate or affidavit shall also constitute sufficient proof of his authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner which the Trustee reasonably deems sufficient.

(c) The Company may, in the circumstances permitted by the Trust Indenture Act, fix any day as the record date for the purpose of determining the Holders entitled to give or take any request, demand, authorization, direction, notice, consent, waiver or other action, or to vote on any action, authorized or permitted to be given or taken by Holders. If not set by the Company prior to the first solicitation of a Holder made by any Person in respect of any such action, or, in the case of any such vote, prior to such vote, the record date for any such action or vote shall be the 30th day (or, if later, the date of the most recent list of Holders required to be provided pursuant to Section 13.01) prior to such first solicitation or vote, as the case may be. With regard to any record date, only the Holders on such date (or their duly designated proxies) shall be entitled to give or take, or vote on, the relevant action.

(d) The ownership of Securities shall be proved by the Security Register.

(e) Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Holder of any Security shall bind every future Holder of the same Security and the Holder of every Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Security.

Section 1.05. *Notices, Etc., to Trustee and Company.* Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with:

(i) the Trustee by any Holder or by the Company shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing (including facsimile) to or with the Trustee at its applicable Corporate Trust Office; or

(ii) the Company by the Trustee or by any Holder shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing (including facsimile) and mailed, first-class postage prepaid, to the Company addressed to it at the address of its principal office specified in the first paragraph of this instrument or at any other address previously furnished in writing to the Trustee by the Company, Attention: Secretary.

Section 1.06. *Notice to Holders; Waiver.* Where this Indenture provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each Holder affected by such event, at such Holder's address as it appears in the Security Register, not later than the latest date (if any), and not earlier than the earliest date (if any), prescribed for the giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

Whenever under this Indenture the Trustee is required to provide any notice by mail, in all cases the Trustee may alternatively provide notice by overnight courier or by telefacsimile, with confirmation of transmission.

Section 1.07. *Conflict with Trust Indenture Act.* If any provision hereof limits, qualifies or conflicts with a provision of the Trust Indenture Act that is required hereunder to be a part of and govern this Indenture, the latter provision

shall control. If any provision of this Indenture modifies or excludes any provision of the Trust Indenture Act that may be so modified or excluded, the latter provision shall be deemed to apply to this Indenture as so modified or to be excluded, as the case may be.

Section 1.08. *Effect of Headings and Table of Contents.* The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof, and all Article and Section references are to Articles and Sections, respectively, of this Indenture unless otherwise expressly stated.

Section 1.09. *Successors and Assigns.* All covenants and agreements in this Indenture by the Company shall bind its successors and assigns, whether so expressed or not.

Section 1.10. *Severability Clause.* In case any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 1.11. *Benefits of Indenture.* Nothing in this Indenture or in the Securities, express or implied, shall give to any Person, other than the parties hereto and their respective successors hereunder and the Holders of Securities, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 1.12. *Governing Law; Waiver of Jury Trial.* This Indenture and the Securities shall be governed by and construed in accordance with the laws of the State of New York without regard to the conflicts of law principles thereof. EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE SECURITIES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 1.13. *Legal Holiday.* In any case where the Stated Maturity of any Security shall not be a Business Day, then (notwithstanding any other provision of this Indenture or of the Securities) payment of principal need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if made on at the Stated Maturity. If any Interest Payment Date, the Stated Maturity or any earlier Fundamental Change Repurchase Date of a Security falls on a day that is not a Business Day, the required payment will be made on the next succeeding Business Day and no Interest on such payment will accrue in respect of the delay.

Section 1.14. *No Recourse Against Others.* None of the Company's, or of any successor entity's, direct or indirect stockholders, employees, officers or directors, as such, past, present or future, shall have any personal liability in respect of the obligations of the Company under the Indenture or the Securities solely by reason of his or its status as such stockholder, employee, officer or director.

Section 1.15. *Force Majeure.* In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 1.16. *U.S.A. Patriot Act.* The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. Patriot Act, the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the U.S.A. Patriot Act.

Section 1.17. *Execution in Counterparts.* This Indenture may be executed in two or more counterparts, which when so executed shall constitute one and the same agreement. The exchange of copies of this Indenture and of signature pages by facsimile or Portable Document Format (PDF) transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

Section 1.18. *Calculations.* Except as otherwise provided herein, the Company or its agents (other than the Trustee) will be responsible for making all calculations and determinations called for under the Indenture and the Securities. The Company or its agents (other than the Trustee) will make all such calculations and determinations in good faith and, absent manifest error, its calculations and determinations will be final and binding on Holders. The Company upon request will provide a schedule of its calculations to the Trustee, and the Trustee is entitled to rely conclusively upon the accuracy of the Company's calculations and determinations without independent verification. The

Trustee will deliver a copy of such schedule to any Holder upon the written request of such Holder.

ARTICLE 2  
Security Forms

Section 2.01. *Forms Generally.* The Securities and the Trustee's certificates of authentication shall be in substantially the forms set forth in this Article 2, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with the rules of any securities exchange or Depository therefor, the Code and regulations thereunder, or as may, consistently herewith, be determined by the officers executing such Securities, as evidenced by their execution thereof.

The Securities shall initially be issued in the form of permanent Global Securities in registered form in substantially the form set forth in this Article 2. The aggregate Principal Amount of the Global Securities may from time to time be increased or decreased by adjustments made on the records of the Trustee, as custodian for the Depository, as hereinafter provided.

Section 2.02. *Form of Face of Security.* **[INCLUDE IF SECURITY IS A RESTRICTED SECURITY—** THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT AS SET FORTH IN THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF, THE HOLDER AGREES THAT IT WILL NOT RESELL OR OTHERWISE TRANSFER THE SECURITY EVIDENCED HEREBY OR THE COMMON STOCK ISSUABLE UPON CONVERSION OF SUCH SECURITY, PRIOR TO THE DATE THAT IS (X) ONE YEAR AFTER THE LATEST ISSUE DATE OF THIS SECURITY AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, EXCEPT (A) TO THE ISSUER; (B) UNDER A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT; (C) TO A PERSON THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) THAT IS PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF ANOTHER QUALIFIED INSTITUTIONAL BUYER AND TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, ALL IN COMPLIANCE WITH RULE 144A (IF AVAILABLE); OR (D) UNDER ANY OTHER AVAILABLE EXEMPTION



FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT; AND (2) THAT IT WILL, PRIOR TO ANY TRANSFER OF THIS SECURITY WITHIN ONE YEAR AFTER THE LATEST ISSUE DATE OF THIS SECURITY FURNISH TO THE TRUSTEE AND THE ISSUER SUCH CERTIFICATIONS, LEGAL OPINIONS OR OTHER INFORMATION AS MAY BE REQUIRED PURSUANT TO THE INDENTURE TO CONFIRM THAT SUCH TRANSFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.]

**[INCLUDE IF SECURITY IS A GLOBAL SECURITY**— THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF A DEPOSITARY OR A NOMINEE THEREOF. THIS SECURITY MAY NOT BE EXCHANGED IN WHOLE OR IN PART FOR A SECURITY REGISTERED, AND NO TRANSFER OF THIS SECURITY IN WHOLE OR IN PART MAY BE REGISTERED, IN THE NAME OF ANY PERSON OTHER THAN SUCH DEPOSITARY OR A NOMINEE THEREOF, EXCEPT IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY (“**DTC**”), A NEW YORK CORPORATION, TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL IN AS MUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

**[INCLUDE IN ALL SECURITIES**— THIS SECURITY WAS ISSUED WITH ORIGINAL ISSUE DISCOUNT FOR UNITED STATES FEDERAL INCOME TAX PURPOSES. PURSUANT TO SECTION 6.15 OF THE INDENTURE, THE COMPANY AGREES, AND BY ACCEPTANCE OF A BENEFICIAL OWNERSHIP INTEREST IN THE SECURITIES EACH BENEFICIAL HOLDER OF A SECURITY AGREES, FOR UNITED STATES FEDERAL INCOME TAX PURPOSES, (I) TO TREAT THE SECURITIES AS INDEBTEDNESS OF THE COMPANY SUBJECT TO UNITED STATES TREASURY REGULATIONS SECTION 1.1275-4 (THE “**CONTINGENT DEBT REGULATIONS**”) AND, FOR PURPOSES OF THE CONTINGENT DEBT REGULATIONS, TO TREAT THE FAIR MARKET VALUE OF ANY

COMMON STOCK BENEFICIALLY RECEIVED UPON CONVERSION AS A CONTINGENT PAYMENT, (II) TO BE BOUND BY THE COMPANY'S DETERMINATION OF THE "COMPARABLE YIELD" AND "PROJECTED PAYMENT SCHEDULE," WITHIN THE MEANING OF THE CONTINGENT DEBT REGULATIONS, WITH RESPECT TO SUCH HOLDER'S SECURITIES AND (III) TO USE SUCH "COMPARABLE YIELD" AND "PROJECTED PAYMENT SCHEDULE" IN DETERMINING INTEREST ACCRUALS WITH RESPECT TO SUCH HOLDER'S SECURITIES AND IN DETERMINING ADJUSTMENTS THERETO. A HOLDER OF SECURITIES MAY OBTAIN THE ISSUE DATE, YIELD TO MATURITY, COMPARABLE YIELD AND THE PROJECTED PAYMENT SCHEDULE BY SUBMITTING A WRITTEN REQUEST FOR SUCH INFORMATION TO: INTEL CORPORATION, 2200 MISSION COLLEGE BLVD., M/S RNB4-151, SANTA CLARA, CA 95054, ATTENTION: CORPORATE SECRETARY, WITH A COPY TO: INTEL CORPORATION, 2200 MISSION COLLEGE BLVD., M/S RN6-46, SANTA CLARA, CA 95054, ATTENTION: TREASURER.]

**3.25% Junior Subordinated Convertible Debentures due 2039**

No. \_\_\_\_\_

CUSIP NO. 458140 AF7

U.S. \$ \_\_\_\_\_

Intel Corporation, a corporation duly organized and validly existing under the laws of the State of Delaware (herein called the "Company"), which term includes any successor corporation under the Indenture referred to on the reverse hereof), for value received hereby promises to pay to Cede & Co., or registered assigns, the principal sum of [•] (\$[•]) (which amount may from time to time be increased or decreased by adjustments made on the records of the Trustee, as custodian for the Depository, in accordance with the rules and procedures of the Depository) on August 1, 2039. Payment of the principal of this Security shall be made by check mailed to the address of the Holder of this Security specified in the register of Securities, or, at the option of the Company, by wire transfer in immediately available funds, in such lawful money of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

The issue date of this Security is July [ ], 2009.

Reference is made to the further provisions of this Security set forth on the reverse hereof, including, without limitation, provisions giving the Company the right to redeem this Security under certain circumstances and provisions giving the Holder the right to convert this Security into Common Stock of the Company and to require the Company to repurchase this Security upon certain events, in each case, on the terms and subject to the limitations referred to on the reverse hereof and as more fully specified in the Indenture. Such further provisions shall for all purposes have the same effect as though fully set forth at this place. Capitalized terms used but not defined herein shall have such meanings as are ascribed to such terms in the Indenture.

This Security shall be deemed to be a contract made under the laws of the State of New York, and for all purposes shall be construed in accordance with and governed by the laws of said State.

This Security shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been manually signed by the Trustee or a duly authorized authenticating agent under the Indenture.

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed.

INTEL CORPORATION

By: \_\_\_\_\_  
Authorized Signatory

**INTEL CORPORATION**

**3.25% Junior Subordinated Convertible Debentures due 2039**

This Security is one of a duly authorized issue of Securities of the Company, designated as its 3.25% Junior Subordinated Convertible Debentures due 2039 (the “**Securities**”), all issued or to be issued under and pursuant to an Indenture dated as of July 27, 2009 (the “**Indenture**”), between the Company and Wells Fargo Bank, National Association (the “**Trustee**”), to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Company and the Holders of the Securities.

Interest. The Securities will bear Regular Interest at a rate of 3.25% per year, payable semi-annually in arrears on August 1 and February 1 of each year beginning on February 1, 2010. In addition to Regular Interest, the Securities will also bear Contingent Interest (i) commencing on August 1, 2019, during any semi-annual interest period in which the average trading price of the Securities for the 10 Trading Day period immediately preceding the first day of such semi-annual period is greater than or equal to \$1,500 per \$1,000 Principal Amount of the Securities, at a rate of 0.50% of such trading price per annum, (ii) commencing on August 1, 2019, during any semi-annual interest period in which the average trading price of the Securities for the 10 Trading Day period immediately preceding the first day of such semi-annual period is less than or equal to a threshold that will initially be set at \$650 per \$1,000 Principal Amount of the Securities and that will increase over time in accordance with the Indenture, at a rate of 0.25% of such trading price per annum and (iii) at any time that Securities are outstanding in the event that the Company pays an extraordinary cash dividend or distribution to holders of the Company’s Common Stock that the Company’s Board of Directors designates as payable to Holders of the Securities. Pursuant to Section 10.03 of the Indenture, in certain circumstances, the Holders shall be entitled to receive Additional Interest.

Subordination. The Securities are unsecured junior obligations of the Company subordinated in right of payment to the Company’s existing and future Senior Debt and effectively subordinated in right of payment to all indebtedness and other liabilities of the Company’s subsidiaries.

Redemption at the Option of the Company. No sinking fund is provided for the Securities. The Securities are redeemable as a whole, or from time to time in part, (i) at any time commencing on August 5, 2019 at the option of the

Company if the Last Reported Sale Price of the Company's Common Stock has been greater than or equal to 150% of Conversion Price then in effect for at least 20 Trading Days during any 30 consecutive Trading Day period prior to the date on which the Company provides notice of redemption and (ii) on or prior to July 27, 2010, if certain U.S. federal tax legislation, regulations or rules are enacted or are issued. The redemption price (the "**Redemption Price**") for any such redemption is equal to (a) in the case of a redemption described in clause (i) above, 100%, expressed as a percentage of the Principal Amount of Securities to be redeemed, together with accrued and unpaid Interest to, but excluding, the Redemption Date and (b) in the case of a redemption described in clause (ii) above, 101.5%, expressed as a percentage of the Principal Amount of Securities to be redeemed, together with accrued and unpaid Interest to, but excluding, the Redemption Date and, if the Conversion Value of the Securities being redeemed exceeds their Initial Conversion Value, 76% of the amount determined by subtracting the Initial Conversion Value of the Securities being redeemed from their Conversion Value.

Repurchase by the Company at the Option of the Holder Upon a Fundamental Change. Subject to the terms and conditions of the Indenture, the Company shall become obligated, at the option of the Holder, to repurchase the Securities if a Fundamental Change occurs at any time prior to the Stated Maturity at 100% of the Principal Amount plus accrued and unpaid Interest to, but excluding, the Fundamental Change Repurchase Date (the "**Fundamental Change Repurchase Price**"), which Fundamental Change Repurchase Price will be paid in cash; *provided* that the Company may elect, subject to the satisfaction of certain conditions described in the Indenture, to pay all or a portion of the Fundamental Change Repurchase Price in Common Stock, Acquiror Securities or a combination thereof. The number of shares of Common Stock or Acquiror Securities that a Holder will receive will equal the quotient obtained by dividing (i) the portion of the Fundamental Change Repurchase Price to be paid in shares of Common Stock or Acquiror Securities, as applicable, by (ii) 95% of the average Closing Price of the shares of Common Stock or Acquiror Securities, as applicable, for the five Trading Day period immediately preceding and including the third Trading Day immediately preceding the Fundamental Change Repurchase Date, subject to adjustment as described in the Indenture.

Withdrawal of Repurchase Notice and Fundamental Change Repurchase Notice. Holders have the right to withdraw, in whole or in part, any Repurchase Notice or Fundamental Change Repurchase Notice, as the case may be, by delivering to the Paying Agent a written notice of withdrawal in accordance with the provisions of the Indenture.

Payment of Redemption Price, Repurchase Price and Fundamental Change Repurchase Price. If cash or, if permitted under the Indenture, Common Stock, Acquiror Securities or any combination of the foregoing, sufficient to pay the

Redemption Price or Fundamental Change Repurchase Price, as the case may be, of all Securities or portions thereof to be redeemed or repurchased on a Redemption Date or on a Fundamental Change Repurchase Date, as the case may be, is deposited with the Paying Agent on the Redemption Date or the Fundamental Change Repurchase Date, as the case may be, such Securities will cease to be outstanding and Interest will cease to accrue on such Securities (or portions thereof) immediately after such Redemption Date or Fundamental Change Repurchase Date, as the case may be, and the Holder thereof shall have no other rights as such (other than the right to receive the Redemption Price or Fundamental Change Repurchase Price, as the case may be, upon surrender of such Security).

Conversion. Subject to and in compliance with the provisions of the Indenture (including without limitation the conditions of conversion of this Security set forth in Article 9 thereof), the Holder hereof has the right, at its option, to convert the Principal Amount hereof or any portion of such principal which is \$1,000 or an integral multiple thereof, into, subject to Section 9.01 of the Indenture, cash and shares of Common Stock, if any, at the Conversion Rate. The initial Conversion Rate is 44.0917 shares of Common Stock per \$1,000 Principal Amount of Securities, subject to adjustment in certain events described in the Indenture. Upon conversion, the Company shall deliver, for each \$1,000 principal amount of Securities being converted, cash and shares of Common Stock, if any, equal to the Settlement Amount in accordance with the Indenture. No fractional shares will be issued upon any conversion, but an adjustment and payment in cash will be made, as provided in the Indenture, in respect of any fraction of a share which would otherwise be issuable upon the surrender of any Securities for conversion. Securities in respect of which a Holder is exercising its right to require repurchase on a Fundamental Change Repurchase Date may be converted only if such Holder withdraws its election to exercise such right in accordance with the terms of the Indenture.

In the event of a deposit or withdrawal of an interest in this Security, including an exchange, transfer, repurchase or conversion of this Security in part only, the Trustee, as custodian of the Depositary, shall make an adjustment on its records to reflect such deposit or withdrawal in accordance with the rules and procedures of the Depositary.

Subject to certain limitations in the Indenture, at any time when the Company is not subject to Section 13 or 15(d) of the United States Securities Exchange Act of 1934, as amended, upon the request of a Holder of a Restricted Security, the Company will promptly furnish or cause to be furnished Rule 144A Information (as defined below) to such Holder of Restricted Securities, or to a prospective purchaser of any such security designated by any such Holder, to the extent required to permit compliance by any such Holder with Rule 144A under the Securities Act of 1933, as amended (the "**Securities Act**"). **Rule 144A**

**Information**” shall be such information as is specified pursuant to Rule 144A(d)(4) under the Securities Act (or any successor provision thereto).

If an Event of Default shall occur and be continuing, the Principal Amount plus Interest through such date on all the Securities may be declared due and payable in the manner and with the effect provided in the Indenture.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Securities under the Indenture at any time by the Company and the Trustee with the consent of the Holders of not less than a majority in aggregate Principal Amount of the Outstanding Securities. The Indenture also contains provisions permitting the Holders of specified percentages in aggregate Principal Amount of the Outstanding Securities, on behalf of the Holders of all the Securities, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of any provision of or applicable to this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security.

As provided in and subject to the provisions of the Indenture, the Holder of this Security shall not have the right to institute any proceeding with respect to the Indenture or for the appointment of a receiver or trustee or for any other remedy thereunder, unless such Holder shall have previously given the Trustee written notice of a continuing Event of Default with respect to the Securities, the Holders of not less than 25% in aggregate Principal Amount of the Outstanding Securities shall have made written request to the Trustee to institute proceedings in respect of such Event of Default as Trustee and offered the Trustee indemnity satisfactory to it, the Trustee shall not have received from the Holders of a majority in Principal Amount of Outstanding Securities a direction inconsistent with such request, and the Trustee shall have failed to institute any such proceeding, for 60 days after receipt of such notice, request and offer of indemnity. The foregoing shall not apply to any suit instituted by the Holder of this Security for the enforcement of any payment of the Principal Amount, Redemption Price or Fundamental Change Repurchase Price hereof on or after the respective due dates expressed herein.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the Principal Amount, Redemption Price or Fundamental Change Repurchase Price of, and Interest on, this Security at the times, place and rate, and in the coin or currency, herein prescribed.



As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is registrable in the Security Register, upon surrender of this Security for registration of transfer at the office or agency of the Company in Minneapolis, Minnesota, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed by, the Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Securities, of authorized denominations and for the same aggregate Principal Amount, will be issued to the designated transferee or transferees.

The Securities are issuable only in registered form in denominations of \$1,000 and any integral multiple of \$1,000 above that amount, as provided in the Indenture and subject to certain limitations therein set forth. Securities are exchangeable for a like aggregate Principal Amount of Securities of a different authorized denomination, as requested by the Holder surrendering the same.

No service charge shall be made for any such registration of transfer or exchange, but the Company and the Security Registrar may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

Prior to due presentment of this Security for registration of transfer, the Company, the Trustee and the Security Registrar and any agent of the Company or the Trustee may treat the Person in whose name this Security is registered as the owner hereof for all purposes, whether or not this Security be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

**This Security shall be governed by and construed in accordance with the laws of the State of New York.**

All terms used in this Security that are defined in the Indenture shall have the meanings assigned to them in the Indenture.

ASSIGNMENT FORM

If you want to assign this Security, fill in the form below and have your signature guaranteed:

I or we assign and transfer this Security to:

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(Print or type name, address and zip code and social security or tax ID number of assignee)

and irrevocably appoint \_\_\_\_\_ agent to transfer this Security on the books of the Company. The agent may substitute another to act for him.

