Spansion Inc.
Form S-1/A
December 15, 2005
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As filed with the Securities and Exchange Commission on December 15, 2005.

Registration No. 333 -124041

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

AMENDMENT NO. 11

TO

FORM S-1

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

SPANSION INC.

(Exact name of registrant as specified in its charter)

Delaware	**3674**	**20-3898239**
(State or other jurisdiction of incorporation or organization)	**(Primary Standard Industrial Classification Code Number)**	**(I.R.S. Employer Identification No.)**

915 DeGuigne Drive

P.O. Box 3453

Sunnyvale, CA 94088

(408) 962-2500

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

Bertrand F. Cambou

Chief Executive Officer

Spansion Inc.

915 DeGuigne Drive

P.O. Box 3453

Sunnyvale, CA 94088

(408) 962-2500

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

Copies to:

Tad J. Freese	Alan F. Denenberg
Latham & Watkins LLP	Davis Polk & Wardwell
505 Montgomery Street, Ste. 2000	1600 El Camino Real
San Francisco, CA 94111	Menlo Park, CA 94025
(415) 391-0600	(650) 752-2000

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

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

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

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

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

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

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to Be Registered	Proposed Maximum Aggregate Offering Price(1)	Amount of Registration Fee
Class A Common Stock, par value $0.001 per share	$ 632,000,000(2)	$ 74,387(3)

(1) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(o) under the Securities Act.
(2) Including shares of Class A common stock that may be purchased by the underwriters to cover overallotments, if any.
(3) Previously paid.

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

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

SUBJECT TO COMPLETION, DATED DECEMBER 15, 2005.

P R O S P E C T U S

39,215,702 Shares

Spansion Inc.

Class A Common Stock

$ per share

We are selling 39,215,702 shares of Class A common stock. We have granted the underwriters an option to purchase up to 5,882,355 additional shares of Class A common stock to cover over-allotments.

This is the initial public offering of our Class A common stock. We currently expect the initial public offering price to be between $13.00 and $14.00 per share. We have applied to have the Class A common stock included for quotation on the Nasdaq National Market under the symbol SPSN.

Our common stock will consist of four classes of stock: Class A common stock, Class B common stock, Class C common stock and Class D common stock. Advanced Micro Devices, Inc., or AMD, will own 47,973,846 shares of our Class A common stock and all of our outstanding shares of Class B common stock. As the holder of our Class B common stock, AMD will have the right initially to elect two of our directors. Fujitsu Limited, or Fujitsu, will own all of our outstanding shares of Class C and Class D common stock. As the holder of our Class C common stock, Fujitsu will have the right initially to elect one of our directors. Holders of all classes of our common stock are entitled to one vote per share on all matters to be voted on by stockholders, except that our Class D common stock has no voting rights with respect to the election of directors. Upon completion of this offering, and assuming no exercise of the underwriters over-allotment option, the Class A and Class B common stock owned by AMD will represent approximately 40.3% of the total outstanding shares of our common stock, and the Class C and Class D common stock owned by Fujitsu will represent approximately 26.8% of the total outstanding shares of our common stock. For more information, see Description of Capital Stock beginning on page 137.

Concurrently with this offering, Spansion LLC, our indirect wholly-owned subsidiary, intends to issue $400 million aggregate principal amount of unsecured notes in a private placement. The notes will not be listed or traded on any securities exchange or trading market.

Investing in our Class A common stock involves risks. See Risk Factors beginning on page 17.

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

	Per Share	Total
Public Offering Price	$	$
Underwriting Discount	$	$
Proceeds to Spansion (before expenses)	$	$

The underwriters expect to deliver the shares to purchasers on or about , 2005.

Citigroup **Credit Suisse First Boston**

JPMorgan

Merrill Lynch & Co.

Morgan Stanley

Deutsche Bank Securities

UBS Investment Bank

Dresdner Kleinwort Wasserstein

, 2005

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You should rely only on the information contained in this prospectus. Neither we nor the underwriters have authorized anyone to provide you with information that is different from that contained in this prospectus. We are offering to sell shares of Class A common stock and seeking offers to buy shares of Class A common stock only in jurisdictions where offers and sales are permitted. You should assume that the information in this prospectus is accurate only as of the date on the front cover of this prospectus or other earlier date stated in this prospectus. Our business, financial condition, results of operations and prospects may have changed since such dates.

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Until , 2006 (25 days after commencement of this offering), all dealers that effect transactions in shares of our Class A common stock, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

Spansion and MirrorBit are our trademarks. Other names are for informational purposes only and may be trademarks of their respective owners.

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SUMMARY

This summary highlights material information found in greater detail elsewhere in this prospectus. It does not contain all of the information that you should consider before investing in shares of our common stock. You should read this entire prospectus carefully, including Risk Factors, the assumptions and other information set forth under Conventions and Assumptions Used in this Prospectus and our financial statements and the accompanying notes, before making an investment decision.

Our Company

Overview

We are one of the largest Flash memory providers and the largest company in the world dedicated exclusively to developing, designing and manufacturing Flash memory, a critical semiconductor component of nearly every electronic product and one of the fastest growing segments of the semiconductor industry. For fiscal 2004 and the first nine months of fiscal 2005, our net sales were $2.3 billion and $1.4 billion. Our net losses for these periods were $20 million and $257 million. According to market research firm iSuppli, in 2004 we were the largest supplier of NOR Flash memory, with a 25.9 percent market share, which made us one of the largest suppliers for the overall Flash memory market, with a 15.1 percent market share, based on end sales of our products by Advanced Micro Devices, Inc., or AMD, and Fujitsu Limited, or Fujitsu, who have acted as our sole distributors. In the first six months of 2005, based on iSuppli quarterly data, we were the second largest supplier of NOR Flash memory, with a 24.9 percent market share, which again made us one of the largest suppliers for the overall Flash memory market, with an 11.5 percent market share, based on end customer sales. Our Flash memory is incorporated into a broad range of electronic products, including mobile phones, consumer electronics, automotive electronics, networking and telecommunications equipment and PC peripherals. Our products are integrated into products from many of the top original equipment manufacturers, or OEMs, in each of these markets, including all of the top ten mobile phone OEMs, all of the top ten consumer electronics OEMs and all of the top ten automotive electronics OEMs. We operate four Flash memory wafer fabrication facilities, or fabs, four assembly and test sites and a development fab, known as our Submicron Development Center, or SDC. We are headquartered in Sunnyvale, California, with Japanese headquarters in Tokyo, Japan, and as of November 20, 2005, we employed approximately 8,300 people worldwide.

The Flash memory market is very capital intensive and requires that suppliers make significant capital expenditures in order to remain competitive. In the first nine months of fiscal 2005, our capital expenditures were $324 million, and we expect to spend approximately an additional $195 million in the remainder of the fiscal year. We have historically funded our capital expenditures through both debt financing and operating cash flow. In addition to capital expenditures, our primary future cash needs on a recurring basis will be for working capital and debt service. As of September 25, 2005, we had $781 million principal amount of outstanding debt including $381 million owed to AMD and Fujitsu. Should we require additional funding, we may need to raise the required additional funds through bank borrowings or public or private sales of debt or equity.

Our History

We were originally organized as a Flash memory manufacturing venture of AMD and Fujitsu in 1993 named Fujitsu AMD Semiconductor Limited, or FASL. The primary function of FASL was to manufacture and sell Flash memory wafers to AMD and Fujitsu, who in turn converted the Flash memory wafers into finished Flash memory products and sold them to their customers. AMD and Fujitsu were also responsible for all research and development and marketing activities and provided FASL with various support and administrative services.

By 2003, AMD and Fujitsu desired to expand the operations of FASL to: achieve economies of scale; add additional Flash memory wafer fabrication capacity; include assembly, test, mark and pack operations; include

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research and development capabilities; and include various marketing and administrative functions. To accomplish these goals, in 2003, AMD and Fujitsu reorganized our business as a Flash memory company called FASL LLC, later renamed Spansion LLC, by integrating the manufacturing venture with other Flash memory assets of AMD and Fujitsu. Since this reorganization, we have manufactured and sold finished Flash memory devices to customers worldwide through our sole distributors, AMD and Fujitsu.

AMD s sales force responsible for selling our products was transferred to us in the second quarter of fiscal 2005. Although the transition of some related support functions, including booking and billing, is still underway, we expect to sell to customers directly as well as through distributors. We also agreed with Fujitsu that Fujitsu will remain our sole distributor in Japan and a distributor throughout the rest of the world, other than Europe and the Americas with limited exceptions.

FASL	è	**Spansion LLC**	è	**Spansion Inc.**
Manufacturing Venture		**AMD / Fujitsu Flash Memory Company**		**Public Standalone Flash Memory Company**
March 1993		**June 2003**		**Planned**
Flash memory wafers sold to AMD and Fujitsu		Finished Flash memory products sold through AMD and Fujitsu as sole distributors Dedicated research and development, marketing and administrative functions		Dedicated sales force Fujitsu sole distributor in Japan and a distributor throughout the rest of the world, other than Europe and the Americas with limited exceptions

Our Industry

Consumers are increasingly demanding access to digital content through sophisticated communications equipment, consumer electronic products and automotive electronics. People now expect to instantly access, store and interact with multimedia content, including photos, music, video and text files using such products as mobile phones, digital cameras, DVD players, set top boxes, or STBs, MP3 players and automotive electronics such as navigation systems. The primary semiconductor component used to store and access this kind of digital content is Flash memory, and as a result, Flash memory has become one of the most critical components of electronic products. Most electronic products use Flash memory to store important program instructions, known as code, as well as multimedia or other digital content, known as data. Code storage allows the basic operating instructions, operating system software or program code to be retained, which allows an electronic product to function, while data storage allows digital content, such as multimedia files, to be retained. There are two major architectures of Flash memory in the market today: NOR Flash memory, which is used for code and data storage in mobile phones and primarily for code storage in consumer electronics, and NAND Flash memory, which is primarily used for data storage in removable memory applications, such as compact Flash cards and USB drives, and is increasingly being used in some high-end mobile phones and embedded applications.

Flash memory is one of the largest semiconductor markets and, according to iSuppli, it reached total worldwide sales of $15.9 billion in 2004, of which 58.4 percent was classified as sales of NOR-based Flash memory products and 41.6 percent was classified as sales of NAND-based Flash memory products. For the first six months of 2005, total worldwide sales reached $8.1 billion, of which 46.3 percent was classified as NOR-based Flash memory products and 53.7 percent was classified as sales of NAND-based Flash memory products. During 2003, 2004 and the first six months of 2005, sales of NAND-based Flash memory products grew at a higher rate than sales of NOR-based Flash memory products. We expect this trend to continue in the foreseeable future. iSuppli projects that sales of NAND-based Flash memory products will grow by 40 percent from 2004 to

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2005 and grow at a 13 percent compound annual growth rate from 2005 to 2009, while sales of NOR-based Flash memory products will decline by 16 percent from 2004 to 2005 and grow at a four percent compound annual growth rate from 2005 to 2009. Because to date we have sold only NOR-based Flash memory products, this trend could materially adversely affect us if we are unsuccessful in executing our strategy described below.

The Flash memory market can be divided into three major categories based on application: wireless, embedded and removable storage. Portable, battery-powered communications applications are categorized as wireless, and solid-state removable memory applications are categorized as removable storage. All other applications, such as consumer and automotive electronics, are categorized as embedded. In 2004, and in the first six months of 2005, the wireless category of the Flash memory market, which primarily consists of mobile phones, represented the largest market for NOR Flash memory, according to iSuppli. Sales by our distributors to end customers in the wireless category drove a majority of our sales in fiscal 2004 and in the first nine months of fiscal 2005.

Overall, the Flash memory market has grown significantly over the past six years, from worldwide sales of $2.9 billion in 1998 to $15.9 billion in 2004. iSuppli projects that the Flash memory market will reach sales of $24.4 billion in 2009, representing a compound annual growth rate of nine percent from 2004 to 2009. We believe much of this growth in the Flash memory market will be driven by a growth in unit shipments and Flash memory content of mobile phones, growth in unit shipments and Flash memory content for embedded applications and a proliferation of removable storage products.

Flash memory is used across a wide spectrum of applications. Within each of the wireless, embedded and removable storage Flash memory market categories, customer and application needs are influenced by whether the application will predominantly require code storage, data storage or a combination of the two. Traditional criteria by which Flash memory customers evaluate Flash memory products include density, or a Flash memory product s storage capacity, cost per bit, performance, reliability and power consumption. In addition to having product-specific requirements, we believe Flash memory customers will increasingly seek Flash memory providers that have the ability to add value beyond the Flash memory component itself.

Our Strengths

We believe we have the attributes that are necessary for long-term success in the Flash memory industry, including the following:

Proprietary MirrorBit Technology. MirrorBit is our proprietary technology which stores two bits of data in a single memory cell, doubling the density of each memory cell. MirrorBit technology allows us to offer a broad range of product configurations with the advantages of NOR architecture. Compared to competitive two-bit-per-cell floating gate technology, MirrorBit technology requires fewer manufacturing steps, resulting in higher yields and lower costs.

Broad Product Offerings. Currently, we serve the wireless and embedded categories of the Flash memory market and produce the industry s broadest range of NOR-based Flash memory products with offerings from 1 to 512 megabits, voltages from 1.8 to 5 volts and a breadth of performance options.

Customer-Centric Innovation. We work with customers to identify evolving needs and new applications in order to develop innovative products and features.

Systems-Level Solutions, Alliances and Support. We have invested significant systems and engineering resources to establish alliances with other semiconductor and software companies, create innovative development tools and testing environments and bring our significant memory subsystems expertise to customers.

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Advanced Manufacturing, Lithography and Packaging Capabilities. We have developed advanced Flash memory device manufacturing capabilities and operate four dedicated production Flash memory wafer fabs and a development fab to accelerate the introduction of next-generation technologies.

Largest Dedicated Flash Memory Player with a Leading Market Position. We are the largest company focused exclusively on the development and manufacture of Flash memory, and in 2004 according to iSuppli we were the largest NOR Flash memory supplier, with a 25.9 percent market share, which made us one of the largest suppliers for the overall Flash memory market, with a 15.1 percent market share, based on end customer sales. In the first six months of 2005, based on iSuppli quarterly data, we were the second largest supplier of NOR Flash memory, with a 24.9 percent market share, which again made us one of the largest suppliers for the overall Flash memory market, with an 11.5 percent market share, based on end customer sales.

