Risk Factors Comparison 2024-05-17 to 2023-02-27 Form: 10-K

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Investing in our securities involves a high degree of risk. A description of the risks and uncertainties associated with our business is set forth below. These risks, together with many other factors described in this report and in our other public filings, and additional risks and uncertainties not currently known to us or that we currently deem to be immaterial, could adversely affect our operations, performance and financial condition. Our actual results could differ materially from our forward- looking statements. Risk Factors Summary The following is a summary of the principal risks that could adversely affect our business, operations and financial results. Business and Operational Risk Factors • Our quarterly results may vary significantly from period to period. • Our ability to increase our revenue will depend upon continued demand growth for additional network capacity and on the level and timing of customer capital spending. • Any delays in the development, introduction or acceptance of our new products or in releasing enhancements to our existing products may harm our business. • **Aggressive business tactics by our competitors and new entrants may harm our business. • The markets in which we compete are highly competitive and we may be unable to compete effectively. •** Supply chain and logistics issues, including delays, shortages **, longer lead times, unfavorable contractual terms** , components that have been discontinued and increased costs, and our dependency on sole source, limited source or high- cost suppliers **,** could harm our business and operating results ~~. • Aggressive business tactics by our competitors and new entrants may harm our business. • The markets in which we compete are highly competitive and we may not be able to compete effectively. • Product performance problems or deployment delays could harm our business, results of operations and reputation. • The effects of the COVID- 19 pandemic or other public health concerns could have a material adverse effect on our business, manufacturing operations and results of operations. • If we lose key personnel or fail to attract qualified personnel, our business may be harmed~~ . • We are dependent on a small number of key customers for a significant portion of our revenue. • **Product performance problems, deployment delays and product security vulnerabilities could harm our business and reputation. •** The manufacturing process for our optical engine and the assembly of our products are very complex. • ~~Increased consolidation among~~ **If we lose key personnel** ~~our~~ - **or fail** ~~customers and suppliers in the communications networking industry has had, and could continue~~ to ~~have~~ **attract qualified personnel** , ~~an adverse effect on~~ our business **may be harmed** ~~and results of operations~~ . • If our contract manufacturers do not perform as we expect, our business may be harmed **. • Increased consolidation among our customers and suppliers in the communications networking industry has had, and could continue to have, an adverse effect on our business and results of operations** . • We rely on various third- party service partners to help complement our global operations. • We must respond to rapid technological change for our products to be successful. • **Failure** ~~If we fail~~ to accurately forecast ~~our~~ manufacturing requirements or customer demand ~~, we~~ could incur additional costs **. • Actions that we are taking or may in the future take to restructure or streamline our business may not be as effective as anticipated and may have negative consequences** . • Our large customers have substantial negotiating leverage, which may harm our results of operations. • Our sales cycle can be long and unpredictable, which could result in unexpected revenue shortfalls. • **The effects of public health emergencies could have a material adverse effect on our business, manufacturing operations and results of operations. •** Any acquisitions or strategic transactions that we undertake could disrupt our business and harm our financial condition and operations ~~. • Actions that we are taking or may in the future take to restructure our business may not be as effective as anticipated and may have negative consequences~~ . Financial and Macroeconomic Risk Factors • We may be unable to generate the cash flow necessary to make anticipated capital expenditures, service our debt ~~,~~ or grow our business **. • Unfavorable macroeconomic and market conditions may adversely affect our financial results** . • Inflation may ~~adversely affect us by increasing~~ **increase our** costs beyond what we can recover through price increases. • ~~Unfavorable macroeconomic and market conditions may adversely affect our industry, business and financial results. •~~ If we need additional capital in the future, it may not be available to us on favorable terms, or at all. • Our Loan Agreement and any other credit or similar agreements into which we may enter in the future may restrict our operations ~~, particularly our ability to respond to changes or to take certain actions regarding our business~~ . • Our debt obligations may adversely affect our ability to raise additional capital and will be a burden on our future cash resources. • Our international sales and operations subject us to additional risks. • We may be adversely affected by fluctuations in currency exchange rates. • Our effective tax rate may increase or fluctuate, which could increase our income tax expense and reduce our net income. • We may issue additional shares of our common stock in connection with conversions of the 2024 Notes, the 2027 Notes and the 2028 Notes **(as defined below)** . • The fundamental change provisions of the 2024 Notes, the 2027 Notes and the 2028 Notes may delay or prevent an otherwise beneficial takeover attempt of us. • The Capped Calls (as defined below) may affect the value of the 2024 Notes and our common stock. • We are subject to counterparty risk with respect to the Capped Calls. Legal and Regulatory Risk Factors • If we fail to protect our intellectual property rights, our competitive position could be harmed, or we could incur significant expense to enforce our rights. • Claims by others that we infringe their intellectual property rights could harm our business. • Security incidents, such as data breaches and cyber- attacks, could ~~compromise our intellectual property and proprietary or confidential information and~~ cause significant damage to our business and reputation. • If we fail to **remediate our material weaknesses or discover additional weaknesses or otherwise fail to** maintain **an** effective **system of** internal controls ~~over financial reporting in the future~~ , the accuracy and timing of our financial reporting may be adversely affected. • We are subject to various governmental export control, trade sanctions and import laws and regulations that could impair our ability to compete in international markets or subject us to liability. • We are subject to environmental regulations that could adversely affect our business. • Regulations relating to environmental, social and governance matters, as well as customer ~~and~~ **, supplier,** investor **or other stakeholder** demands, may add operational complexity for us ~~and may adversely affect our relationships with our customers, suppliers and investors~~ . • We are subject to global data privacy and data protection laws and regulations that could adversely affect our business or subject us to liability. • A portion of our revenue is generated by sales to government entities, which are subject to a number of uncertainties, challenges and risks. • Our business could be adversely affected if we cannot obtain and maintain required security clearances, or we do not comply with obligations regarding the safeguarding of classified information. • Failure to comply with anti- bribery and similar laws could subject us to adverse consequences. General Risk Factors • The trading price of our common stock has been volatile and is likely to be volatile in the future. • Future sales of our common stock could cause our stock price to fall. • Anti- takeover provisions in our charter documents and Delaware law could discourage, delay or prevent a change in control of our company and may affect the trading price of our common stock. • Exclusive forum provisions in our bylaws will restrict our stockholders' ability to choose the judicial forum for disputes with us or our directors, officers or employees. • Events that are outside of our control, such as natural