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

(Sign exactly as your name appears on the other side of this Security)

Signature Guarantee: \_\_\_\_\_

Note: Signatures must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Security Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("**STAMP**") or such other "signature guarantee program" as may be determined by the Security Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

In connection with any transfer of this Security occurring prior to the date which is the earlier of (i) the date of the declaration by the Commission of the effectiveness of a registration statement under the Securities Act, as amended (the "**Securities Act**"), covering resales of this Security (which effectiveness shall not have been suspended or terminated at the date of the transfer) and (ii) the first anniversary of the Issue Date set forth on the face of this Security, the undersigned confirms that it has not utilized any general solicitation or general advertising in connection with the transfer and that this Security is being transferred:

[Check One]

- (1)  to the Company or a subsidiary thereof; or
- (2)  to a "Qualified Institutional Buyer" pursuant to and in compliance with Rule 144A under the Securities Act; or
- (3)  pursuant to the exemption from registration provided by Rule 144 under the Securities Act.

Unless one of the above boxes is checked, the Trustee will refuse to register any of the Securities evidenced by this certificate in the name of any Person other than the registered Holder thereof, *provided* that if box (3) is checked, the Company may require (and shall deliver to the Trustee and the Security Registrar), prior to registering any such transfer of the Securities, in its sole discretion, such legal opinions, certifications and other information as the Company may reasonably request to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act.

If none of the foregoing boxes is checked, the Trustee or Security Registrar shall not be obligated to register this Security in the name of any Person other than the Holder hereof unless and until the conditions to any such transfer of registration set forth herein and in Section 3.09 of the Indenture shall have been satisfied.

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

(Sign exactly as your name appears  
on the other side of this Security)

Signature Guarantee: \_\_\_\_\_

Note: Signatures must be guaranteed by an “eligible guarantor institution” meeting the requirements of the Security Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program (“**STAMP**”) or such other “signature guarantee program” as may be determined by the Security Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

TO BE COMPLETED BY PURCHASER IF (2) ABOVE IS CHECKED

The undersigned represents and warrants that it is purchasing this Security for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a “**qualified institutional buyer**” within the meaning of Rule 144A under the Securities Act and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Company as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned’s foregoing representations in order to claim the exemption from registration provided by Rule 144A.

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

NOTICE: To be executed by an executive officer.

CONVERSION NOTICE

If you want to convert this Security into Common Stock of the Company, check the box:

To convert only part of this Security, state the Principal Amount to be converted (which must be \$1,000 or an integral multiple of \$1,000):

\$ \_\_\_\_\_

If you want the stock certificate made out in another person's name, fill in the form below:

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(Insert other person's social security or tax ID no.)

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(Print or type other person's name, address and zip code)

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Date: \_\_\_\_\_ Signed: \_\_\_\_\_

(Sign exactly as your name appears on the other side of this Security)

Signature Guarantee: \_\_\_\_\_

Note: Signatures must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Security Registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("**STAMP**") or such other "signature guarantee program" as may be determined by the Security Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

Section 2.04. *Form of Trustee's Certificate of Authentication.* This is one of the Securities referred to in the within-mentioned Indenture.

Dated: \_\_\_\_\_

Wells Fargo Bank, National Association,  
as Trustee

By \_\_\_\_\_  
Authorized Signatory

Section 2.05. *Legend on Restricted Securities.* During the period beginning on the Issue Date and ending on the date one year from such date, any Security, including any Security issued in exchange therefor or in lieu thereof, shall be deemed a "**Restricted Security**" and shall be subject to the restrictions on transfer provided in the legends set forth on the face of the form of Security in Section 2.02; *provided, however,* that the term "**Restricted Security**" shall not include any Securities as to which restrictions have been terminated in accordance with Section 3.05. All Securities shall bear the applicable legends set forth on the face of the form of Security in Section 2.02. Except as provided in Sections 3.05 and 3.09, the Trustee shall not issue any unlegended Security until it has received an Officers' Certificate in the form of Exhibit C attached hereto from the Company directing it to do so.

ARTICLE 3  
The Securities

Section 3.01. *Title and Terms; Payments.* The aggregate Principal Amount of Securities that may be authenticated and delivered under this Indenture is initially limited to \$2,000,000,000, except for Securities authenticated and delivered upon registration or transfer of, or in exchange for, or in lieu of, other Securities pursuant to Section 3.04, 3.05, 3.06, 7.06, 8.05 or 15.06.

The Securities shall be known and designated as the "3.25% Junior Subordinated Convertible Debentures due 2039" of the Company. The Principal Amount shall be payable at the Stated Maturity.

The Securities shall not have the benefit of a sinking fund.

The Securities shall be subordinated to all Senior Debt of the Company.

The Principal Amount of and Interest on Global Securities registered in the name of The Depository Trust Company or its nominee shall be paid by wire transfer in immediately available funds to The Depository Trust Company or its nominee, as applicable.

The Principal Amount of Physical Securities shall be payable at the office or agency of the Company maintained for such purpose. Interest on Physical Securities will be payable (i) to Holders having an aggregate Principal Amount of \$2,000,000 or less of Securities, by check mailed to such Holders and (ii) to Holders having an aggregate Principal Amount of more than \$2,000,000 of Securities, either by check mailed to such Holders or, upon application by a Holder to the Security Registrar not later than the relevant Record Date for such Interest payment, by wire transfer in immediately available funds to such Holder's account within the United States, which application shall remain in effect until the Holder notifies the Security Registrar to the contrary in writing.

Section 3.02. *Denominations.* The Securities shall be issuable only in registered form without coupons and in denominations of \$1,000 and any integral multiple of \$1,000 above that amount.

Section 3.03. *Execution, Authentication, Delivery and Dating.* The Securities shall be executed on behalf of the Company by its Chairman of the Board of Directors, its President or one of its Vice Presidents.

Securities bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Securities or did not hold such offices at the date of such Securities.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Securities. The Company Order shall specify the amount of Securities to be authenticated, and shall further specify the amount of such Securities to be issued as a Global Security or as Physical Securities. The Trustee in accordance with such Company Order shall authenticate and deliver such Securities as in this Indenture provided and not otherwise.

Each Security shall be dated the date of its authentication.

No Security shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Security a certificate of authentication substantially in the form provided for herein executed by the Trustee by manual signature, and such certificate upon any Security shall be



conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder.

Section 3.04. *Temporary Securities.* Pending the preparation of definitive Securities, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Securities that are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Securities may determine, as evidenced by their execution of such Securities; *provided*, that any such temporary Securities shall bear legends on the face of such Securities as set forth in Section 2.02.

If temporary Securities are issued, the Company will cause definitive Securities to be prepared without unreasonable delay. After the preparation of definitive Securities, the temporary Securities shall be exchangeable for definitive Securities upon surrender of the temporary Securities at any office or agency of the Company designated pursuant to Section 6.02, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a like Principal Amount of Physical Securities of authorized denominations. Until so exchanged, the temporary Securities shall in all respects be entitled to the same benefits under this Indenture as Physical Securities.

Section 3.05. *Registration; Registration of Transfer and Exchange; Restrictions on Transfer.* (a) The Company shall cause to be kept at the applicable Corporate Trust Office of the Trustee a register (the register maintained in such office and in any other office or agency designated pursuant to Section 6.02 being herein sometimes collectively referred to as the “**Security Register**”) in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Securities and of transfers of Securities. The Trustee is hereby appointed “Security Registrar” (the “**Security Registrar**”) for the purpose of registering Securities and transfers of Securities as herein provided.

Upon surrender for registration of transfer of any Security at an office or agency of the Company designated pursuant to Section 6.02 for such purpose, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of any authorized denominations and of a like aggregate Principal Amount and tenor, each such Security bearing such restrictive legends as may be required by this Indenture (including Sections 2.02, 2.05 and 3.09).

At the option of the Holder and subject to the other provisions of this Section 3.05 and to Section 3.09, Securities may be exchanged for other Securities of any authorized denominations and of a like aggregate Principal Amount and tenor, upon surrender of the Securities to be exchanged at such office or agency. Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities which the Holder making the exchange is entitled to receive.

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

Every Security presented or surrendered for registration of transfer or for exchange shall (if so required by the Company or the Trustee) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed, by the Holder thereof or his attorney duly authorized in writing. As a condition to the registration of transfer of any Restricted Securities, the Company or the Trustee may require evidence satisfactory to them as to the compliance with the restrictions set forth in the legend on such securities.

Except as provided in the following sentence and in Section 3.09, all Securities originally issued hereunder and all Securities issued upon registration of transfer or exchange or replacement thereof shall be Restricted Securities and shall bear the legends required by Sections 2.02 and 2.05, unless the Company shall have delivered to the Trustee (and the Security Registrar, if other than the Trustee) a Company Order stating that the Security is not a Restricted Security and may be issued without such legend thereon. Securities that are issued upon registration of transfer of, or in exchange for, Securities that are not Restricted Securities shall not be Restricted Securities and shall not bear such legend.

No service charge shall be made for any registration of transfer or exchange of Securities, but the Company and the Security Registrar may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Securities, other than exchanges pursuant to Section 3.04 not involving any transfer.

Neither the Company nor the Security Registrar shall be required to exchange or register a transfer of any Security (i) during the period beginning at the opening of business 15 days before the mailing of a notice of redemption to all Holders of Securities to be redeemed and ending at the close of business on the date on which a notice of redemption is mailed to all Holders of Securities to be redeemed, (ii) after any notice of redemption has been given to Holders, except

that where such notice provides that such Security is to be redeemed only in part, the Company and the Security Registrar shall be required to exchange or register a transfer of the portion thereof not to be redeemed, (iii) that has been surrendered for conversion or (iv) as to which a Fundamental Change Repurchase Notice has been delivered and not withdrawn, except that where such Fundamental Change Repurchase Notice provides that such Security is to be purchased only in part, the Company and the Security Registrar shall be required to exchange or register a transfer of the portion thereof not to be purchased.

(b) Beneficial ownership of every Restricted Security shall be subject to the restrictions on transfer provided in the legends required to be set forth on the face of each Restricted Security pursuant to Sections 2.02 and 2.05, unless such restrictions on transfer shall be terminated in accordance with this Section 3.05(b) or Section 3.09. The Holder of each Restricted Security, by such Holder's acceptance thereof, agrees to be bound by such restrictions on transfer.

The restrictions imposed by this Section 3.05 and by Sections 2.02, 2.05 and 3.09 upon the transferability of any particular Restricted Security shall cease and terminate upon delivery by the Company to the Trustee of an Officers' Certificate stating that such Restricted Security has been transferred in compliance with Rule 144 under the Securities Act (or any successor provision thereto). Any Restricted Security as to which the Company has delivered to the Trustee an Officers' Certificate stating that such restrictions on transfer shall have expired in accordance with their terms or shall have terminated may, upon surrender of such Restricted Security for exchange to the Security Registrar in accordance with the provisions of this Section 3.05, be exchanged for a new Security, of like tenor and aggregate Principal Amount, which shall not bear the restrictive legends required by Sections 2.02 and 2.05.

As used in the preceding two paragraphs of this Section 3.05, the term "transfer" encompasses any sale, pledge, transfer or other disposition of any Restricted Security.

(c) Neither the Trustee, the Security Registrar nor any of their respective agents shall (i) have any duty to monitor compliance with or with respect to any federal or state or other securities or tax laws or (ii) have any duty to obtain documentation relating to any transfers or exchanges other than as specifically required hereunder.

(d) Notwithstanding the foregoing, during the period of one year after the Issue Date, the Company shall not, and shall not permit any of its "affiliates" (as defined in Rule 144 under the Securities Act) to, resell any of the Securities that constitute "restricted securities" under Rule 144 under the Securities Act that have been reacquired by any of them.

Section 3.06. *Mutilated, Destroyed, Lost and Stolen Securities.* If any mutilated Security is surrendered to the Trustee, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a new Security of like tenor and Principal Amount and bearing a number not contemporaneously outstanding.

If there shall be delivered to the Company and the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Security and (ii) such security or indemnity as may be required by them to save each of them and any agent of either of them harmless, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a bona fide purchaser, the Company shall execute and the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Security, a new Security of like tenor and Principal Amount and bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable or has been called for redemption in full, the Company in its discretion may, instead of issuing a new Security, pay such Security.

Upon the issuance of any new Security under this Section 3.06, the Company may require payment by the Holder of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

Every new Security issued pursuant to this Section 3.06 in lieu of any destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities duly issued hereunder.

The provisions of this Section 3.06 are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities.

Section 3.07. *Persons Deemed Owners.* Prior to due presentment of a Security for registration of transfer, the Company, the Trustee, the Security Registrar and any agent of the Company, the Trustee or the Security Registrar may treat the Person in whose name such Security is registered as the owner of such Security for the purpose of receiving payment of the principal of such Security and for all other purposes whatsoever, whether or not such Security be overdue, and neither the Company, the Trustee, the Security Registrar nor any

agent of the Company, the Trustee or the Security Registrar shall be affected by notice to the contrary.

Section 3.08. *Book-Entry Provisions for Global Securities.* (a) The Global Securities initially shall (i) be registered in the name of the Depository or the nominee of such Depository, (ii) be delivered to the Trustee as custodian for the Depository and (iii) bear legends as set forth on the face of the form of Security in Section 2.02.

Members of, or participants in, the Depository (“**Agent Members**”) shall have no rights under this Indenture with respect to any Global Security held on their behalf by the Depository, or the Trustee as its custodian, or under the Global Security, and the Depository may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner of the Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depository or impair, as between the Depository and its Agent Members, the operation of customary practices governing the exercise of the rights of any Holder.

(b) Transfers of the Global Securities shall be limited to transfers in whole, but not in part, to the Depository, its successors or their respective nominees. Interests of beneficial owners in a Global Security may be transferred or exchanged, in whole or in part, for Physical Securities in accordance with the rules and procedures of the Depository and the provisions of Section 3.09. In addition, Physical Securities shall be transferred to all beneficial owners in exchange for their beneficial interests in the Global Securities if (A) such Depository has notified the Company that the Depository (i) is unwilling or unable to continue as Depository for such Global Security or (ii) has ceased to be a clearing agency registered under the Exchange Act when the Depository is required to be so registered to act as such Depository and, in either such case, no successor Depository shall have been appointed within 90 days of such notification, (B) there shall have occurred and be continuing an Event of Default with respect to such Global Security and the Outstanding Securities shall have become due and payable pursuant to Section 10.02 and the Trustee requests that Physical Securities be issued or (C) the Company, at its option, notifies the Trustee that it elects to cause the issuance of Physical Securities, subject to applicable procedures of the Depository; *provided* that Holders of Physical Securities offered and sold in reliance on Rule 144A shall have the right, subject to applicable law, to request that such Securities be exchanged for interests in the applicable Global Security.

(c) In connection with any transfer or exchange of a portion of the beneficial interest in the Global Security to beneficial owners pursuant to

paragraph (b) above, the Security Registrar shall (if one or more Physical Securities are to be issued) reflect on its books and records the date and a decrease in the Principal Amount of the Global Security in an amount equal to the Principal Amount of the beneficial interest in the Global Security to be transferred, and the Company shall execute, and the Trustee shall authenticate and deliver, one or more Physical Securities of like tenor and amount.

(d) In connection with the transfer of the entire Global Security to beneficial owners pursuant to paragraph (b) above, the Global Security shall be deemed to be surrendered to the Trustee for cancellation, and the Company shall execute, and the Trustee shall authenticate and deliver, to each beneficial owner identified by the Depository in exchange for its beneficial interest in the Global Security, an equal aggregate Principal Amount of Physical Securities of authorized denominations and the same tenor.

(e) Any Physical Security constituting a Restricted Security delivered in exchange for an interest in the Global Security pursuant to paragraph (c) or (d) above shall, except as otherwise provided by paragraph (c) of Section 3.09, bear the legend regarding transfer restrictions applicable to the Physical Securities set forth on the face of the form of Security in Section 2.02.

(f) The Holder of the Global Securities may grant proxies and otherwise authorize any Person, including Agent Members and Persons that may hold interests through Agent Members, to take any action that a Holder is entitled to take under this Indenture or the Securities.

Section 3.09. *Cancellation and Transfer Provisions.* The Company at any time may deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder that the Company may have acquired in any manner whatsoever, and may deliver to the Trustee for cancellation any Securities previously authenticated hereunder which the Company has not issued and sold. The Trustee shall cancel and dispose of all Securities surrendered for registration of transfer, exchange, payment, purchase, repurchase, redemption, conversion (pursuant to Article 9 hereof) or cancellation in accordance with its customary practices. If the Company shall acquire any of the Securities, such acquisition shall not operate as a redemption or satisfaction of the indebtedness represented by such Securities unless and until the same are delivered to the Trustee for cancellation. The Company may not issue new Securities to replace Securities it has paid in full or delivered to the Trustee for cancellation.

(a) *Transfers to QIBs.* The following provisions shall apply with respect to the registration of any proposed transfer of a Security constituting a Restricted Security to a QIB:

(i) the Security Registrar shall register the transfer if such transfer is being made by a proposed transferor who has checked the box provided for on the form of Security stating, or has otherwise advised the Company and the Security Registrar in writing, that the sale has been made in compliance with the provisions of Rule 144A to a transferee who has signed the certification provided for on the form of Security stating, or has otherwise advised the Company and the Security Registrar in writing, that it is purchasing the Security for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a QIB within the meaning of Rule 144A, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Company as it has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon its foregoing representations in order to claim the exemption from registration provided by Rule 144A; and

(ii) if the proposed transferee is an Agent Member, and the Securities to be transferred consist of Physical Securities which after transfer are to be evidenced by an interest in the Global Security, upon receipt by the Security Registrar of instructions given in accordance with the Depositary's and the Security Registrar's procedures, the Security Registrar shall reflect on its books and records the date and an increase in the Principal Amount of the Global Security in an amount equal to the Principal Amount of the Physical Securities to be transferred, and the Trustee shall cancel the Physical Securities so transferred.

(b) *Private Placement Legend.* Upon the registration of transfer, exchange or replacement of Securities not bearing the legends required by Sections 2.02 and 2.05, the Security Registrar shall deliver Securities that do not bear such legends. Upon the registration of transfer, exchange or replacement of Securities bearing the legends required by Sections 2.02 and 2.05, the Security Registrar shall deliver only Securities that bear such legends unless there is delivered to the Security Registrar an Opinion of Counsel reasonably satisfactory to the Company and the Trustee to the effect that neither such legend nor the related restrictions on transfer are required in order to maintain compliance with the provisions of the Securities Act.

(c) *General.* By its acceptance of any Security bearing the legends required by Sections 2.02 and 2.05, each Holder of such a Security acknowledges the restrictions on transfer of such Security set forth in this Indenture and in such legends and agrees that it will transfer such Security only as provided in this Indenture.

The Security Registrar shall retain, in accordance with its customary procedures, copies of all letters, notices and other written communications received pursuant to this Section 3.09. The Company shall have the right to inspect and make copies of all such letters, notices or other written communications at any reasonable time upon the giving of reasonable written notice to the Security Registrar.

Section 3.10. *CUSIP Numbers*. In issuing the Securities, the Company may use “CUSIP” numbers (if then generally in use), and, if so, the Trustee shall use “CUSIP” numbers in notices of redemption as a convenience to Holders; provided that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such numbers. The Company will promptly notify the Trustee in writing of any change in the “CUSIP” numbers.

#### ARTICLE 4 Interest

##### Section 4.01. *Generally*.

(a) Regular interest (“**Regular Interest**”) shall accrue on the Securities from July 27, 2009 at a rate of 3.25% per annum until the principal thereof is paid or made available for payment. Regular Interest shall be payable semi-annually in arrears on August 1 and February 1 of each year, commencing February 1, 2010.

(b) Interest on the Securities shall be computed (i) for any full semi-annual period for which a particular interest rate (inclusive of any Contingent Interest or Additional Interest payable with respect to the Securities) is applicable, on the basis of a 360-day year of twelve 30-day months and (ii) for any period for which a particular interest rate (inclusive of any Contingent Interest or Additional Interest payable with respect to the Securities) is applicable shorter than a full semi-annual period for which interest is calculated, on the basis of a 30-day month and, for such periods of less than a month, the actual number of days elapsed over a 30-day month.

(c) Except as otherwise provided in this Section 4.01(c), a Holder of any Securities at the close of business on a Record Date shall be entitled to receive Interest on such Securities on the corresponding Interest Payment Date.

(i) A Holder of any Securities as of a Record Date that are converted after the close of business on such Record Date and prior to the



opening of business on the corresponding Interest Payment Date shall be entitled to receive Interest on the principal amount of such Securities, notwithstanding the conversion of such Securities prior to such Interest Payment Date. However, a Holder that surrenders any Securities for conversion between the close of business on a Record Date and the opening of business on the corresponding Interest Payment Date shall be required to pay the Company an amount equal to the Interest payable by the Company with respect to such Securities on such Interest Payment Date at the time such Holder surrenders such Securities for conversion, *provided*, however, that this sentence shall not apply to a Holder that converts Securities:

(A) in respect of which the Company has given notice of redemption pursuant to Section 7.03 on a Redemption Date that is after the relevant Record Date and on or prior to the third Scheduled Trading Day after the relevant Interest Payment Date;

(B) in respect of which the Company has specified a Fundamental Change Repurchase Date that is after the relevant Record Date and on or prior to the relevant Interest Payment Date; or

(C) following the Record Date for the payment of Regular Interest on August 1, 2039.

Accordingly, a Holder that converts Securities under any of the circumstances described in clauses (A), (B) or (C) above will not be required to pay to the Company an amount equal to the Interest payable by the Company with respect to such Securities on the relevant Interest Payment Date.

(ii) Notwithstanding any other provision of this Section 4.01(c), any Interest payable on a Redemption Date that falls between the close of business on a Record Date and the close of business on the corresponding Interest Payment Date shall be payable to the Holder of the Securities being redeemed as provided in Section 7.01(b) and shall not be payable to the Holder on the Record Date immediately preceding such redemption. The payment of such Interest to the Holder of the Securities being redeemed as provided in Section 7.01(b) shall be deemed to satisfy the Company's obligations in respect of such Interest.

(iii) Notwithstanding any other provision of this Section 4.01(c), any Interest payable on a Fundamental Change Repurchase Date that falls between the close of business on a Record Date and the close of business on the corresponding Interest Payment Date shall be payable to

the Holder of the Securities being repurchased as provided in Section 8.01(a) and shall not be payable to the Holder on the Record Date immediately preceding such redemption. The payment of such Interest to the Holder of the Securities being repurchased as provided in Section 8.01(a) shall be deemed to satisfy the Company's obligations in respect of such Interest.