Our Strategy

Our goal is to leverage our proprietary MirrorBit technology, broad product offerings, customer-centric innovation, systems-level solutions, advanced manufacturing capabilities and leading market position to grow our leadership position in the wireless and embedded categories and enter new, high-growth portions of the Flash memory market. To achieve these goals, we are pursuing the following key strategies:

Capitalize on Our Leadership Position. We plan to use our position as a market leader to increase our share in the wireless and embedded categories of the Flash memory market.

Bridge the NOR/NAND Divide. We are developing a new architecture called ORNAND based on our MirrorBit technology that we believe will draw from among the best features of both NOR and NAND architectures and will be an important part of our strategy to address data storage applications within the wireless and embedded categories of the Flash memory market, which are currently primarily served by NAND-based Flash memory products. Through our MirrorBit technology, we expect to deliver products primarily for code and data applications in the wireless and embedded categories of the Flash memory market that combine the attributes of performance, reliability, cost-per-bit and density that we believe will be tailored to our customers needs.

Enter New Markets Not Traditionally Served by Flash Memory. By leveraging our MirrorBit technology, we intend to develop a diverse range of products that meets the needs of a broader range of customer requirements in areas not traditionally served by Flash memory.

Continue to Develop Systems-Level Solutions and Provide Increasing Value to Customers. We intend to leverage the expertise of our dedicated software development team and design engineers to work with customers and complementary silicon and software providers to optimize entire systems that incorporate Flash memory.

Leverage Our Manufacturing and Technology Expertise. We plan to continue to migrate toward smaller geometries and larger silicon wafers, which we believe will result in a lower manufacturing cost-per-unit at a given product density. We also have recently entered into an agreement with Taiwan Semiconductor Manufacturing Company, or TSMC, to augment our internal production capacity for our 110-nanometer MirrorBit technology.

Concurrent Debt Offering

Concurrently with the consummation of this offering, Spansion LLC, our indirect wholly-owned subsidiary, intends to issue $400 million aggregate principal amount of senior unsecured notes in a private placement and apply the net proceeds from the sale of the notes to repay a portion of our outstanding borrowings, including all amounts owed under our promissory notes to AMD and Fujitsu. To the extent that Spansion LLC is unable to place the full $400 million aggregate principal amount of senior unsecured notes on acceptable terms, one or both of AMD and Fujitsu will purchase senior subordinated unsecured notes such that the total aggregate principal amount of senior

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unsecured notes and senior subordinated unsecured notes will total $400 million. Any notes purchased by one or both of AMD and Fujitsu will be subordinated to the senior unsecured notes and consequently may bear interest at a rate that is up to 150 basis points higher than the interest rate on the senior unsecured notes, but the terms of which will otherwise be substantially similar to the senior unsecured notes. The notes will be offered by Spansion LLC because it is the operating company that will generate the cash required to make interest payments on the notes. The concurrent offering and sale of the notes is not being registered under the Securities Act of 1933, and the notes offered thereby may not be offered or sold in the United States absent registration or an applicable exemption from registration requirements. The completion of the sale of $400 million aggregate principal amount of notes is a condition to the completion of this offering. For illustration of the pro forma effect of the issuance of our senior unsecured notes, see Unaudited Pro Forma Consolidated Financial Data.

We have decided to issue a combination of Class A common stock and, through Spansion LLC, senior unsecured notes, in order to create an appropriate capital structure and balance between debt and equity, optimize our access to capital from different types of investors and increase our likelihood of success in raising the amount of capital that we are seeking.

Transition Towards Operating as a Standalone Entity

As we continue our transition towards operating as a standalone entity, we intend over time to reduce our reliance on AMD and Fujitsu for administrative and other services and functions. For example, AMD s sales force responsible for selling our products was transferred to us in the second quarter of fiscal 2005 and AMD ceased to earn any distribution margin on the sale of our products. Although the transition of some related support functions, including booking and billing, is still underway, we expect to sell directly to customers formerly served by AMD, as well as potential customers not served solely by Fujitsu. We also reached an agreement with Fujitsu to reduce the distribution margin earned by Fujitsu on the sale of our products from 6.5 percent to 4.3 percent beginning in the second quarter of fiscal 2005. In addition, we have agreed with each of AMD and Fujitsu to pay them a reduced royalty rate for the use of their intellectual property.

The impact of these changes on our results of operations beginning in the second quarter of fiscal 2005 included the following:

- net sales were positively affected because we captured all of the distribution margin formerly earned by AMD on sales of our products, and we captured some of the distribution margin formerly earned by Fujitsu on sales of our products; and

- marketing, general and administrative costs increased by the addition of sales personnel and associated administrative costs required to support the sales function.

In addition, we expect that the future impact of these changes on our results of operations would include the following:

- cost of sales would decrease by the amount of the reduction in royalties that we currently pay to AMD and Fujitsu pursuant to our licenses for their intellectual property, but such decrease would likely be offset, at least in part, by increased royalty payments for licenses and cross licenses with various third parties, and by the increased logistics and related costs formerly paid by AMD and Fujitsu; and

- the increase in marketing, general and administrative expenses described above would be partially offset by a decrease in such expenses as a result of our working with AMD and Fujitsu to reduce costs under our services agreements with them.

For more information on the impact of the AMD sales force transfer and the reduction in distribution margin under the Fujitsu distribution agreement, see Unaudited Pro Forma Consolidated Financial Data and Management s Discussion and Analysis of Financial Condition and Results of Operations Continuing Transition to Independence elsewhere in this prospectus.

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In addition to the activities outlined above, with the assistance of AMD, we also expect to attempt to negotiate our own agreements and arrangements with third parties for intellectual property and technology that is important to our business, including the material intellectual property that we previously had access to through our relationship with AMD. As a subsidiary of AMD, we have been the beneficiary of AMD s intellectual property arrangements with third parties. Following the completion of this offering, we will no longer be a beneficiary under a number of these agreements. Under other agreements, we believe we will continue to be a beneficiary for some period of time after the consummation of this offering while AMD continues to hold a majority of our shares entitled to vote for the election of directors. If we are unable to negotiate our own license agreements, we may be subject to claims that we are infringing intellectual property rights of third parties through the manufacture and sale of our products and the operation of our business. For more information, see Risk Factors We will lose rights to key intellectual property arrangements once we are no longer a beneficiary of AMD s patent cross-license agreements and other licenses, which creates a greatly increased risk of patent or other intellectual property infringement claims against us.

Company Information

We were formed as FASL LLC, a Delaware limited liability company, on April 15, 2003 and changed our name to Spansion LLC on June 28, 2004. Effective as of June 30, 2003, AMD and Fujitsu had contributed various assets to us, and as a result became our two members. Prior to this offering, Spansion LLC will be reorganized into a corporate structure. A holding company, Spansion Inc., will be the entity that offers shares to the public. Spansion Inc. will have a wholly-owned subsidiary, Spansion Technology Inc., that, subsequent to the completion of this offering, will be the successor to the operations of Spansion LLC.

The reorganization will occur through the following steps. First, AMD Investments, Inc., an indirect wholly-owned subsidiary of AMD, will contribute its 60 percent ownership interest in Spansion LLC to a newly formed Delaware corporation, Spansion Inc., in exchange for 43,529,402 shares of Class A common stock and one share of Class B common stock of Spansion Inc. Fujitsu will contribute all of the outstanding capital stock of Fujitsu Microelectronics Holding, Inc., or FMH, the wholly-owned Fujitsu subsidiary that holds Fujitsu s 40 percent ownership interest in Spansion LLC, to Spansion Inc. in exchange for one share of Class C common stock and 29,019,601 shares of Class D common stock of Spansion Inc. FMH will be renamed Spansion Technology Inc. Subsequent to the completion of this offering, Spansion Inc. will contribute the 60 percent ownership interest in Spansion LLC that it received from AMD Investments to Spansion Technology Inc. Spansion LLC will then be a wholly-owned subsidiary of Spansion Technology Inc. and will ultimately be merged into Spansion Technology Inc.

Upon the consummation of this offering, Fujitsu will cancel $40 million of the aggregate principal amount outstanding under the Fujitsu Cash Note, the terms of which are described in Management s Discussion and Analysis of Financial Condition and Results of Operations Contractual Obligations, in exchange for that number of shares of our Class D common stock calculated by dividing the principal amount cancelled by the initial public offering price per share of our Class A common stock, which would be 2,962,962 shares assuming an initial public offering price per share of $13.50.

Upon the consummation of this offering, AMD will cancel $60 million of the aggregate principal amount outstanding under the AMD Cash Note, the terms of which are described in Management s Discussion and Analysis of Financial Condition and Results of Operations Contractual Obligations, in exchange for that number of shares of our Class A common stock calculated by dividing the principal amount cancelled by the initial public offering price per share of our Class A common stock, which would be 4,444,444 shares assuming an initial public offering price per share of $13.50.

Our mailing address and principal executive offices are located at 915 DeGuigne Drive, P.O. Box 3453, Sunnyvale, California 94088, and our telephone number is (408) 962-2500.

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THE OFFERING

Shares of Class A common stock offered	39,215,702 shares of Class A common stock (or 45,098,057 shares if the underwriters exercise their over-allotment option in full).
Shares of Class A common stock to be outstanding after this offering [1][2]	87,189,548 shares of Class A common stock (or 93,071,903 shares if the underwriters exercise their over-allotment option in full).
Common stock owned by AMD after this offering	47,973,846 shares of Class A common stock; one share of Class B common stock.[2][3]
Common stock owned by Fujitsu after this offering	One share of Class C common stock; 31,982,563 shares of Class D common stock.[3][4][5]
Voting rights of Class A common stock	One vote per share.
Use of proceeds	We estimate that the net proceeds from the sale of shares of our Class A common stock in this offering will be approximately $493 million. We intend to use the net proceeds from this offering for working capital, capital expenditures and general corporate purposes. See Use of Proceeds.
Dividend policy	We currently do not intend to pay cash dividends and, under conditions where our cash is below specified levels, are prohibited from doing so under agreements governing our borrowing arrangements.
Risk factors	See Risk Factors and the other information included in this prospectus for a discussion of the factors you should consider before deciding to invest in shares of our Class A common stock.
Proposed Nasdaq National Market symbol	SPSN.
Concurrent notes offering	Concurrently with the consummation of this offering, Spansion LLC, our indirect wholly-owned subsidiary, intends to issue $400 million aggregate principal amount of senior unsecured notes in a private placement and apply the net proceeds from the sale of the notes to repay a portion of our outstanding borrowings, including all amounts owed under our promissory notes to AMD and Fujitsu. To the extent that Spansion LLC is unable to place the full $400 million aggregate principal amount of senior unsecured notes on acceptable terms, one or both of AMD and Fujitsu will purchase senior subordinated unsecured notes such that the total aggregate principal amount of senior unsecured notes and senior subordinated unsecured notes will total $400 million. Any notes purchased by one or both of AMD and Fujitsu will be subordinated to the senior unsecured notes and consequently may bear interest at a rate that is up to 150 basis points higher than the interest rate on the senior unsecured notes, but the terms of which will

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otherwise be substantially similar to the senior unsecured notes. The completion of the sale of $400 million aggregate principal amount of notes is a condition to the completion of this offering. The concurrent offering and sale of the notes is not being registered under the Securities Act of 1933, and the notes offered thereby may not be offered or sold in the United States absent registration or an applicable exemption from registration requirements.

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(1) Excludes an aggregate of 31,982,563 shares of our Class A common stock reserved for issuance upon conversion of our shares of Class D common stock held by Fujitsu which will convert to Class A common stock on a one-for-one basis upon the earlier of (1) the date that is one year from the consummation of this offering and (2) the date upon which our board of directors elects to cause the Class D common stock to convert to Class A common stock following a determination that such conversion is in our best interests. Also excludes an aggregate of 11,750,000 shares of our Class A common stock to be reserved for issuance under our equity incentive plan and employee stock purchase plan. At the time of the consummation of this offering, we intend to grant stock options or restricted stock units for approximately 6,000,000 shares of our Class A common stock to our employees under our 2005 equity incentive plan.

(2) Includes that number of shares of our Class A common stock that will be issued to AMD upon the consummation of this offering in exchange for AMD s cancellation of $60 million of the aggregate principal amount outstanding under the AMD Cash Note, the terms of which are described in Management s Discussion and Analysis of Financial Condition and Results of Operations Contractual Obligations, calculated by dividing the principal amount cancelled by the initial public offering price per share of our Class A common stock, which would be 4,444,444 shares assuming an initial public offering price per share of $13.50. A $1.00 increase in the assumed initial public offering price of $13.50 per share would decrease the number of shares of our Class A common stock issued to AMD in exchange for its cancellation of indebtedness by 306,513 shares. A $1.00 decrease in the assumed initial public offering price of $13.50 per share would increase the number of shares of our Class A common stock issued to AMD in exchange for its cancellation of indebtedness by 355,556 shares.

(3) The Class B common stock and the Class C common stock entitle AMD and Fujitsu to elect such number of members to our board of directors as set forth in our certificate of incorporation, which depends on such holder s aggregate ownership interest in us. See Description of Capital Stock.

(4) Includes that number of shares of our Class D common stock that will be issued to Fujitsu upon the consummation of this offering in exchange for Fujitsu s cancellation of $40 million of the aggregate principal amount outstanding under the Fujitsu Cash Note, the terms of which are described in Management s Discussion and Analysis of Financial Condition and Results of Operations Contractual Obligations, calculated by dividing the principal amount cancelled by the initial public offering price per share of our Class A common stock, which would be 2,962,962 shares assuming an initial public offering price per share of $13.50. A $1.00 increase in the assumed initial public offering price of $13.50 per share would decrease the number of shares of our Class D common stock issued to Fujitsu in exchange for its cancellation of indebtedness by 204,342 shares. A $1.00 decrease in the assumed initial public offering price of $13.50 per share would increase the number of shares of our Class D common stock issued to Fujitsu in exchange for its cancellation of indebtedness by 237,038 shares.