disasters, terrorist attacks, wars **and armed conflicts** , such as **between** Russia **and** ~~' s war with~~ Ukraine **and Israel and Hamas** , or other catastrophic events, could harm our operations. For a more complete discussion of the material risks facing our business, see below. Our quarterly results may vary significantly from period to period, which could make our future results difficult to predict and could cause our operating results to fall below investor, analyst or our expectations. Our quarterly results and, in particular, our revenue, gross margins, operating expenses, operating margins and net income (loss), have historically varied significantly from period to period and may continue to do so in the future. As a result, comparing our operating results on a period- to- period basis may not be meaningful. Our budgeted expense levels are based, in large part, on our expectations of future revenue and the development efforts associated with that future revenue. Consequently, if our revenue does not meet projected levels in the short term, our inventory levels, cost of goods sold and operating expenses would be high relative to revenue, resulting in potential operating losses. If our revenue or operating results do not meet the expectations of investors or securities analysts or fall below any guidance we provide to the market, the price of our common stock may decline substantially. Factors that may contribute to fluctuations in our quarterly results, many of which are outside our control and may be difficult to predict, include: • fluctuations in demand, sales cycles and prices for products and services, including discounts given in response to competitive pricing pressures or to secure long- term customer relationships, as well as the timing of purchases by our key customers; • **changes in customers' budgets for optical transport network purchases and changes or variability in their purchasing cycles; • the timing, market acceptance and rate of adoption of our new product releases and our competitors' new product releases; •** the price, quality **, lead times** , timing of delivery and availability of key components from suppliers, including any price or shipping cost increases or delays in the supply of components that may result from supply disruptions as well as impacts due to consolidations amongst our suppliers; • ~~changes in customers' budgets for optical transport network purchases and changes or variability in their purchasing cycles; •~~ fluctuations in our customer, product or geographic mix, including the impact of new customer deployments, which typically carry lower gross margins, customer consolidation, which may affect our ability to grow revenue, and products powered by our next-generation technologies, which initially tend to be lower margin due to higher per unit production costs and **may have** greater variability in production yields ~~; • the timing, market acceptance and rate of adoption of our new product releases and our competitors' new product releases~~ ; • our ability to manage manufacturing costs, maintain or improve quality, and increase volumes and yields on products manufactured in our internal manufacturing facilities; • our ability to **manage inventory while timely meeting customer demand and avoiding charges for excess or obsolete inventory; • our ability to** control costs, including our operating expenses ~~and~~ **,** the costs and availability of components and materials we purchase for our products **and our capital expenditures** ; • our ability to successfully restructure or transform our operations within our anticipated time frame and realize our anticipated savings; • order cancellations ~~,~~ **or** reductions or delays in delivery schedules by our customers; • any significant changes in the competitive dynamics of the markets we serve, including any new entrants, new technologies, or customer or competitor consolidation, as well as aggressive pricing tactics by our competitors; • **any delay in collecting** ~~our~~ - **or** ~~ability~~ **failure** to **collect accounts receivable** ~~manage inventory while timely meeting customer demand and avoiding charges for excess or obsolete inventory~~ ; • readiness of customers for installation of our products ~~as well as the availability of third-party service partners to provide contract engineering and installation services for us~~ , ~~each of~~ which has been impacted by the ~~effects~~ **budget constraints and personnel availability** of ~~the COVID- 19 pandemic; • any delay in collecting or~~ **our customers** ~~failure to collect accounts receivable~~ ; • the timing of revenue recognition and revenue deferrals; • any future changes in U. S. GAAP or new interpretations of existing accounting rules; • the impact of a significant natural disaster or public health emergency, as well as interruptions or shortages in the supply of utilities such as water and electricity, in a key location such as our Northern California facilities, which are located near major earthquake fault lines, in areas of high fire risk and in a designated flood zone; and • general economic, market and political conditions in domestic and international markets, including those related to any policy changes by the federal government or by the presidential administration in the ~~United States~~ **U. S.** , and other factors beyond our control, including the ongoing effects of continuing inflation ~~, rising~~ **and high** interest rates ~~and the COVID- 19 pandemic and related response measures~~ . Our ability to increase our revenue will depend upon continued growth of demand by consumers and businesses for additional network capacity ~~and~~ **,** on the level and timing of capital spending by our customers **, and on the continued demand for our services support** . Our future success depends on factors that increase the amount of data transmitted over communications networks and the growth of optical transport networks to meet the increased demand for optical capacity. These factors include the growth of mobile, video and cloud- based services, increased broadband connectivity and the continuing adoption of high- capacity, revenue- generating services. If demand for such bandwidth does not continue, or slows down, the market for optical transport networking equipment may not continue to grow and our product sales would be negatively impacted. In addition, demand for our products depends on the level and timing of capital spending in optical networks by service providers as they construct, expand and upgrade the capacity of their optical networks. Capital spending is cyclical in our industry and spending by customers can change on short notice. **Customer demand is dependent in part on the level of inventory held by customers and, to the extent that such inventory levels have been or will be built up by customers to address global supply issues or otherwise, overall customer demand may be dampened in subsequent periods until the level of inventory held by such customers returns to more normalized levels.** Any future decisions by our customers to reduce capital spending, whether caused by lower customer demand, weakening economic conditions, ~~rising~~ **high** borrowing costs, inflation, customer- specific supply chain issues, changes in government regulations relating to telecommunications and data networks, or other reasons, could have a material adverse effect on our business, financial condition and results of operations **. Revenue we receive for our services offerings is highly dependent on product sales and the implementation processes of our customers. If our customers have internal services teams or if our products such as our pluggables do not otherwise require our services support, our revenue related to services and our related gross margins may be impacted and our results of operations may be harmed** . Our products are based on complex technologies, including, in many cases, the development of next- generation PICs, DSPs and specialized ASICs, each of which are key components of our optical engines. In addition, we may also depend on technologies from outside suppliers, all of which may cause us to experience unanticipated delays in developing, improving, manufacturing or deploying our products. The development process for our optical engines is lengthy, and any modifications entail significant development cost and risks. At any given time, various new product introductions and enhancements to our existing products are in the development phase and are not yet ready for commercial manufacturing or deployment. We rely on third parties, some of which are relatively early- stage companies, to