Section 4.02. *Contingent Interest.* (a) Contingent interest on the Securities ("**Contingent Interest**") shall accrue and the Company shall pay such Contingent Interest to the Holders as follows:

(i) beginning with the six-month interest payment period commencing August 1, 2019:

(A) during any six-month interest payment period with respect to which the average Trading Price for the 10 Trading Days immediately preceding the first day of such six-month interest payment period is greater than or equal to the Upside Trigger, in which case the Contingent Interest payable on each \$1,000 Principal Amount for such six-month interest payment period shall be equal to 0.50% per annum of the average Trading Price for the 10 Trading Days immediately preceding the first day of such six-month interest payment period;

(B) during any six-month interest payment period with respect to which the average Trading Price for the 10 Trading Days immediately preceding the first day of such six-month interest payment period is less than or equal to the Downside Trigger, in which case the Contingent Interest payable on each \$1,000 Principal Amount for such six-month interest payment period shall be equal to 0.25% per annum of the average Trading Price for the 10 Trading Days immediately preceding the first day of such six-month interest payment period; and

(ii) at any time Securities are outstanding, upon the declaration by the Company's Board of Directors of an extraordinary cash dividend or distribution to all or substantially all holders of the Company's Common Stock that the Company's Board of Directors designates as payable with respect to the Securities (an "**Extraordinary Dividend**"), in which case (A) Contingent Interest will be payable on the same date as, and in an amount equal to, the dividend or distribution that a Holder would have received had such Holder converted its Securities immediately prior to the record date for the payment of the corresponding dividend or distribution to holders of the Company's Common Stock and (B) the record date for such Interest shall be the same as the record date for the payment of the

corresponding extraordinary dividend or distribution to holders of the Company's Common Stock.

(b) The Company shall have no obligation to determine the Trading Price of the Securities or to request the Trustee to determine the Trading Price of the Securities unless a Holder of Securities provides the Company with reasonable evidence that the Trading Price of the Securities is greater than or equal to the Upside Trigger or is less than or equal to the Downside Trigger, at which time the Company shall instruct the Trustee to determine the Trading Price of the Securities beginning on the next Trading Day and on each successive Trading Day until the Trading Price of the Securities is less than the Upside Trigger or is greater than the Downside Trigger, as applicable.

Section 4.03. *Trustee's Responsibilities in Respect of Contingent Interest.* The Trustee's sole responsibility pursuant to Section 4.02 shall be to obtain the Trading Price of the Securities for each of the 10 Trading Days immediately preceding the first day of the applicable six-month interest payment period and to provide such information to the Company. The Company shall determine whether Holders are entitled to receive Contingent Interest, and if so, provide written notice to the Trustee and issue a press release as required by Section 4.05. Notwithstanding any term contained in this Indenture or any other document to the contrary, the Trustee shall have no responsibilities, duties or obligations for or with respect to (i) determining whether the Company must pay Contingent Interest or (ii) determining the amount of Contingent Interest, if any, payable by the Company.

Section 4.04. *Payment of Contingent Interest.* Subject to Section 4.01 hereof, Contingent Interest for any six-month interest payment period shall be paid on the applicable Interest Payment Date to the Holder in whose name any Security is registered on the Security Register at the corresponding Record Date. Contingent Interest due under this Article 4 shall be treated for all purposes of this Indenture like any other interest accruing on the Securities.

Section 4.05. *Contingent Interest Notification.* By the third Business Day of a six-month interest payment period for which Contingent Interest specified in Section 4.02(a) (i) will be paid, the Company will disseminate a press release through Reuters Economic Services and Bloomberg Business News stating that Contingent Interest will be paid on the Securities and identifying such six-month interest payment period as the six-month interest payment period for which such Contingent Interest will be paid. By the third Business Day following the designation by the Company's Board of Directors of an extraordinary cash dividend or distribution as an Extraordinary Dividend pursuant to Section 4.02(a)(ii), the Company will disseminate a press release through Reuters Economic Services and Bloomberg Business News stating that Contingent Interest will be paid on the Securities and identifying the Record Date for the

payment of such Contingent Interest and the amount of such extraordinary cash dividend or distribution payable with respect to each share of the Company's Common Stock.

ARTICLE 5  
Subordination

Section 5.01. *Agreement of Subordination.* The Company covenants and agrees, and each Holder of Securities issued hereunder by its acceptance thereof likewise covenants and agrees, that all Securities shall be issued subject to the provisions of this Article 5; and each Person holding any Security, whether upon original issue or upon transfer, assignment or exchange thereof, accepts and agrees to be bound by such provisions.

The payment of the principal of and Interest on all Securities (including, but not limited to, the Redemption Price and the Fundamental Change Repurchase Price with respect to the Securities subject to redemption or repurchase in accordance with Articles 7 and 8, respectively, and the payment of any cash upon conversion in accordance with Article 9) issued hereunder shall, to the extent and in the manner hereinafter set forth, be subordinated and subject in right of payment to the prior payment in full in cash or other payment satisfactory to the holders of Senior Debt of all Senior Debt, whether outstanding at the date of this Indenture or thereafter incurred.

No provision of this Article 5 shall prevent the occurrence of any Default or Event of Default hereunder.

Section 5.02. *Payments to Holders.* No payment shall be made with respect to the principal of or any premium or Interest on the Securities (including, but not limited to, the Redemption Price and the Fundamental Change Repurchase Price with respect to the Securities subject to redemption or purchase in accordance with Articles 7 and 8, respectively, and any payment of cash upon conversion in accordance with Article 9), except payments and distributions made by the Trustee as permitted by the first or second paragraph of Section 5.05, if:

(a) a default in the payment of principal, premium, interest or other amounts due on any Senior Debt, or in respect of any redemption or repurchase obligation under any Senior Debt, occurs and is continuing (or, in the case of Senior Debt for which there is a period of grace, in the event of such a default that continues beyond the period of grace, if any, specified in the instrument or lease evidencing such Senior Debt) (a "**Payment Default**"); or

(b) a default, other than a Payment Default, on any Designated Senior Debt occurs and is continuing that then permits holders of such Designated Senior Debt (or any Representative) to accelerate its maturity (a “**Non-Payment Default**”) and a Responsible Officer of the Trustee receives at the Corporate Trust Office a written notice of the default (a “**Payment Blockage Notice**”) from the Company or a Representative of Designated Senior Debt.

Notwithstanding the foregoing, following the delivery of a Payment Blockage Notice, no new Payment Blockage Notice may be delivered and no new period of payment blockage with respect to the Securities may begin until both (i) 365 consecutive days have elapsed since the effectiveness of the first Payment Blockage Notice and (ii) all scheduled payments of principal, any premium and Interest with respect to the Securities that are due have been paid in full in cash. No default that existed or was continuing on the date of delivery of any Payment Blockage Notice with respect to the Designated Senior Debt whose holders delivered the Payment Blockage Notice may be made the basis of a subsequent Payment Blockage Notice by the holders of such Designated Senior Debt, whether or not within a period of 365 consecutive days.

The Company may and shall resume payments on and distributions in respect of the Securities upon:

(1) in the case of a Payment Default, the date upon which the default is cured or waived or ceases to exist, or

(2) in the case of a Non-Payment Default, the earlier of the date on which such default is cured or waived or ceases to exist, in each case as and to the extent permitted under the documentation for the Designated Senior Debt, or the 179<sup>th</sup> day after the date on which the applicable Payment Blockage Notice is received, in each case, unless the maturity of the Designated Senior Debt has been accelerated or this Article 5 otherwise prohibits the payment or distribution at the time of such payment or distribution.

Upon any payment by the Company, or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to creditors upon any dissolution or winding-up or liquidation or reorganization of the Company (whether voluntary or involuntary) or in bankruptcy, insolvency, receivership or similar proceedings, all amounts due or to become due upon all Senior Debt shall first be paid in full in cash, or other payments satisfactory to the holders of Senior Debt before any payment of cash, property or securities is made on account of the principal of or Interest on, or with respect to the conversion of, the Securities (except, to the extent required by applicable law, payments made pursuant to Article 14 from monies deposited with the Trustee pursuant thereto

prior to commencement of proceedings for such dissolution, winding-up, liquidation or reorganization); and upon any such dissolution or winding-up or liquidation or reorganization of the Company or bankruptcy, insolvency, receivership or other proceeding, any payment by the Company, or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to which the Holders of the Securities or the Trustee would be entitled, except for the provision of this Article 5, shall (except as aforesaid) be paid by the Company or by any receiver, trustee in bankruptcy, liquidating trustee, agent or other Person making such payment or distribution, or by the Holders of the Securities or by the Trustee under this Indenture if received by them or it, directly to the holders of Senior Debt (pro rata to such holders on the basis of the respective amounts of Senior Debt held by such holders, or as otherwise required by law or a court order) or their representative or representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing any Senior Debt may have been issued, as their respective interests may appear, to the extent necessary to pay all Senior Debt in full in cash, or other payment satisfactory to the holders of Senior Debt, after giving effect to any concurrent payment or distribution to or for the holders of Senior Debt, before any payment or distribution is made to the Holders of the Securities or to the Trustee.

The consolidation of the Company with, or the merger of the Company into, another corporation or the liquidation or dissolution of the Company following the conveyance, transfer or lease of all or substantially all its property to another corporation upon the terms and conditions provided for in Article 11 shall not be deemed a dissolution, winding-up, liquidation or reorganization for the purposes of this Section 5.02 if such other corporation shall, as a part of such consolidation, merger, conveyance, transfer or lease, comply with the conditions stated in Article 11.

In the event that, notwithstanding the foregoing provisions, any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities (including, without limitation, by way of setoff or otherwise), prohibited by the foregoing, shall be received by the Trustee or the Holders of the Securities before all Senior Debt is paid in full, in cash or other payment satisfactory to the holders of Senior Debt, or provision is made for such payment thereof in accordance with its terms in cash or other payment satisfactory to the holders of Senior Debt, such payment or distribution shall be held in trust for the benefit of and shall be paid over or delivered to the holders of Senior Debt or their Representative or Representatives, as their respective interests may appear, as calculated by the Company, for application to the payment of all Senior Debt remaining unpaid to the extent necessary to pay all Senior Debt in full, in cash or other payment satisfactory to the holders of Senior Debt or their Representative, after giving effect to any concurrent payment or distribution to or for the holders of such Senior Debt.

Nothing in this Section 5.02 shall apply to claims of, or payments to, the Trustee under or pursuant to Sections 10.06 and 12.07. This Section 5.02 shall be subject to the further provisions of Section 5.05.

Section 5.03. *Subrogation of Securities.* Subject to the payment in full, in cash or other payment satisfactory to the holders of Senior Debt, of all Senior Debt, the rights of the Holders of the Securities shall be subrogated to the extent of the payments or distributions made to the holders of such Senior Debt pursuant to the provisions of this Article 5 (equally and ratably with the holders of all indebtedness of the Company which by its express terms is subordinated to other indebtedness of the Company to substantially the same extent as the Securities are subordinated and is entitled to like rights of subrogation) to the rights of the holders of Senior Debt to receive payments or distributions of cash, property or securities of the Company applicable to the Senior Debt until the principal of and Interest on the Securities shall be paid in full in cash or other payment satisfactory to the Holders of Securities; and, for the purposes of such subrogation, no payments or distributions to the holders of the Senior Debt of any cash, property or securities to which the Holders of the Securities or the Trustee would be entitled except for the provisions of this Article 5, and no payment over pursuant to the provisions of this Article 5, to or for the benefit of the holders of Senior Debt by Holders of the Securities or the Trustee, shall, as between the Company, its creditors other than holders of Senior Debt, and the Holders of the Securities, be deemed to be a payment by the Company to or on account of the Senior Debt; and no payment or distribution of cash, property or securities to or for the benefit of the Holders of the Securities pursuant to the subrogation provisions of this Article 5, which would otherwise have been paid to the holders of Senior Debt shall be deemed to be a payment by the Company to or for the account of the Securities. It is understood that the provisions of this Article 5 are and are intended solely for the purposes of defining the relative rights of the Holders of the Securities, on the one hand, and the holders of the Senior Debt, on the other hand.

Nothing contained in this Article 5 or elsewhere in this Indenture or in the Securities is intended to or shall impair, as among the Company, its creditors other than the holders of Senior Debt, and the Holders of the Securities, the obligation of the Company, which is absolute and unconditional, to pay to the Holders of the Securities the principal of and Interest on the Securities as and when the same shall become due and payable in accordance with their terms, or is intended to or shall affect the relative rights of the Holders of the Securities and creditors of the Company other than the holders of the Senior Debt.

Upon any payment or distribution of assets of the Company referred to in this Article 5, the Trustee, subject to the provisions of Section 12.01, and the Holders of the Securities shall be entitled to conclusively rely upon any order or decree made by any court of competent jurisdiction in which such bankruptcy,

dissolution, winding-up, liquidation or reorganization proceedings are pending, or a certificate of the receiver, trustee in bankruptcy, liquidating trustee, agent or other person making such payment or distribution, delivered to the Trustee or to the Holders of the Securities, for the purpose of ascertaining the persons entitled to participate in such distribution, the holders of the Senior Debt and other indebtedness of the Company, the amount thereof or payable thereon and all other facts pertinent thereto or to this Article 5.

Section 5.04. *Authorization to Effect Subordination.* Each Holder of a Security by the Holder's acceptance thereof authorizes and directs the Trustee on the Holder's behalf to take such action as may be necessary or appropriate to effectuate the subordination as provided in this Article 5 and appoints the Trustee to act as the Holder's attorney-in-fact for any and all such purposes.

Section 5.05. *Notice to Trustee.* The Company shall give prompt written notice in the form of an Officers' Certificate to a Responsible Officer of the Trustee and to any Paying Agent of any fact known to the Company that would prohibit the making of any payment of monies to or by the Trustee or any Paying Agent in respect of the Securities pursuant to the provisions of this Article 5. Notwithstanding the provisions of this Article 5 or any other provision of this Indenture, the Trustee shall not be charged with knowledge of the existence of any facts which would prohibit the making of any payment of monies to or by the Trustee in respect of the Securities pursuant to the provisions of this Article 5, unless and until a Responsible Officer of the Trustee shall have received written notice thereof at the applicable Corporate Trust Office from the Company (in the form of an Officers' Certificate) or a Representative or a Holder or Holders of Senior Debt or from any trustee thereof; and before the receipt of any such written notice, the Trustee, subject to the provisions of Section 12.01, shall be entitled in all respects to assume that no such facts exist; *provided* that, if on a date not less than two Business Days prior to the date upon which by the terms hereof any such monies may become payable for any purpose (including, without limitation, the payment of the principal of or Interest on any Security) the Trustee shall not have received, with respect to such monies, the notice provided for in this Section 5.05, then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such monies and to apply the same to the purpose for which they were received, and shall not be affected by any notice to the contrary which may be received by it on or after such prior date. Notwithstanding anything in this Article 5 to the contrary, nothing shall prevent any payment by the Trustee to the Holders of monies deposited with it pursuant to Article 14, and any such payment shall not be subject to the provisions of this Article 5.

The Trustee, subject to the provisions of Section 12.01, shall be entitled to conclusively rely on the delivery to it of a written notice by a Representative or a person representing himself to be a holder of Senior Debt (or a trustee on behalf



of such holder) to establish that such notice has been given by a Representative or a holder of Senior Debt. In the event that the Trustee determines in good faith that further evidence is required with respect to the right of any person as a holder of Senior Debt to participate in any payment or distribution pursuant to this Article 5, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Debt held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this Article 5, and if such evidence is not furnished the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

Section 5.06. *Trustee's Relation to Senior Debt.* The Trustee in its individual capacity shall be entitled to all the rights set forth in this Article 5 in respect of any Senior Debt at any time held by it, to the same extent as any other holder of Senior Debt, and nothing in Section 12.13 or elsewhere in this Indenture shall deprive the Trustee of any of its rights as such holder.

With respect to the holders of Senior Debt, the Trustee undertakes to perform or to observe only such of its covenants and obligations as are specifically set forth in this Article 5, and no implied covenants or obligations with respect to the holders of Senior Debt shall be read into this Indenture against the Trustee. The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Debt and, subject to the provisions of Section 12.01, the Trustee shall not be liable to any holder of Senior Debt if it shall pay over or deliver to Holders of Securities, the Company or any other Person money or assets to which any holder of Senior Debt shall be entitled by virtue of this Article 5 or otherwise.

Section 5.07. *No Impairment of Subordination.* No right of any present or future holder of any Senior Debt to enforce subordination as herein provided shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any act or failure to act, in good faith, by any such holder, or by any noncompliance by the Company with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof which any such holder may have or otherwise be charged with.

Section 5.08. *No Impairment Of Conversion Right.* Nothing contained in this Article 5 or elsewhere in this Indenture or in the Securities is intended to or shall impair, as among the Company, its creditors other than holders of Senior Debt and the Holders, the right, which is absolute and unconditional, of the Holder of any Security to convert such Security in accordance with Article 9.

Section 5.09. *Existing Junior Subordinated Convertible Debentures.* The Securities are not senior in right of payment to, and will rank equal with, the Company's 2.95% Junior Subordinated Convertible Debentures Due 2035.

Section 5.10. *Article Applicable to Paying Agents.* If at any time any Paying Agent other than the Trustee shall have been appointed by the Company and be then acting hereunder, the term "Trustee" as used in this Article 5 shall (unless the context otherwise requires) be construed as extending to and including such Paying Agent within its meaning as fully for all intents and purposes as if such Paying Agent were named in this Article 5 in addition to or in place of the Trustee; *provided*, however, that the first paragraph of Section 5.05 shall not apply to the Company or any Affiliate of the Company if it or such Affiliate acts as Paying Agent.

Section 5.11. *Senior Debt Entitled to Rely.* The holders of Senior Debt (including, without limitation, Designated Senior Debt) shall have the right to rely upon this Article 5, and no amendment or modification of the provisions contained herein shall diminish the rights of such holders unless such holders shall have agreed in writing thereto.

## ARTICLE 6 Covenants

Section 6.01. *Payments.* The Company shall duly and punctually make all payments in respect of the Securities in accordance with the terms of the Securities and this Indenture.

Any payments made or due pursuant to this Indenture shall be considered paid on the applicable date due if by 10:00 a.m., New York City time, on such date the Paying Agent holds, in accordance with this Indenture, cash sufficient to pay all such amounts then due. Payment of the principal of and Interest on the Securities shall be in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts.

Section 6.02. *Maintenance of Office or Agency.* The Company shall maintain an office or agency where Securities may be presented or surrendered for payment, where Securities may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served, which shall initially be the applicable Corporate Trust Office of the Trustee. The Company shall give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Company hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands.

The Company may also from time to time designate one or more other offices or agencies where the Securities may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided*, however, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency for such purposes. The Company shall give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

Section 6.03. *Appointments to Fill Vacancies in Trustee's Office.* The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, in the manner provided in Section 12.10, a Trustee, so that there shall at all times be a Trustee hereunder.

Section 6.04. *Money for Security Payments to be Held in Trust.* If the Company shall at any time act as its own Paying Agent, it shall, on or before each due date of any payment in respect of any of the Securities, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to make the payment so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided and shall promptly notify the Trustee of its action or failure so to act.

Whenever the Company shall have one or more Paying Agents, it will, prior to each due date of any payment in respect of any Securities, deposit with a Paying Agent a sum sufficient to pay such amount, such sum to be held as provided by the Trust Indenture Act, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its action or failure so to act.

The Company shall cause each Paying Agent other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section 6.04, that such Paying Agent will (i) comply with the provisions of the Trust Indenture Act applicable to it as a Paying Agent and (ii) during the continuance of any default by the Company (or any other obligor upon the Securities) in the making of any payment in respect of the Securities, upon the written request of the Trustee, forthwith pay to the Trustee all sums held in trust by such Paying Agent as such.

The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the

Trustee, such Paying Agent shall be released from all further liability with respect to such money.

Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the making of payments in respect of any Security and remaining unclaimed for two years after such payment has become due shall be paid to the Company on Company Request, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Security shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; *provided*, however, that the Trustee or such Paying Agent, before being required to make any such repayment, shall at the expense of the Company cause to be published once, in a newspaper published in the English language, customarily published on each Business Day and of general circulation in the City of New York, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication, any unclaimed balance of such money then remaining shall be repaid to the Company. In the absence of a written request from the Company to return funds remaining unclaimed for two years after such payment has become due to the Company, the Trustee shall from time to time deliver all unclaimed payments to or as directed by applicable escheat authorities, as determined by the Trustee in its sole discretion, in accordance with the customary practices and procedures of the Trustee. Any such unclaimed funds held by the Trustee pursuant to this Section 6.04 shall be held uninvested and without any liability for interest.

Section 6.05. *Statement by Officers as to Default.* The Company will deliver to the Trustee, within 120 days after the end of each fiscal year of the Company ending after the date hereof, an Officers' Certificate, stating whether or not to the knowledge of the signers thereof the Company is in Default in the performance and observance of any of the terms, provisions and conditions of this Indenture (without regard to any period of grace or requirement of notice provided hereunder) and, if the Company shall be in Default, specifying all such Defaults and the nature and status thereof of which they may have knowledge.

Section 6.06. *Existence.* Subject to Article 11, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory) and franchises; *provided*, however, that the Company shall not be required to preserve any such right or franchise if the Company shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and that the loss thereof is not disadvantageous in any material respect to the Holders.