(5) The Class D common stock will be identical to the Class A common stock, except that the Class D common stock will not have the right to vote for the election of any directors to our board of directors. With respect to all other matters on which stockholders are entitled to vote, the Class D common stock will have the same voting rights of the Class A common stock. The Class D common stock will convert to Class A common stock on a one-for-one basis upon the earlier of (1) the date that is one year from the consummation of this offering and (2) the date upon which our board of directors elects to cause the Class D common stock to convert to Class A common stock following a determination that such conversion is in our best interests. For additional information, see Description of Capital Stock.

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CONVENTIONS AND ASSUMPTIONS USED IN THIS PROSPECTUS

We were originally organized as a manufacturing venture called Fujitsu AMD Semiconductor Limited, a Japanese corporation. Effective June 30, 2003, we were reorganized as a Delaware limited liability company named FASL LLC, which was later renamed Spansion LLC. As Spansion LLC, we are owned by two members: AMD Investments, Inc., a Delaware corporation and wholly-owned subsidiary of AMD, and Fujitsu Microelectronics Holding, Inc., a Delaware corporation and wholly-owned subsidiary of Fujitsu. Shortly prior to the consummation of this offering, Spansion LLC will be reorganized into a corporate structure with a Delaware corporation holding company named Spansion Inc. and a wholly-owned operating company subsidiary. At that time, AMD Investments, Inc. and Fujitsu Limited will be our only stockholders. Unless we indicate otherwise, all of the information in this prospectus assumes that (i) all limited liability company interests in Spansion LLC held by our members have been exchanged for equity interests in Spansion Inc. and (ii) the reorganization into a corporate structure has been completed such that our authorized capital stock is as set forth under Description of Capital Stock.

In this prospectus, unless the context otherwise requires: (1) references to we, us, Spansion, our and our company refer to (i) Spansion LLC its subsidiaries prior to the consummation of this offering and (ii) Spansion Inc. and its subsidiaries after the consummation of this offering; (2) references to AMD and Fujitsu in the context of being members of Spansion LLC will be deemed to refer to AMD Investments, Inc. and Fujitsu Microelectronics Holding, Inc.; (3) references to AMD in the context of being a stockholder of Spansion Inc. will be deemed to refer to AMD Investments, Inc.; (4) references to Spansion LLC in the context of Spansion LLC s concurrent notes offering in a private placement refer to Spansion LLC, our indirect wholly-owned operating subsidiary following our reorganization into a corporate structure; (5) unless otherwise specified as Class B, Class C or Class D common stock, references to common stock refer to Spansion Inc. s Class A common stock; and (6) references to our customers refer to customers of our sole distributors, AMD and Fujitsu.

Throughout this prospectus, our fiscal periods ended March 31, 2003, December 28, 2003 and December 26, 2004 are referred to as fiscal 2002, 2003 and 2004. In fiscal 2002, we used a fiscal year beginning April 1, 2002 and ending March 31, 2003, which consisted of 52 weeks. In connection with our reorganization effective June 30, 2003, we adopted a fiscal year ending the last Sunday of December. Fiscal 2003 was therefore a transition period beginning April 1, 2003 and ending December 28, 2003, during which we operated as Fujitsu AMD Semiconductor Limited for the first three months and then operated as Spansion LLC for the final six months. Fiscal 2003 consisted of approximately 39 weeks. Fiscal 2004 ended December 26, 2004 and consisted of 52 weeks. The nine months ended September 26, 2004 and September 25, 2005 each consisted of 39 weeks.

Unless we indicate otherwise, all of the information in this prospectus assumes: (i) that the underwriters do not exercise their option to purchase up to 5,882,355 shares of our common stock within 30 days from the date of this prospectus to cover over-allotments; (ii) that Spansion LLC s concurrent issuance of $400 million aggregate principal amount of notes in a private placement has been completed; (iii) that Fujitsu has cancelled $40 million of the aggregate principal amount outstanding under the Fujitsu Cash Note in exchange for that number of shares of our Class D common stock calculated by dividing the principal amount cancelled by the initial public offering price per share of our Class A common stock, which would be 2,962,962 shares assuming an initial public offering price per share of $13.50; and (iv) that AMD has cancelled $60 million of the aggregate principal amount outstanding under the AMD Cash Note in exchange for that number of shares of our Class A common stock calculated by dividing the principal amount cancelled by the initial public offering price per share of our Class A common stock, which would be 4,444,444 shares assuming an initial public offering price per share of $13.50. A $1.00 increase in the assumed initial public offering price of $13.50 per share would decrease the number of shares of our common stock issued to AMD and Fujitsu in exchange for their cancellation of indebtedness by 306,513 and 204,342 shares. A $1.00 decrease in the assumed initial public offering price of $13.50 per share would increase the number of shares of our common stock issued to AMD and Fujitsu in exchange for their cancellation of indebtedness by 355,556 and 237,038 shares.

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SUMMARY HISTORICAL AND UNAUDITED PRO FORMA FINANCIAL DATA

The following table sets forth summary historical consolidated financial data and unaudited pro forma consolidated financial data. In fiscal 2002, we used a fiscal year beginning April 1, 2002 and ending March 31, 2003, which consisted of 52 weeks. In connection with our reorganization effective June 30, 2003, we adopted a fiscal year ending the last Sunday in December. Fiscal 2003 was therefore a transition period beginning April 1, 2003 and ending December 28, 2003, during which we operated as FASL for the first three months and operated as Spansion LLC for the final six months. Fiscal 2003 consisted of approximately 39 weeks. Fiscal 2004 began December 29, 2003 and ended December 26, 2004, which consisted of 52 weeks. The summary consolidated statement of operations data for the fiscal years ended March 31, 2003, December 28, 2003 and December 26, 2004 and the summary consolidated balance sheet data as of December 26, 2004 have been derived from, and should be read together with, our audited consolidated financial statements and the related notes included elsewhere in this prospectus. The summary unaudited consolidated statement of operations data for the nine months ended September 26, 2004 and September 25, 2005 and the summary unaudited consolidated balance sheet data as of September 25, 2005 have been derived from, and should be read together with, our unaudited consolidated financial statements included elsewhere in this prospectus. Other unaudited quarterly financial data are derived from our unaudited interim condensed consolidated financial statements not included elsewhere in this prospectus. The unaudited interim condensed consolidated financial statements have been prepared on the same basis as the audited consolidated financial statements and, in the opinion of management, include all adjustments, consisting only of normal recurring adjustments, necessary for a fair presentation. The historical results are not necessarily indicative of the results to be expected in any future periods, and the results for the nine months ended September 25, 2005 should not be considered indicative of results to be expected for the full fiscal year.

We prepared the unaudited pro forma consolidated statement of operations data for the fiscal year ended December 26, 2004, set forth in the table below, from our audited consolidated financial statements for the fiscal year ended December 26, 2004, which are included elsewhere in this prospectus, and we prepared the unaudited pro forma consolidated statement of operations data for the nine months ended September 25, 2005, set forth in the table below, from our unaudited consolidated financial statements for the nine months ended September 25, 2005, which are included elsewhere in this prospectus, to reflect our results of operations as if the events described below had occurred as of December 29, 2003.

As we continue our transition towards operating as a standalone entity, we intend over time to reduce our reliance on AMD and Fujitsu for administrative and other services and functions. For example, AMD s sales force responsible for selling our products was transferred to us in the second quarter of fiscal 2005 and AMD ceased to earn any distribution margin on the sale of our products. Although the transition of some related support functions, including booking and billing, is still underway, we expect to sell directly to customers formerly served by AMD, as well as potential customers not solely served by Fujitsu. We also reached an agreement with Fujitsu to reduce the distribution margin earned by Fujitsu on the sale of our products from 6.5 percent to 4.3 percent beginning in the second quarter of fiscal 2005. As set forth below, we have included adjustments in our unaudited pro forma consolidated statement of operations data for our assumption of freight, duty and logistics and related costs, our assumption of warehousing and related costs, and our assumption of direct and indirect marketing, general and administrative expenses in connection with employing AMD s sales force responsible for selling our products. Each of these adjustments represents the costs that AMD incurred in connection with selling our products in fiscal 2004 and in the first nine months of fiscal 2005, all of which were incurred by AMD prior to the transfer of AMD s sales force as of April 1, 2005. We believe that the costs that were actually incurred by AMD in connection with selling our products are representative of the costs that we would have incurred if the transfer of AMD s sales force had occurred as of December 29, 2003. Moreover, as of April 1, 2005, we and AMD entered into an Agency Agreement whereby we agreed to pay AMD for the provision of transitional support services for shipping, invoicing and billing, purchase order processing and other related functions, including worldwide sales and marketing support services such as credit and collections. We believe that the negotiated fees for these marketing, general and administrative transitional services substantially approximate the expenses that we would incur if we were to perform these services internally. In the aggregate, these pro forma adjustments, as well as the elimination of the AMD distribution margin and the reduction of the Fujitsu distribution margin, increased both operating and net income, which subsequently resulted in an incremental expense in connection with our profit sharing program.

The unaudited pro forma consolidated statement of operations data for the fiscal year ended December 26, 2004 and for the nine months ended September 25, 2005 set forth below gives effect to:

- the contemplated termination of the AMD Distribution Agreement, which would have resulted in an elimination of the seven percent distribution margin thereunder for fiscal 2004, which would have added approximately $80.3 million to net sales for fiscal 2004, and resulting in an elimination of the 6.5 percent distribution margin thereunder for the first nine months of fiscal 2005, which would have added approximately $14.1 million to net sales for the first nine months of fiscal 2005;

- a reduction from seven percent to 4.3 percent in the distribution margin under the Fujitsu Distribution Agreement for fiscal 2004, which would have added approximately $26.2 million to net sales for fiscal 2004 and a reduction from 6.5 percent to 4.3 percent in the distribution margin under the Fujitsu Distribution Agreement for the first nine months of fiscal 2005, which would have added approximately $4.4 million to net sales for the first nine months of fiscal 2005;

- our assumption of freight, duty and logistics related costs for our products currently incurred by AMD which we believe would have increased cost of sales for fiscal 2004 by approximately $4.4 million and by approximately $1.4 million for the first nine months of fiscal 2005;

- our assumption of warehousing and related costs for our products currently incurred by Fujitsu, which we believe would have increased cost of sales for fiscal 2004 by approximately $4.0 million and by approximately $1.0 million for the first nine months of fiscal 2005;

- our assumption of direct and indirect marketing, general and administrative expenses in connection with employing AMD s sales force responsible for selling our products, which we believe would have increased marketing, general and administrative expenses for fiscal 2004 by approximately $47.4 million and by approximately $10.4 million for the first nine months of fiscal 2005;

- the inclusion of an incremental expense in connection with our profit sharing program for the increase in net income resulting from the foregoing adjustments, which we calculated as ten percent of incremental operating income before profit sharing expense, and which we believe would have increased marketing, general and administrative expenses for fiscal 2004 by approximately $5.1 million, but with no corresponding increase in the expense for the first nine months of fiscal 2005 since there was no profit on a pro forma basis in that period;

- the inclusion of incremental interest expense and amortization of capitalized debt issuance costs in connection with our concurrent private placement of notes, assuming the notes had been issued on December 29, 2003, net of a reduction of interest expense actually recorded on those outstanding debt obligations which will be repaid from the proceeds of the notes, assuming they had been repaid on December 29, 2003, and net of a reduction of interest expense related to the $100 million of debt to AMD and Fujitsu that will be cancelled in exchange for shares of our common stock, which we believe would have increased interest expense for fiscal 2004 by approximately $20.2 million and by approximately $13.4 million for the first nine months of fiscal 2005. We have assumed an interest rate of 11 percent payable on the notes based upon our financial condition and expected credit ratings and the current interest rate environment and market conditions, although the actual interest rate on our notes may differ from this assumed rate as a result of the interest rate environment and market conditions in effect at the time of pricing of the notes offering. A 100 basis point (one percent) increase

in the interest rate on the notes would result in incremental annual increased interest expense of $4 million per year. A 100 basis point (one percent) decrease in the interest rate on the notes would result in incremental decreased interest expense of $4 million per year;

the inclusion of a tax provision for the incremental taxes owed on incremental net income before tax which would have been earned by our foreign subsidiaries and taxed at local statutory rates resulting from the foregoing adjustments, which we believe would have decreased the income tax benefit for fiscal 2004 by approximately $7.7 million and by approximately $1.3 million for the first nine months of fiscal 2005; and

the inclusion of a $3.1 million reduction of tax benefit that reflects the additional U.S. tax which we would have incurred if we were taxed as a corporation rather than a limited liability company for fiscal 2004 and no reduction of tax benefit for the first nine months of fiscal 2005.

The agreements that we have reached which resulted in the foregoing adjustments to our unaudited pro forma consolidated statement of operations data have not resulted in material assets being contributed to us or liabilities assumed by us.

The unaudited pro forma consolidated statement of operations data for the fiscal year ended December 26, 2004 and the nine months ended September 25, 2005 does not include all expected or potential changes to our cost structure. For example, the unaudited pro forma consolidated statement of operations data does not give effect to other costs or benefits that have been or will be incurred or realized as we transition to a standalone company, including costs or benefits related to:

designing and implementing new enterprise-wide information systems;

obtaining licenses from third parties for technology incorporated in our products or software used to operate our business, including any licenses required to replace the intellectual property rights we will lose once we are no longer a beneficiary under AMD s existing cross-license agreements. These costs will be offset to some extent by the reduction in royalty rates we pay under our patent cross-license agreements with AMD and Fujitsu. For more information, see Risk Factors We will lose rights to key intellectual property arrangements once we are no longer a beneficiary of AMD s patent cross-license agreements and other licenses, which creates a greatly increased risk of patent or other intellectual property infringement claims against us and Certain Relationships and Related Party Transactions Patent Cross-License Agreements;

being a public company, including significant legal, accounting and other expenses we did not incur as a private company;

implementing our planned cost reduction efforts; and

a possible increase in the cost of procuring goods and services from third parties as a result of changes in our purchasing power. For more information, see Risk Factors We may experience increased costs resulting from a decrease in the purchasing power we currently have due to our being a majority-owned subsidiary of AMD.