develop, manufacture and deliver components for our next- generation products, which can often require custom development. The development process from laboratory prototype to customer trials, and subsequently to general availability, involves a significant number of simultaneous efforts. These efforts often must be completed in a timely and coordinated manner so that they may be incorporated into the product development cycle for our systems, and include: • completion of product development, including the development and completion of our next- generation optical engines, and the completion of associated module development; • the qualification and multiple sourcing of critical components; • validation of manufacturing methods and processes; • extensive quality assurance and reliability testing and staffing of testing infrastructure; • validation of software; and • establishment of systems integration and systems test validation requirements. Each of these steps, in turn, presents risks of failure, rework or delay, any one of which could decrease the speed and scope of product introduction and marketplace acceptance of our products. New generations of our optical engines as well as intensive software testing are important to the timely introduction of new products and enhancements to our existing products, which are subject to these development risks. In addition, unexpected intellectual property disputes, inability to obtain licenses to utilize third party development tools or other intellectual property on commercially acceptable terms, failure of critical design elements, limited or constrained engineering resources, **changes in product designs** and a host of other development execution risks may delay, or even prevent, the introduction of new products or enhancements to our existing products. If we **have longer development lead times than our competitors for comparable products, or if we** do not develop and successfully introduce or enhance products **ahead of our competitors or** in a timely manner, including the successful development of our next generation optical engine, our competitive position will suffer. As we transition customers to new products **and technologies** , we face significant risk that our new products **or technologies** may not be accepted by our current or new customers. To the extent that we fail to introduce new and innovative products **and technologies** that are adopted by customers, we could fail to obtain an adequate return on these investments and could lose market share to our competitors, which could be difficult or impossible to regain. Similarly, we may face decreased revenue, gross margins and profitability due to a rapid decline in sales of current products as customers hold spending to focus purchases on new product platforms. In addition, the sale of new products **and technologies** may result in the cannibalization of sales for existing products, which may harm our results of operations. We could also incur significant costs in completing the transition, including costs of inventory write- downs of the current product as customers transition to new product platforms. In addition, products or technologies developed by others may render our products noncompetitive or obsolete and result in significant reduction in orders from our customers and the loss of existing and prospective customers. Any delays in the introduction of new components that we are developing for use in our other products as part of our vertical integration strategy may also prevent us from realizing the anticipated cost savings of such development. This may negatively impact our gross margins and harm our business and operating results....... customer relationships, either of which would harm our business and operating results. The markets that we compete in are extremely competitive, which often results in aggressive business tactics by our competitors and new entrants, including: • aggressively pricing their optical transport products and other portfolio products, including offering significant one- time discounts and guaranteed future price decreases; • offering optical products at a substantial discount or for free when bundled together with broader technology purchases, such as router or wireless equipment purchases; • **marketing product availability on aggressive timelines to influence customer purchasing decisions; •** providing financing, marketing and advertising assistance to customers; and • influencing customer requirements to emphasize different product capabilities, which better suit their products. The level of competition and pricing pressure tend to increase when competing for large or high- profile opportunities or during periods of economic weakness when there are fewer network build- out projects. If we fail to compete successfully against our current and future competitors, or if our current or future competitors continue or expand their aggressive business tactics, including those described above, demand for our products could decline, we could experience delays or cancellations of customer orders or we could be required to reduce our prices to compete in the market. The ~~packet~~ **markets in which we compete are highly competitive and we may not be able to compete effectively. The** optical **networking** equipment market is competitive. Our main competitors **in the optical transport systems market** include ~~DWDM~~ **dense wavelength division multiplexing** system suppliers, such as **ADTRAN** ~~ADVA Optical Networking~~ , Ciena Corporation, Cisco Systems, **Fujitsu, Huawei, Nokia,** Ribbon Communications ~~Inc., Huawei Technologies Co., Ltd., Nokia~~ and ZTE. ~~In addition~~ **Competition in the optical subsystems and pluggable optics**

market includes , **but is not limited to, Cisco (via** ~~there~~ - **their** ~~are several other companies that offer one or more products that partially compete with our offerings~~ **acquisition of Acacia), Lumentum, Marvell and Coherent, as well as a wide range of China- based suppliers** . Moreover, other companies have developed, or may in the future develop, products that are or could be competitive with our products. We also could encounter competitor consolidation in the markets in which we compete, which could lead to a changing competitive landscape, capabilities and market share, and could impact our results of operations. ~~For example, in March 2021, Cisco completed its acquisition of optical communications supplier Acacia Communications.~~ Competition in the markets we serve is based on any one or a combination of the following factors: • **the ability of products and services to meet customers' immediate and future network requirements; •** price and other commercial terms; • ~~functionality and~~ optical **reach and capacity** performance; • **features** ~~existing business~~ and **functionality** ~~customer relationships; • the ability of products and services to meet customers' immediate and future network requirements~~ ; • the availability of components required to manufacture key products; • **existing business and customer relationships; •** power consumption **,** ~~; •~~ heat dissipation **,** ~~; •~~ form factor ~~or~~ **and** density; • installation and operational simplicity **; • network and service manageability** ; • quality and reliability; • service and support; • security and encryption requirements; • scalability and investment protection; and • product **availability and** lead times. Some of our competitors have substantially greater name recognition and technical, financial, sales and marketing resources. Many of our competitors have more resources and more experience in developing or acquiring new products and technologies, **customizing product features specific to certain geographic requirements** and in creating market awareness for those products and technologies. In addition, many of our competitors have the financial resources to offer competitive products at aggressive pricing levels or have the ability to provide financing to customers, which could prevent us from competing effectively. Further, many of our competitors have built long-standing relationships with some of our prospective and existing customers and could, therefore, have an inherent advantage in selling products to those customers. We also compete with low- cost producers that may increase pricing pressure on us and with a number of smaller companies that provide competition for a specific product, customer segment or geographic market. In addition, we may also face increased competition from system and component companies that develop products based on off-the- shelf hardware that offers the latest commercially available