Section 6.07. *Rule 144A Information Requirement.* Within the period prior to the expiration of the holding period applicable to sales of Securities or any Common Stock issuable on conversion thereof under Rule 144(k) under the Securities Act (or any successor provision), the Company covenants and agrees that it shall, during any period in which it is not subject to Section 13 or 15(d) under the Exchange Act, make available to any Holder or beneficial Securityholder or any such Common Stock, in each case which continue to be Restricted Securities, in connection with any sale thereof and any prospective Purchasers of Securities or such Common Stock from such Holder or beneficial holder, the information required pursuant to Rule 144A(d)(4) under the Securities Act upon the request of any Holder or beneficial holder of the Securities or such Common Stock and it will take such further action as any Holder or beneficial holder of such Securities or such Common Stock may reasonably request, all to the extent required from time to time to enable such Holder or beneficial holder to sell its Securities or Common Stock without registration under the Securities Act within the limitation of the exemption provided by Rule 144A, as such rule may be amended from time to time. Upon the request of any Holder or any beneficial holder of the Securities or such Common Stock, the Company will deliver to such Holder a written statement as to whether it has complied with such requirements.

Section 6.08. *Resale of Certain Securities.* During the period beginning on the Issue Date and ending on the date that is one year from the Issue Date, the Company shall not, and shall not permit any of its “**affiliates**” (as defined under Rule 144 under the Securities Act or any successor provision thereto) to, resell any Securities which constitute “**restricted securities**” under Rule 144 that have been reacquired by any of them. The Trustee shall have no responsibility in respect of the Company’s performance of its agreement in the preceding sentence.

Section 6.09. *Book-Entry System.* If the Securities cease to trade in the Depository’s book-entry settlement system, the Company covenants and agrees that it shall use reasonable efforts to make such other book entry arrangements that it determines are reasonable for the Securities.

Section 6.10. *Additional Interest.* If at any time Additional Interest becomes payable by the Company pursuant to Section 10.03, the Company shall promptly deliver to the Trustee a certificate to that effect and stating (1) the amount of such Additional Interest that is payable and (2) the date on which such Additional Interest is payable. Additional Interest payable in accordance with Section 10.03 shall be payable in arrears on each Interest Payment Date following accrual in the same manner as Regular Interest on the Securities. Unless and until a Responsible Officer of the Trustee receives such a certificate, the Trustee may assume without inquiry that no Additional Interest is payable. If the Company has paid Additional Interest directly to the Persons entitled to such Additional Interest, the Company shall deliver to the Trustee a certificate setting forth the particulars of such payment.

Section 6.11. *Commission Filings And Reports.* The Company covenants to comply with Section 314(a) of the Trust Indenture Act as it relates to reports, information and documents that the Company may be required to file with the Trustee pursuant to such Section 314(a) and with the Commission pursuant to Section 13 or 15(d) of the Exchange Act or otherwise by the Exchange Act, the Trust Indenture Act or other rules and regulations of the Commission and to file such reports, information and documents with the Trustee within 45 days after the same is required to be filed with the Commission; *provided* that in each case the delivery of materials to the Trustee by electronic means or filing of documents pursuant to the Commission's "EDGAR" system (or any successor electronic filing system) shall be deemed to constitute "filing" with the Trustee for purposes of this Section 6.11. Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

Section 6.12. *Stay, Extension and Usury Laws.* The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law which would prohibit or forgive the Company from paying all or any portion of the principal of or interest on the Securities as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Indenture; and the Company (to the extent it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 6.13. *Information for IRS Filings.* The Company shall provide to the Trustee on a timely basis such information as the Trustee requires to enable the Trustee to prepare and file any form required to be submitted by the Company to the Internal Revenue Service and the Holders of the Securities.

Section 6.14. *Further Instruments and Acts.* Upon request of the Trustee, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture.

Section 6.15. *Tax Treatment of the Securities.* The Company agrees, and by acceptance of a beneficial ownership interest in the Securities each Holder of Securities will be deemed to have agreed, for United States federal income tax purposes, (a) to treat the Securities as indebtedness of the Company subject to

United States Treasury regulations section 1.1275-4 (the “**Contingent Debt Regulations**”) and, for purposes of the Contingent Debt Regulations, to treat the Fair Market Value of any Common Stock beneficially received by a Holder upon any conversion of the Securities as a contingent payment, (b) to be bound by the Company’s determination of the “comparable yield” and “projected payment schedule,” within the meaning of the Contingent Debt Regulations, with respect to the Securities and (c) to use such “comparable yield” and “projected payment schedule” in determining interest accruals with respect to such Holder’s Securities and in determining adjustments thereto. A Holder of Securities may obtain the issue date, yield to maturity, comparable yield and the projected payment schedule by submitting a written request for such information to: Intel Corporation, 2200 Mission College Blvd., M/S SC4-203, Santa Clara, CA 95052-8119, Attention: Corporate Secretary, with a copy to Intel Corporation, 2200 Mission College Blvd., M/S RN6-46, Santa Clara, CA 95052-8119, Attention: Treasurer.

ARTICLE 7  
Redemption

Section 7.01. *Right to Redeem; Notices to Trustee.* (a) The Securities may be redeemed in whole or in part at the option of the Company:

(i) on or prior to July 27, 2010, if any Tax Triggering Event has occurred; and

(ii) on or after August 5, 2019, if the Last Reported Sale Price of the Company’s Common Stock has been greater than or equal to 150% of Conversion Price then in effect for at least 20 Trading Days during any 30 consecutive Trading Day period prior to the date on which the Company provides notice of redemption.

(b) The redemption price at which the Securities are redeemable (the “**Redemption Price**”) shall be payable in cash and shall be equal to:

(i) in the case of a redemption pursuant to Section 7.01(a)(i), 101.5% of the Principal Amount of the Securities being redeemed plus (A) accrued and unpaid Interest to, but excluding, the Redemption Date and (B) if the Conversion Value as of the Redemption Date of the Securities being redeemed exceeds their Initial Conversion Value, 76% of the amount determined by subtracting the Initial Conversion Value of such Securities from their Conversion Value as of the Redemption Date; or

(ii) in the case of a redemption pursuant to Section 7.01(a)(ii), 100% of the Principal Amount of Securities to be redeemed, together with

accrued and unpaid Interest to, but excluding, the Redemption Date; *provided*, however, that if Securities are redeemed on any Interest Payment Date, the Interest payable in respect of such Interest Payment Date shall be payable to the Holders of record as of the corresponding Record Date.

(c) The Company may not redeem any Securities unless all accrued and unpaid Interest thereon has been or is simultaneously paid for all semi-annual periods or portions thereof terminating prior to the Redemption Date.

(d) Except as provided in this Section 7.01, the Securities shall not be redeemable by the Company.

Section 7.02. *Selection of Securities to be Redeemed.* If less than all the Securities are to be redeemed, the Trustee shall select the Securities to be redeemed pro rata or by lot or by any other method the Trustee considers fair and appropriate (so long as such method is not prohibited by the rules of The Nasdaq Global Select Market or any stock exchange on which the Securities are then listed, as applicable). The Trustee shall make the selection within 7 days from its receipt of the notice from the Company delivered pursuant to Section 7.03 from Outstanding Securities not previously called for redemption.

Securities and portions of them the Trustee selects shall be in Principal Amounts of \$1,000 or integral multiples of \$1,000. Provisions of this Indenture that apply to Securities called for redemption in whole also apply to Securities called for redemption in part. The Trustee shall notify the Company promptly of the Securities or portions of Securities to be redeemed.

If any Security selected for partial redemption is converted in part before termination of the conversion right with respect to the portion of the Security so selected, the converted portion of such Security shall be deemed (so far as may be) to be the portion selected for redemption. Securities which have been converted during a selection of Securities to be redeemed may be treated by the Trustee as outstanding for the purpose of such selection.

Section 7.03. *Notice of Redemption.* At least 30 days but not more than 60 days before a Redemption Date, the Company shall mail a notice of redemption by first-class mail, postage prepaid, to the Trustee, the Paying Agent and each Holder of Securities to be redeemed.

The notice shall specify the Securities to be redeemed and shall state:

- (i) the Redemption Date;
- (ii) the Redemption Price;



- (iii) the Conversion Price;
- (iv) the name and address of the Paying Agent and Conversion Agent;
- (v) that Securities called for redemption may be converted at any time before the close of business on the Business Day immediately preceding the Redemption Date;
- (vi) that Holders who want to convert Securities must satisfy the requirements set forth therein and in this Indenture;
- (vii) that Securities called for redemption must be surrendered to the Paying Agent for cancellation to collect the Redemption Price;
- (viii) if fewer than all the outstanding Securities are to be redeemed, the certificate numbers (if such Securities are held other than in global form) and Principal Amounts of the particular Securities to be redeemed;
- (ix) that, unless the Company defaults in making payment of such Redemption Price, Interest will cease to accrue on and after the Redemption Date; and
- (x) the CUSIP number of the Securities.

At the Company's written request delivered at least 30 days prior to the date such notice is to be given (unless a shorter time period shall be acceptable to the Trustee), the Trustee shall give the notice of redemption to each Holder of Securities to be redeemed in the Company's name and at the Company's expense.

Section 7.04. *Effect of Notice of Redemption.* Once notice of redemption is given, Securities called for redemption become due and payable on the Redemption Date and at the Redemption Price stated in the notice except for Securities that are converted in accordance with the terms of this Indenture. Upon surrender to the Paying Agent, such Securities shall be paid at the Redemption Price stated in the notice.

Section 7.05. *Deposit of Redemption Price.* Prior to 10:00 a.m. (New York City time) on a Redemption Date, the Company shall deposit with the Paying Agent (or if the Company or a Subsidiary or an Affiliate of either of them is the Paying Agent, shall segregate and hold in trust) money sufficient to pay the Redemption Price of all Securities to be redeemed on that date other than Securities or portions of Securities called for redemption which on or prior thereto have been delivered by the Company to the Trustee for cancellation or have been converted. The Paying Agent shall as promptly as practicable return to the

Company any money not required for that purpose because of conversion of Securities pursuant to Article 9. If such money is then held by the Company in trust and is not required for such purpose it shall be discharged from such trust.

Section 7.06. *Securities Redeemed in Part.* Upon surrender of a Security that is redeemed in part, the Company shall execute and the Trustee shall authenticate and deliver to the Holder a new Security in an authorized denomination equal in principal amount to the unredeemed portion of the Security surrendered. The Company shall not be required to (i) issue, register the transfer of, or exchange any Securities during a period of 15 days before the mailing of a notice of redemption or (ii) register the transfer of, or exchange any, Securities so selected for redemption, in whole or in part, except the unredeemed portion of any Security being redeemed in part.

#### ARTICLE 8

#### Fundamental Changes and Repurchases Thereupon

##### Section 8.01. *Repurchase at Option of Holders Upon a Fundamental Change.*

(a) *Generally.* If a Fundamental Change occurs at any time, then each Securityholder shall have the right, at such Holder's option, to require the Company to repurchase all of such Holder's Securities or any portion thereof that is a multiple of \$1,000 Principal Amount, on the date (the "**Fundamental Change Repurchase Date**") specified by the Company that is not less than 20 Business Days and not more than 35 Business Days after the date of the Fundamental Change Company Notice (as defined below) at a repurchase price equal to 100% of the Principal Amount thereof, together with accrued and unpaid Interest thereon to, but excluding, the Fundamental Change Repurchase Date (the "**Fundamental Change Repurchase Price**"); *provided*, however, that if Securities are repurchased pursuant to this Section 8.01 on any Interest Payment Date, the Interest payable in respect of such Interest Payment Date shall be payable to the Holders of record as of the corresponding Record Date.

Repurchases of Securities under this Section 8.01 shall be made, at the option of the Holder thereof, upon:

(i) delivery to the Trustee (or other Paying Agent appointed by the Company) by a Holder of a duly completed notice (the "**Fundamental Change Repurchase Notice**") in the form set forth on the reverse of the Securities prior to the close of business on the Fundamental Change Repurchase Date; and

(ii) delivery or book-entry transfer of the Securities to the Trustee (or other Paying Agent appointed by the Company) at any time after delivery of the Fundamental Change Repurchase Notice (together with all necessary endorsements) at the applicable Corporate Trust Office of the Trustee (or other Paying Agent appointed by the Company), such delivery being a condition to receipt by the Holder of the Fundamental Change Repurchase Price therefor; *provided* that such Fundamental Change Repurchase Price shall be so paid pursuant to this Section 8.01 only if the Securities so delivered to the Trustee (or other Paying Agent appointed by the Company) shall conform in all respects to the description thereof in the related Fundamental Change Repurchase Notice.

The Fundamental Change Repurchase Notice shall state:

- (A) if certificated, the certificate numbers of Securities to be delivered for repurchase;
- (B) the portion of the Principal Amount of Securities to be repurchased, which must be \$1,000 or an integral multiple thereof; and
- (C) that the Securities are to be repurchased by the Company pursuant to the applicable provisions of the Securities and the Indenture.

Any purchase by the Company contemplated pursuant to the provisions of this Section 8.01 shall be consummated by the delivery of the consideration to be received by the Holder promptly following the later of the Fundamental Change Repurchase Date and the time of the book-entry transfer or delivery of the Securities.

Notwithstanding anything herein to the contrary, any Holder delivering to the Trustee (or other Paying Agent appointed by the Company) the Fundamental Change Repurchase Notice contemplated by this Section 8.01 shall have the right to withdraw such Fundamental Change Repurchase Notice at any time prior to the close of business on the Business Day prior to the Fundamental Change Repurchase Date by delivery of a written notice of withdrawal to the Trustee (or other Paying Agent appointed by the Company) in accordance with Section 8.03 below.

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

(b) *Fundamental Change Company Notice.* On or before the 20<sup>th</sup> Business Day after the occurrence of a Fundamental Change, the Company shall

provide to all Holders of record of the Securities and the Trustee and Paying Agent a notice (the "**Fundamental Change Company Notice**") of the occurrence of such Fundamental Change and of the repurchase right at the option of the Holders arising as a result thereof. Such mailing shall be by first class mail. Simultaneously with providing such Fundamental Change Company Notice, the Company shall publish a notice containing the information included therein once in a newspaper of general circulation in the City of New York or publish such information on the Company's website or through such other public medium as the Company may use at such time.

Each Fundamental Change Company Notice shall specify:

- (i) the events causing the Fundamental Change;
- (ii) the date of the Fundamental Change;
- (iii) the last date on which a Holder may exercise the repurchase right;
- (iv) the Fundamental Change Repurchase Price;
- (v) the Fundamental Change Repurchase Date;
- (vi) the name and address of the Paying Agent and the Conversion Agent, if applicable;
- (vii) if applicable, the applicable Conversion Rate and any adjustments to the applicable Conversion Rate;
- (viii) whether the Company will pay the Fundamental Change Repurchase Price in cash, shares of the Company's Common Stock, Acquiror Securities or a combination thereof, specifying the percentage of each;
- (ix) if applicable, that the Securities with respect to which a Fundamental Change Repurchase Notice has been delivered by a Holder may be converted only if the Holder withdraws the Fundamental Change Repurchase Notice in accordance with Section 8.03; and
- (x) the procedures that Holders must follow to require the Company to repurchase their Securities.

No failure of the Company to give the foregoing notices and no defect therein shall limit the Securityholders' repurchase rights or affect the validity of the proceedings for the repurchase of the Securities pursuant to this Section 8.01.

(c) *No Payment During Events of Default.* There shall be no repurchase of any Securities pursuant to this Section 8.01 if there has occurred (prior to, on or after, as the case may be, the giving, by the Holders of such Securities, of the required Fundamental Change Repurchase Notice) and is continuing an Event of Default (other than a default that is cured by the payment of the Fundamental Change Repurchase Price with respect to such Securities). The Paying Agent will promptly return to the respective Holders thereof any Securities (i) with respect to which a Fundamental Change Repurchase Notice has been withdrawn in compliance with this Indenture, or (ii) held by it during the continuance of an Event of Default (other than a default that is cured by the payment of the Fundamental Change Repurchase Price with respect to such Securities) in which case, upon such return, the Fundamental Change Repurchase Notice with respect thereto shall be deemed to have been withdrawn.

(d) *Payment of Fundamental Change Repurchase Price* The Securities to be repurchased pursuant to this Section 8.01 shall be paid for in cash *provided* that if a Fundamental Change occurs as a result of a Change of Control Event and no Event of Default has occurred or is continuing, the Securities to be repurchased may be paid for, in whole or in part, at the election of the Company, in (i) shares of the Company's Common Stock that are Publicly Traded Securities, (ii) shares of Capital Stock of an acquiror of the Company that are Publicly Traded Securities ("**Acquiror Securities**") or (iii) any combination of cash or the shares specified in clauses (i) or (ii), in each case subject to the conditions set forth in paragraph (e) below.

(e) *Conditions for Election to Pay Fundamental Change Repurchase Price in Common Stock or Acquiror Securities* If the Company elects to pay all or any portion of the Fundamental Change Repurchase Price in shares of Common Stock or in Acquiror Securities, the number of shares of Common Stock or Acquiror Securities to be paid will equal the quotient obtained by dividing (i) the portion of the Fundamental Change Repurchase Price to be paid in such shares of Common Stock or Acquiror Securities by (ii) 95% of the average of the Last Reported Sale Price of such shares of Common Stock or Acquiror Securities, as applicable, for the five Trading Day period immediately preceding but ending on the third Trading Day immediately preceding the Fundamental Change Repurchase Date, appropriately adjusted to take into account the occurrence, during the period commencing on the first of the Trading Days during the five Trading Day period and ending on the Fundamental Change Repurchase Date, of any event described in Section 9.03. The Company shall designate, in the Fundamental Change Company Notice delivered pursuant to Section 8.01(b) above, whether it will repurchase the Securities for cash, shares of Common Stock or Acquiror Securities or, if a combination thereof, the percentages of the Fundamental Change Repurchase Price in respect of which it will pay cash, shares of Common Stock and Acquiror Securities; *provided* that the Company will pay cash for fractional interests in shares of Common Stock and Acquiror Securities.

For purposes of determining the existence of potential fractional interests, all Securities subject to repurchase by the Company held by a Holder shall be considered together (no matter how many separate certificates are to be presented). Each Holder whose Securities are repurchased pursuant to this Section 8.01 shall receive the same percentages of cash, shares of Common Stock and Acquiror Securities in payment of the Fundamental Change Repurchase Price for such Securities, except with regard to the payment of cash in lieu of fractional shares of Common Stock or Acquiror Securities. The Company may not change its election with respect to the consideration (or components or percentages of components thereof) to be paid once the Company has given its Fundamental Change Company Notice to Holders except in the event of a failure to satisfy, prior to the close of business on the Business Day prior to the Fundamental Change Repurchase Date, any condition to the payment of the Fundamental Change Repurchase Price, in whole or in part, in shares of Common Stock or Acquiror Securities.

The Company shall, at least three Business Days prior to delivering the Fundamental Change Company Notice, deliver an Officers' Certificate to the Trustee specifying:

- (i) the manner of payment selected by the Company,
- (ii) the information required by the Fundamental Change Company Notice pursuant to Section 8.01(b),
- (iii) if the Company elects to pay the Fundamental Change Repurchase Price, or a specified percentage thereof, in shares of Common Stock or Acquiror Securities, that the conditions to such manner of payment set forth in this Section 8.01(e) have been or will be complied with, and
- (iv) whether the Company desires the Trustee to give the Fundamental Change Company Notice required by Section 8.01(b).

The Company's right to exercise its election to repurchase Securities through the delivery of shares of Common Stock or Acquiror Securities shall be conditioned upon:

- (i) the Company's giving a timely Fundamental Change Company Notice containing an election to purchase all or a specified percentage of the Securities with shares of Common Stock or Acquiror Securities as provided herein;
- (ii) the registration of such shares of Common Stock or Acquiror Securities under the Securities Act and, if required, the Exchange Act;

(iii) the listing of such shares of Common Stock or Acquiror Securities on a United States national securities exchange or the quotation of such shares of Common Stock or Acquiror Securities in an inter-dealer quotation system of any registered United States national securities association, in each case, if the Common Stock or Acquiror Securities, as applicable, are then listed on a national securities exchange or quoted in an inter-dealer quotation system;

(iv) any necessary qualification or registration of such shares of Common Stock or Acquiror Securities under applicable state securities laws or the availability of an exemption from such qualification and registration; and

(v) the receipt by the Trustee of (1) an Officers' Certificate stating that the terms of the issuance of the shares of Common Stock or Acquiror Securities are in conformity with this Indenture, (2) an Opinion of Counsel to the effect that the shares of Common Stock or Acquiror Securities to be delivered in payment of the Fundamental Change Repurchase Price in respect of the Securities have been duly authorized and, when issued and delivered pursuant to the terms of this Indenture in payment of the Fundamental Change Repurchase Price in respect of the Securities, will be validly issued, fully paid and non-assessable and (3) an Officers' Certificate, stating that the conditions to the issuance of the shares of Common Stock or Acquiror Securities have been satisfied.

Such Officers' Certificate shall also set forth the Last Reported Sale Price of a share of Common Stock or Acquiror Securities, as applicable, on each Trading Day during the period commencing on the fifth Trading Day immediately preceding but ending on the third Business Day prior to the applicable Fundamental Change Repurchase Date. If the foregoing conditions are not satisfied prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date and the Company has elected to repurchase the Securities through the issuance of shares of Common Stock or the delivery of Acquiror Securities, the Company shall pay the entire Fundamental Change Repurchase Price of the Securities in cash.

Promptly after determination of the actual number of shares of Common Stock or Acquiror Securities to be issued upon repurchase of Securities, the Company shall be required to disseminate a press release through Dow Jones & Company, Inc. or Bloomberg Business News containing the information required by the Fundamental Change Company Notice or shall publish the information on the Company's website or through such other public medium as the Company may use at that time.

All shares of Common Stock and Acquiror Securities delivered upon repurchase of the Securities shall be duly authorized, validly issued, fully paid and nonassessable.

If a Holder of a repurchased Security is paid in shares of Common Stock or Acquiror Securities, the Company shall pay any documentary, stamp or similar issue or transfer tax due on such issue of Common Stock. However, the Holder shall pay any such tax that is due because the Holder requests that the Common Stock or Acquiror Securities be issued in a name other than the Holder's name. The Trustee (or other Paying Agent appointed by the Company) may refuse to deliver the certificates representing the shares of Common Stock or Acquiror Securities being issued in a name other than the Holder's name until the Trustee (or other paying agent appointed by the Company) receives a sum sufficient to pay any tax that will be due because the shares of Common Stock are to be issued in a name other than the Holder's name. Nothing herein shall preclude any income tax withholding required by law or regulations.