The unaudited pro forma earnings per share information assumes our reorganization into a corporate structure occurred on December 29, 2003 and is based on the number of shares owned by AMD and Fujitsu immediately prior to the consummation of this offering.

Also set forth below is unaudited consolidated as adjusted balance sheet data as of September 25, 2005, which has been prepared from our unaudited consolidated balance sheet as of September 25, 2005, which is included elsewhere in this prospectus. The unaudited consolidated as adjusted balance sheet data adjusts the actual data to reflect the receipt and application of the net proceeds from this offering and the receipt and

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application of the net proceeds from the concurrent private placement of notes by Spansion LLC, our indirect wholly-owned subsidiary, in each case after deducting underwriting discounts and commissions and estimated offering expenses payable by us. The other pro forma adjustments discussed above do not impact the unaudited consolidated as adjusted balance sheet data.

Our unaudited pro forma consolidated financial data is not intended to represent what our financial condition and results of operations actually would have been had the transactions described above occurred or to be indicative of our future financial performance.

Summary Historical and Unaudited Pro Forma Financial Data

	Year Ended Mar. 31, 2003	Nine Months Ended Dec. 28, 2003	Year Ended Dec. 26, 2004	Pro Forma for the Year Ended Dec. 26, 2004[2]	Nine Months Ended Sept. 26, 2004	Nine Months Ended Sept. 25, 2005	Pro Forma for the Nine Months Ended Sept. 25, 2005[2]
	(in thousands, except per share amounts)						
Statement of Operations Data[1]:							
Net sales	$ 961,950	$ 1,193,212	$ 2,262,227	$ 2,368,766	$ 1,775,251	$ 1,411,209	$ 1,429,749
Cost of sales	921,924	1,086,030	1,840,862	1,849,290	1,425,905	1,312,470	1,314,822
Gross profit	40,026	107,182	421,365	519,476	349,346	98,739	114,927
Other expenses:							
Research and development		146,947	280,954	280,954	209,199	220,100	220,100
Marketing, general and administrative	4,811	74,200	137,159	189,641	100,616	126,784	137,177
Operating income (loss)	35,215	(113,965)	3,252	48,881	39,531	(248,145)	(242,350)
Interest and other income (expense), net	(202)	1,335	3,198	3,198	2,223	2,496	2,496
Interest expense	(1,867)	(20,733)	(40,165)	(60,376)	(29,972)	(33,574)	(47,015)
Income (loss) before income taxes	33,146	(133,363)	(33,715)	(8,297)	11,782	(279,223)	(286,869)
Provision (benefit) for income taxes	12,169	(4,420)	(14,013)	(6,266)	4,897	(22,634)	(21,320)
Net income (loss)	$ 20,977	$ (128,943)	$ (19,702)	$ (2,031)	$ 6,885	$ (256,589)	$ (265,549)
Net income (loss) per share:							
Basic and diluted	$ 21.50	n/a[4]	n/a[4]	n/a[4]	n/a[4]	n/a[4]	n/a[4]
Shares used in per share calculation:							

Basic and diluted	975,753	n/a(4)	n/a(4)	n/a(4)	n/a(4)	n/a(4)	n/a(4)
Unaudited Pro Forma Effects of Assumed Reorganization into Corporate Structure(3):							
Actual income (loss) before income taxes	n/a(4)	$ (133,363)	$ (33,715)	$ (8,297)	$ 11,782	$ (279,223)	$ (286,869)
Pro forma provision (benefit) for income taxes	n/a(4)	(43,369)	(11,566)	(3,151)	7,344	(22,634)	(21,320)
Pro forma net income (loss)	n/a(4)	$ (89,994)	$ (22,149)	$ (5,146)	$ 4,438	$ (256,589)	$ (265,549)
Pro forma income (loss) per share:							
Basic and diluted	n/a(4)	$ (1.24)	$ (0.31)	$ (0.06)	$ 0.06	$ (3.54)	$ (3.32)
Pro forma shares used in per share calculation:							
Basic and diluted	n/a(4)	72,549	72,549	79,956(5)	72,549	72,549	79,956(5)

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	As of Sept. 25, 2005		
	Actual	Pro Forma(6)	Pro Forma as Adjusted(6)(7)
Balance Sheet Data:			
Cash and cash equivalents	$ 119,024	$ 161,450	$ 634,497
Other assets	25,760	36,060	36,060
Working capital (deficit)	(116,091)	309,895	802,942
Total assets	2,759,948	2,812,674	3,305,721
Accrued liabilities to members	20,472	14,183	14,183
Other accrued liabilities	61,049	60,965	60,965
Long-term debt and capital lease obligations, including current portion, and notes payable to banks under revolving loans	780,500	739,599	739,599
Members capital/stockholders equity	1,348,125	1,448,125	1,941,172

(1) As discussed more fully within Management s Discussion and Analysis of Financial Condition and Results of Operations, we began producing and selling finished Flash memory devices effective June 30, 2003 which significantly affected our operating results as compared to earlier periods when we solely produced and sold Flash memory wafers.

(2) Reflects adjustments in connection with our transition towards operating as a standalone entity by giving effect to the assumptions set forth in Unaudited Pro Forma Consolidated Financial Data found elsewhere in this prospectus.

(3) Reflects the impact of the planned reorganization of Spansion LLC into Spansion Inc. and the pro forma effects as if we had been subject to U.S. taxes and had outstanding shares equivalent to those held by AMD and Fujitsu at the time of our reorganization into Spansion Inc.

(4) Effective June 30, 2003, we were reorganized as a Delaware limited liability company with ownership in the form of limited liability company units held by AMD and Fujitsu. Therefore, net income (loss) per share data is not applicable for periods subsequent to June 30, 2003, and pro forma net income (loss) per share data is not applicable for periods prior to June 30, 2003 for which net income (loss) per share data is already presented.

(5) The increase in shares used in the basic and diluted net income (loss) per share calculation for the pro forma results for the year ended December 26, 2004 and for the nine months ended September 25, 2005 is directly related to the 4,444,444 shares of Class A common stock that we will issue to AMD in exchange for its cancellation of $60 million principal amount outstanding under the AMD Cash Note and 2,962,962 shares of Class D common stock that we will issue to Fujitsu in exchange for its cancellation of $40 million principal amount outstanding under the Fujitsu Cash Note, in each case calculated by dividing the principal amount cancelled by the assumed Class A common stock initial public offering price per share of $13.50. A $1.00 increase in the assumed initial public offering price of $13.50 per share would decrease the number of shares of our common stock issued to AMD and Fujitsu in exchange for their cancellation of indebtedness by 306,513 and 204,342 shares. A $1.00 decrease in the assumed initial public offering price of $13.50 per share would increase the number of shares of our common stock issued to AMD and Fujitsu in exchange for their cancellation of indebtedness by 355,556 and 237,038 shares.

(6) The unaudited consolidated pro forma balance sheet data as of September 25, 2005 adjusts the actual data to reflect the receipt and application of the net proceeds from the concurrent private placement of notes by Spansion LLC, our indirect wholly-owned subsidiary, after deducting underwriting discounts and commissions and estimated offering expenses payable by us. These adjustments consist of:

The adjustment to cash and cash equivalents is related to total net proceeds from Spansion LLC s issuance of notes of $400 million, net of issuance costs of $10.3 million, reduced by long-term debt (and accrued and unpaid interest) that will be repaid of $347.3 million.

The adjustment to other assets is related to the $10.3 million of capitalized financing costs as a result of Spansion LLC s issuance of the notes.

The adjustments to accrued liabilities to members and other accrued liabilities are comprised of (i) $6.3 million that would have been deducted from our accrued liabilities to members as a result of our repayment of interest on indebtedness to members, and (ii) $84,000 that would have been deducted from our other accrued liabilities as a result of our repayment of interest on indebtedness to third parties.

The adjustments to long-term debt and capital lease obligations, including current portion, and notes payable to banks under revolving loans are comprised of (i) $400 million, which represents the amounts that would have been added to our long-term debt as a result of Spansion LLC s issuance of its notes, (ii) $120 million, which represents the amounts that would have been deducted from our current portion of long-term obligations to members as a result of our repayment of the remaining $60 million of the AMD Cash Note after AMD s cancellation of $60 million of the principal amount outstanding under the AMD Cash Note in exchange for shares of Class A common stock as described in (5) above, (iii) $161.9 million, which represents the amounts that would have been deducted from our current portion of long-term obligations to members as a result of our repayment of the AMD Asset Note, (iv) $38.5 million, which represents the amounts that would have been deducted from our current portion of long-term obligations to members as a result of our repayment of the Spansion Penang Asset Note, (v) $15 million, which represents the amounts that would have been deducted from our current portion of long-term obligations to members as a result of our repayment of the Spansion China Line of Credit, (vi) $5.6 million, which represents the amounts that would have been deducted from our long-term obligations to members as a result of our repayment of the Spansion Penang Loan, (vii) $40 million, which represents the amounts that would have been deducted from our current portion of long-term obligations to members as a

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result of the cancellation of $40 million of the principal amount outstanding under the Fujitsu Cash Note in exchange for shares of Class D common stock as described in (5) above and (viii) $60 million, which represents the amounts that would have been deducted from our long-term debt as a result of our repayment of the Senior Secured Credit Facility. The terms of each of these debt instruments are described in Management s Discussion and Analysis of Financial Condition and Results of Operations Contractual Obligations.

The adjustments to stockholders equity are related to the $100 million that would have been added to our additional paid-in capital as a result of the cancellation of the AMD Cash Note and the Fujitsu Cash Note in exchange for shares of our common stock as described in (5) above.

(7) The adjustments are related to the $493.0 million that represents the net proceeds that would have been added to our additional paid-in capital as a result of our issuance of approximately 39.2 million shares of Class A common stock, par value $0.001 per share. A $1.00 increase (decrease) in the assumed initial public offering price of $13.50 per share would increase (decrease) the net proceeds to us from this offering by $37 million, assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting underwriting discounts and commissions and estimated offering expenses payable by us.

For more information, see Use of Proceeds and Capitalization. The other pro forma adjustments discussed in (1) through (4) above do not impact the unaudited consolidated as adjusted balance sheet data.

	Year Ended Mar. 31, 2003	Nine Months Ended Dec. 28, 2003	Year Ended Dec. 26, 2004	Nine Months Ended Sept. 26, 2004	Nine Months Ended Sept. 25, 2005
			(in thousands)		
Supplemental Information:					
EBITDA[(1)]	$ 313,994	$ 202,450	$ 538,017	$ 433,287	$ 166,001
Capital expenditures	(190,228)	(214,752)	(530,095)	(426,753)	(323,870)
Net cash provided by operating activities	356,200	134,046	463,298	441,842	220,614
Net cash used for investing activities	(190,228)	(186,914)	(551,613)	(477,488)	(264,077)
Net cash provided by (used in) financing activities	(165,977)	372,879	(125,576)	(88,743)	24,341

(1) The term earnings before interest, income taxes, depreciation and amortization (EBITDA) is not defined under U.S. generally accepted accounting principles, or U.S. GAAP, and EBITDA is not a measure of operating income, operating performance or liquidity presented in accordance with U.S. GAAP. We believe that EBITDA enhances an investor s understanding of our financial performance and our ability to satisfy principal and interest obligations with respect to our indebtedness. Our management uses EBITDA to assess financial performance and debt service capabilities. In assessing financial performance, our management reviews EBITDA as a general indicator of economic performance compared to prior periods. Because EBITDA excludes interest, income taxes, depreciation and amortization, EBITDA provides an indicator of general economic performance that is not affected by debt restructurings, fluctuations in interest rates or effective tax rates, or levels of depreciation and amortization. Accordingly, our management believes this type of measurement is useful for comparing general operating performance from period to period and making related management decisions. EBITDA is also used by securities analysts, lenders and others in their evaluation of different companies because it excludes items that can vary widely across different industries or among companies within the same industry. For example, interest expense can be highly dependent on a company s capital structure, debt levels and credit ratings. Therefore, the impact of interest expense on earnings can vary significantly among companies. In addition, the tax positions of companies can vary because of their differing abilities to take advantage of tax benefits and because of the tax policies of the various jurisdictions in which they operate. As a result, effective tax rates and tax expense can vary considerably among companies. Finally, companies employ productive assets of different ages and utilize different methods of acquiring and depreciating such assets. This can result in considerable variability in the relative costs of productive assets and the depreciation and amortization expense among companies. Our management also believes that our investors use EBITDA as a measure of our ability to service indebtedness as well as to fund capital expenditures and working capital requirements. However, when assessing our operating performance or liquidity, you should not consider this data in isolation, or as a substitute for our net cash from operating activities or other cash flow data that is calculated in accordance with U.S. GAAP. In addition, EBITDA may not be comparable to EBITDA or similarly titled measures utilized by other companies since such other companies may not calculate EBITDA in the same manner as we do. A reconciliation of net income (loss), the most directly comparable U.S. GAAP measure, to EBITDA for each of the respective periods indicated is as follows:

Year Ended Mar. 31, 2003	Nine Months Ended Dec. 28, 2003	Performance bonds	$ 114	$114

Total assets of discontinued operations	$114	$ 114

B. Concurrent with entry into the Acquisition Agreement and as additional consideration for MEM to accept transfer of the Property, the Company entered into a Series A Convertible Preferred Stock Purchase Agreement (the “Series A Purchase Agreement”) with MEM, whereby the Company issued 50,000 shares of newly designated Series A Convertible Preferred Stock (the “Preferred Stock”) to MEM in exchange for (i) MEM accepting the transfer of the Property and replacing the Company as the permittee and operator of the WTP, and (ii) the payment of approximately $1 to the Company. The Series A Purchase Agreement contains customary representations and warranties on the part of the Company. As contemplated by the Acquisition Agreement and the Series A Purchase Agreement and as approved by the Company’s Board of Directors, the Company filed with the Secretary of State of the State of Wyoming Articles of Amendment containing a Certificate of Designations with respect to the Preferred Stock (the “Certificate of Designations”). Pursuant to the Certificate of Designations, the Company designated 50,000 shares of its authorized preferred stock as Series A Convertible Preferred Stock. The Preferred Stock accrues dividends at a rate of 12.25% per annum of the Adjusted Liquidation Preference (as defined below); such dividends are not payable in cash but are accrued and compounded quarterly in arrears on the first business day of the succeeding calendar quarter. At issuance, the aggregate fair value of the Preferred Stock was $2,000 based on the initial liquidation preference of $40 per share. The “Adjusted Liquidation Preference” is initially $40 per share of Preferred Stock, with increases each quarter by the accrued quarterly dividend. The Preferred Stock is senior to other classes or series of shares of the Company with respect to dividend rights and rights upon liquidation. No dividend or distribution will be declared or paid on junior stock, including the Company’s common stock, (1) unless approved by the holders of Preferred Stock and (2) unless and until a like dividend has been declared and paid on the Preferred Stock on an as-converted basis.