technologies. Due to the narrower focus of their efforts, these competitors may achieve commercial availability of their products more quickly than we can and may provide attractive alternatives to our customers. **more of our key** customers would reduce our revenue and harm our operating results.A relatively small number of customers accounts for a large percentage of our revenue from period to period.For example,for the year ended December ~~30~~ **31** , ~~2023~~ **2022** ,our top ten ~~end-~~ customers accounted for approximately ~~52~~ **48** % of our total revenue and one ~~end-~~ customer accounted for ~~10~~ **11** % of our total revenue.For ~~2022~~ **2021** ,our top ten ~~end-~~ customers accounted for approximately ~~48~~ **42** % of **our total revenue and no customer accounted for 10 %** ~~our~~ - **or more** ~~total revenue and one end- customer accounted for 11 %~~ of our ~~total~~ revenue.For ~~2021~~ **2020** ,our top ten ~~end-~~ customers accounted for approximately ~~42~~ **43** % of ~~our total revenue and no end- customer accounted for 10 % or~~ **our** ~~more~~ **total revenue and one customer accounted for 11 %** of our revenue.Our business will likely be harmed if any of our key customers,for whatever reason,substantially reduce,delay or stop their orders from us.In addition,our business will be harmed if we fail to maintain our competitive advantage with our key customers or do not add new large ~~and medium~~ customers over time.We continue to expect a relatively small number of customers to continue to account for a large percentage of revenue from period to period.However,customer consolidation could reduce the number of key customers that generate a significant percentage of our revenue and may increase the risks relating to dependence on a small number of customers. **Our ability to continue to generate revenue from our key customers** Product performance problems, including undetected errors in our hardware or software, or deployment delays **, and product security vulnerabilities,** could harm our business, results of operations and reputation. The development and production of products with high technology content is complicated and often involves problems with hardware, software, components and manufacturing methods. Complex hardware and software systems that are built with and include increasingly sophisticated technology, such as our products, can often contain undetected errors or bugs when first introduced or as new versions are released. In addition, errors associated with components we purchase from third parties, including customized components, may be difficult to resolve. We have experienced issues in the past in connection with our products, including failures due to the receipt of components from our suppliers that are either faulty or do not meet our product specifications, and performance issues related to software updates. From time to time, we have had to replace certain components or provide software remedies or other remediation in response to errors or bugs, and we may have to do so again in the future. In addition, performance issues can be heightened during periods where we are developing and introducing multiple new products to the market, as any performance issues we encounter in one technology or product could impact the performance or timing of delivery of other products. Our products may also suffer degradation of performance and reliability over time. If reliability, quality, security or network monitoring problems develop, a number of negative effects on our business could result, including: • reduced orders from existing customers; • declining interest from potential customers; • delays in our ability to recognize revenue or in collecting accounts receivables; • increased costs associated with fixing hardware or software defects or replacing products; • high service and warranty expenses; • delays in shipments; • high inventory excess and obsolescence expense; • high levels of product returns; • diversion of our engineering personnel from our product development efforts; and • payment of liquidated damages, performance guarantees or similar penalties. Because we outsource the manufacturing of certain components of our products, we may also be subject to product performance problems as a result of the acts or omissions of third parties, and we may not have adequate compensating remedies against such third parties or otherwise implement effective measures to mitigate such problems. From time to time, we encounter interruptions or delays in the activation of our products at a customer' s site. These interruptions or delays may result from product performance problems or from issues with installation and activation, some of which are outside our control, such as supply chain disruptions affecting our customers or us. For example, in 2022, we experienced project delays due to incomplete customer readiness and the unavailability of certain customer resources and customer ~~–~~furnished ~~material~~ **prerequisites** required for project implementation. If we experience significant interruptions or delays that we cannot promptly resolve, the associated revenue for these installations may be delayed **. In addition,** ~~or~~ **our** ~~confidence~~ **demands could harm our business** ~~in a number of ways,any of which may be material~~ .The manufacturing process for our optical engine **,including the PICs,DSPs and specialized ASICs,** and the assembly of our finished products are complex. ~~The partial or complete loss of any of our manufacturing facilities,a reduction in yields of our PICs or an inability to scale capacity to meet customer demands could harm our business.The manufacturing process for our optical engine,including the PICs,DSPs and specialized ASICs,and the assembly of our finished products are complex.~~ In the event that any of our manufacturing facilities utilized to build these components and assemble our finished products was fully or partially destroyed,or shut down,as a result of a natural disaster,work stoppage or otherwise,it could severely limit our ability to ~~deliver and~~ sell our products ~~or support new product development~~ .Because of the complex nature of our manufacturing facilities,such loss would take a considerable amount of time to repair or replace.The partial or complete loss of any of our manufacturing facilities,or an event causing the interruption in our use of any such facilities,whether as a result of a natural disaster,a public health crisis **like the COVID- 19 pandemic** ,work stoppage or otherwise,for any extended period of time,could cause our business,financial condition and results of operations to be harmed.Minor deviations in the PIC manufacturing process can cause substantial decreases in yields and,in some cases,cause production to be suspended.In the past,we have had significant variances in our PIC yields,including production interruptions and suspensions,and may in the future have continued yield variances,including additional interruptions or suspensions.Lower than expected yields from our PIC manufacturing process or defects,integration issues or other **performance problems in our products could limit our ability to satisfy customer demand requirements and could damage customer relations and harm our business,reputation and operating results.Our inability to obtain sufficient manufacturing capacity to meet demand,either in our own facilities or through foundry or similar arrangements with third parties,could also harm our** in our products could ~~be undermined, which could cause us to lose customers, fail to add new customers, and consequently harm our financial results. The effects of the ongoing COVID- 19 pandemic and other future public health concerns could have a material adverse effect on our business, manufacturing operations and results of operations. While the effects of the COVID- 19 pandemic have been decreasing, it has caused disruptions to our business and operations and could have a material adverse effect on our business and results of operations in the future. For example, the imposition of shelter- in- place or similarly restrictive work- from- home orders during the COVID- 19 pandemic has in the past impacted, and could again impact, many of our offices and employees, and many of our employees continue to work remotely or in hybrid work environments. As a result of the public health and safety measures during the COVID- 19 pandemic, we at times temporarily closed or substantially limited~~ -- **limit** ~~the presence of personnel in some of our offices, implemented travel restrictions and modified our participation in various industry events. Our flexible approach