Section 8.02. *Effect of Fundamental Change Repurchase Notice.* Upon receipt by the Paying Agent of the Fundamental Change Repurchase Notice specified in Section 8.01(a), the Holder of the Security in respect of which such Fundamental Change Repurchase Notice was given shall (unless such Fundamental Change Repurchase Notice is withdrawn as specified in the following two paragraphs) thereafter be entitled to receive solely the Fundamental Change Repurchase Price with respect to such Security. Such Fundamental Change Repurchase Price shall be paid to such Holder, subject to receipt of funds by the Paying Agent, promptly following the later of (x) the Fundamental Change Repurchase Date with respect to such Security (provided the conditions in Section 8.01(a) have been satisfied) and (y) the time of delivery of such Security to the Paying Agent by the Holder thereof in the manner required by Section 8.01(b).

Section 8.03. *Withdrawal of Fundamental Change Repurchase Notice.*

(a) A Fundamental Change Repurchase Notice may be withdrawn by means of a written notice of withdrawal delivered to the Paying Agent in accordance with the Fundamental Change Company Notice at any time prior to the close of business on the Business Day immediately preceding the Fundamental Change Repurchase Date, specifying:

- (i) the Principal Amount of the Securities with respect to which such notice of withdrawal is being submitted;
- (ii) if Physical Securities have been issued, the certificate numbers of the withdrawn Securities; and
- (iii) the principal amount, if any, of such Securities that remains subject to the original Fundamental Change Repurchase Notice, which



portion must be in principal amounts of \$1,000 or an integral multiple of \$1,000;

*provided, however,* that if the Securities are not in certificated form, the notice must comply with appropriate procedures of the Depositary.

*Section 8.04. Deposit of Fundamental Change Repurchase Price.* Prior to 10:00 a.m. (local time in the City of New York) on the Fundamental Change Repurchase Date, the Company shall deposit with the Trustee or with the Paying Agent (or, if the Company or a Subsidiary or an Affiliate of either of them is acting as the Paying Agent, shall segregate and hold in trust as provided herein) an amount of money (in immediately available funds if deposited on such Business Day) or Common Stock or Acquiror Securities, if permitted hereunder, sufficient to pay the Fundamental Change Repurchase Price, of all the Securities or portions thereof that are to be repurchased as of the Fundamental Change Repurchase Date. The Company shall promptly notify the Trustee in writing of the amount of any deposits of cash, Common Stock or Acquiror Securities made pursuant to this Section 8.04. If the Paying Agent holds cash, Common Stock or Acquiror Securities sufficient to pay the Fundamental Change Repurchase Price of any Security for which a Fundamental Change Repurchase Notice has been tendered and not withdrawn in accordance with this Indenture as of the close of business on the Business Day prior to the Fundamental Change Repurchase Date, then immediately following the Fundamental Change Repurchase Date, (a) such Security will cease to be outstanding and Interest will cease to accrue thereon and (b) all other rights of the Holder in respect thereof will terminate (other than the right to receive the Fundamental Change Repurchase Price and previously accrued and unpaid Interest upon delivery or transfer of such Security).

*Section 8.05. Securities Repurchased in Whole or in Part.* Any Security that is to be repurchased, whether in whole or in part, shall be surrendered at the office of the Paying Agent (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or such Holder's attorney duly authorized in writing) and the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Security, without service charge, a new Security or Securities, of any authorized denomination as requested by such Holder in aggregate Principal Amount equal to, and in exchange for, the portion of the Principal Amount of the Security so surrendered which is not repurchased.

*Section 8.06. Covenant to Comply With Securities Laws Upon Repurchase of Securities.* In connection with any offer to repurchase Securities under Section 8.01 (provided that such offer or repurchase constitutes an "issuer tender offer" for purposes of Rule 13e-4 (which term, as used herein, includes any successor provision thereto) under the Exchange Act at the time of such offer or

repurchase), the Company shall (i) comply with Rule 13e-4 and Rule 14e-1 under the Exchange Act, (ii) file the related Schedule TO (or any successor schedule, form or report) under the Exchange Act, and (iii) otherwise comply with all Federal and state securities laws so as to permit the rights and obligations under Section 8.01 to be exercised in the time and in the manner specified in Section 8.01.

Section 8.07. *Repayment to the Company.* The Trustee and the Paying Agent shall return to the Company any cash that remains unclaimed, together with interest or dividends, if any, thereon, held by them for the payment of the Fundamental Change Repurchase Price; *provided* that to the extent that the aggregate amount of cash, Common Stock and/or Acquiror Securities deposited by the Company pursuant to Section 8.04 exceeds the aggregate Fundamental Change Repurchase Price of the Securities or portions thereof which the Company is obligated to repurchase as of the Fundamental Change Repurchase Date, then as soon as practicable following the Fundamental Change Repurchase Date, the Trustee or the Paying Agent, as the case may be, shall return any such excess to the Company.

ARTICLE 9  
Conversion

Section 9.01. *Conversion Obligation.*

(a) Subject to and upon compliance with the provisions of this Indenture, each Holder shall have the right, at such Holder's option, at any time following the Issue Date of the Securities hereunder through the close of business on the third Scheduled Trading Day immediately prior to the Stated Maturity to convert the Principal Amount of any such Securities, or any portion of such Principal Amount which is \$1,000 or an integral multiple thereof at the rate per \$1000 Principal Amount of such Security (the "**Conversion Rate**") then in effect, (x) on or after February 1, 2039, without regard to the conditions described in clauses (i) through (v) below and (y) prior to February 1, 2039, only upon the satisfaction of any of the following conditions:

(i) A Holder may surrender all or a portion of its Securities for conversion during any fiscal quarter (and only during such fiscal quarter) commencing after December 26, 2009 if the Last Reported Sale Price for the Common Stock for at least 20 Trading Days (whether or not consecutive) during the period of 30 consecutive Trading Days ending on the last Trading Day of the preceding fiscal quarter is greater than or equal to 130% of the Conversion Price on each applicable Trading Day.

(ii) A Holder may surrender its Securities for conversion during the five Business Day period after any 10 consecutive Trading Day period (the **Measurement Period**) in which the Trading Price per \$1,000 principal amount of Securities, as determined following a request by a Holder in accordance with the procedures set forth in this Section 9.01(a)(ii), for each day of such period was less than 98% of the product of the Last Reported Sale Price of the Common Stock and the applicable Conversion Rate (**Trading Price Condition**). For purposes of this Section 9.01(a)(ii), if the Bid Solicitation Agent cannot reasonably obtain at least one bid for \$5,000,000 Principal Amount of Securities from an independent nationally recognized securities dealer as required by the definition of Trading Price, then the Trading Price per \$1,000 Principal Amount of Securities will be deemed to be less than 98% of the product of the Last Reported Sale Price of the Common Stock and the applicable Conversion Rate. If the Company does not instruct the Bid Solicitation Agent to obtain bids when required, the trading price per \$1,000 principal amount of the debentures will be deemed to be less than 98% of the product of the Last Reported Sale Price on each day that the Company fails to do so. In connection with any conversion in accordance with this Section 9.01(a)(ii), the Bid Solicitation Agent shall have no obligation to determine the Trading Price of the Securities unless requested by the Company; and the Company shall have no obligation to make such request to the Bid Solicitation Agent unless a Holder provides the Company with reasonable evidence that the Trading Price per \$1,000 principal amount of Securities would be less than 98% of the product of the Last Reported Sale Price of the Common Stock and the applicable Conversion Rate and such Holder requests that the Company require the Bid Solicitation Agent to determine the Trading Price. Promptly after receiving such evidence, the Company shall instruct the Bid Solicitation Agent to determine the Trading Price of the Securities beginning on the next Trading Day and on each successive Trading Day until the Trading Price per \$1,000 principal amount of Securities is greater than or equal to 98% of the product of the Last Reported Sale Price of the Common Stock and the applicable Conversion Rate. If and when the Trading Price per \$1,000 principal amount of Securities, for each day of the Measurement Period is less than 98% of the product of the Last Reported Sale Price of the Common Stock and the applicable Conversion Rate, the Company will notify the Holders. If at anytime thereafter, the Trading Price per \$1,000 Principal Amount of Securities is greater than or equal to 98% of the product of the Last Reported Sale Price of the Common Stock and the Conversion Rate for such date, the Company will also notify the Holders.

(iii) A Holder may surrender its Securities for conversion if the Company calls such Securities for redemption as provided in Article 7, at any time prior to the close of business on the third Scheduled Trading Day

immediately preceding the Redemption Date, even if the Securities are not otherwise convertible at such time, after which time the Holder's right to convert its Securities pursuant to this Section 9.01 will expire unless the Company defaults in the payment of the Redemption Price.

(iv) In the event that the Company elects to:

(A) issue to all or substantially all holders of Common Stock rights or warrants or securities convertible into or exchangeable or exercisable for Common Stock, for a period expiring not more than 45 calendar days after the announcement date of such issuance, at a price less than the average of the Last Reported Sale Prices of a share of Common Stock for the 10 consecutive Trading Day period ending on the Trading Day immediately preceding the announcement of such issuance; or

(B) distribute to all or substantially all holders of Common Stock assets, debt securities or other rights to purchase securities of the Company, which distribution has a per share value, as reasonably determined by the Company's Board of Directors in good faith, exceeding 10% of the Last Reported Sale Price of the Common Stock on the Trading Day immediately preceding the date of announcement for such distribution,

then, in each case, the Company shall notify the Holders, in the manner provided in Section 1.06, at least 25 Scheduled Trading Days prior to the Ex-Dividend Date for such issuance or distribution. Once the Company has given such notice, Holders may surrender Securities for conversion at any time until the earlier of 5:00 p.m., New York City time, on the Business Day immediately prior to such Ex-Dividend Date or the Company's announcement that such issuance or distribution will not take place, even if the Securities are not otherwise convertible at such time.

(v) If the Company is party to a transaction or event that constitutes a Make-Whole Fundamental Change, or if the Company is a party to a consolidation, merger, binding share exchange, or transfer or lease of all or substantially all of the assets of the Company, pursuant to which the Common Stock would be converted into cash, securities or other assets, the Securities may be surrendered for conversion at any time from or after the date which is 30 Scheduled Trading Days prior to the anticipated effective date of the transaction until the earlier of (x) 30 Trading Days after the actual effective date of such transaction (or, if such transaction also constitutes a Fundamental Change, the related Fundamental Change Repurchase Date) and (y) the date the Company announces the transaction will not take place. In addition, Holders may

surrender all or a portion of their Securities for conversion if an event of the type described in subparagraph (i) of the definition of Change of Control Event in Section 1.01 hereof occurs. In such event, Holders may surrender Securities for conversion at any time beginning on the actual effective date of the transaction until and including the date that is 30 calendar days after the actual effective date of such transaction or, if earlier, until the Fundamental Change Repurchase Date corresponding to the Fundamental Change. The Company shall notify Holders, in the manner provided in Section 1.06, as promptly as practicable following the date the Company publicly announces such transaction.

The initial Conversion Rate (subject to adjustment as provided in this Indenture) is 44.0917 shares of Common Stock per \$1,000 Principal Amount.

Section 9.02. *Conversion Procedure.*

(a) Upon conversion of any Security, subject to this Section 9.02 and Sections 9.01 and 9.08, the Company will deliver to Holders in respect of each \$1,000 Principal Amount of Securities tendered for conversion a settlement amount equal to the sum of the Daily Settlement Amounts for each of the 20 Trading Days during the Observation Period (the “**Settlement Amount**”).

The “**Daily Settlement Amount**” for each of the 20 Trading Days during the Observation Period shall consist of:

- (i) cash equal to the lesser of \$50 and the Daily Conversion Value; and
- (ii) to the extent the Daily Conversion Value exceeds \$50, at the Company’s election, either (A) cash equal to the amount the Daily Conversion Value exceeds \$50 or (B) a number of shares of Common Stock equal to (x) the difference between the Daily Conversion Value and \$50, divided by (y) the Volume-Weighted Average Price for such day.

The “**Daily Conversion Value**” means, for each of the 20 consecutive Trading Days during the Observation Period, 5% of the product of (i) the applicable Conversion Rate on such day and (ii) the Volume-Weighted Average Price of the Common Stock on such day.

(b) If any adjustment to the Conversion Rate or conversion of Securities pursuant to this Article 9 would require the Company to issue shares of Common Stock in excess of the amount permitted by applicable listing standards of The Nasdaq Global Select Market to be issued without approval by the Company’s stockholders, the Company shall either (i) obtain the approval of its stockholders with respect to such issuance or (ii) in lieu of delivering shares of Common Stock in excess of such limitations, pay cash on a pro rata basis to the Holders of

Securities being converted in an amount per share of Common Stock equal to the Last Reported Sale Price for the Company's Common Stock on the Trading Day immediately prior to the date when such shares would otherwise be required to be delivered to converting Holders.

(c) For purposes of this Section 9.02, and notwithstanding the definition contained in Section 1.01, the term "**Trading Day**" shall mean a day during which (A) there is no Market Disruption Event and (B) trading in the Common Stock generally occurs on The Nasdaq Global Select Market or, if the Common Stock is not then listed on The Nasdaq Global Select Market, on the other principal U.S. national or regional securities exchange on which the Common Stock is listed or, if the Common Stock is not then listed on a United States national or regional securities exchange, on the principal other market on which the Common Stock is then traded. If the Common Stock (or other security for which a Volume-Weighted Average Price must be determined for purposes of this Section 9.02) is not so listed or traded, then for purposes of this Section 9.02, "**Trading Day**" shall mean a Business Day.

(d) Before any Holder of a Security shall be entitled to convert the same as set forth above, such Holder shall (1) in the case of a Global Security, comply with the procedures of the Depositary in effect at that time and, if required, pay funds equal to interest payable on the next Interest Payment Date to which such Holder is not entitled as set forth in Section 9.02(k) and, if required pursuant to Section 9.02(h), pay all stamp, transfer or similar taxes or duties, if any, in connection with such conversion and (2) in the case of a Security issued in certificated form, (A) complete and manually sign and deliver an irrevocable written notice to the Conversion Agent in the form on the reverse of such certificated Security (or a facsimile thereof) (a "**Notice of Conversion**") at the office of the Conversion Agent and shall state in writing therein the principal amount of Securities to be converted and the name or names (with addresses) in which such Holder wishes the certificate or certificates for any shares of Common Stock, if any, to be delivered upon settlement of the Company's conversion obligation to be registered, (B) surrender such Securities, duly endorsed to the Company or in blank (and accompanied by appropriate endorsement and transfer documents), at the office of the Conversion Agent, (C) if required pursuant to Section 9.02(h), pay all stamp, transfer or similar taxes or duties, if any, in connection with such conversion, and (D) if required, pay funds equal to interest payable on the next Interest Payment Date to which such Holder is not entitled as set forth in Section 9.02(k). No Notice of Conversion with respect to any Securities may be tendered by a Holder thereof if such Holder has also tendered a Fundamental Change Repurchase Notice and not validly withdrawn such Fundamental Change Repurchase Notice in accordance with Section 8.03.

If more than one Security shall be surrendered for conversion at one time by the same Holder, the Company's conversion obligation with respect to such

Securities, if any, that shall be payable upon conversion shall be computed on the basis of the aggregate principal amount of the Securities (or specified portions thereof to the extent permitted thereby) so surrendered.

(e) A Security shall be deemed to have been converted immediately prior to the close of business on the date (the "**Conversion Date**") that the Holder has complied with the requirements set forth in clause (d); provided, however, that the Person in whose name any shares of the Common Stock shall be issuable upon such conversion in respect of any Trading Day during the Observation Period will become the Holder of record of such shares as of the close of business on such Trading Day.

(f) Payment of the cash and shares of Common Stock, if any, pursuant to Section 9.02(a) in satisfaction of the Company's conversion obligation shall be made by the Company in no event later than the third Business Day immediately following the last Trading Day of the Observation Period. The Company shall deliver cash in lieu of any fractional share of Common Stock issuable in connection with payment of the Settlement Amount (based on the Volume-Weighted Average Price for the final Trading Day of the Observation Period), provided that record ownership shall be determined as set forth in Section 9.02(e) above.

(g) In case any Security shall be surrendered for partial conversion, the Company shall execute and the Trustee shall authenticate and deliver to or upon the written order of the Holder of the Security so surrendered, without charge to such Holder, a new Security or Securities in authorized denominations in an aggregate principal amount equal to the unconverted portion of the surrendered Securities.

(h) If a Holder submits a Security for conversion, the Company shall pay any documentary, stamp or similar issue or transfer tax due on the issue of any shares of Common Stock upon the conversion, unless the tax is due because the Holder requests any shares to be issued in a name of other than the Holder's name, in which case the Holder will pay that tax. The Conversion Agent may refuse to deliver the certificates representing the shares of Common Stock being issued in a name other than the Holder's name until the Trustee receives a sum sufficient to pay any tax which will be due because the shares are to be issued in a name other than the Holder's name. Nothing herein shall preclude any tax withholding required by law or regulations.

(i) Except as provided in Section 9.03, no adjustment shall be made for dividends on any shares issued upon the conversion of any Security as provided in this Article 9.

(j) Upon the conversion of an interest in a Global Security, the Trustee shall make a notation on such Global Security as to the reduction in the principal amount represented thereby. The Company shall notify the Trustee in writing of any conversion of any Security effected through any Conversion Agent other than the Trustee.

(k) Upon conversion, a Holder will not receive any separate cash payment for accrued and unpaid Interest except as set forth below. The Company's settlement of the conversion obligation as described above shall be deemed to satisfy its obligation to pay the Principal Amount of the Security and accrued and unpaid Interest to, but not including, the Conversion Date. As a result, accrued and unpaid Interest to, but not including, the Conversion Date shall be deemed to be paid in full rather than cancelled, extinguished or forfeited. Notwithstanding the preceding sentence, payments in respect of accrued and unpaid Interest on Securities converted after the close of business on a Record Date and prior to the opening of business on the related Interest Payment Date shall be governed by the provisions of Section 4.01 hereof. Except as described above, no payment or adjustment will be made for accrued interest on converted Securities.

Section 9.03. *Adjustment of Conversion Rate.* The Conversion Rate shall be adjusted from time to time by the Company as follows, except that the Conversion Rate shall not be adjusted if Holders of the Securities participate, at the same time as holders of Common Stock and as a result of holding the Securities, in any of the transactions described in this Section 9.03 without having to convert their Securities and as if they held the full number of shares of Common Stock underlying such Securities:

(a) In case the Company shall issue solely shares of Common Stock as a dividend or distribution on all or substantially all shares of the outstanding Common Stock, or shall effect a share split into a greater number of shares of Common Stock or a share combination into a lesser number of shares of Common Stock, the Conversion Rate shall be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_1}{OS_0}$$

where

CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date of such dividend or distribution, or immediately prior to the open of business on the effective date of such share split or share combination, as applicable;



- CR1 = the Conversion Rate in effect immediately after the open of business on such Ex-Dividend Date or the effective date;
- OS0 = the number of shares of Common Stock outstanding immediately prior to such Ex-Dividend Date or effective date; and
- OS1 = the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, share split or share combination.

Such adjustment shall become effective immediately after 9:00 a.m., New York City time, on the Ex-Dividend Date for such dividend or distribution, or the effective date fixed for such share split or share combination. If any dividend or distribution of the type described in this Section 9.03(a) is declared but not so paid or made, or the outstanding shares of Common Stock are not split or combined, as the case may be, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution, or subdivide or combine the outstanding shares of Common Stock, as the case may be, to the Conversion Rate that would then be in effect if such dividend, distribution, split or combination had not been declared.

(b) In case the Company shall issue to all or substantially all holders of its outstanding shares of Common Stock rights or warrants entitling them (for a period expiring within 45 calendar days after the announcement date of such issuance) to subscribe for or purchase shares of Common Stock at a price per share less than the average of the Last Reported Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on the Trading Day immediately preceding the date of announcement of such issuance, the Conversion Rate shall be adjusted based on the following formula:

$$CR1 = CR0 \times \frac{OS0 + X}{OS0 + Y}$$

where

- CR0 = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such issuance;
- CR1 = the Conversion Rate in effect immediately after the open of business on such Ex-Dividend Date;
- OS0 = the number of shares of Common Stock outstanding immediately prior to the open of business on such Ex-Dividend Date;

X = the total number of shares of Common Stock issuable pursuant to such rights or warrants; and

Y = the number of shares of Common Stock equal to the aggregate price payable to exercise or convert such rights or warrants divided by the average of the Last Reported Sale Prices of Common Stock over the 10 consecutive Trading Day period ending on the Trading Day immediately preceding the date of announcement of the issuance of such rights or warrants.

Such adjustment shall be successively made whenever any such rights or warrants are issued and shall become effective immediately after 9:00 a.m., New York City time, on the Ex Dividend Date for such issuance. To the extent that shares of Common Stock are not delivered after the expiration of such rights or warrants, the Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect had the adjustments made upon the issuance of such rights or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights or warrants are announced but not so issued, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if the announcement with respect to such rights or warrants had not been made.

In determining whether any rights or warrants entitle the holders to subscribe for or purchase shares of Common Stock at less than such Last Reported Sale Prices of Common Stock for the 10 consecutive Trading Day period ending on the Trading Day immediately preceding the date of announcement of such issuance, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received by the Company for such rights or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors.