At the option of the holder, each share of Preferred Stock was initially convertible into approximately 13.33 shares of the Company’s $0.01 par value common stock (the “Conversion Rate”) for an aggregate of 666,667 shares of common stock. The Conversion Rate is subject to anti-dilution adjustments for stock splits, stock dividends, certain reorganization events, and to price-based anti-dilution protections if the Company subsequently issues shares for less than 90% of fair value on the date of issuance. Each share of Preferred Stock will be convertible into a number of shares of common stock equal to the ratio of the initial conversion value to the conversion value as adjusted for accumulated dividends multiplied by the Conversion Rate. In no event will the aggregate number of shares of common stock issued upon conversion be greater than approximately 793,000 shares. The Preferred Stock will generally not vote with the Company’s common stock on an as-converted basis on matters put before the Company’s shareholders. The holders of the Preferred Stock have the right to approve specified matters as set forth in the Certificate of Designations and have the right to require the Company to repurchase the Preferred Stock in connection with a change of control. However, the Company’s Board of Directors has the ability to prevent any change of control that could trigger a redemption obligation related to the Preferred Stock.

During the first quarter of 2016, the Company recorded the fair value of the Preferred Stock based on the initial liquidation preference of $2,000. Since the cash consideration paid by MEM for the Preferred Stock was a nominal amount, the Company recorded a charge to operations of approximately $2,000 associated with the issuance.

C. Concurrent with entry into the Acquisition Agreement and the Series A Purchase Agreement, the Company and MEM entered into an Investor Rights Agreement, which provides MEM rights to certain information and Board observer rights. MEM has agreed that it, along with its affiliates, will not acquire more than 16.86% of the Company's issued and outstanding shares of Common Stock. In addition, MEM has the right to demand registration of the shares of Common Stock issuable upon conversion of the Preferred Stock under the Securities Act of 1933, as amended.

Combined Results of Operations for Discontinued Operations

The results of operations of the discontinued mining operations are presented separately in the accompanying financial statements. Presented below are the components for the six months ended June 30, 2017 and 2016:

	2017	2016
Issuance of preferred stock to induce disposition	$ —	$(1,999)
Operating expenses of mining segment:		
Water treatment plant	—	(256)
Mine property holding costs	—	(117)
Professional fees	—	(76)
Total results for discontinued operations	$ —	$(2,448)

6. DEBT

Energy One, a wholly-owned subsidiary the Company, has a credit facility with APEG Energy II, L.P. ("APEG"). As of June 30, 2017 and 2016, outstanding borrowings under the credit facility amounted to $6.0 million. U.S. Energy Corp., Energy One and APEG entered into a Limited Forbearance Agreement dated May 2, 2017. On June 28, 2017, U.S. Energy Corp., Energy One and APEG entered into a Fifth Amendment to the credit facility providing for, among other things, an extension of the maturity date to July 19, 2019, new financial coverage ratio covenants and a waiver with respect to any historical Company non-compliance with any and all financial covenants. As of June 30, 2017 and 2016, the borrowing base was $6.0 million. Borrowings under the credit facility are secured by Energy One's oil and gas producing properties and substantially all of the Company's cash and equivalents. Each borrowing under the agreement has a term of six months, but can be continued at the Company's election through July 2019 if the Company remains in compliance with the covenants under the credit facility. The weighted average interest rate on this debt is 7.23% as of June 30, 2017. The interest rate on the credit facility is currently fixed at 8.75%.

Energy One is required to comply with customary affirmative covenants and with certain negative covenants. The principal negative financial covenants do not permit (as the following terms are defined in the Fifth Amendment) (i) PDP Coverage Ratio to be less than 1.2 to 1; and (ii) the current ratio to be less than 1.0 to 1.0. As of June 30, 2017, the Company is in compliance with all credit facility covenants. Additionally, the Credit Agreement prohibits or limits Energy One's ability to incur additional debt, pay cash dividends and other restricted payments, sell assets, enter into transactions with affiliates, and to merge or consolidate with another company. The Company is a guarantor of Energy One's obligations under the Credit Agreement.

7. COMMITMENTS AND CONTINGENCIES

From time to time, the Company is party to certain legal actions and claims arising in the ordinary course of business. While the outcome of these events cannot be predicted with certainty, management does not expect these matters to have a materially adverse effect on the Company's financial position or results of operations. Following is updated information related to currently pending legal matters:

North Dakota Properties. On June 8, 2011, Brigham Oil & Gas, L.P. ("Brigham"), as the operator of the Williston 25-36 #1H Well, filed an action in the State of North Dakota, County of Williams, in District Court, Northwest Judicial District, Case No. 53-11-CV-00495 to interplead to the court with respect to the undistributed suspended royalty funds from this well to protect itself from potential litigation. Brigham became aware of an apparent dispute with respect to ownership of the mineral interest between the ordinary high water mark and the ordinary low water mark of the Missouri River. Brigham suspended payment of certain royalty proceeds of production related to the minerals in and under this property pending resolution of the apparent dispute. Brigham was subsequently sold to Statoil ASA ("Statoil") who assumed Brigham's rights and obligations under this case. The Company owns a working interest, not royalty interest, in this well and no funds have been withheld.

On January 28, 2013, the District Court Northwest Judicial District issued an Order for Partial Summary Judgment holding that the State of North Dakota as part of its title to the beds of navigable waterways owns the minerals in the area between the ordinary high and low watermarks on these waterways, and that this public title excludes ownership and any proprietary interest by riparian landowners. This issue has been appealed to the North Dakota Supreme Court. The Company's legal position is aligned with Brigham, who will continue to provide legal counsel in this case for the benefit of all working interest owners.

The Company is also a party to litigation that seeks to reform certain assignments of mineral interests it acquired from Brigham. This matter involves the depth below the surface to which the assignments were effective. The plaintiff is seeking to reform the agreement such that the Company's assignment would be revised to be 12 feet closer to the surface. This dispute affects one of the Company's producing wells. The matter was settled on July 7, 2017 with the court ruling in favor Brigham and therefore U.S. Energy will retain all interests in all subject leases.

Texas Quiet Title Action – Willerson Lease. In September 2013, the Company acquired from Chesapeake a 15% working interest in approximately 4,244 gross mineral acres referred to as the Willerson lease. In January 2014, Willerson inquired if their lease had terminated due to the failure to achieve production in paying quantities pursuant to the terms of the lease. The Company along with Crimson and Liberty filed a declaratory judgment action in the District Court of Dimmit County in May 2014 seeking a determination from the court that the lease remains valid and in effect. The lessors counterclaimed for breach of contract, trespass, and related causes of action. In January 2016, the lessors filed a third-party petition alleging breach of contract, trespass, and related causes of action against Chesapeake and EXCO Operating Company, LP. The matter has settled in 2017 with the Company's portion of such settlement being $75,000 plus related legal fees of $165,000 as reflected in the Company's financial statements under "Professional fees, insurance and other" as of June 30, 2017.

Arbitration of Employment Claim. A former employee has claimed that the Company owes up to $1.8 million under an Executive Severance and Non-Compete agreement (the "Agreement") due to a change of control and termination of employment without cause. The Agreement requires that any disputes be submitted to binding arbitration and a request for arbitration was submitted by the parties in March 2016. This matter was settled in May 2017 for $175,000 plus non-essential equipment of $15,000 as reflected in the Company's financial statements under "Rental and other income/(loss)" as of June 30, 2017.

Contingent Ownership Interests. As of June 30, 2017, the Company had recognized a contingent liability associated with uncertain ownership interests of $1.5 million. This liability arises when the calculations of respective joint ownership interests by operators differs from the Company's calculations. These differences relate to a variety of matters, including allocation of non-consent interests, complex payout calculations for individual and group wells and the timing of reversionary interests. Accordingly, these matters are subject to legal interpretation and the related obligations are presented as a contingent liability in the accompanying condensed consolidated balance sheet as of June 30, 2017. While the Company has classified this entire amount as a current liability, most of these issues are expected to be resolved through arbitration, mediation or litigation. Due to the complexity of the issues involved, there can be no assurance that the outcome of these contingencies will be resolved within the next twelve months.

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Anfield Gain Contingency. In 2007, the Company sold all of its uranium assets for cash and stock of the purchaser, Uranium One Inc. ("Uranium One"). The assets sold included a uranium mill in Utah and unpatented uranium claims in Wyoming, Colorado, Arizona and Utah. Pursuant to the asset purchase agreement, the Company was entitled to additional consideration from Uranium One up to $40,000 based on, among other things, the performance of the mill, and achievement of commercial production and royalties, however no additional consideration has been received from Uranium One. In August 2014, the Company entered into an agreement with Anfield Resources Inc. ("Anfield") whereby if Anfield was successful in acquiring the property from Uranium One, Anfield would be released from the future payment obligations stemming from the 2007 sale to Uranium One. On September 1, 2015, Anfield acquired the property from Uranium One and is now obligated to provide the following consideration to the Company:

Issuance of $2,500 in Anfield common shares to the Company. The Anfield shares are to be held in escrow and released in tranches over a 36-month period. Pursuant to the agreement, if any of the share issuances result in the Company holding in excess of 20% of the then issued and outstanding shares of Anfield (the "Threshold"), such shares in excess of the Threshold would not be issued at that time, but deferred to the next scheduled share issuance. If, upon the final scheduled share issuance the number of shares to be issued exceeds the Threshold, the value in excess of the Threshold is payable to the Company in cash,
$2,500 payable in cash upon 18 months of continuous commercial production, and
$2,500 payable in cash upon 36 months of continuous commercial production.

The first tranche of common shares resulted in the issuance of 7,436,505 shares of Anfield with a market value of $750,000 and such shares were delivered to the Company in September 2015. The second tranche of shares resulted in the issuance of 3,937,652 additional shares of Anfield with a market value of $750,000, and such shares were delivered to the Company in September 2016. Since the trading volume in Anfield shares has increased, beginning primarily in the quarter ended June 30, 2016, the Company determined a mark-to-market technique would be the most appropriate method to determine the fair value for Anfield shares. The primary factor in using a mark-to-market valuation in determining the fair value of Anfield shares is justified because of the Company's belief that due to the increased liquidity in the stock, using current market prices for Anfield shares reflects the most accurate fair value calculation. At June 30, 2017, we determined the fair value of the Anfield shares to be approximately $0.6 million. The timing of any future receipt of cash from Anfield is not determinable and there can be no assurance that any cash will ever be received from Anfield or that the shares received from Anfield will ever be liquidated for cash.

8. SHAREHOLDERS' EQUITY

Preferred Stock

The Company's articles of incorporation authorize the issuance of up to 100,000 shares of preferred stock, $0.01 par value. Shares of preferred stock may be issued with such dividend, liquidation, voting and conversion features as may be determined by the Board of Directors without shareholder approval. As discussed in Note 5, in February 2016 the Board of Directors approved the designation of 50,000 shares of Series A Convertible Preferred Stock in connection with the disposition of the Company's mining segment.

Warrants

On December 21, 2016, the Company completed a registered direct offering of 1.0 million shares of common stock at a net price of $1.50 per share. Concurrently, the investors received warrants to purchase 1.0 million shares of Common Stock of the Company at an exercise price of $2.05 per share, subject to adjustment, for a period of five years from closing. The total net proceeds received by the Company was approximately $1.32 million. The fair value of the warrants upon issuance was $1.24 million, with the remaining $0.08 million being attributed to common stock. The warrants contain a dilutive issuance and other liability provisions which cause the warrants to be accounted for as a liability. Such warrant instruments are initially recorded as a liability and are accounted for at fair value with changes in fair value reported in earnings.

Stock Options

For the six months ended June 30, 2017 and 2016, total stock-based compensation expense related to stock options was $36,000 and $43,000 respectively. As of June 30, 2017, there was $44,000 of unrecognized expense related to unvested stock options, which will be recognized as stock-based compensation expense through January 2018. For the six months ended June 30, 2017, no stock options were granted, exercised, forfeited or expired. Presented below is information about stock options outstanding and exercisable as of June 30, 2017 and December 31, 2016:

	June 30, 2017		December 31, 2016	
	Shares	Price (1)	Shares	Price (1)
Stock options outstanding	390,525	$ 20.64	390,525	$ 20.64
Stock options exercisable	381,640	$ 20.79	376,084	$ 20.97

(1) Represents the weighted average price.

The following table summarizes information for stock options outstanding and exercisable at June 30, 2017:

Options Outstanding					Options Exercisable	
Number of Shares	Exercise Price Range Low	High	Weighted Average	Remaining Contractual Term (years)	Number of Shares	Weighted Average Exercise Price
56,786	$9.00	$9.00	$ 9.00	7.5	51,231	$ 9.00
49,504	12.48	12.48	12.48	6.0	49,504	12.48
98,396	13.92	17.10	15.01	2.3	98,396	15.01
185,839	22.62	30.24	29.35	0.6	182,509	29.48
390,525	$9.00	$30.24	$ 20.64	2.7	381,640	$ 20.97

As of June 30, 2017, no shares are available for future grants under the Company's stock option plans. Based upon the closing price for the Company's common stock of $0.68 per share on June 30, 2017, there was no intrinsic value related to stock options outstanding as of June 30, 2017.