to work arrangements and related policies continues to evolve. The COVID- 19 pandemic has also at times contributed to delays in certain operational processes and it may again impact our operational processes. We have experienced disruption and delays in our global supply chain and manufacturing operations, logistics operations and customer support operations, including shipping delays, higher transport costs, and certain limitations on~~ our ability to **satisfy** ~~access customer fulfillment and service sites. We are dependent on sole source and limited source suppliers for several key components, and we have experienced capacity issues, longer lead times, increased costs and shortages with certain component suppliers, including for semiconductors, impacting our operational processes and results of operations. Some of these disruptions negatively impacted our revenue and our results of operations. The impact of the COVID- 19 pandemic and other future public health concerns on our business and results of operations in the future remains uncertain and is dependent in part on infection, morbidity and disability rates, the emergence of new viruses, the continued effectiveness and availability of vaccinations, and broader global macroeconomic developments. We may face further disruptions or restrictions on our ability to source, manufacture or distribute our products due to existing or additional governmental restrictions in multiple countries on business operations and movement of people and products. If we experience pronounced disruptions in our operations or in our ability to service our customers, including due to COVID- 19 or other infections or quarantines among our employees and service providers, or if we face continued supply chain disruption or curtailed~~ customer demand ~~, these factors may materially adversely impact~~ **requirements and could damage customer relations and harm** our business **, reputation** and **operating** results ~~of operations~~ . ~~We~~ **Our inability to obtain sufficient manufacturing capacity to meet demand, either in our own facilities or through foundry or similar arrangements with third parties,** could also **harm** ~~face negative impacts on our liquidity and capital resources in the future due to the effects of the COVID- 19 pandemic or~~ **our relationships with** ~~other public health concerns, and their impacts on~~ our customers, **our business** ~~suppliers, third- party service providers~~ and ~~capital markets~~ **our results of operations. Additionally, if we are unable to fully utilize our own manufacturing facilities, this may also reduce our efficiency and lower our gross margins** . If we lose key personnel or fail to attract **, upskill** and retain ~~additional~~ qualified personnel when needed, our business may be harmed. Our success depends to a significant degree upon the continued contributions of our key management, engineering, sales and marketing, and finance personnel, many of whom will be approaching retirement age in the next decade and many of whom would be difficult to replace. For example, senior members of our engineering team have unique technical experience that would be difficult to replace. Because our products are complex, we must also hire and retain highly trained customer service and support personnel to ensure that the deployment of our products does not result in network disruption for our customers. We believe our future success will depend in large part upon our ability to identify, attract **, upskill** and retain highly skilled **and diverse** personnel, and competition for these individuals is intense in our industry, especially in the San Francisco Bay Area where we are headquartered and, increasingly, in certain cities and regions where we have operations outside the ~~United States~~ **U. S.** as well. The loss of the services of any of our key personnel, the inability to identify, attract or retain qualified personnel in the future or delays in hiring qualified personnel, particularly engineers and sales personnel, could make it difficult for us to manage our business and meet key objectives, such as timely product introductions. These risks may be exacerbated due to a strong labor market with a competitive wage environment and attrition **or a decline in the pool of available talent** . In addition, we do not have long- term employment contracts or key person life insurance covering any of our key personnel. If we are unable to identify, attract and retain qualified personnel, we may be unable to manage our business effectively, and our results of operations could suffer. We **rely** ~~are dependent~~ on **third- party contract manufacturers to perform** a ~~small number of key customers for a significant~~ portion of ~~our revenue from period to period and~~ the ~~loss~~ **manufacturing** of ~~, or~~ **our products** ~~a significant reduction in~~ , **and** ~~orders from one or~~ **our future success** more of our key customers would reduce...... to generate revenue from our key customers will depend on our ability to ~~maintain strong relationships with these customers~~ **have sufficient volumes of our products manufactured in a cost- effective** and ~~introduce competitive new~~ **quality- controlled manner. We have engaged third parties to manufacture certain elements of our** products at **multiple contract manufacturing sites located around** ~~competitive prices. In most cases, our sales are made to these~~ -- **the world but do not have** ~~customers pursuant to standard purchase agreements, which may be canceled or reduced readily, rather than~~ long- term ~~purchase commitments~~ **agreements in place with some of our manufacturers and suppliers** that would ~~require suppliers that would~~ guarantee product availability,or the continuation of particular pricing or payment terms.We face a number of risks due to our dependence on contract manufacturers,including:• reduced control over delivery schedules,particularly for international contract manufacturing sites **;• risks related to dependency on certain contract manufacturers** ;• reliance on the quality assurance procedures of third parties;• potential uncertainty regarding manufacturing yields and costs;• potential lack of adequate capacity during periods of high demand or inability to fulfill manufacturing orders due to supply issues;• potential variability of pricing or payment terms due to agreement length;• risks and uncertainties associated with the locations or countries where our products are manufactured **or otherwise operate** ,including potential ~~manufacturing~~ disruptions caused by geopolitical events,military actions,work stoppages or other social factors,natural disasters **,** ~~or other~~ environmental factors,or ~~international~~ **public** health emergencies ~~,such as the COVID- 19 pandemic~~ ;• counterparty risk,particularly if our contract manufacturers are sensitive to inflation and interest- rate risk;• limited warranties on components;and • potential misappropriation of our intellectual property.Any of these **risks could impair our ability to fulfill orders. Our products are built with and incorporate increasingly sophisticated technology and any delays by our contract manufacturers or their inability to meet our product specifications or quality standards may cause us to be unable to meet the delivery requirements of our** customers ~~to purchase any minimum or guaranteed volumes orders. In the event of a cancellation or reduction of an order~~ , **which could decrease** ~~we may not have enough time to reduce operating expenses to minimize the effect of the lost revenue on our business. Our operating results will continue to depend on our ability to sell our products to our key customers~~ - **customer satisfaction and harm our product sales** . In addition, ~~we must regularly compete~~ **if our contract manufacturers are unable or unwilling to continue manufacturing our products or components of our products in required volumes or our relationship with any of our contract manufacturers is discontinued** for ~~and win business with existing and new customers across all of our customer segments. In addition, global economic conditions may affect the network spending, procurement strategies, or business practices of our key customers. If~~ any **reason** ~~of our key customers experience a loss in revenue due to weakening economic conditions~~ , **we would be required** ~~public health crisis, their corporate borrowing costs being materially impacted by rising interest rates, or other adverse occurrences, they may reduce or delay capital spending generally or with respect~~ to ~~our products~~ **identify and qualify