(c) In case the Company shall, by dividend or otherwise, distribute to all or substantially all holders of its Common Stock shares of any class of Capital Stock of the Company (other than Common Stock as covered by Section 9.03(a)), evidences of its indebtedness or other assets or property of the Company (including securities, but excluding dividends and distributions covered by Section 9.03(a), 9.03(b), 9.03(d), 9.03(e) or 9.08) (any of such shares of Capital Stock, indebtedness, other assets or property of the Company or rights or warrants to acquire Capital Stock or other securities hereinafter in this Section 9.03(c) called the “**Distributed Property**”), then, in each such case other than a Spin-Off the Conversion Rate shall be adjusted based on the following formula:

$$CR1 = CR0 \times \frac{SP0}{SP0 - FMV}$$

where

- CR0 = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such distribution;
- CR1 = the Conversion Rate in effect immediately after the open of business on such Ex-Dividend Date;
- SP0 = the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and
- FMV = the fair market value (as determined by the Company's Board of Directors) of the shares of Capital Stock, evidences of indebtedness, assets, property, rights or warrants distributed with respect to each outstanding share of Common Stock on the Ex-Dividend Date for such distribution.

Such adjustment shall become effective immediately prior to 9:00 a.m., New York City time, on the Ex-Dividend Date for such distribution. If such dividend or distribution is declared but not so paid or made, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. If the Board of Directors determines the fair market value of any distribution for purposes of this Section 9.03(c) by reference to the actual or when issued trading market for any securities, it shall in doing so consider the prices in such market over the same period used above in computing the average of the Last Reported Sale Prices of the Common Stock.

With respect to an adjustment pursuant to this Section 9.03(c) where there has been a payment of a dividend or other distribution on the Common Stock of shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit (a "**Spin-Off**"), the Conversion Rate will be increased based on the following formula:

$$CR1 = CR0 \times \frac{FMV0 + MP0}{MP0}$$

where

- CR0 = the Conversion Rate in effect immediately prior to the end of the Valuation Period;
- CR1 = the Conversion Rate in effect immediately after the end of the Valuation Period;
- FMV0 = the average of the Last Reported Sale Prices of the Capital Stock or similar equity interest distributed to holders of Common Stock applicable to one share of Common Stock over the first 10 consecutive Trading Day period after, and including, the Ex-Dividend Date of the Spin-Off (the "**Valuation Period**"); and
- MP0 = the average of the Last Reported Sale Prices of Common Stock over the Valuation Period.

Such adjustment shall occur on the last day of the Valuation Period; provided that in respect of any conversion (or calculation of a Daily Settlement Amount in respect of a conversion occurring before the Ex Dividend Date of any Spin Off) during the Valuation Period, references with respect to 10 Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed between the Ex-Dividend Date of such Spin-Off and the Conversion Date or the date of such calculation of a Daily Settlement Amount in determining the applicable Conversion Rate.

Rights or warrants distributed by the Company to all holders of Common Stock entitling the holders thereof to subscribe for or purchase shares of the Company's Capital Stock (either initially or under certain circumstances), which rights or warrants, until the occurrence of a specified event or events ("**Trigger Event**"): (i) are deemed to be transferred with such shares of Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of Common Stock, shall be deemed not to have been distributed for purposes of this Section 9.03 (and no adjustment to the Conversion Rate under this Section 9.03 will be required) until the occurrence of the earliest Trigger Event, whereupon such rights and warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 9.03(c). If any such right or warrant, including any such existing rights or warrants distributed prior to the date of this Indenture, are subject to events, upon the occurrence of which such rights or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and record date with respect to new rights or warrants with such rights (and a termination or expiration of the existing rights or warrants without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights or warrants, or any Trigger

Event or other event (of the type described in the preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 9.03 was made, (1) in the case of any such rights or warrants that shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Rate shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or repurchase price received by a holder or holders of Common Stock with respect to such rights or warrants (assuming such holder had retained such rights or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase, and (2) in the case of such rights or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights and warrants had not been issued.

For purposes of this Section 9.03(c) and Sections 9.03(a) and 9.03(b), any dividend or distribution to which this Section 9.03(c) is applicable that also includes shares of Common Stock, or rights or warrants to subscribe for, purchase or convert into shares of Common Stock to which Section 9.03(a) and/or Section 9.03(b) applies, shall be deemed instead to be (1) a dividend or distribution of the evidences of indebtedness, assets or shares of Capital Stock other than such shares of Common Stock or rights or warrants to which Section 9.03(a) or 9.03(b) applies (and any Conversion Rate adjustment required by this Section 9.03(c) with respect to such dividend or distribution shall then be made) immediately followed by (2) a dividend or distribution of such shares of Common Stock or such rights or warrants to which Section 9.03(a) or 9.03(b) applies (and any further Conversion Rate adjustment required by Sections 9.03(a) and 9.03(b) with respect to such dividend or distribution shall then be made), except (A) the Ex-Dividend Date of such dividend or distribution shall be substituted for the “Ex-Dividend Date,” the “the Ex-Dividend Date or effective date,” and “the Ex-Dividend Date for such issuance” within the meaning of Sections 9.03(a) and 9.03(b) and (B) any shares of Common Stock included in such dividend or distribution shall not be deemed “outstanding immediately prior to such Ex-Dividend Date or effective date” within the meaning of Section 9.03(a).

(d) In case the Company shall pay a dividend or make a distribution consisting exclusively of cash to all or substantially all holders of its Common Stock other than (1) a regular quarterly cash dividend that does not exceed \$0.14 per share (the “**Initial Dividend Threshold**”) or (2) an Extraordinary Dividend payable to Securityholders, the Conversion Rate shall be adjusted based on the following formula:

$$CR1 = CR0 \times \frac{SP0}{SP0 - C}$$

where

- CR0 = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such dividend or distribution;
- CR1 = the Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such dividend or distribution;
- SP0 = the Last Reported Sale Prices of the Common Stock on the Trading Day immediately preceding the Ex-Dividend Date for such dividend or distribution; and
- C = the amount in cash per share the Company distributes to holders of Common Stock in excess of the Initial Dividend Threshold; provided that if the dividend or distribution is not a regular quarterly cash dividend, the Initial Dividend Threshold will be deemed to be zero. The Initial Dividend Threshold is subject to adjustment in a manner inversely proportional to adjustments to the Conversion Rate; provided that no adjustment will be made to the Initial Dividend Threshold for any adjustment to the conversion rate under this Section 9.03(d).

Such adjustment shall become effective immediately before 9:00 am, New York City time, on the Ex-Dividend Date for such dividend or distribution. If such dividend or distribution is declared but not so paid or made, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

For the avoidance of doubt, for purposes of this Section 9.03(d), in the event of any reclassification of the Common Stock, as a result of which the Securities become convertible into more than one class of Common Stock, if an adjustment to the Conversion Rate is required pursuant to this Section 9.03(d), references in this Section 9.03(d) to one share of Common Stock or Last Reported Sale Price of one share of Common Stock shall be deemed to refer to a unit or to the price of a unit consisting of the number of shares of each class of Common Stock into which the Securities are then convertible equal to the numbers of shares of such class issued in respect of one share of Common Stock in such reclassification. The above provisions of this paragraph shall similarly apply to successive reclassifications.

(e) In case the Company or any of its Subsidiaries make a payment in respect of a tender offer or exchange offer for all or any portion of the Common Stock, to the extent that the cash and value of any other consideration included in

the payment per share of Common Stock exceeds the Last Reported Sale Price of the Common Stock on the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer (as it may be amended), the Conversion Rate shall be increased based on the following formula:

$$CR1 = CR0 \times \frac{AC + (SP1 \times OS1)}{OS0 \times SP1}$$

where

- CR0 = the Conversion Rate in effect immediately prior to the close of business on the 10<sup>th</sup> Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires;
- CR1 = the Conversion Rate in effect immediately after to the close of business on the 10<sup>th</sup> Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires;
- AC = the aggregate value of all cash and any other consideration (as determined by the Company's Board of Directors) paid or payable for shares purchased in such tender or exchange offer;
- OS0 = the number of shares of Common Stock outstanding immediately prior to the date such tender or exchange offer expires (including any shares purchased pursuant to the tender or exchange offer);
- OS1 = the number of shares of Common Stock outstanding immediately after the date such tender or exchange offer expires (not including any shares purchased pursuant to the tender or exchange offer); and
- SP1 = the average of the Last Reported Sale Prices of Common Stock over the 10 consecutive Trading Day period commencing on the Trading Day next succeeding the date such tender or exchange offer expires,

such adjustment to the Conversion Rate to occur at the close of business on the 10<sup>th</sup> Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires; provided that in respect of any conversion (or calculation of a Daily Settlement Amount in respect

of a conversion occurring before the expiration date of such tender or exchange) within 10 Trading Days immediately following, and including, the expiration date of any tender or exchange offer, references with respect to 10 Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed between the expiration date of such tender or exchange offer and the Conversion Date or the date of such calculation of a Daily Settlement Amount in determining the applicable Conversion Rate. If the Company is obligated to purchase shares pursuant to any such tender or exchange offer, but the Company is permanently prevented by applicable law from effecting any such purchases or all such purchases are rescinded, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such tender or exchange offer had not been made.

(f) If (i) the Company elects to satisfy its conversion obligation through delivery of a combination of cash and Common Stock and shares of Common Stock are deliverable to settle the Daily Settlement Amount for a given Trading Day within the Observation Period applicable to Securities a holder has converted, (ii) any distribution or transaction described in clauses (a) through (e) above has not yet resulted in an adjustment to the applicable Conversion Rate on the Trading Day in question, and (iii) the shares the holder will receive in respect of such Trading Day are not entitled to participate in the relevant distribution or transaction (because they were not held on a related record date or otherwise), then promptly after such distribution or transaction has occurred, the Company will adjust the number of shares that it delivers to the holder in respect of the relevant Trading Day as the Company determines is appropriate to reflect the relevant distribution or transaction.

(g) For purposes of this Section 9.03 (i) the term “**record date**” shall mean, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock have the right to receive any cash, securities or other property or in which the Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of stockholders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract or otherwise) and (ii) the term “**effective date**” shall mean the first date on which the shares trade on the applicable exchange or in the applicable market, regular way, reflecting the transaction.

(h) If application of the formulas provided in Section 9.03(a), 9.03(b), 9.03(c), 9.03(d) or 9.03(e) would result in a decrease in the Conversion Rate, no adjustment to the Conversion Rate shall be made except in the case of a reverse share split or share combination.

(i) In addition to those required by clause (a), (b), (c), (d) or (e) of this Section 9.03, and to the extent permitted by applicable law and subject to the



applicable rules of The Nasdaq Global Select Market (if the Common Stock is then listed on the Nasdaq Global Select Market), the Company from time to time may increase the Conversion Rate by any amount for a period of at least 20 days if the Company's Board of Directors determines that such increase would be in the Company's best interest. In addition, the Company may also (but is not required to) increase the Conversion Rate to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock in connection with any dividend or distribution of shares (or rights to acquire shares) or similar event. Whenever the Conversion Rate is increased pursuant to the preceding sentence, the Company shall mail to the Holder of each Security at such Holder's last address appearing on the Security Register provided for in Section 3.05 a notice of the increase at least fifteen days prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which it will be in effect.

(j) All calculations and other determinations under this Article 9 shall be made by the Company or its agents and shall be made to the nearest cent or to the nearest one-tenth thousandth (1/10,000) of a share, as the case may be. No adjustment shall be made for the Company's issuance of Common Stock or convertible or exchangeable securities or rights to purchase Common Stock or convertible or exchangeable securities, other than as provided in this Section 9.03. No adjustment shall be made to the Conversion Rate unless such adjustment would require a change of at least 1% in the Conversion Rate then in effect at such time. Any adjustment that would otherwise be required to be made shall be carried forward and taken into account in any subsequent adjustment or in connection with any conversion of Securities.

(k) Whenever the Conversion Rate is adjusted as herein provided, the Company shall promptly file with the Trustee and any Conversion Agent other than the Trustee an Officers' Certificate setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Unless and until a Responsible Officer of the Trustee and the Conversion Agent shall have received such Officers' Certificate, neither the Trustee nor the Conversion Agent shall be deemed to have knowledge of any adjustment of the Conversion Rate and may assume without inquiry that the last Conversion Rate of which a Responsible Officer of the Trustee or the Conversion Agent, as applicable, has actual knowledge is still in effect. Promptly after delivery of such certificate, the Company shall prepare a notice of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which each adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Rate to each Holder at his last address appearing on the Security Register provided for in Section 3.05 of this Indenture, within 20 days of the effective date of such adjustment. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(l) In any case in which this Section 9.03 provides that an adjustment shall become effective immediately after (1) an Ex-Dividend Date or effective for an event or (2) the expiration date for any tender or exchange offer pursuant to Section 9.03(e) (each an “**Adjustment Determination Date**”), the Company may elect to defer until the occurrence of the applicable Adjustment Event (as hereinafter defined) (x) issuing to the Holder of any Security converted after such Adjustment Determination Date and before the occurrence of such Adjustment Event, the additional shares of Common Stock or other securities issuable upon such conversion by reason of the adjustment required by such Adjustment Event over and above the Common Stock issuable upon such conversion before giving effect to such adjustment and (y) paying to such Holder any amount in cash in lieu of any fraction pursuant to Section 9.03. For purposes of this Section 9.03(l), the term “**Adjustment Event**” shall mean:

(i) in any case referred to in clause (1) hereof, the occurrence of such event,

(ii) in any case referred to in clause (2) hereof, the date a sale or exchange of Common Stock pursuant to such tender or exchange offer is consummated and becomes irrevocable.

(m) For purposes of this Section 9.03, the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock.

(n) Notwithstanding any of the foregoing, the Conversion Rate will not be adjusted: (i) upon the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the securities of the Company and the investment of additional optional amounts in shares of Common Stock under any plan; (ii) upon the issuance of any shares of Common Stock or options or rights to purchase those shares pursuant to any present or future employee, director or consultant benefit plan or program of or assumed by the Company or any Subsidiary; (iii) upon the issuance of any shares of Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in clause (ii) and outstanding as of the date the Securities were first issued; (iv) for any dividend or distribution in connection with a merger, sale or conveyance effected solely for the purpose of changing the Company’s jurisdiction of incorporation as permitted by the terms of the Indenture; (v) for a change in the par value of the Common Stock; or (vi) for accrued and unpaid Interest.

Section 9.04. *Shares to Be Fully Paid.* The Company shall provide, free from preemptive rights, out of its authorized but unissued shares or shares held in

treasury, sufficient shares of Common Stock to provide for conversion of the Securities from time to time as such Securities are presented for conversion.

Section 9.05. *Adjustments of Average Prices.* Whenever a provision of the Indenture requires the calculation of an average of Last Reported Sale Prices or Volume-Weighted Average Price over a span of multiple days, the Company will make appropriate adjustments to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the Ex-Dividend Date of the event occurs, at any time during the period from which the average is to be calculated, including upon the occurrence of multiple events that each result in an adjustment to the Conversion Rate in such period.

Section 9.06. *Conversion After a Public Acquiror Change of Control.*

(a) In the event of a Public Acquiror Change of Control, the Company may, in lieu of delivering cash or a combination of cash and shares of Common Stock pursuant to Section 9.07, elect (subject to the satisfaction of the provisions of this Section 9.06) to adjust the Conversion Rate and the related conversion obligation such that from and after the effective date of such Public Acquiror Change of Control, Holders will be entitled to convert their Securities, in accordance with Section 9.01 hereof, into cash and a number of shares of Public Acquiror Common Stock by adjusting the Conversion Rate in effect immediately before the Public Acquiror Change of Control by multiplying it by a fraction:

(i) the numerator of which will be (A) in the case of a share exchange, consolidation, merger or binding share exchange, pursuant to which the Common Stock is converted into cash, securities or other property, the average value of all cash and any other consideration (as determined by the Company's Board of Directors in the manner contemplated by Section 9.03(c)) paid or payable per share of Common Stock or (B) in the case of any other Public Acquiror Change of Control, the average of the Last Reported Sale Prices of the Common Stock for the five consecutive Trading Days prior to but excluding the effective date of such Public Acquiror Change of Control; and

(ii) the denominator of which will be the average of the Last Reported Sale Prices of the Public Acquiror Common Stock for the five consecutive Trading Days commencing on the Trading Day next succeeding the effective date of such Public Acquiror Change of Control.

(b) In order to make the election pursuant to this Section 9.06, the Company and the issuer of the Public Acquiror Common Stock shall execute with the Trustee a supplemental indenture (which shall comply with the Trust

Indenture Act as in force at the date of execution of such supplemental indenture) providing that each Security shall be exchangeable into Public Acquiror Common Stock. Such supplemental indenture shall provide for provisions and adjustments which shall be a nearly equivalent as may be practicable to the provisions and adjustments provided for in this Article 9.

(c) The Company will provide notice to Holders of its election to adjust the Conversion Rate pursuant to this Section 9.06 in the notice delivered with respect to the Make-Whole Fundamental Change that constitutes a Public Acquiror Change of Control pursuant to Section 8.01(b) (or, if no such notice is required because the 105% Exception is applicable, then a notice delivered at the same time as such notice would have been required for a Fundamental Change).

Section 9.07. *Adjustments Upon Certain Fundamental Changes.* (a) If a Holder elects to convert Securities at any time from and after the date that is 30 Business Days prior to the anticipated effective date of a Make-Whole Fundamental Change until the Fundamental Change Repurchase Date (or, if there is no Fundamental Change Repurchase Date because the 105% Exception is applicable, then until 30 Business Days following the date of such Fundamental Change, determined without regard to the 105% Exception), the Conversion Rate applicable to each \$1,000 Principal Amount of converted Securities shall be increased by an additional number of shares of Common Stock (the “**Additional Shares**”) as described below.

(b) The number of Additional Shares by which the Conversion Rate will be increased shall be determined by reference to the table attached as Exhibit B hereto, based on the date on which the Make-Whole Fundamental Change occurs or becomes effective (the “**Make-Whole Effective Date**”) and the Stock Price; *provided* that if the actual Stock Price is between two Stock Price amounts in such table or the Make-Whole Effective Date is between two Make-Whole Effective Dates in such table, the number of Additional Shares shall be determined by a straight-line interpolation between the number of Additional Shares set forth for the next higher and next lower Stock Price amounts and the two nearest Make-Whole Effective Dates, as applicable, based on a 365-day year; *provided further* that if (1) the Stock Price is greater than \$75.00 per share of Common Stock (subject to adjustment in the same manner as set forth in Section 9.03), no Additional Shares will be added to the Conversion Rate, and (2) the Stock Price is less than \$18.90 per share (subject to adjustment in the same manner as set forth in Section 9.03), no Additional Shares will be added to the Conversion Rate. Notwithstanding the foregoing, in no event will the total number of Additional Shares of Common Stock issuable upon conversion exceed 8.8183 per \$1,000 Principal Amount (subject to adjustment in the same manner as set forth in Section 9.03).

(c) The Stock Prices set forth in the first row of the table in Exhibit B hereto shall be adjusted as of any date on which the Conversion Rate of the Securities is adjusted. The adjusted Stock Prices shall equal the Stock Prices applicable immediately prior to such adjustment, multiplied by a fraction, the numerator of which is the Conversion Rate in effect immediately prior to the adjustment giving rise to the Stock Price adjustment and the denominator of which is the Conversion Rate as so adjusted. The number of Additional Shares within the table shall be adjusted in the same manner as the Conversion Rate as set forth in Section 9.03 (other than by operation of an adjustment to the Conversion Rate by adding Additional Shares).

(d) The table in Exhibit B hereto sets forth the hypothetical stock price and the number of additional shares to be received per \$1,000 Principal Amount of Securities.

(e) Upon surrender of Securities for conversion in connection with a Make-Whole Fundamental Change, the Company shall deliver, in lieu of shares of Common Stock, including the Additional Shares, cash or a combination of cash and shares of Common Stock as provided under Section 9.02; provided, however, that if the consideration for the Common Stock in any Make-Whole Fundamental Change described in clause (ii) of the definition of Change of Control Event is comprised entirely of cash, for any conversion of Securities following the Make-Whole Effective Date of such Make-Whole Fundamental Change, the conversion obligation will be calculated based solely on the Stock Price for the transaction and will be deemed to be an amount equal to the applicable Conversion Rate (including any adjustment) multiplied by the Stock Price. In such event, the conversion obligation shall be determined and paid to Holders in cash on the third Business Day following the Conversion Date. The Company shall notify holders of the Make-Whole Effective Date and issue a press release announcing such Make-Whole Effective Date no later than five Business Days after such Make-Whole Effective Date.

(f) If at any time the Company obtains knowledge that a Make-Whole Fundamental Change will occur, then, no later than 30 Business Days prior to the anticipated effective date of such Make-Whole Fundamental Change (or, in the event that the Company obtains knowledge of such Make-Whole Fundamental Change less than 30 Business Days before such anticipated effective date, no later than 3 Business Days after the date on which the Company obtains such knowledge), the Company shall notify Holders of the Securities, the Trustee and the Paying Agent of the occurrence and anticipated effective date of such Make-Whole Fundamental Change and shall disseminate a press release through Reuters Economic Services and Bloomberg Business News stating that it expects a Make-Whole Fundamental Change to occur with respect to the Securities and identifying the anticipated effective date of such Make-Whole Fundamental Change.