Restricted Stock Grants

In January 2015, the Board of Directors granted 340,711 shares of restricted stock under the 2012 Equity Plan to four officers of the Company. These shares originally vested annually over a period of three years. However, during 2015 vesting was accelerated for three of the four officers in connection with severance agreements for an aggregate of 240,711 shares. The remaining 100,000 shares vested for 33,333 shares in both January 2016 and January 2017 and the remaining shares will vest for 33,334 shares in January 2018. The fair market value of the 340,711 shares on the date of grant was approximately $511,000. On September 23, 2016, the Board of Directors granted restricted stock to each member of the Board for 58,500 shares per Board member for an aggregate grant of 351,000 shares. The vesting of the directors' restricted grants was accelerated in May 2017 in connection with the resignations of members of the Company's Board of Directors. The closing price of the Company's common stock on the grant date was $1.74, which is expected to result in an aggregate compensation charge of $611,000. For the six months ended June 30, 2017 and 2016, total stock-based compensation expense related to restricted stock grants was $176,000 and $25,000 respectively. As of June 30, 2017, there was $402,000 of unrecognized expense related to unvested restricted stock grants, which will be recognized as stock-based compensation expense through January 2018.

9. INCOME TAXES

For Federal income tax purposes, as of December 31, 2016 the Company had net operating loss and percentage depletion carryovers of approximately $74.7 million and $2.5 million, respectively. The net operating loss carryovers may be carried back two years and forward twenty years from the year the net operating loss was generated. The net operating losses may be used to offset future taxable income and expire in varying amounts through 2035. In addition, the Company has alternative minimum tax credit carry-forwards of approximately $0.7 million which are available to offset future federal income taxes over an indefinite period. The Company has established a valuation allowance for all deferred tax assets including the net operating loss and alternative minimum tax credit carryforwards discussed above since the “more likely than not” realization criterion was not met as of June 30, 2017 and 2016. Accordingly, the Company did not recognize an income tax benefit for the six months ended June 30, 2017 and 2016. Furthermore, the Company projects a net loss for the fiscal year ended December 31, 2017.

The Company recognizes, measures, and discloses uncertain tax positions whereby tax positions must meet a “more-likely-than-not” threshold to be recognized. As of June 30, 2017, gross unrecognized tax benefits are immaterial and there was no change in such benefits during the three months ended June, 2017. The Company does not expect significant increase or decrease to the uncertain tax positions within the next twelve months.

10. EARNINGS (LOSS) PER SHARE

Basic earnings (loss) per share is computed based on the weighted average number of common shares outstanding. The calculation of diluted earnings (loss) per share includes the potential dilutive impact of unvested restricted stock awards and contingently issuable shares during the periods presented, unless their effect is anti-dilutive. For the three and six months ended June 30, 2017 and 2016, common stock equivalents excluded from the calculation of weighted average shares because they were antidilutive are as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2017	2016	2017s	2016
Stock options	390,525	390,525 (1)	390,525	390,525 (1)
Unvested shares of restricted common stock	356,555	11,111	356,555	11,141
Outstanding warrants	1,000,000	—	1,000,000	—
Total	1,747,080	401,636	1,747,080	401,666

(1) Includes weighted average number of shares for options and shares of restricted stock issued during the period

11. SIGNIFICANT CONCENTRATIONS

The Company has exposure to credit risk in the event of nonpayment by the joint interest operators of the Company's oil and gas properties. Approximately 27% of the Company's proved developed oil and gas reserve quantities are associated with wells that are operated by a single operator (the "Major Operator"). As of June 30, 2017 and December 31, 2016, the Company had a liability to the Major Operator of $2,667,000 and $2,710,000 respectively, for accrued operating expenses and overpayments of net revenues when the Major Operator failed to recognize that the Company's ownership interest reverted after payout was achieved for certain wells during 2014 and 2015. Beginning in the second quarter of 2015, the Major Operator began withholding the Company's net revenues from all wells that it operates for the Company and management expects the Major Operator will continue to withhold the Company's net revenues until this liability is paid in full. Based on the oil and gas prices and costs used in the Company's reserve report as of June 30, 2017, this liability is not expected to be fully settled until the first quarter of 2020, but under higher pricing scenarios the Company expects the liability will be repaid from future production. Accordingly, the aggregate balances are presented as current liabilities in the accompanying consolidated balance sheets.

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12. FAIR VALUE MEASUREMENTS

Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. In determining fair value, the Company uses various methods including market, income and cost approaches. Based on these approaches, the Company often utilizes certain assumptions that market participants would use in pricing the asset or liability, including assumptions about risk and the risks inherent in the inputs to the valuation technique. These inputs can be readily observable, market corroborated, or generally unobservable inputs. The Company utilizes valuation techniques that maximize the use of observable inputs and minimize the use of unobservable inputs. Based on the observability of the inputs used in the valuation techniques the Company is required to provide the following information according to the fair value hierarchy. The fair value hierarchy ranks the quality and reliability of the information used to determine fair values. Financial assets and liabilities carried at fair value will be classified and disclosed in one of the following three categories:

Level 1 - Quoted prices for identical assets and liabilities traded in active exchange markets, such as the New York Stock Exchange.

Level 2 - Observable inputs other than Level 1 including quoted prices for similar assets or liabilities, quoted prices in less active markets, or other observable inputs that can be corroborated by observable market data. Level 2 also includes derivative contracts whose value is determined using a pricing model with observable market inputs or can be derived principally from or corroborated by observable market data.

Level 3 - Unobservable inputs supported by little or no market activity for financial instruments whose value is determined using pricing models, discounted cash flow methodologies, or similar techniques, as well as instruments for which the determination of fair value requires significant management judgment or estimation; also includes observable inputs for nonbinding single dealer quotes not corroborated by observable market data.

The Company has processes and controls in place to attempt to ensure that fair value is reasonably estimated. The Company performs due diligence procedures over third-party pricing service providers in order to support their use in the valuation process. Where market information is not available to support internal valuations, independent reviews of the valuations are performed and any material exposures are evaluated through a management review process.

While the Company believes its valuation methods are appropriate and consistent with other market participants, the use of different methodologies or assumptions to determine the fair value of certain financial instruments could result in a different estimate of fair value at the reporting date. The following is a description of the valuation methodologies used for complex financial instruments measured at fair value:

Marketable Equity Securities Valuation Methodologies

The fair value of available for sale securities is based on quoted market prices obtained from independent pricing services. Accordingly, the Company has classified these instruments as Level 1.

Warrant Valuation Methodologies

The warrants contain a dilutive issuance and other liability provisions which cause the warrants to be accounted for as a liability. Such warrant instruments are initially recorded and valued as a level 3 liability and are accounted for at fair value with changes in fair value reported in earnings.

The Company estimated the value of the warrants issued with the Securities Purchase Agreement on December 31, 2016 to be $1,030,000, or $1.03 per warrant, using the Monte Carlo model with the following assumptions: a term expiring June 21, 2022, exercise price of $2.05, stock price of $1.28, average volatility rate of 90%, and a risk-free interest rate of 2.01%. The Company re-measured the warrants as of June 30, 2017, using the same Monte Carlo model, using the following assumptions: a term expiring June 21, 2022, exercise price of $2.05, stock price of $0.68, average volatility rate of 88%, and a risk-free interest rate of 1.89%. As of June 30, 2017, the fair value of the warrants was $510,000, or $0.51 per warrant, and was recorded as a liability on the accompanying consolidated balance sheets. An increase in any of the variables would cause an increase in the fair value of the warrants. Likewise, a decrease in any variable would cause a decrease in the value of the warrants.

Other Financial Instruments

The carrying amount of cash and equivalents, oil and gas sales receivable, other current assets, accounts payable and accrued expenses approximate fair value because of the short-term nature of those instruments. The recorded amounts for the Senior Secured Revolving Credit Facility discussed in Note 6 approximates the fair market value due to the variable nature of the interest rates, and the fact that market interest rates have remained substantially the same since the latest amendment to the credit facility.

Recurring Fair Value Measurements

Recurring measurements of the fair value of assets and liabilities as of June 30, 2017 and December 31, 2016 are as follows:

	June 30, 2017				December 31, 2016			
	Level 1	Level 2	Level 3	Total	Level 1	Level 2	Level 3	Total
Marketable equity securities:								
Sutter Gold Mining Company	$11	$ —	$ —	$11	$16	$ —	$—	$16
Anfield Resources, Inc.	611	—	—	611	930	—	—	930
Crude oil price risk derivatives		311	—	311	—	—	—	—
Total	$622	$ 311	$ —	$933	$946	$ —	$—	$946
Outstanding warrant liability	$—	$ —	$ 510	$510	$—	$ —	$1,030	$1,030

The following table presents a reconciliation of changes in assets and liabilities measured at fair value on a recurring basis for the period ended June 30, 2017 and the year ended December 31, 2016.

	Assets			Liabilities	
	Marketable Securities and Derivatives				
	Sutter	Anfield	Derivatives	Warrants	
	(Level 1)	(Level 1)	(Level 2)	(Level 3)	Net
Fair value, December 31, 2016	$ 16	$ 930	$ —	1,030	$1,976
Total net losses included in:					
Other comprehensive loss	(5)	(319)	—	—	(324)
Fair value adjustments included in net loss:					
Net unrealized gain on warrant fair value adjustment	—	—	—	(520)	(520)
Crude oil price risk derivatives	—	—	311	—	311
Fair value, June 30, 2017	$ 11	$ 611	311	510	$1,443

13. SUBSEQUENT EVENTS

On July 26, 2017, for the period beginning January 1, 2018 through December 31, 2018, the Company entered into NYMEX natural gas swap contracts for 500 mcf per day at $3.01 per mcf.

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

Forward Looking Statements

This Form 10-Q contains "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). All statements other than statements of historical facts included in and incorporated by reference into this Form 10-Q are forward-looking statements. When used in this Form 10-Q, the words "will", "expect", "anticipate", "intend", "plan", "believe", "seek", "estimate" and similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words. Forward-looking statements in this Form 10-Q include statements regarding our expected future revenue, income, production, liquidity, cash flows, reclamation and other liabilities, expenses and capital projects, future capital expenditures and future transactions. Because these forward-looking statements involve risks and uncertainties, actual results could differ materially from those expressed or implied by these forward-looking statements due to a variety of factors, including those associated with our ability to find oil and natural gas reserves that are economically recoverable, the volatility of oil, NGL and natural gas prices, declines in the values of our properties that have resulted in and may in the future result in additional ceiling test write downs, our ability to replace reserves and sustain production, our estimate of the sufficiency of our existing capital sources, our ability to raise additional capital to fund cash requirements for our participation in oil and gas properties and for future acquisitions, the uncertainties involved in estimating quantities of proved oil and natural gas reserves, in prospect development and property acquisitions or dispositions and in projecting future rates of production or future reserves, the timing of development expenditures and drilling of wells, hurricanes and other natural disasters and the operating hazards attendant to the oil and gas and minerals businesses. In particular, careful consideration should be given to cautionary statements made in the "Risk Factors" section of our 2015 Annual Report on Form 10-K and other quarterly reports on Form 10-Q filed with the SEC, all of which are incorporated herein by reference. The Company undertakes no duty to update or revise any forward-looking statements.

General Overview

We are an independent energy company focused on the lease acquisition and development of oil and gas producing properties in the continental United States. Our business is currently focused in South Texas and the Williston Basin in North Dakota. However, we do not intend to limit our focus to these geographic areas. We continue to focus on increasing production, reserves, revenues and cash flow from operations while managing our level of debt.

We currently explore for and produce oil and gas through a non-operator business model; however, we may operate oil and gas properties for our own account and may expand our holdings or operations into other areas. As a non-operator, we rely on our operating partners to propose, permit and manage wells. Before a well is drilled, the operator is required to provide all oil and gas interest owners in the designated well the opportunity to participate in the drilling costs and revenues of the well on a pro-rata basis. After the well is completed, our operating partners also transport, market and account for all production. As discussed in Item 1. Business, our long-term strategic focus is to develop operational capabilities through the pursuit of opportunities to acquire operated properties and/or operatorship of existing properties.

Recent Developments

On July 26, 2017, for the period beginning January 1, 2018 through December 31, 2018, the Company entered into NYMEX natural gas swap contracts for 500 mcf per day at $3.01 per mcf.

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Critical Accounting Policies and Estimates

The preparation of our consolidated financial statements in conformity with generally accepted accounting principles in the United States ("GAAP") requires us to make assumptions and estimates that affect the reported amounts of assets, liabilities, revenues and expenses, as well as the disclosure of contingent assets and liabilities at the date of our financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results may differ from these estimates under different assumptions or conditions. A summary of our significant accounting policies is detailed in *Note 1 – Organization, Operations and Significant Accounting Polices* in Item 8 of our 2016 Annual Report on Form 10-K filed with the SEC on April 17, 2017.

Recently Issued Accounting Standards

Please refer to the section entitled *Recent Accounting Pronouncements* under *Note 1 – Organization, Operations and Significant Accounting Policies* in the Notes to the Financial Statements included in Item 1 of this report for additional information on recently issued accounting standards and our plans for adoption of those standards.

Results of Operations

Comparison of our Statements of Operations for the Three Months Ended June 30, 2017 and 2016

During the three months ended June 30, 2017, we recorded a net profit of $0.3 million as compared to a net loss of $4.2 million for the three months ended June 30, 2016. In the following sections we discuss our revenue, operating expenses, non-operating income, and discontinued operations for the three months ended June 30, 2017 compared to the three months ended June 30, 2016.

