

Spansion Inc.  
Form S-8  
June 18, 2007

As filed with the Securities and Exchange Commission on June 18, 2007

Registration No.

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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM S-8**

**REGISTRATION STATEMENT**

**UNDER**

**THE SECURITIES ACT OF 1933**

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**SPANSION INC.**

(Exact Name of Registrant as Specified in Its Charter)

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**Delaware**  
(State or Other Jurisdiction of  
Incorporation or Organization)

**915 DeGuigne Drive**

**P.O. Box 3453**

**Sunnyvale, California 94088-3453**

(Address, Including Zip Code, of Principal Executive Offices)

**20-3898239**  
(I.R.S. Employer  
Identification No.)

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**Spansion Inc. 2007 Equity Incentive Plan**

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(Full Title of the Plan)

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**Bertrand F. Cambou**

**President and Chief Executive Officer**

**Spansion Inc.**

**915 DeGuigne Drive**

**P.O. Box 3453**

**Sunnyvale, California 94088**

**(408) 962-2500**

(Name, Address and Telephone Number, Including Area Code, of Agent for Service)

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**CALCULATION OF REGISTRATION FEE**

<b>Title of Securities</b>	<b>Amount To Be Registered</b>	<b>Proposed Maximum Offering Price Per Share</b>	<b>Proposed Maximum Aggregate Offering Price</b>	<b>Amount Of Registration Fee</b>
Class A Common Stock, \$0.001 par value per share	7,595,523 <sup>(1)</sup> shares	\$ 11.35 <sup>(2)</sup>	\$ 86,209,186 <sup>(2)</sup>	\$ 2,647 <sup>(2)</sup>

<sup>(1)</sup> This Registration Statement covers, in addition to the number of shares of Spansion Inc., a Delaware corporation (the Company or the Registrant), Class A common stock, par value \$0.001 per share (the Common Stock), stated above, options and other rights to purchase or acquire the shares of Common Stock covered by this Registration Statement and, pursuant to Rule 416(c) under the Securities Act of 1933, as amended (the Securities Act), an additional indeterminate number of shares, options and rights that may be offered or issued pursuant to the Spansion Inc. 2007 Equity Incentive Plan (the Plan) as a result of one or more adjustments under the Plan to prevent dilution resulting from one or more stock splits, stock dividends or similar transactions.

<sup>(2)</sup> Pursuant to Securities Act Rule 457(h), the maximum offering price, per share and in the aggregate, and the registration fee were calculated based upon the average of the high and low prices of the Common Stock on June 15, 2007, as quoted on the Nasdaq Global Market.

The Exhibit Index for this Registration Statement is at page 9.

**PART I**

INFORMATION REQUIRED IN THE

SECTION 10(a) PROSPECTUS

The document(s) containing the information specified in Part I of Form S-8 will be sent or given to participants as specified by Securities Act Rule 428(b)(1).

**PART II**

INFORMATION REQUIRED IN THE  
REGISTRATION STATEMENT

**Item 3. Incorporation of Certain Documents by Reference**

The following documents of the Company filed with the Securities and Exchange Commission (the Commission) are incorporated herein by reference:

- (a) The Company's Annual Report on Form 10-K for its fiscal year ended December 31, 2006, filed with the Commission on February 27, 2007 (Commission File No. 000-51666);
- (b) The Company's Quarterly Report on Form 10-Q for its fiscal quarter ended April 1, 2007, filed with the Commission on May 9, 2007 (as amended on May 24, 2007) (Commission File No. 000-51666);
- (c) The Company's Current Reports on Form 8-K, filed with the Commission on June 7, 2007, June 4, 2007, June 1, 2007, May 31, 2007, May 21, 2007, May 11, 2007, May 11, 2007, May 9, 2007, April 26, 2007, April 4, 2007, April 3, 2007, March 28, 2007 and March 22, 2007 (Commission File No. 000-51666); and
- (d) The description of the Company's Common Stock contained in its Registration Statement on Form 8-A, filed with the Commission on December 13, 2005 (Commission File No. 000-51666) (which incorporates such description of the Common Stock from the Form S-1, which description is also hereby incorporated by reference), and any other amendment or report filed for the purpose of updating such description.

All documents subsequently filed by the Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended (the Exchange Act), prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the date of filing of such documents. Any statement contained herein or in a document, all or a portion of which is incorporated or deemed to be incorporated by reference herein, shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or amended, to constitute a part of this Registration Statement.

**Item 4. Description of Securities**

Not applicable.

**Item 5. Interests of Named Experts and Counsel**

Not applicable.

**Item 6. Indemnification of Directors and Officers**

The Registrant is a Delaware corporation. Subsection (b)(7) of Section 102 of the Delaware General Corporation Law (the "DGCL"), enables a corporation in its original certificate of incorporation or an amendment thereto to eliminate or limit the personal liability of a director to the corporation or its stockholders for monetary damages for violations of the director's fiduciary duty, except (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the DGCL (providing for liability of directors for unlawful payment of dividends or unlawful stock purchases or redemptions) or (iv) for any transaction from which a director derived an improper personal benefit.