Section 9.08. *Effect of Recapitalizations, Reclassifications and Changes to the Common Stock.*

(a) If any of the following events occur:

- (i) any recapitalization, reclassification or change of shares of Common Stock issuable upon conversion of the Securities (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination, or any other change for which an adjustment is provided in Section 9.03);
- (ii) any consolidation, merger or combination of the Company with another Person;
- (iii) any sale, lease or other transfer of all of the consolidated assets of the Company and its Subsidiaries to any other Person substantially as an entirety; or
- (iv) any statutory share exchange,

in each case as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof), then, at the effective time of the transaction, the right to convert a Security will be changed to a right to convert each \$1000 principal amount of such Security into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a Holder of a number of shares of Common Stock equal to the Conversion Rate immediately prior to such transaction would have owned or been entitled to receive (the "**Reference Property**") upon such transaction. In such a case, any increase in the Conversion Rate by the Additional Shares as provided in Section 9.07 will not be payable in Additional Shares of Common Stock (or cash and Additional Shares) but will represent the right to receive the aggregate amount of cash, securities or other property into which the Additional Shares would convert in the transaction from the surviving entity (or a direct or indirect parent thereof). However, at and after the effective time of such transaction, (x) any amount otherwise payable in cash upon conversion of the Securities pursuant to Section 9.02 will continue to be payable in cash, (y) the number of shares of Common Stock otherwise deliverable upon conversion of the Securities pursuant to Section 9.02 will instead be deliverable in the amount and type of Reference Property that a holder of that number of shares of Common Stock would have received in such transaction and (z) the Volume-Weighted Average Price will be calculated based on the value of a unit of Reference Property that a holder of one share of Common Stock would have received in such transaction. If the transaction causes the Common Stock to be converted into, or exchanged for, the right to receive more than a single type of consideration (determined based in part upon any form of

stockholder election), the Reference Property into which the Securities will be convertible shall be deemed to be the weighted average of the types and amounts of consideration received by the holders of Common Stock that affirmatively make such election. Notwithstanding the first sentence of this paragraph, if the Company elects to adjust the Conversion Rate and its conversion obligation pursuant to Section 9.06, the provisions of Section 9.06 shall apply instead of the first sentence of this paragraph. If the transaction also constitutes a Fundamental Change, a Holder may require the Company to repurchase all or a portion of its Securities pursuant to Article 8 hereof. In connection with any transaction described above, the Company shall also adjust the Initial Dividend Threshold based on the number of shares of Common Stock comprising the Reference Property and, if applicable, the value of any non-stock consideration comprising the Reference Property. If the Reference Property is comprised solely of non-stock consideration, the Initial Dividend Threshold shall be adjusted to zero.

Section 9.09. *Certain Covenants.*

(a) Before taking any action which would cause an adjustment reducing the Conversion Rate below the then par value, if any, of the shares of Common Stock issuable upon conversion of the Securities, the Company will take all corporate action which may, in the opinion of its counsel, be necessary in order that the Company may validly and legally issue shares of such Common Stock at such adjusted Conversion Rate.

The Company covenants that all shares of Common Stock issued upon conversion of Securities will be fully paid and non-assessable by the Company and free from all taxes, liens and changes with respect to the issue thereof.

(b) The Company covenants that, if any shares of Common Stock to be provided for the purpose of conversion of Securities hereunder require registration with or approval of any governmental authority under any federal or state law before such shares may be validly issued upon conversion, the Company will in good faith and as expeditiously as possible, to the extent then permitted by the rules and interpretations of the Commission (or any successor thereto), endeavor to secure such registration or approval, as the case may be.

(c) The Company covenants that if at any time the Common Stock shall be listed on any other national securities exchange or automated quotation system the Company will, if permitted and required by the rules of such exchange or automated quotation system, list and keep listed, so long as the Common Stock shall be so listed on such exchange or automated quotation system, all Common Stock issuable upon conversion of the Securities.

(d) The Company covenants that it shall not become a party to any transaction described in Section 9.08 unless the terms of such transaction are consistent with the foregoing.

Section 9.10. *Responsibility of Trustee.* The Trustee and any other Conversion Agent shall not at any time be under any duty or responsibility to any Securityholder to determine the Conversion Rate or whether any facts exist which may require any adjustment of the Conversion Rate, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. The Trustee and any other Conversion Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock, or of any securities or property, which may at any time be issued or delivered upon the conversion of any Security; and the Trustee and any other Conversion Agent make no representations with respect thereto. Neither the Trustee nor any Conversion Agent shall be responsible for any failure of the Company to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or property or cash upon the surrender of any Security for the purpose of conversion or to comply with any of the duties, responsibilities or covenants of the Company contained in this Article 9. Without limiting the generality of the foregoing, neither the Trustee nor any Conversion Agent shall be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture entered into pursuant to Section 9.08 relating either to the kind or amount of shares of stock or securities or property (including cash) receivable by Securityholders upon the conversion of their Securities after any event referred to in such Section 9.08 or to any adjustment to be made with respect thereto, but, subject to the provisions of Section 12.01, may accept as conclusive evidence of the correctness of any such provisions, and shall be protected in conclusively relying upon, the Officers' Certificate (which the Company shall be obligated to file with the Trustee prior to the execution of any such supplemental indenture) with respect thereto.

Section 9.11. *Notice to Holders Prior to Certain Actions.* In case:

(a) the Company shall declare a dividend (or any other distribution) on its Common Stock that would require an adjustment in the Conversion Rate pursuant to Section 9.03; or

(b) the Company shall authorize the granting to all of the holders of its Common Stock of rights or warrants to subscribe for or purchase any share of any class or any other rights or warrants; or

(c) of any reclassification of the Common Stock of the Company (other than a subdivision or combination of its outstanding Common Stock, or a change in par value, or from par value to no par value, or from



no par value to par value), or of any consolidation or merger to which the Company is a party and for which approval of any stockholders of the Company is required, or of the sale or transfer of all or substantially all of the assets of the Company; or

(d) of the voluntary or involuntary dissolution, liquidation or winding-up of the Company;

the Company shall cause to be filed with the Trustee and to be mailed to each Securityholder at his address appearing on the Security Register, provided for in Section 3.05 of this Indenture, as promptly as possible but in any event at least twenty days prior to the applicable date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution or rights or warrants, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution or rights are to be determined, or (y) the date on which such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding-up is expected to become effective or occur, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding-up. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such dividend, distribution, reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding-up.

Section 9.12. *Stockholder Rights Plans.* Each share of Common Stock issued upon conversion of Securities pursuant to this Article 9 shall be entitled to receive the appropriate number of rights, if any, and the certificates representing the Common Stock issued upon such conversion shall bear such legends, if any, in each case as may be provided by the terms of any stockholder rights plan adopted by the Company, as the same may be amended from time to time. If at the time of conversion, however, the rights have separated from the shares of Common Stock in accordance with the provisions of the applicable stockholder rights agreement so that the Holders of the Securities would not be entitled to receive any rights in respect of Common Stock issuable upon conversion of the Securities, the Conversion Rate will be adjusted at the time of separation as if the Company has distributed to all holders of Common Stock, shares of Capital Stock of the Company, evidence of indebtedness or assets as provided in Section 9.03(c), subject to readjustment in the event of the expiration, termination or redemption of such rights.

Section 9.13. *Exchange in Lieu of Conversion.*

(a) If at any time when a Holder surrenders Securities for conversion prior to the Stated Maturity of the Securities, the Company:

(i) has designated a financial institution (a “**Designated Institution**”) to accept such Securities in exchange for cash and shares of Common Stock, if any, equal to the consideration due upon conversion as provided in Section 9.02; and

(ii) notifies the Holder surrendering such Securities for conversion by the second Trading Day after the Conversion Date, that it has directed the Designated Institution to make an exchange in lieu of conversion,

then, notwithstanding anything in this Indenture to the contrary, the Company may direct the Conversion Agent to surrender such Securities, on or prior to the commencement of the applicable Observation Period to the Designated Institution for exchange in lieu of conversion.

(b) If the Designated Institution accepts Securities surrendered for exchange, it shall notify the Conversion Agent whether it shall deliver, upon exchange, all cash or a combination of cash and shares of Common Stock and shall deliver such cash and shares of Common Stock, if any, as specified in Section 9.02 to the Conversion Agent and the Stock Transfer Agent (in the case of shares of Common Stock) and the Conversion Agent, and Stock Transfer Agent, if applicable, shall deliver such cash and shares of Common Stock, if any, to the Holder, on the third Business Day immediately following the last day of the applicable Observation Period, which delivery shall be deemed to satisfy the Company’s conversion obligations under this Article 9 with respect to such Holder. Any Securities so exchanged by such Designated Institution shall remain Outstanding for all purposes under this Indenture.

(c) If the Designated Institution agrees to accept any Securities for exchange but does not timely deliver the related consideration to the Conversion Agent, or if the Designated Institution does not accept such Securities for exchange, the Company shall, on the third Business Day immediately following the last day of the applicable Observation Period, convert such Securities into cash and shares of Common Stock, if any, in accordance with the provisions of Section 9.02.

(d) For the avoidance of doubt, in no event will the Company’s designation of a financial institution pursuant to this Section 9.13 require such financial institution to accept any Securities for exchange.

ARTICLE 10  
Events of Default; Remedies

Section 10.01. *Events of Default*. “**Event of Default**,” wherever used herein, means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

- (a) default in the payment of Interest on any Securities when due and payable and such default continues for a period of 30 days;
- (b) default in the payment of the Principal Amount, Redemption Price or Fundamental Change Repurchase Price on any Security when it becomes due and payable;
- (c) default in the Company’s obligation to convert the Securities into shares of its Common Stock or a cash, as applicable, upon exercise of a Holder’s conversion rights in accordance with Article 9 hereof and such default continues for a period of 10 days;
- (d) failure by the Company to comply with its obligations under Article 11 hereof;
- (e) failure by the Company to issue a Fundamental Change Company Notice when due;
- (f) default in the performance of any covenant, agreement or condition of the Company in this Indenture or the Securities (other than a default specified in paragraph (a) or (b) above), and such default continues for a period of 90 days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in aggregate Principal Amount of the Outstanding Securities a written notice specifying such default and requiring it to be remedied and stating that such notice is a “**Notice of Default**” hereunder; *provided, however*, that failure by the Company to file with the Commission or submit to the Trustee any annual, quarterly or other report required by the Exchange Act shall not constitute an Event of Default until 180 days after the date on which the Company receives such notice;
- (g) the entry by a court having jurisdiction in the premises of (i) a decree or order for relief in respect of the Company of a voluntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or (ii) a decree or order adjudging the Company as bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect

of the Company under any applicable federal or state law or (iii) appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of 60 consecutive days; or

(h) the commencement by the Company of a voluntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by it to the entry of a decree or order for relief in respect of the Company in an involuntary case or proceeding under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable federal or state law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Company in furtherance of any such action.

Section 10.02. *Acceleration of Maturity; Rescission and Annulment.* (a) If an Event of Default (other than those specified in Sections 10.01(g) and 10.01(h)) occurs and is continuing, then and in every such case the Trustee or the Holders of not less than 25% in aggregate Principal Amount of the Outstanding Securities may declare the Principal Amount plus accrued and unpaid Interest on all the Outstanding Securities to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by Holders), and upon any such declaration such Principal Amount plus accrued and unpaid Interest shall become immediately due and payable.

Notwithstanding the foregoing, in the case of an Event of Default specified in Section 10.01(g) or Section 10.01(h)), the Principal Amount plus accrued and unpaid Interest on all Outstanding Securities will *ipso facto* become due and payable without any declaration or other act on the part of the Trustee or any Holder.

(b) At any time after such a declaration of acceleration has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article 10 provided, the Holders of a majority in aggregate Principal Amount of the Outstanding Securities, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences if:

(i) such rescission and annulment will not conflict with any judgment or decree of a court of competent jurisdiction; and

(ii) all Events of Default, other than the non-payment of the Principal Amount plus accrued and unpaid Interest on Securities that have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 10.13.

No such rescission shall affect any subsequent default or impair any right consequent thereon.

Section 10.03. *Additional Interest.* (a) If, at any time during the six-month period beginning on, and including, the date which is six months after the Issue Date, the Company fails to timely file any document or report that the Company is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act, as applicable (after giving effect to all applicable grace periods thereunder and other than current reports on Form 8-K), or the Securities are not otherwise freely tradable by Holders, other than the Company's Affiliates (as a result of restrictions pursuant to U.S. securities law or the terms of this Indenture or the Securities), the Company shall pay Additional Interest on the Securities which shall accrue on the Securities (i) at a rate of 0.25% per annum of the Principal Amount of Securities outstanding for each day during the first 90 days of such period for which the Company's failure to file, or the failure of the Securities to be freely tradable by Holders, other than the Company's Affiliates, as described above, has occurred and is continuing and (ii) at a rate of 0.50% per annum of the Principal Amount of Securities outstanding for each day after the first 90 days during such period for which the Company's failure to file, or the failure of the Securities to be freely tradable by Holders, other than the Company's Affiliates, as described above, has occurred and is continuing.

(b) If, and for so long as, the restrictive legend on the Securities has not been removed in accordance with Article 2 or the Securities are not otherwise freely tradable by Holders, other than the Company's Affiliates (without restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Securities), as of the 365th day after the Issue Date, the Company shall pay Additional Interest on the Securities which shall accrue on the Securities at a rate of (i) 0.25% per annum of the Principal Amount of Securities outstanding for the for each day during the first 90 days during such period and (ii) 0.50% per annum of the Principal Amount Securities outstanding for each day after the first 90 days during such period until, as applicable (i) the restrictive legend on the Securities has been removed in accordance with Article 2, or (ii) the Securities are otherwise freely tradable by Holders other than the Company's Affiliates (without restrictions pursuant to U.S. securities law or the terms of this Indenture or the Securities).

(c) Notwithstanding Section 10.02, if so elected by the Company, the sole remedy for any Event of Default relating to the failure to comply with Section 6.11 hereof, will for the first 270 days after the occurrence of such an Event of Default consist exclusively of the right to receive Additional Interest on the Securities at an annual rate equal to 0.25% of the Principal Amount of Outstanding Securities during the first 90 days after the occurrence of such an Event of Default and 0.50% of the Principal Amount of Outstanding Securities from the 91<sup>st</sup> day until the 270<sup>th</sup> day following the occurrence of such an Event of Default. The Additional Interest payable pursuant to this Section 10.03(c) will be in addition to any Additional Interest that may accrue pursuant to Section 10.03(a) or 10.03(b) hereof. If the Company so elects, the Additional Interest payable under this Section 10.03(c) will be payable on all Outstanding Securities from and including the date on which such event of default first occurs to, but not including, the 270<sup>th</sup> day thereafter, or such earlier date on which such Event of Default has been cured or waived. On the 270<sup>th</sup> day after such Event of Default (or earlier, if the Event of Default is cured or waived prior to 270<sup>th</sup> day), Additional Interest payable pursuant to this Section 10.03(c) will cease to accrue and, to the extent the Event of Default is continuing, the Securities will be subject to acceleration as provided in Section 10.02. In the event the Company does not elect to pay the Additional Interest payable pursuant to this Section 10.03(c) upon an Event of Default in accordance with this paragraph, the Securities will be subject to acceleration as provided in Section 10.02.

In order to elect to pay the Additional Interest payable pursuant to this Section 10.03(c) as the sole remedy during the first 270 days after the occurrence of an Event of Default relating to the failure to comply with Section 6.11 in accordance with the immediately preceding paragraph, the Company must (i) notify all Holders, the Trustee and Paying Agent of such election prior to the date that is 180 days after the Notice of Default is delivered to the Company by the Trustee or holders of at least 25% in Principal Amount of Outstanding Securities. Upon the failure to timely give all Holders, the Trustee and Paying Agent such notice, the Securities will be subject to acceleration as provided in Section 10.02.

Section 10.04. *Collection of Indebtedness and Suits for Enforcement by Trustee.* If an Event of Default occurs and is continuing, the Trustee may, but shall not be obligated to, pursue any available remedy to collect the payment of the Principal Amount plus accrued but unpaid Interest on the Securities or to enforce the performance of any provision of the Securities or this Indenture. The Trustee may maintain a proceeding even if the Trustee does not possess any of the Securities or does not produce any of the Securities in the proceeding. [Note: Deleted Sections already appear in Sections 12.07, 10.11, 10.10]

Section 10.05. *Trustee May File Proofs of Claim.* In case of any judicial proceeding relative to the Company (or any other obligor upon the Securities), its property or its creditors, the Trustee shall be entitled and empowered, by

intervention in such proceeding or otherwise, to take any and all actions authorized under the Trust Indenture Act in order to have claims of the Holders and the Trustee allowed in any such proceeding. In particular, the Trustee shall be authorized to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequesteror or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel and any other amounts due the Trustee under Section 12.07.

No provision of this Indenture shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder thereof or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 10.06. *Application of Money Collected.* Any money collected by the Trustee pursuant to this Article 10 shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money to Holders, upon presentation of the Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee under Section 12.07; and

SECOND: To the payment of the amounts then due and unpaid on the Securities for the Principal Amount, Redemption Price, Fundamental Change Repurchase Price or Interest, as the case may be, in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities.

Section 10.07. *Limitation on Suits.* No Holder of any Security shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder (other than in the case of an Event of Default specified in Section 10.01(a) or 10.01(b)), unless:

- (i) such Holder has previously given written notice to the Trustee of a continuing Event of Default;
- (ii) the Holders of not less than 25% in aggregate Principal Amount of the Outstanding Securities shall have made written request to

the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

(iii) such Holder or Holders have offered to the Trustee indemnity reasonably satisfactory to it against the costs, expenses and liabilities to be incurred in compliance with such request;

(iv) the Trustee for 60 days after its receipt of such notice, request and offer of security or indemnity satisfactory to it has failed to institute any such proceeding; and

(v) no direction, in the opinion of the Trustee, inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in aggregate Principal Amount of the Outstanding Securities;

it being understood and intended that no one or more Holders shall have any right in any manner whatever by virtue of, or by availing itself of, any provision of this Indenture to affect, disturb or prejudice the rights of any other Holders, or to obtain or to seek to obtain priority or preference over any other Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all the Holders (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not such actions or forbearances are unduly prejudicial to such Holders).

Section 10.08. *Unconditional Right of Holders to Receive Payment.* Notwithstanding any other provision of this Indenture, the right of any Holder to receive payment of the Principal Amount, Redemption Price, Fundamental Change Repurchase Price or Interest in respect of the Securities held by such Holder, on or after the respective due dates expressed in the Securities or any Redemption Date or Fundamental Change Purchase Date, as applicable, and to convert the Securities in accordance with Article 9, or to bring suit for the enforcement of any such payment on or after such respective dates or the right to convert, shall not be impaired or affected adversely without the consent of such Holder.

Section 10.09. *Restoration of Rights and Remedies.* If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceeding, the Company, the Trustee and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding had been instituted.



Section 10.10. *Rights and Remedies Cumulative.* Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities in the last paragraph of Section 3.06, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

Section 10.11. *Delay or Omission Not Waiver.* No delay or omission of the Trustee or of any Holder of any Security to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article 10 or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

Section 10.12. *Control by Holders.* The Holders of a majority in Principal Amount of the Outstanding Securities shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee, provided that:

- (i) such direction shall not be in conflict with any rule of law or with this Indenture; and
- (ii) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction.

Section 10.13. *Waiver of Past Defaults.* The Holders of not less than a majority in Principal Amount of the Outstanding Securities may on behalf of the Holders of all the Securities waive any past Default hereunder and its consequences, except a Default:

- (i) Described in Section 10.01(a) or 10.01(b); or
- (ii) in respect of a covenant or provision hereof which under Article 15 cannot be modified or amended without the consent of the Holder of each Outstanding Security affected.

Upon any such waiver, such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Default or impair any right consequent thereon.

Section 10.14. *Undertaking for Costs.* In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, in either case in respect of the Securities, a court may require any party litigant in such suit to file an undertaking to pay the costs of the suit, and the court may assess reasonable costs, including reasonable attorney's fees and expenses, against any party litigant in the suit having due regard to the merits and good faith of the claims or defenses made by the party litigant; but the provisions of this Section 10.14 shall not apply to any suit instituted by the Company, to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in Principal Amount of the Outstanding Securities, or to any suit instituted by any Holder for the enforcement of the payment of the Principal Amount on or after Maturity of such Security, the Redemption Price or the Fundamental Change Repurchase Price.

[Note: Deleted Section already contained in 6.12]

#### ARTICLE 11

##### Consolidation, Merger, Conveyance, Transfer Or Lease

Section 11.01. *Company May Consolidate, etc., Only on Certain Terms.* The Company shall not consolidate with or merge into any other Person or convey, transfer or lease all or substantially all of its properties and assets to any Person, unless:

(a) either (i) the Company is the resulting, surviving or transferee Person or (ii) the Person (if other than the Company) formed by such consolidation or into which the Company is merged or the Person which acquires by conveyance or transfer, or which leases, all or substantially all of the properties and assets of the Company (the "**Surviving Entity**"), (1) is organized and validly existing under the laws of the United States of America, any State thereof or the District of Columbia, (2) the Surviving Entity expressly assumes, by an indenture supplemental hereto, executed and delivered to the Trustee, all of the obligations of the Company under the Securities and this Indenture;

(b) immediately after giving effect to such transaction, no Event of Default, and no event which, after notice or lapse of time or both, would become an Event of Default, shall have occurred and be continuing; and

(c) if a supplemental indenture is required in connection with such transaction, the Company or the Surviving Entity has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer or lease and such supplemental indenture comply with this Article 11 and Article 15, respectively.

Section 11.02. *Successor Substituted.* Upon any consolidation of the Company with, or merger of the Company into, any other Person or any conveyance, transfer or lease of all or substantially all of the properties and assets of the Company in accordance with Section 11.01, the successor Person formed by such consolidation or into which the Company is merged or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein, and thereafter, except in the case of a lease of all or substantially all of the Company's properties and assets, the predecessor Person shall be relieved of all obligations and covenants under this Indenture and the Securities.

ARTICLE 12  
The Trustee

Section 12.01. *Certain Duties and Responsibilities.* The duties and responsibilities of the Trustee shall be as provided by the Trust Indenture Act. Except during the continuance of an Event of Default of which a Responsible Officer of the Trustee has actual knowledge, the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee. In case an Event of Default of which a Responsible Officer of the Trustee has actual knowledge with respect to the Securities has occurred (which has not been cured or waived), the Trustee shall exercise the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs. Notwithstanding the foregoing, no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers. Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 12.01.

Section 12.02. *Notice of Defaults.* The Trustee shall give the Holders notice of any Default hereunder within 90 days after the occurrence thereof; provided, that (except in the case of any Default in the payment of Principal Amount or Interest on any of the Securities, Redemption Price or Fundamental Change Repurchase Price), the Trustee shall be protected in withholding such notice if and so long as a Responsible Officer of the Trustee in good faith determines that the withholding of such notice is in the interest of the Holders of Securities.