Revenue. Presented below is a comparison of our oil and gas sales, production quantities and average sales prices for the three months ended June 30, 2017 and 2016 (dollars in thousands, except average sales prices):

Change

	2017	2016	Amount	Percent
Revenue:				
Oil	$1,591	$1,677	$(86)	-5 %
Gas	401	319	82	26 %
Total	$1,992	$1,996	$(4)	0 %
Production quantities:				
Oil (Bbls)	36,004	43,032	(7,028)	-16 %
Gas (Mcfe)	134,187	167,897	(33,710)	-20 %
BOE	58,369	71,015	(12,646)	-18 %
Average sales prices:				
Oil (Bbls)	$44.19	$38.97	$5.22	13 %
Gas (Mcfe)	2.99	1.90	1.09	57 %
BOE	34.13	28.11	6.02	21 %

The decrease in our oil sales of $0.1 million for the three months ended June 30, 2017 as compared to the three months ended June 30, 2016 was primarily the result of a 16% decrease in oil production during the three months ended June 30, 2017. The 13% increase in the average oil price realized partially offset the reduction in our oil production quantity during the three months ended June 30, 2017. The increase in our gas sales of $0.1 million for the three months June 30, 2017 as compared to the three months ended June 30, 2016 was driven by a 57% increase in the average gas price realized which offset a 20% decrease in our gas production during the three months ended June 30, 2017. The increase in our net realized oil price is reflective of the partial recovery in global commodity prices during the first half of 2017. During the last year, the differential between West Texas Intermediate ("WTI") quoted prices for crude oil and the prices we realize for sales in the Williston Basin was approximately $6.00 per barrel lower. We expect this differential to continue (with the amount of the differential varying over time) and that our oil sales revenue will be affected by lower realized prices from this region.

For the three months ended June 30, 2017, we produced 58,369 BOE, or an average of 641 BOE per day, as compared to 71,015 BOE or 780 BOE per day during the comparable period in 2016. This 18% reduction was attributable to several factors, including (i) the normal decline in production for wells in the area of our properties, (ii) the Company did not add significant reserves from drilling or acquisition over the past year, and (iii) the low commodity price environment incentivizes operators to scale back production until prices recover.

Oil and Gas Production Costs. Presented below is a comparison of the Company's oil and gas production costs for the three months ended June 30, 2017 and 2016 (dollars in thousands):

	2017	2016	Change Amount	Change Percent
Production taxes and other expenses	$267	$271	$(4)	-1 %
Lease operating expenses	536	1,163	(627)	-54 %
Total	$803	$1,434	$(631)	-44 %

For the three months ended June 30, 2017, production taxes and other expenses slightly decreased compared to the comparable period in 2016. The consistency in production taxes resulted from similar revenues from oil and gas sales. For the three months ended June 30, 2017, lease operating expense decreased by $0.6 million which was primarily due to the implementation of cost reduction strategies by the operators of our wells. During 2017, we expect cost reduction implementation programs to continue during the prolonged global commodity price downtown.

Depreciation, depletion and amortization. Our DD&A rate for the three months ended June 30, 2017 was $3.33 per BOE compared to $12.17 per BOE for the three months ended June 30, 2016. Our DD&A rate can fluctuate as a result of changes in drilling and completion costs, impairments, divestitures, changes in the mix of our production, the underlying proved reserve volumes and estimated costs to drill and complete proved undeveloped reserves. The primary factor that resulted in a reduction in our DD&A rate for the three months ended June 30, 2017 was $9.6 million of aggregate quarterly impairment charges that resulted from our quarterly Full Cost Ceiling limitations during 2016. During each of the quarters ended March 31, 2016 and June 30, 2016, we recognized impairment charges which reduced the net capitalized costs subject to future DD&A calculations. Accordingly, our DD&A rate per BOE decreased as we reduced the net capitalized costs by the quarterly impairment charges discussed below.

Impairment of oil and gas properties. During the three months ended June 30, 2017 and 2016, we recorded impairment charges related to our oil and gas properties of $0.0 million and $2.6 million, respectively, because the net capitalized costs were in excess of the Full Cost Ceiling limitation. These quarterly impairment charges were primarily due to the deepening declines in the price of oil beginning in 2015 and continuing through 2016. Presented below are the weighted average prices (before applying the impact of basis differentials between the benchmark prices and the actual prices realized for our wells) used to prepare our reserve estimates and to calculate our Full Cost Ceiling limitations for each of the last five calendar quarters, along with the impairment charges recognized during each of those quarters (dollars in thousands, except average prices):

	Average Price [(1)]		
	Oil (Bbl)	Gas (MMbtu)	Impairment Charge
Second quarter of 2016	43.12	2.24	2,611
Third quarter of 2016	41.68	2.28	—
Fourth quarter of 2016	42.75	2.48	—
First quarter of 2017	47.61	2.73	—
Second quarter of 2017	48.95	3.01	—

(1) Represents the trailing 12-month average for benchmark oil and gas prices ending in the last month of the calendar quarter shown.

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Our quarterly reserve reports are prepared based on a trailing 12-month average for benchmark oil and gas prices.

General and Administrative Expenses. Presented below is a comparison of our general and administrative expenses for the three months ended June 30, 2017 and 2016 (dollars in thousands):

	2017	2016	Change Amount	Change Percent
Compensation and benefits, including directors	$178	$172	$6	3 %
Stock-based compensation	106	34	72	212 %
Professional fees	571	541	30	6 %
Insurance, rent and other	136	16	120	750 %
Total	$991	$763	$228	30 %

General and administrative expenses increased by $0.2 million for the three months ended June 30, 2017 compared to the three months ended June 30, 2016. This increase was primarily attributable to (i) an increase of $0.1 million in insurance fees associated with the Company's operations, and (ii) an increase in stock-based compensation which primarily resulted from the amortization of restricted stock grants issued in September 2016.

Non-Operating Income (Expense). Presented below is a comparison of our non-operating income (expense) for the three months ended June 30, 2017 and 2016 (dollars in thousands):

	2017	2016	Change Amount	Change Percent
Realized gain on oil price risk derivatives	$100	$380	$(280)	-73 %
Unrealized gain (loss) on oil price risk derivatives	311	(887)	1,198	135 %
Rental and other income (expense), net	(131)	(48)	(83)	173 %
Warrant revaluation gain	180	—	180	NA
Interest expense	(121)	(75)	(46)	61 %
Gain on sale of assets	1	100	(99)	-99 %
Total other income (expense)	$340	$(530)	$870	164 %

During the three months ending June 30, 2017, the Company had a realized gain on oil price risk derivatives of $0.1 million compared to a gain of $0.4 million for the comparable period in 2016. The Company had an unrealized gain on oil price risk derivatives of $0.3 million for the six months ended June 30, 2017 compared to a loss of $0.9 million for the comparable period for 2016. Unrealized gains or losses result from changes in the fair value of the derivatives as commodity prices increase or decrease. Unrealized losses are also recognized in the month when derivative contracts are settled in cash through the recognition of a realized gain. Similarly, unrealized gains are also recognized in the month when derivative contracts are settled in cash through the recognition of a realized loss.

During the three months ending June 30, 2017, the Company realized an expense of $0.1 million on rental and other income (expense), an increase of $0.1 million over the comparable period in 2016. The increased expense was primarily due to an increase in office rental expenses of $0.1 million incurred during the quarter ending June 30, 2017.

During the three months ending June 30, 2017, we realized a non-cash gain on the revaluation of our outstanding warrants of $0.2 million. Our warrant liability is accounted for using the mark-to-market accounting method whereby gains and losses from changes in the fair value of derivative instruments are recognized immediately into earnings. No warrants were outstanding for the period ending June 30, 2016. We will continue to revalue our outstanding warrants on a quarterly basis.

Interest expense increased by $0.05 million during the three months ended June 30, 2017 compared to the comparable period in 2016. The average interest rate increased to 7.23% for the three months ended June 30, 2017 in comparison to 2.95% for the three months ended June 30, 2016.

Discontinued Operations. In February 2016 the Company completed the disposition of our mining segment to Mt. Emmons Mining Company ("MEM"), including the Keystone Mine, the WTP and other related properties. A significant objective for completing the disposition was to improve future profitability through the elimination of the obligations to operate the WTP and mine holding costs, which are expected to result in estimated annual cash savings of $3.0 million. During the three months ended June 30, 2017 and 2016, we incurred operating expenses associated with the discontinued mining segment of $0 and $0.1 million, respectively.

In order to induce MEM to assume the Company's obligations to operate the WTP we issued additional consideration in the form of 50,000 shares of Series A Convertible Preferred Stock. For the three months ended March 31, 2016, we recorded the fair value of the Preferred Stock based on the initial liquidation preference of $2.0 million. Since the cash consideration paid by MEM for the Preferred Stock was $500, we recorded a charge to discontinued operations of approximately $2.0 million associated with the issuance. There were no charges associated with discontinued operations for the period ended June 30, 2017.

Comparison of our Statements of Operations for the Six Months Ended June 30, 2017 and 2016

During the six months ended June 30, 2017, we recorded a net loss of $0.4 million as compared to a net loss of $14.8 million for the six months ended June 30, 2016. Our loss from continuing operations was $0.4 million for six months ended June 30, 2017 compared to $12.3 million for the six months ended June 30, 2016. In the following sections we discuss our revenue, operating expenses, non-operating income, and discontinued operations for the six months ended June 30, 2017 compared to the six months ended June 30, 2016.

Revenue. Presented below is a comparison of our oil and gas sales, production quantities and average sales prices for the six months ended June 30, 2017 and 2016 (dollars in thousands, except average sales prices):

	2017	2016	Change Amount	Percent	
Revenue:					
Oil	$2,830	$2,541	$289	11	%
Gas	909	521	388	74	%
Total	$3,739	$3,062	$677	22	%
Production quantities:					
Oil (Bbls)	65,040	82,680	(17,640)	-21	%
Gas (Mcfe)	259,282	233,776	25,506	11	%
BOE	108,253	121,643	(13,390)	-11	%
Average sales prices:					
Oil (Bbls)	$43.51	$30.73	$12.78	42	%
Gas (Mcfe)	3.51	2.23	1.28	57	%
BOE	34.54	25.17	9.37	37	%

The increase in our oil sales of $0.3 million for the six months ended June 30, 2017 as compared to the six months ended June 30, 2016 was primarily the result of a 42% increase in the average oil price realized during the six months ended June 30, 2017. The increase in the average oil price realized offset a 21% reduction in our oil production quantity during the six months ended June 30, 2017. The increase in our gas sales of $0.4 million for the six months ended June 30, 2017 as compared to the six months ended June 30, 2016 was driven by a 57% increase in the average gas price realized during the six months ended June 30, 2017 combined with a 11% increase in our gas production quantity for the same period. The increase in our net realized commodity prices is reflective of the partial recovery in global commodity prices during the first half of 2017. During the last year, the differential between West Texas Intermediate ("WTI") quoted prices for crude oil and the prices we realize for sales in the Williston Basin was approximately $6.00 per barrel lower. We expect this differential to continue (with the amount of the differential varying over time) and that our oil sales revenue will be affected by lower realized prices from this region.

For the six months ended June 30, 2017, we produced 108,253 BOE, or an average of 598 BOE per day, as compared to 121,643 BOE or 667 BOE per day during the comparable period in 2016. This 11% reduction was attributable to several factors, including (i) the normal decline in production for wells in the area of our properties, (ii) the Company did not add significant reserves from drilling or acquisition over the past year, and (iii) the low price environment incentivizes operators to scale back production until prices recover.

Oil and Gas Production Costs. Presented below is a comparison of our oil and gas production costs for the six months ended June 30, 2017 and 2016 (dollars in thousands):

	2017	**2016**	**Change Amount**	**Percent**
Production taxes and other expenses	$620	$480	$140	29 %
Lease operating expenses	1,236	1,984	(748)	-37 %
Total	$1,856	$2,464	$(608)	-25 %

For the six months ended June 30, 2017, production taxes and other expenses increased by $0.1 million compared to the comparable period in 2016. Substantially all of this increase in production taxes resulted from increased oil and gas sales. For the six months ended June 30, 2017, lease operating expense decreased by $0.7 million which was primarily due to the implementation of cost reduction strategies by the operators of our wells. During 2017, we expect cost reduction implementation programs to continue during the prolonged global commodity price downtown.

Depreciation, depletion and amortization. Our DD&A rate for the six months ended June 30, 2017 was $4.21 per BOE compared to $13.53 per BOE for the six months ended June 30, 2016. Our DD&A rate can fluctuate as a result of changes in drilling and completion costs, impairments, divestitures, changes in the mix of our production, the underlying proved reserve volumes and estimated costs to drill and complete proved undeveloped reserves. The primary factor that resulted in a reduction in our DD&A rate for the six months ended June 30, 2017 was $9.6 million of aggregate quarterly impairment charges that resulted from our quarterly Full Cost Ceiling limitations during 2016. During each of the quarters ended March 31, 2016 and June 30, 2016, we recognized impairment charges which reduced the net capitalized costs subject to future DD&A calculations. Accordingly, our DD&A rate per BOE decreased as we reduced the net capitalized costs by the quarterly impairment charges discussed below.

Impairment of oil and gas properties. During the six months ended June 30, 2017 and 2016, we recorded impairment charges related to our oil and gas properties of $0.0 million and $9.6 million, respectively, because the net capitalized costs were in excess of the Full Cost Ceiling limitation. These quarterly impairment charges were primarily due to the deepening declines in the price of oil beginning in 2015 and continuing through 2016. Presented below are the weighted average prices (before applying the impact of basis differentials between the benchmark prices and the actual prices realized for our wells) used to prepare our reserve estimates and to calculate our Full Cost Ceiling limitations for each of the last five calendar quarters, along with the impairment charges recognized during each of those quarters (dollars in thousands, except average prices):

General and Administrative Expenses. Presented below is a comparison of our general and administrative expenses for the six months ended June 30, 2017 and 2016 (dollars in thousands):

			Change		
	2017	**2016**	**Amount**	**Percent**	
Compensation and benefits, including directors	$354	$311	$43	14	%
Stock-based compensation	212	68	144	212	%
Professional fees	1,350	768	582	76	%
Insurance, rent and other	237	183	54	30	%
Total	$2,153	$1,330	$823	62	%

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General and administrative expenses increased by $0.8 million for the six months ended June 30, 2017 compared to the six months ended June 30, 2016. This increase was primarily attributable to (i) an increase of $0.6 million in professional fees as we replaced some of the services previously performed by employees with consultants combined with a legal settlement on the Willerson lease (See Note 7 Commitments and Contingencies), and (ii) an increase in stock-based compensation which primarily resulted from the amortization of restricted stock grants issued in September 2016.