Section 145 of the DGCL authorizes a court to award, or a corporation's board of directors to grant, indemnity to officers, directors and other corporate agents in terms sufficiently broad to permit such indemnification under certain circumstances and subject to certain limitations.

As permitted by Section 145 of the DGCL, the Registrant's certificate of incorporation includes a provision that eliminates the personal liability of its directors for monetary damages for breach of their fiduciary duty as directors and that provides for the indemnification of directors to the fullest extent permissible under Delaware law.

In addition, as permitted by Section 145 of the DGCL, the bylaws of the Registrant provide that:

the Registrant shall indemnify its directors and officers for serving the Registrant in those capacities or for serving other business enterprises at the Registrant's request, to the fullest extent permitted by the Delaware General Corporation Law;

the Registrant is required to advance expenses, as incurred, to its directors and officers in connection with defending a proceeding, except that such director or officer shall undertake to repay such advances if it is ultimately determined that such person is not entitled to indemnification;

the Registrant is not obligated pursuant to the bylaws to indemnify a person with respect to proceedings initiated by that person, except with respect to proceedings authorized by the Registrant's board of directors or brought to enforce a right to indemnification;

the rights conferred in the bylaws are not exclusive, and the Registrant is authorized to enter into indemnification agreements with its directors, officers, employees and agents and to obtain insurance to indemnify such persons; and

the Registrant may, in its discretion, indemnify employees and agents in those circumstances where indemnification is not required by law.

The Registrant has entered into separate indemnification agreements with each of its directors and executive officers that provide the maximum indemnity allowed to directors and executive officers by Section 145 of the DGCL and which allow for certain additional procedural protections. The Registrant intends to enter into indemnification agreements with any new directors and executive officers in the future.

The indemnification provisions of the Registrant's certificate of incorporation and bylaws and the indemnification agreements entered or to be entered into between the Registrant and its officers and directors may be sufficiently broad to permit indemnification of the Registrant's officers and directors for liabilities (including reimbursement of expenses incurred) arising under the Securities Act.

**Item 7. Exemption from Registration Claimed**

Not applicable.

**Item 8. Exhibits**

See the attached Exhibit Index at page 9, which is incorporated herein by reference.

**Item 9. Undertakings**

(a) The undersigned Registrant hereby undertakes:

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

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

(ii) To reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement; and

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

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

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

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

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in this Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(h) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, executive officers and controlling persons of the Registrant pursuant to the provisions described in Item 6 above, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

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**SIGNATURES**

Pursuant to the requirements of the Securities Act, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Form S-8 Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Sunnyvale, State of California, on June 18, 2007.

SPANSION INC.

By: /s/ Robert C. Melendres  
Robert C. Melendres  
Executive Vice President, Chief Legal Officer,  
Corporate Development and Corporate Secretary

**POWER OF ATTORNEY**

Each person whose signature appears below constitutes and appoints Bertrand F. Cambou and Robert C. Melendres, and each of them, acting individually and without the other, as his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him or her and in his or her name, place, and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments, exhibits thereto and other documents in connection therewith) to this Registration Statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or either of them individually, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

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

<b>Signature</b>	<b>Title</b>	<b>Date</b>
/s/ Bertrand F. Cambou	President, Chief Executive Officer and Director	June 18, 2007
Bertrand F. Cambou	(Principal Executive Officer)	
/s/ Dario Sacomani	Executive Vice President and Chief Financial Officer	June 18, 2007
Dario Sacomani	(Principal Financial and Accounting Officer)	



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/s/ Hector de J. Ruiz	Chairman	June 18, 2007
Hector de J. Ruiz		
/s/ David K. Chao	Director	June 18, 2007
David K. Chao		
/s/ Robert L. Edwards	Director	June 18, 2007
Robert L. Edwards		
/s/ Patti S. Hart	Director	June 18, 2007
Patti S. Hart		
/s/ David E. Roberson	Director	June 18, 2007
David E. Roberson		
/s/ John M. Stich	Director	June 18, 2007
John M. Stich		

**EXHIBIT INDEX**

<b>Exhibit Number</b>	<b>Description of Exhibit</b>
4.1(1)	Spansion Inc. 2007 Equity Incentive Plan.
5.1	Opinion of O Melveny and Myers LLP (opinion re legality).
23.1	Consent of Ernst & Young LLP (independent registered public accounting firm).
23.2	Consent of O Melveny and Myers LLP (included in Exhibit 5.1).
24.1	Power of Attorney (included in this Registration Statement under Signatures and incorporated herein by reference).

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(1) Incorporated by reference to Appendix A to the Registrant's Definitive Proxy Statement on Schedule 14A filed April 9, 2007.