alternative manufacturers** , which could ~~materially adversely affect~~ **cause us to be unable to meet** our ~~business~~ **supply requirements to our customers** and ~~results~~ - **result in the breach** of ~~operations~~ **our customer agreements** . ~~The~~ **Qualifying a new contract** ~~manufacturing~~ **manufacturer** ~~process for our optical engine~~ and **commencing volume** ~~the assembly of our finished products~~ **production is expensive and time- consuming. If we** are **required to change** ~~complex. The partial or complete loss of any of our~~ - **or qualify** ~~manufacturing facilities,~~ a ~~reduction in yields of our PICs or~~ **new contract manufacturer, we could lose revenue** ~~an~~ **and damage our** ~~inability to scale capacity to meet~~ customer demands could harm our business. The...... third parties, could also harm our relationships ~~with our customers, our business and our results of operations~~ . We have seen increased consolidation in the communications networking industry over the past few years, which has adversely affected our business and results of operations. Customer consolidation in the past has led to changes in buying patterns, slowdowns in spending, redeployment of existing equipment and re- architecture of parts of existing networks or future networks, as the combined companies evaluate the needs of the combined business. Moreover, the significant purchasing power of these large companies can increase pricing and competitive pressures for us, including the potential for decreases in our average selling prices. If one of our customers is acquired by another company that does not rely on us to provide it with products or relies on another provider of similar products, we may lose that customer' s business. Such consolidation may further reduce the number of customers that generate a significant percentage of our revenue and may exacerbate the risks relating to dependence on a small number of customers. Any of the foregoing results will adversely affect our business, financial condition and results of operations. In addition, our suppliers in the communications networking industry have recently continued to consolidate. For example, II- VI acquired ~~Finisar in 2019 and then acquired~~ Coherent in 2022. Supplier consolidation may lead to increased prices of components for our products, deployment delays or a disruption in output. In addition, such consolidation may exacerbate the risks relating to our dependence on a small number of suppliers for certain components and materials that are required to manufacture our products . We rely on third- party...... lose revenue and damage our customer relationships . We rely on various third- party service partners to help complement our global operations, and failure to adequately manage these relationships could adversely impact our financial results and relationships with customers. We rely on a number of third- party service partners, both domestic and international, to complement our global operations. We rely upon these partners for certain installation, maintenance, logistics and support functions. ~~In addition, as our customers increasingly seek to rely on vendors to perform additional services~~ **Services** ~~relating~~ **provided by these partners typically relate** to the design, construction and operation of ~~their~~ **customer** networks **. Over time** , the scope of work performed by our service partners is likely to **increasingly** ~~increase and may~~ include areas where we have less experience providing or managing such services. We must successfully identify, assess, train and certify qualified service partners in order to ensure the proper installation, deployment and maintenance of our products. The vetting and certification of these partners **, particularly outside the U. S.,** can be costly and time- consuming, and certain partners may not have the same operational history, financial resources and scale as we have. Additionally, certain service partners may provide similar services for other companies, including our competitors. We may not be able to manage our relationships with our service partners effectively, and we cannot be certain that they will be able to deliver services in the manner or time required, that we will be able to maintain the continuity of their services, or that they will adhere to our approach to ethical business practices. We may also be exposed to a number of risks or challenges relating to the performance of our service partners, including: • delays in recognizing revenue; • liability for injuries to persons, damage to property or other claims relating to the actions or omissions of our service partners; • our services revenue and gross margin may be adversely affected; and • our relationships with customers could suffer. If we do not effectively manage our relationships with third- party service partners, or if they fail to perform ~~these~~ -- **the** services **we request** in the manner or time required, our financial results and relationships with our customers could be adversely affected. We must respond to rapid technological change and comply with evolving industry standards and requirements for our products to be successful. The optical transport networking equipment market is characterized by rapid technological change, changes in customer requirements and evolving industry standards. We continually invest in research and development to sustain or enhance our existing products, but the introduction of new communications technologies and the emergence of new industry standards or requirements could render our products obsolete. Further, in developing our products, we have made, and will continue to make, assumptions with respect to which standards or requirements will be adopted by our customers and competitors. If the standards or requirements adopted by our prospective customers are different from those on which we have focused our efforts, market acceptance of our products would be reduced or delayed, and our business would be harmed. We are continuing to invest a significant portion of our research and development efforts in the development of our next- generation products. We expect our competitors will continue to improve the performance of their existing products and introduce new products and technologies and to influence customers' buying criteria so as to emphasize product capabilities that we do not, or may not, possess. To be competitive, we must **increase our understanding of competitive dynamics in our markets, better** anticipate future customer requirements and continue to invest significant resources in research and development, sales and marketing, and customer support ~~, and the~~ **. The demand for** investment ~~demands~~ **resources** may **also** increase as the ~~technology~~ **technologies we develop and utilize** ~~becomes~~ - **become** more complex **and the skills required to undertake such development become more scarce and expensive to obtain** . If we do not anticipate **or meet** these future customer requirements **, including with respect to the energy efficiency of our products,** and invest in the technologies **, including artificial intelligence and machine learning,** necessary to enable us to ~~have~~ **create, manufacture** and ~~to~~ sell the appropriate solutions **on a timely basis** , ~~it may limit~~ our competitive position and future sales **may be limited** , which would have an adverse effect on our business and financial condition. We may not have sufficient resources to ~~make~~ **undertake** these investments and we may not be able to make the technological advances necessary to be competitive **and successful in the markets we serve** . If we fail to accurately forecast our manufacturing requirements or customer demand, we could incur additional costs, including inventory write- downs or equipment write- offs, which would adversely affect our business and results of operations. We generate forecasts of future demand for our products several months prior to the scheduled delivery to our prospective customers. This requires us to make significant investments before we know if corresponding revenue will be recognized. Lead times vary significantly for materials and components, including ASICs, that we need to order for the manufacture of our products and depend on factors such as the specific supplier, contract terms and demand for each component at a given time. In the past, we have experienced lengthened lead times for certain components, ~~and we continue to see long lead times for certain components due to industry- wide supply chain challenges,~~ which makes forecasting more challenging. We may be required to purchase increased levels of such components to satisfy our delivery commitments to our customers as a result of longer lead times for components. In addition, we must manage our inventory to ensure we continue to meet our commitments as we introduce new products or make enhancements to our existing products. If we overestimate market demand for our products **, including as a result of customers changing the timing or volume of their purchases in response to the evolving supply chain environment or broader macroeconomic conditions,** and, as a result, increase our inventory in anticipation of customer orders that do not materialize, we will have excess inventory ~~, which~~ **. This** could result in increased risk of obsolescence and significant inventory write- downs. ~~Furthermore, this will result in reduced production volumes and our fixed costs will be spread across fewer units, increasing our per unit costs.