Non-Operating Income (Expense). Presented below is a comparison of our non-operating income (expense) for the six months ended June 30, 2017 and 2016 (dollars in thousands):

	2017	**2016**	**Change Amount**	**Percent**
Realized gain on oil price risk derivatives	$100	$1,262	$(1,162)	-92 %
Unrealized gain (loss) on oil price risk derivatives	311	(1,460)	1,771	121 %
Rental and other income (expense), net	(347)	(79)	(268)	339 %
Warrant revaluation gain	520	—	520	NA
Interest expense	(246)	(247)	1	0 %
Gain on sale of assets	1	100	(99)	-99 %
Total other income (expense)	$339	$(424)	$763	180 %

During the six months ending June 30, 2017, the Company had a realized gain on oil price risk derivatives of $0.1 million and of $1.3 million for the comparable period in 2016. We has an unrealized gain on oil price risk derivatives of $0.3 million for the six months ended June 30, 2017 compared to a loss of $1.5 million for the comparable period for 2016. Unrealized gains or losses result from changes in the fair value of the derivatives as commodity prices increase or decrease. Unrealized losses are also recognized in the month when derivative contracts are settled in cash through the recognition of a realized gain. Similarly, unrealized gains are also recognized in the month when derivative contracts are settled in cash through the recognition of a realized loss.

During the six months ending June 30, 2017, the Company realized an expense of $0.3 million on rental and other income (expense), an increase of $0.3 million over the comparable period in 2016. The increased expense was primarily due to an increase in office rental expenses of $0.1 million combined with a $0.2 million settlement associated with a former employee claim. Please refer to Note 7 entitled “Commitment and Contingencies” for more information.

During the six months ending June 30, 2017, we realized a non-cash gain on the revaluation of our outstanding warrants of $0.5 million. Our warrant liability is accounted for using the mark-to-market accounting method whereby gains and losses from changes in the fair value of derivative instruments are recognized immediately into earnings. No warrants were outstanding for the six month period ending June 30, 2016. We will continue to revalue our outstanding warrants on a quarterly basis.

Interest expense decreased by a non-material amount during the six months ended June 30, 2017 compared to the comparable period in 2016. The decrease was attributable to the one-time amortization of a debt issuance cost that was recognized in the six month period ended June 30, 2016. The one-time amortization cost was offset by an increase in the average interest rate to 7.23% for the six months ended June 30, 2017.

Discontinued Operations. In February 2016 we completed the disposition of our mining segment to Mt. Emmons Mining Company ("MEM"), including the Keystone Mine, the WTP and other related properties. A significant objective for completing the disposition was to improve future profitability through the elimination of the obligations to operate the WTP and mine holding costs, which are expected to result in estimated annual cash savings of $3.0 million. During the six months ended June 30, 2017 and 2016, we incurred operating expenses associated with the discontinued mining segment of $0 and $0.4 million, respectively.

In order to induce MEM to assume the Company's obligations to operate the WTP we issued additional consideration in the form of 50,000 shares of Series A Convertible Preferred Stock. For the three months ended March 31, 2016, we recorded the fair value of the Preferred Stock based on the initial liquidation preference of $2.0 million. Since the cash consideration paid by MEM for the Preferred Stock was $500, we recorded a charge to discontinued operations of approximately $2.0 million associated with the issuance. There were no charges associated with discontinued operations for the six month period ended June 30, 2017.

Non-GAAP Financial Measures- Adjusted EBITDAX

Adjusted EBITDAX represents income (loss) from continuing operations as further modified to eliminate impairments, depreciation, depletion and amortization, stock-based compensation expense, loss on investments and other non-operating income or expense, income taxes, unrealized derivative gains and losses, interest expense, exploration expense, and other items set forth in the table below. Adjusted EBITDAX excludes certain items that we believe affect the comparability of operating results and can exclude items that are generally one-time in nature or whose timing and/or amount cannot be reasonably estimated.

Adjusted EBITDAX is a non-GAAP measure that is presented because we believe it provides useful additional information to investors and analysts as a performance measure. In addition, adjusted EBITDAX is widely used by professional research analysts and others in the valuation, comparison, and investment recommendations of companies in the oil and gas exploration and production industry, and many investors use the published research of industry research analysts in making investment decisions. Adjusted EBITDAX should not be considered in isolation or as a substitute for net income (loss), income (loss) from operations, net cash provided by operating activities, or profitability or liquidity measures prepared under GAAP. Because adjusted EBITDAX excludes some, but not all items that affect net income (loss) and may vary among companies, the adjusted EBITDAX amounts presented may not be comparable to similar metrics of other companies.

The following table provides reconciliations of income (loss) from continuing operations to adjusted EBITDAX for the three and six months ended June 30, 2017 and 2016:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2017	2016	2017	2016
Income (loss) from continuing operations (GAAP)	$336	$(4,206)	$(404)	$(12,370)
Impairment of oil and gas properties	—	2,611	—	9,568
Depreciation, depletion and amortization:				

Oil and gas operations	202	864	473	1,646
Other		36		72
Unrealized (gain) loss on oil price risk derivatives	(311)	887	(311)	1,460
Stock-based compensation	106	34	212	68
Gain on sale of assets	(1)	(100)	(1)	100
Rental and other income (expense), net	131	48	347	79
Warrant Fair Value Adjustment (gain) loss	(180)		(520)	
Interest expense	121	69	246	247
Adjusted EBITDAX (Non-GAAP)	$404	$243	$42	$870

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Liquidity and Capital Resources

The following table sets forth certain measures of our liquidity as of June 30, 2017 and December 31, 2016:

	2017	2016	Change
Cash and equivalents	$1,987	$2,518	$(531)
Working capital deficit [1]	(435)	(6,043)	5,608
Total assets	15,800	16,767	(967)
Outstanding debt under Credit Facility	6,000	6,000	—
Borrowing base under Credit Facility	6,000	6,000	—
Total shareholders' equity	3,241	3,758	(517)
Select Ratios			
Current ratio [2]	0.91 to 1.00	0.45 to 1.00	
Debt to equity ratio [3]	1.86 to 1.00	1.59 to 1.00	

(1) Working capital deficit is computed by subtracting total current liabilities from total current assets.
(2) The current ratio is computed by dividing total current assets by total current liabilities.
(3) The debt to equity ratio is computed by dividing total debt by total shareholders' equity.

As of June 30, 2017, we have a working capital deficit of $0.4 million compared to a working capital deficit of $6.0 million as of December 31, 2016, an increase of $5.6 million. This increase was primarily attributable to a reclassification of the Company's Credit Facility as a long term liability. The reclassification offset a reduction in cash by $0.5 million, primarily driven by an increase in professional service fees and an accrual for the settlement of the Employee Arbitration (See Note 7 Commitments and Contingencies).

On May 2, 2017, the Amended and Restated Credit Agreement, dated July 30, 2010 between U.S. Energy Corp.'s wholly-owned subsidiary, Energy One and Wells Fargo Bank N.A. was sold, assigned and transferred to APEG Energy II, L.P. ("APEG") (the "Credit Agreement"). APEG purchased and assumed all of Wells Fargo's rights and obligations as the lender to Energy One under the Credit Agreement. Concurrently, U.S. Energy Corp., Energy One and APEG entered into a Limited Forbearance Agreement dated May 2, 2017. On June 28, 2017, U.S. Energy Corp., Energy One and APEG entered into a Fifth Amendment to the Credit Agreement providing for, among other things, an extension of the maturity date to July 19, 2019, new financial coverage ratio covenants and a limited release and waiver with respect to any historical Company non-compliance with any and all financial covenants. The Company is currently forecasted to remain in compliance with all covenants throughout the life of the credit facility and believes the multi-year extension to the maturity date will provide the parties sufficient time to work towards a long-term solution that enables the Company to execute its operational strategy and ensure value for existing shareholders. As of

June 30, 2017, the Company was in compliance with all financial covenants and fully conforming with all requirements under its credit agreement. Accordingly, the entire balance of $6.0 million has been classified as a long-term liability.

During 2015 and 2014, we received significant overpayments due to an operator's failure to timely recognize the payout implications of our joint operating agreements. During the second quarter of 2015, the operator corrected its records and has elected to begin withholding the net revenues from all of our wells that it operates to recover these overpayments. As of June 30, 2017, the balance of the overpayment was approximately $2.7 million. Based on the oil and gas prices and costs used in the Company's reserve report as of June 30, 2017, this liability is not expected to be fully settled until the first quarter of 2020, but under higher pricing scenarios we expect the entire liability will be repaid sooner. The aggregate balances are presented as current liabilities in our consolidated balance sheets.

We believe certain operators have failed to allocate our share of non-consent ownership interests which results in contingent liabilities to the extent we have not been billed for our proportionate share of such interests, and contingent assets to the extent that we have not received our share of the net revenues. We record net contingent liabilities for the obligations that we believe are probable which amounted to $1.5 million as of June 30, 2017. The ultimate resolution of these uncertainties about our working interests and net revenue interests can extend over a long period of time and the Company cannot provide any assurance that these matters will be resolved within the next year.

As of June 30, 2017, we had cash and equivalents of $2.0 million, and we expect to maintain cash balances in this range for some time. We also expect potential investors and lenders will find our singular industry focus, combined with attractive producing properties and a low-cost overhead structure to be an attractive vehicle to partner with the Company during this continued industry downturn and low commodity price environment. Additionally, our long-term strategy is to acquire additional oil and gas properties at attractive prices. However, there can be no assurance that we will be able to complete future transactions on acceptable terms or at all.

If we have unanticipated needs for financing in 2017, alternatives that we will consider if necessary include selling or joint venturing an interest in some of our oil and gas assets, selling our real estate assets in Wyoming, selling our marketable equity securities, issuing shares of our common stock for cash or as consideration for acquisitions, and other alternatives, as we determine how to best fund our capital programs and meet our financial obligations. Our capital expenditure plan and our ability to obtain sufficient funding to make anticipated capital expenditures and satisfy our financial obligations are subject to numerous risks and uncertainties, including those discussed in *Risk Factors* in our 2016 Annual Report on Form 10-K filed on April 17, 2017.

Cash Flows

The following table summarizes our cash flows for the six months ended June 30, 2017 and 2016 (in thousands):

	2017	**2016**	**Change**
Net cash provided by (used in):			
Operating activities	$(533)	$(1,434)	$ 901
Investing activities	2	(86)	88
Financing activities	—	(26)	26
Discontinued operations	—	(448)	448

Operating Activities. Cash used in operating activities for the six months ended June 30, 2017 was $0.5 million as compared to cash used by operated activities $1.4 million for the comparable period in 2016, an improvement of $0.9 million. The improvement is primarily attributed to one time severance agreements with previous employees being paid in the period ended June 30, 2016.

Investing Activities. Cash used in investing activities for the six months ended June 30, 2017 was $2,000 as compared to cash used in investing activities of $0.1 million for the comparable period in 2016. The primary use of cash in our investing activities for 2017 was for capital workovers for our oil and gas drilling activities.

Financing Activities. For the six months ended June 30, 2017, we had no cash flow from financing compared to June 30, 2016 of a nominal amount received for the issuance of Series A Convertible Preferred Stock.

Discontinued Operations. We had no cash used for discontinued operations for the six months ended of June 30, 2017. Cash used in discontinued operations was $0.4 million for the six months ended June 30, 2016.

Off-balance Sheet Arrangements

As part of our ongoing business, we have not participated in transactions that generate relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities ("SPEs"), which would have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes.

We evaluate our transactions to determine if any variable interest entities exist. If it is determined that we are the primary beneficiary of a variable interest entity, that entity will be consolidated in our consolidated financial statements. We have not been involved in any unconsolidated SPE transactions during the periods covered by this report.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

As a smaller reporting company, we are not required to provide the information under this Item.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Based on an evaluation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act), as of the end of our quarter ended June 30, 2017, our Chief Executive Officer and Principal Financial Officer determined that our controls were not adequate due to a vacancy in certain accounting and finance consulting positions that the Company has historically utilized to implement the Company's review of key controls in a timely manner. A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the Company's annual or interim financial statements will not be prevented or detected on a timely basis. Accordingly, based on this material weakness, our Chief Executive Officer and Principal Financial Officer concluded that our disclosure controls and procedures were not effective as of the end of the period covered by this Quarterly Report on Form 10-Q, June 30, 2017 as it relates to the timely implementation of the Company's review of key controls.

The Company has addressed this weakness by filling the consulting vacancy with professionals with experience in implementing a full review of key controls on an ongoing basis.

Changes in Internal Control over Financial Reporting

During the fiscal quarter ended June 30, 2017, there have been no changes in our internal control over financial reporting that have materially affected or are reasonably likely to materially affect our internal control over financial reporting.

PART II – OTHER INFORMATION

Item 1. Legal Proceedings

Except as set forth above in Note 7 to the Financial Statements, there have been no material changes from the legal proceedings as previously disclosed in Item 3 of our 2016 Annual Report on Form 10-K.

Item 1A. Risk Factors.

As a smaller reporting company, we are not required to provide the information under this Item.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.

Not applicable.

Item 3. Defaults Upon Senior Securities.

Not applicable.

Item 4. Mine Safety Disclosures.

Not applicable.

Item 5. Other Information.

Not applicable.

Item 6. Exhibits

10.1*	Fifth Amendment to Credit Agreement with APEG ENERGY II L.P.
31.1*	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes – Oxley Act of 2002
31.2*	Certification of principal financial officer pursuant to Section 302 of the Sarbanes – Oxley Act of 2002
32.1*†	Certification under Rule 13a-14(b) of Chief Executive Officer and principal financial officer
101.INS	XBRL Instance Document
101.SCH	XBRL Schema Document
101.CAL	XBRL Calculation Linkbase Document
101.DEF	XBRL Definition Linkbase Document
101.LAB	XBRL Label Linkbase Document
101.PRE	XBRL Presentation Linkbase Document

* Filed herewith.
Δ Exhibit constitutes a management contract or compensatory plan or agreement.
† In accordance with SEC Release 33-8238, Exhibit 32.1 is being furnished and not filed.

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SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) 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.

	U.S. ENERGY CORP. (Registrant)
Date: August 14, 2017	By:/s/ David A. Veltri DAVID A. VELTRI, Chief Executive Officer
Date: August 14, 2017	By:/s/ Ryan L. Smith RYAN L. SMITH, Chief Financial Officer

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