Section 12.03. *Certain Rights Of Trustee*. Subject to the provisions of Section 12.01:

(a) the Trustee may conclusively rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order and any resolution of the Board of Directors of the Company may be sufficiently evidenced by a Board Resolution;

(c) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, request and conclusively rely upon an Officers' Certificate;

(d) the Trustee may consult with counsel of its selection and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(e) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture or to institute, conduct or defend any litigation hereunder or in relation hereto at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee security or indemnity reasonably satisfactory to it against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit; and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney at the sole cost of the Company and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation;

(g) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, attorneys or

custodians and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent, attorney or custodian appointed with due care by it hereunder;

(h) the Trustee shall not be charged with knowledge or required to take notice of any Default or Event of Default with respect to the Securities unless either (i) a Responsible Officer shall have actual knowledge of such Default or Event of Default or (ii) written notice of such Default or Event of Default shall have been given to a Responsible Officer of the Trustee by the Company or any other obligor on such Securities or by any Holder of such Securities;

(i) the Trustee shall not be liable in its individual capacity for any action taken, suffered or omitted by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture;

(j) the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian, director, officer, employee and other Person employed to act hereunder;

(k) the Trustee may request that the Company deliver an Officers' Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officers' Certificate may be signed by any person authorized to sign an Officers' Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded;

(l) the permissive rights of the Trustee to take certain actions under or perform any discretionary act enumerated in this Indenture shall not be construed as a duty unless so specified herein, and the Trustee shall not be answerable for other than its negligence or willful misconduct in the performance of such action or act;

(m) the Trustee shall not be liable in its individual capacity with respect to any action taken, suffered or omitted to be taken by it in good faith in accordance with this Indenture or at the direction of the Holders of a majority in aggregate Principal Amount of the Outstanding Securities relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising or omitting to exercise any trust or power conferred upon the Trustee, under this Indenture;

(n) in no event shall the Trustee be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee

has been advised of the likelihood of such loss or damage and regardless of the form of action; and

(o) the Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder.

Section 12.04. *Not Responsible for Recitals.* The recitals contained herein and in the Securities, except the Trustee's certificates of authentication, shall be taken as the statements of the Company, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity, sufficiency or priority of this Indenture or of the Securities. The Trustee shall not be accountable for the use or application by the Company of Securities or the proceeds thereof. Except with respect to the authentication of Securities pursuant to Section 3.03, the Trustee shall not be responsible for the legality or the validity of this Indenture or the Securities issued or intended to be issued hereunder.

Section 12.05. *May Hold Securities.* The Trustee, any Paying Agent, any Security Registrar or any other agent of the Company, in its individual or any other capacity, may become the owner or pledgee of Securities and, subject to Section 12.08 and 12.13, may otherwise deal with the Company with the same rights it would have if it were not Trustee, Paying Agent, Security Registrar or such other agent.

Section 12.06. *Money Held in Trust.* Subject to the provisions of Section 14.02, all monies and properties received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received. Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed in writing with the Company.

Section 12.07. *Compensation, Reimbursement; Indemnification.* The Company agrees:

(i) to pay to the Trustee from time to time such compensation for all services rendered by it hereunder as the Company and the Trustee shall from time to time agree in writing (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(ii) except as otherwise expressly provided herein, to reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such

expense, disbursement or advance as may be attributable to its negligence or willful misconduct; and

(iii) to indemnify the Trustee and any predecessor Trustee for, and to hold it harmless against, any and all loss, liability, damage, claim or expense including taxes (other than taxes based upon, measured by or determined by the income of the Trustee) incurred without negligence or willful misconduct on its part, arising out of or in connection with the acceptance or administration of this trust, including the reasonable costs and expenses of defending itself against any claim (whether assessed by the Company, by any Holder or any other Person) or liability in connection with the exercise or performance of any of its powers or duties hereunder.

Notwithstanding any other provision of this Indenture to the contrary, in no event shall the Trustee be liable for special, indirect or consequential loss or damage of any kind whatsoever (including, but not limited to, lost profits) even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

The obligations of the Company under this Section 12.07 shall survive the resignation or removal of the Trustee and the satisfaction and discharge of this Indenture. To secure the Company's payment obligations in this Section 12.07, the Trustee shall have a lien prior to the Securities on all money or property held or collected by the Trustee, except that held in trust to pay principal on the Securities. Such lien shall survive the resignation or removal of the Trustee and the satisfaction and discharge of this Indenture. When the Trustee incurs expenses or renders services after a Default or an Event of Default specified in Section 10.01(g) or 10.01(h) hereof occurs, the expenses and the compensation for the services (including the fees and expenses of its agents and counsel) are intended to constitute expenses of administration under U.S. Code, Title 11 or any other similar foreign, federal or state law for the relief of debtors.

Section 12.08. *Disqualification; Conflicting Interests.* If the Trustee has or shall acquire a conflicting interest within the meaning of the Trust Indenture Act, the Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Indenture.

Section 12.09. *Corporate Trustee Required; Eligibility.* There shall at all times be a Trustee hereunder which shall be a Person that is eligible pursuant to the Trust Indenture Act to act as such and has, or whose parent banking company has, a combined capital and surplus of at least \$50,000,000. If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of

this Section 12.09, the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 12.09, it shall resign immediately in the manner and with the effect hereinafter specified in this Article 12.

Section 12.10. *Resignation and Removal; Appointment of Successor.* (a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article 12 shall become effective until the acceptance of appointment by the successor Trustee under Section 12.11.

(b) The Trustee may resign at any time by giving written notice thereof to the Company. If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction at the expense of the Company for the appointment of a successor Trustee.

(c) The Trustee may be removed at any time by Act of the Holders of majority in Principal Amount of the Outstanding Securities, delivered to the Trustee and to the Company. If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within 30 days after the notice of removal, the Trustee being removed may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Securities.

(d) If at any time:

(i) the Trustee shall fail to comply with Section 12.08 after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Security for at least six months, or

(ii) the Trustee shall cease to be eligible under Section 12.09 and shall fail to resign after written request therefor by the Company or by any such Holder, or

(iii) the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent, or

(iv) a receiver of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, (A) the Company by a Company Order may remove the Trustee, or (B) subject to Section 10.14, any Holder who has been a bona fide



Holder of a Security for at least six months may, on behalf of such Holder and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

(e) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, the Company, by a Company Order, shall promptly appoint a successor Trustee. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee shall be appointed by Act of the Holders of a majority in Principal Amount of the Outstanding Securities delivered to the Company and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment, become the successor Trustee and supersede the successor Trustee appointed by the Company. If no successor Trustee shall have been so appointed by the Company or the Holders and accepted appointment in the manner hereinafter provided, any Holder who has been a bona fide Holder of a Security for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(f) The Company shall give written notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee to all Holders in the manner provided in Section 1.06. Each notice shall include the name of the successor Trustee and the address of its Corporate Trust Office.

Section 12.11. *Acceptance of Appointment by Successor.* Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on request of the Company or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder. Upon request of any such successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts.

No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under this Article 12.

Section 12.12. *Merger, Conversion, Consolidation or Succession to Business.* Any Person into which the Trustee may be merged or converted or with

which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all the corporate trust business of the Trustee by sale or otherwise, shall be the successor of the Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article 12, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities.

Section 12.13. *Preferential Collection of Claims against the Company.* If and when the Trustee shall be or become a creditor of the Company (or any other obligor upon the Securities), the Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of claims against the Company (or any such other obligor).

#### ARTICLE 13

##### Holders' Lists And Reports By Trustee

Section 13.01. *Company to Furnish Trustee Names and Addresses of Holders.* The Company will furnish or cause to be furnished to the Trustee:

(i) semi-annually, not more than 15 days after each Record Date, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders as of such Record Date; and

(ii) at such other times as the Trustee may request in writing, within 30 days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished;

*excluding* from any such list names and addresses received by the Trustee in its capacity as Security Registrar *provided, however,* that no such list need be furnished so long as the Trustee is acting as Security Registrar.

Section 13.02. *Preservation of Information; Communications to Holders.* (a) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Trustee as provided in Section 13.01 and the names and addresses of Holders received by the Trustee in its capacity as Security Registrar. The Trustee may destroy any list furnished to it as provided in Section 13.01 upon receipt of a new list so furnished.

(b) The rights of Holders to communicate with other Holders with respect to their rights under this Indenture or under the Securities, and the corresponding rights and duties of the Trustee, shall be as provided by the Trust Indenture Act.

(c) Every Holder of Securities, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any agent of either of them shall be held accountable by reason of any disclosure of information as to names and addresses of Holders made pursuant to the Trust Indenture Act.

Section 13.03. *Reports By Trustee.* (a) The Trustee shall transmit to Holders such reports concerning the Trustee and its actions under this Indenture as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant thereto. Reports so required to be transmitted at stated intervals of not more than 12 months shall be transmitted no later than July 15 in each calendar year, commencing in July 15, 2010. Each such report shall be dated as of a date not more than 60 days prior to the date of transmission.

(b) A copy of each such report shall, at the time of such transmission to Holders, be filed by the Trustee with each stock exchange, if any, upon which the Securities are listed, with the Commission and with the Company. The Company will promptly notify the Trustee in writing when the Securities are listed on any stock exchange or of any delisting thereof.

#### ARTICLE 14 Satisfaction And Discharge

Section 14.01. *Satisfaction and Discharge of Indenture.* This Indenture shall cease to be of further effect (except as to any surviving rights of registration of transfer or exchange of Securities herein expressly provided for), and the Trustee, on demand of and at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when

(a) either

(i) all Securities theretofore authenticated and delivered (other than (A) Securities which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 3.06 and (B) Securities for whose payment money has theretofore been deposited with the Trustee in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust as provided in Section 6.04) have been delivered to the Trustee for cancellation; or

(ii) all such Securities not theretofore delivered to the Trustee for cancellation have become due and payable and the Company has deposited or caused to be deposited with the Trustee as trust funds in trust for the purpose an amount sufficient to pay and discharge the entire indebtedness evidenced by such Securities not theretofore delivered to the Trustee for cancellation;

(b) the Company has paid or caused to be paid all other sums payable hereunder by the Company; and

(c) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 12.07 and, if money shall have been deposited with the Trustee pursuant to Section 14.01(a)(ii), the obligations of the Trustee under Section 14.02 and the last paragraph of Section 6.04 shall survive.

Section 14.02. *Application of Trust Money.* Subject to the provisions of the last paragraph of Section 6.04, all money deposited with the Trustee pursuant to Section 14.01 shall be held in trust and applied by it, in accordance with the provisions of the Securities and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal and Interest for whose payment such money has been deposited with the Trustee.

#### ARTICLE 15 Supplemental Indentures

Section 15.01. *Supplemental Indentures Without Consent of Holders.* Without the consent of any Holders, the Company, when authorized by a Board Resolution, and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

(i) to cure any ambiguity or correct any inconsistent or otherwise defective provision contained herein, so long as such action does not adversely affect to a material extent the interests of the Holders; provided that any such action made solely to conform the provisions of this Indenture to the description thereof contained in the final offering

memorandum dated July 21, 2009, shall be deemed not to adversely affect the interests of the Holders;

(ii) to evidence the succession of another Person to the Company and the assumption by any such successor of the covenants of the Company herein and in the Securities;

(iii) to provide for uncertificated Securities in addition to or in place of certificated Securities; *provided* that the Company receives an opinion of nationally recognized tax counsel that such uncertificated Securities are issued in registered form for purposes of Section 163(f) of the Code, or in a manner such that the uncertificated Securities are described in Section 163(f)(2)(B) of the Code;

(iv) to add guarantees with respect to the Securities;

(v) to convey, transfer, assign, mortgage or pledge to the Trustee as security for the Securities any property or assets;

(vi) to add to the covenants of the Company for the benefit of the Holders, or to surrender any right or power herein conferred upon the Company;

(vii) make any change that does not materially and adversely affect the rights of any Holder;

(viii) to modify, eliminate or add to the provisions of this Indenture to such extent as shall be necessary to effect the qualifications of this Indenture under the Trust Indenture Act, or under any similar federal statute hereafter enacted; or

(ix) to conform the provisions of this Indenture to the "Description of Debentures" section contained in the final offering memorandum dated July 21, 2009.

Section 15.02. *Supplemental Indentures With Consent of Holders.* With the consent of the Holders of not less than a majority in Principal Amount of the Outstanding Securities, by Act of said Holders delivered to the Company and the Trustee, the Company, when authorized by a Board Resolution, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders under this Indenture; *provided, however*, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Security affected thereby,

(i) reduce the percentage in Principal Amount of the Outstanding Securities, the consent of whose Holders is required for any supplemental indenture, or the consent of whose Holders is required for any waiver under this Indenture (including any waiver of past defaults pursuant to Section 10.13);

(ii) reduce the rate or extend the time of payment of any Interest on any Security;

(iii) reduce the Principal Amount of, or extend the Stated Maturity of, any Security;

(iv) make any change that impairs or adversely affects the conversion rights or Conversion Rate of any Securities;

(v) reduce the Redemption Price or Fundamental Change Repurchase Price of any Security or amend or modify in any manner adverse to the Holders of Securities the Company's obligation to make such payments, whether through an amendment or waiver of provisions in the covenants, definitions or otherwise;

(vi) make any Security payable in money other than that stated in the Security or other than in accordance with the provisions of this Indenture;

(vii) impair the right of any Holder to receive payment of the Principal Amount of, or Interest on, a Holder's Securities on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder's Securities;

(viii) modify the provisions of Article 5 relating to the subordination of the Securities in a manner adverse to the Holders of Securities; or

(ix) modify any of the provisions of this Section 15.02 or Section 10.13, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Security affected thereby.

It shall not be necessary for any Act of Holders under this Section 15.02 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

Section 15.03. *Execution of Supplemental Indentures.* In executing, or accepting the additional trusts created by, any supplemental indenture permitted

by this Article 15 or the modifications thereby of the trusts created by this Indenture, the Trustee shall receive, and (subject to Section 12.01) shall be fully protected in conclusively relying upon, in addition to the documents required by Section 1.02, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture. Subject to the preceding sentence, the Trustee shall sign such supplemental indenture if the same does not adversely affect the Trustee's own rights, duties or immunities under this Indenture or otherwise. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture that adversely affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Section 15.04. *Effect of Supplemental Indentures.* Upon the execution of any supplemental indenture under this Article 15, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

Section 15.05. *Conformity with Trust Indenture Act.* Every supplemental indenture executed pursuant to this Article 15 shall conform to the requirements of the Trust Indenture Act.

Section 15.06. *Reference in Securities to Supplemental Indentures.* Securities authenticated and delivered after the execution of any supplemental indenture pursuant to this Article 15 shall bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities so modified as to conform, in the opinion of the Trustee and the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Securities.

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the day and year first above written.

INTEL CORPORATION

By: /s/ Ravi Jacob  
Name: Ravi Jacob  
Title: Vice President and Treasurer

*[Trustee Signature Follows]*

[Signature Page to Indenture]

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Wells Fargo Bank, National Association, as  
Trustee

By: /s/ Maddy Hall

Name: Maddy Hall

Title: Vice President

[Signature Page to Indenture]

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Form of Fundamental Change Repurchase Notice

Wells Fargo Bank, National Association  
707 Wilshire Blvd., 17<sup>th</sup> Floor  
Los Angeles, CA 90017

Attention: Corporate Trust Services

Re: Intel Corporation (the "**Company**")  
3.25% Junior Subordinated Convertible Debentures due 2039

This is a Fundamental Change Repurchase Notice as defined in Section 8.01(a) of the Indenture dated as of July 27, 2009 (the "Indenture") between the Company and Wells Fargo Bank, National Association, as Trustee. Terms used but not defined herein shall have the meanings ascribed to them in the Indenture.

Certificate No(s). of Securities: \_\_\_\_\_

I intend to deliver the following aggregate Principal Amount of Securities for purchase by the Company pursuant to Section 8.01 of the Indenture (in multiples of \$1,000):

\$ \_\_\_\_\_

I hereby agree that the Securities will be purchased as of the Fundamental Change Repurchase Date pursuant to the terms and conditions thereof and of the Indenture.

Signed: \_\_\_\_\_

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**INTEL CORPORATION**

Officers' Certificate

[NAME OF OFFICER], the [TITLE]<sup>1</sup> of INTEL CORPORATION, a Delaware corporation (the "**Company**") and [NAME OF OFFICER], the [TITLE]<sup>2</sup> of the Company do hereby certify, in connection with the sale of \$2,000,000,000 of the Company's 3.25% Junior Subordinated Convertible Debentures due 2039 (the "**Securities**") pursuant to the terms of the Indenture, dated as of July 27, 2009 (as may be amended or supplemented from time to time, the "Indenture"), by and among the Company and WELLS FARGO BANK, NATIONAL ASSOCIATION (the "**Trustee**"), that:

1. The undersigned are permitted to sign this "Officers' Certificate" on behalf of the Company, as the term "Officers' Certificate" is defined in the Indenture.
2. The undersigned have read, and thoroughly examined, the Indenture and the definitions therein relating thereto.
3. In the opinion of the undersigned, the undersigned have made such examination as is necessary to enable the undersigned to express an informed opinion as to whether or not all conditions precedent described herein as provided for in the Indenture have been complied with.
4. To the best knowledge of the undersigned, all conditions precedent described herein as provided for in the Indenture have been complied with and no Event of Default (as defined in the Indenture) with respect to any of the Securities (as defined in the Indenture) shall have occurred and is occurring.
5. The Securities have become freely tradable without restrictions by non-affiliates of the Company pursuant to Rule 144 under the Securities Act of 1933, as amended.

In accordance with Section 3.05 of the Indenture, the Company hereby instructs you as follows:

1. To take those actions necessary so that the private placement legend described in Sections 2.02 and 2.05 of the Indenture and set forth on the Global Securities shall be deemed removed from the Global Securities in

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<sup>1</sup> [ To be the Chairman of the Board, President or any Vice President of the Company]

<sup>2</sup> [To be the Treasurer, Assistant Treasurer, Secretary or Assistant Secretary of the Company]

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accordance with the terms and conditions of the Securities and as provided in the Indenture, without further action on the part of the Holders.

2. To take those actions necessary so that the restricted CUSIP number for the Securities shall be removed from the Global Securities and replaced with an unrestricted CUSIP number, which CUSIP number shall be [ ], in accordance with the terms and conditions of the Global Securities and as provided in the Indenture, without further action on the part of the Holders.

[signature page follows]

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IN WITNESS WHEREOF, we have signed this certificate as of [\_\_\_\_\_].

INTEL CORPORATION,  
a Delaware corporation

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**INTEL CORPORATION**  
**STATEMENT SETTING FORTH THE COMPUTATION**  
**OF RATIOS OF EARNINGS TO FIXED CHARGES**

(Dollars in Millions)

	Nine Months Ended	
	September 26, 2009	September 27, 2008
Earnings <sup>1</sup>	\$ 3,294	\$ 7,317
Adjustments:		
Add-Fixed charges	94	102
Subtract-Capitalized interest	<u>(54)</u>	<u>(56)</u>
Earnings and fixed charges (net of capitalized interest)	<u>\$ 3,334</u>	<u>\$ 7,363</u>
Fixed charges:		
Interest <sup>2</sup>	\$ 1	\$ 8
Capitalized interest	54	56
Estimated interest component of rental expense	<u>39</u>	<u>38</u>
Total	<u>\$ 94</u>	<u>\$ 102</u>
Ratio of earnings before taxes and fixed charges, to fixed charges	35	72

<sup>1</sup> After adjustments required by Item 503 (d) of the U.S. Securities and Exchange Regulation S-K.

<sup>2</sup> Interest within provision for taxes on the consolidated condensed statements of operations is not included.

The following certification includes references to an evaluation of the effectiveness of the design and operation of the company's "disclosure controls and procedures" and to certain matters related to the company's "internal control over financial reporting." Item 4 of Part I of this Form 10-Q presents the conclusions of the CEO and the CFO about the effectiveness of our disclosure controls and procedures based on and as of the date of such evaluation (related to Item 4 of the certification), and contains additional information concerning disclosures to our Audit Committee and independent auditors with regard to deficiencies in internal control over financial reporting and fraud and related matters (Item 5 of the certification).

#### CERTIFICATION

I, Paul S. Otellini, certify that:

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

Date: November 2, 2009

By: /s/ Paul S. Otellini

Paul S. Otellini  
President and Chief Executive Officer



The following certification includes references to an evaluation of the effectiveness of the design and operation of the company's "disclosure controls and procedures" and to certain matters related to the company's "internal control over financial reporting." Item 4 of Part I of this Form 10-Q presents the conclusions of the CEO and the CFO about the effectiveness of our disclosure controls and procedures based on and as of the date of such evaluation (related to Item 4 of the certification), and contains additional information concerning disclosures to our Audit Committee and independent auditors with regard to deficiencies in internal control over financial reporting and fraud and related matters (Item 5 of the certification).

#### CERTIFICATION

I, Stacy J. Smith, certify that:

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

Date: November 2, 2009

By: /s/ Stacy J. Smith  
Stacy J. Smith  
Vice President, Chief Financial Officer, and  
Principal Accounting Officer

**CERTIFICATION**

Each of the undersigned hereby certifies, for the purposes of section 1350 of chapter 63 of title 18 of the United States Code, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, in his capacity as an officer of Intel Corporation (Intel), that, to his knowledge, the Quarterly Report of Intel on Form 10-Q for the period ended September 26, 2009, fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934 and that the information contained in such report fairly presents, in all material respects, the financial condition and results of operations of Intel. This written statement is being furnished to the Securities and Exchange Commission as an exhibit to such Form 10-Q. A signed original of this statement has been provided to Intel and will be retained by Intel and furnished to the Securities and Exchange Commission or its staff upon request.

Date: November 2, 2009

By: /s/ Paul S. Otellini  
Paul S. Otellini  
President and Chief Executive Officer

Date: November 2, 2009

By: /s/ Stacy J. Smith  
Stacy J. Smith  
Vice President, Chief Financial Officer, and  
Principal Accounting Officer