~~ If we underestimate demand for our products, we will have inadequate inventory, which could slow down or interrupt the manufacturing of our products, cause delays in shipments and our ability to recognize revenue, and result in potential loss of customers **or orders** to competitors. In addition, we may be unable to meet our supply commitments to customers, which could result in a loss of certain customer opportunities or a breach of our customer agreements **.** Actions that we ~~are taking or~~ may in the future take to restructure **or streamline** our business to cut costs and align our operating structure with current or future opportunities may not be as effective as anticipated and may have negative consequences.We have incurred,and may in the future incur,substantial costs in connection with restructuring plans.Although ~~these~~ **such** restructuring initiatives may be taken to improve our operating efficiency and to reallocate resources to align more closely with our evolving business model and current and future opportunities,they may not result in the benefits we anticipate.We incur substantial costs to implement restructuring plans,and our restructuring activities **,if any,** may subject us to reputational and litigation risks.Our past restructuring plans do not provide any assurance that we will realize anticipated cost savings or other benefits from any restructuring plans we **may** implement.In addition,restructuring plans may have other consequences,such as attrition beyond any planned reductions in workforce ~~,~~ **or** a negative effect on employee morale and productivity or our ability to attract highly skilled employees.Restructuring presents other **potential** significant ~~potential~~ risks such as the actual or perceived disruption of service or reduction in service standards to customers,loss of sales,the failure to preserve supplier relationships and diversion of management attention.In addition,as a result of ~~these~~ **any** restructuring actions **we may take** ,our ability to execute on product development,address key market opportunities or meet customer demand could be materially and adversely affected.Further,any anticipated benefits from ~~these~~ **any** restructuring initiatives **we may take** may be realized later than expected or not at all,and the ongoing costs of implementing these measures **,if any,** may be greater than anticipated.As a result,current or future restructuring plans may affect our revenue and other operating results ~~.We may be unable to generate the cash flow necessary to make anticipated capital~~ . Our large customers have substantial negotiating leverage, which may cause us to agree to terms and conditions that result in lower average selling prices and potentially increased cost of sales leading to lower gross margin, each of which would harm our results of operations. Many of our customers are large service providers and ICPs that have substantial purchasing power and leverage in negotiating contractual arrangements with us. In addition, customer consolidation in the past few years has created combined companies that are even larger and have greater negotiating leverage. Our customers have sought and may continue to seek advantageous pricing, payment and other commercial terms. This may further impact our profitability if we are unable to recover through price increases passed along to these customers additional costs we have incurred from inflationary pressures to the supply chain or shipping and freight. We have also occasionally agreed and may continue to agree to unfavorable commercial terms with these customers, including the potential of reducing the average selling price of our products, increasing cost of sales or agreeing to extended payment terms in response to these commercial requirements or competitive pricing pressures. Continued inflation could decrease the profitability of customer contracts, particularly those with extended payment terms, that are not indexed to inflation. If we are compelled to agree to disadvantageous terms and conditions, unable to comply with such terms and conditions, or **unable to** adapt our business model and operations to such terms and conditions, then our operating results will be negatively impacted. Our sales cycle can be long and unpredictable, which could result in an unexpected revenue shortfall in any given quarter. Our products can have a lengthy sales cycle, which can extend from six to twelve months and may take even longer for larger prospective customers. Our prospective customers conduct significant evaluation, testing, implementation and acceptance procedures before they purchase our products. We incur substantial sales and marketing expenses and expend significant management effort during this time, regardless of whether we make a sale. Supply chain disruptions have also at times lengthened, and may in the future lengthen, our sales cycle due to delays in the customer certification process for our products. Because our sales cycle is long, we are likely to recognize higher inflation- related costs before recognizing the benefits of any price increases that we implement for our products. Moreover, the costs associated with our sales cycle may increase faster than our ability to increase prices. In addition, changes in regulatory requirements or uncertainty associated with the regulatory environment could delay or impede investment in network infrastructures and adversely affect our business, financial condition and results of operations. Because the purchase of our equipment involves substantial cost, most of our customers wait to purchase our equipment until they are ready to deploy it in their network. As a result, it is difficult for us to accurately predict the timing of future purchases by our customers. In addition, product purchases are often subject to budget constraints, multiple approvals and unplanned administrative processing and other delays, including the need for the customer to obtain external financing. If sales expected from customers for a particular quarter are not realized in that quarter or at all, our revenue will be negatively impacted. **The impact of public health emergencies on our business and results of operations in the future remains uncertain and is dependent in part on infection, morbidity and disability rates, the emergence of new viruses, the continued effectiveness and availability of vaccinations, and broader global macroeconomic developments. During the COVID- 19 pandemic, we at times temporarily closed or substantially limited the presence of personnel in some of our offices, implemented travel restrictions and modified our participation in various industry events. The COVID- 19 pandemic also at times contributed to delays in certain operational processes, and it led to disruption and delays in our global supply chain and manufacturing operations, logistics operations and customer support operations, including shipping delays, higher transport costs, and certain limitations on our ability to access customer fulfillment and service sites. It also led to capacity issues, longer lead times, increased costs and shortages with certain component suppliers, including for semiconductors, impacting our operational processes and results of operations. If we experience pronounced disruptions in our operations or in our ability to service our customers, including due to impacts from public health emergencies, or if we face continued supply chain disruption or curtailed customer demand, these factors may materially adversely impact our business and results of operations. We could also face negative impacts on our liquidity and capital resources in the future due to the effects of public health emergencies, and their impacts on our customers, suppliers, third- party service providers and capital markets.** Any acquisitions or strategic transactions that we undertake could disrupt our business and harm our financial condition and results of operations. We have made strategic acquisitions of businesses, technologies and other assets in the past, including most recently the Acquisition. We may engage in acquisitions, divestitures or other strategic transactions in the future. In order to undertake certain of these transactions, we may use cash, issue equity that could dilute our current stockholders, or incur debt or assume indebtedness. If we are unable to achieve the anticipated efficiencies and strategic benefits of such transactions, it could adversely affect our business, financial condition and results of operations. In addition, the market price of our common stock could be adversely affected if investors and securities analysts react unfavorably to a strategic transaction or if the integration or the anticipated financial and strategic benefits of such transactions are not realized as rapidly as or to the extent anticipated by investors and securities analysts. Acquisitions, divestitures or other strategic transactions can also result in adverse tax consequences, warranty or product liability exposure related to acquired assets, additional stock- based compensation expense, and write- up of acquired inventory to fair value. Divestitures can also result in contractual, employment or intellectual property liability related to divested assets. In addition, we may record goodwill and other purchased intangible assets in connection with an acquisition and incur impairment charges in the future. If our actual results, or the plans and estimates used in future impairment analyses, are less favorable than the original estimates used to assess the recoverability of these assets, we could incur additional impairment charges. Acquisitions, divestitures or other strategic transactions also involve numerous risks that could disrupt our ongoing business and distract our management team, including: • problems integrating the acquired operations, technologies or products with our own; • challenges in divesting assets and intellectual property without negatively affecting our retained business; • diversion of management' s attention from our core business; • adverse effects on existing business relationships with suppliers and customers; • risks associated with entering new markets or exiting existing markets; and • loss of key employees. Our failure to adequately manage the risks associated with an acquisition, divestment or strategic transaction could have an adverse effect on our business, financial condition and results of operations. Actions that we are taking or may...... our debt or grow our business. We may not be able to generate sufficient cash flow from operations to make anticipated capital expenditures, service our debt or grow our business. Our ability to pay our expenses, service our debt and fund planned capital expenditures will depend on our future performance, which will be affected by general economic, competitive, legislative, political, regulatory ~~, public health issues~~ and other factors beyond our control, and our ability to continue to realize synergies and anticipated cost savings. If we are unable to generate sufficient cash flow from operations to service our debt or to make anticipated capital expenditures, we may be required to sell assets, reduce capital expenditures, borrow additional funds or evaluate alternatives for efficiently funding our capital expenditures and ongoing operations, including the issuance of equity, equity- linked and debt securities. **Unfavorable macroeconomic** ~~Inflation, which has continued in the U. S.~~ and ~~globally, can~~ **market conditions may** adversely affect **our industry** ~~us by increasing the costs of labor~~, ~~supplies and other costs of doing~~ business ~~, and price increases within our supply chain have negatively affected our gross margin. In an~~ **and financial** ~~inflationary environment, our ability to raise prices or add additional cost- recovery surcharges of a magnitude sufficient to match the rate of inflation, on a timely basis, may be constrained by customer resistance and competitive concerns, as well as industry- specific and other economic conditions, which would reduce our profit margins. Moreover, even if we seek to implement price increases in response to inflationary pressures, because of our long sales cycle, we may recognize increased costs as a result~~ **results** ~~of inflation before we are able to recognize the benefits of any such price increases. We have experienced increases in the prices of labor, supplies and other costs of doing business and continued inflationary pressures could continue to adversely impact our profitability~~. In the past, unfavorable macroeconomic and market conditions **, including recessionary environments,** have resulted in sustained periods of decreased demand for optical communications products and slowdowns in the telecommunications industry in which we operate. Such slowdowns may result in: • reduced **or delayed** demand for our products as a result of constraints on capital spending **by our customers or excess inventory held** by our customers; • increased price competition for our products, not only from our competitors, but also as a result of the utilization of inventoried or underutilized products by our customers or potential customers, which could put additional downward pressure on our near- term gross profits; • risk of excess or obsolete inventories; • our customers facing financial difficulties, including bankruptcy; • **delayed collections of accounts receivable amounts or payment defaults; •** excess **internal** manufacturing capacity and higher associated overhead costs as a percentage of revenue; and • more limited ability to accurately forecast our business **, operating capital needs** and future financial performance. ~~The COVID- 19 pandemic created significant uncertainty in global macroeconomic conditions and capital markets, credit markets, and, in particular, supply chains continue to experience high levels of disruption, volatility and uncertainty.~~ High inflation, ~~along with~~ **high interest rates, the recent collapse of several financial institutions, and** other signs of economic disruption **or recession** , ~~has~~ **have** also contributed to adverse global macroeconomic conditions. These conditions may also result in the tightening of credit markets, which could limit or delay our customers' ability to obtain necessary financing for their purchases of our products. Our customers may delay or cancel their purchases or increase the time they take to pay or default on their payment obligations due to a lack of liquidity in the capital markets, the continued uncertainty in the global economic environment or inflationary concerns, which could result in a higher level of bad debt expense and would negatively affect our business and operating results. In addition, currency fluctuations could negatively affect our international customers' ability or desire to purchase our products. A lack of liquidity and economic uncertainty may also adversely affect our suppliers or the terms on which we purchase products from these suppliers. These impacts could limit our ability to obtain components for our products from these suppliers and could adversely impact our supply chain or the delivery schedule to our customers. Suppliers could also require us to purchase more expensive components, or re- design our products, which could cause increases in the cost of our products and delays in the manufacturing and delivery of our products. Such events could harm our gross margin and harm our reputation and our customer relationships, either of which could harm our business and operating results **. Inflation may adversely affect us by increasing costs beyond what we can recover through price increases. Inflation, which has continued in the U. S. and globally, can adversely affect us by increasing the costs of labor, supplies and other costs of doing business, and price increases within our supply chain have negatively affected our gross margin. In an inflationary environment, our ability to raise prices or add additional cost- recovery surcharges of a magnitude sufficient to match the rate of inflation, on a timely basis, may be constrained by customer resistance and competitive concerns, as well as industry- specific and other economic conditions, which would reduce our profit margins. Moreover, even if we seek to implement price increases in response to inflationary pressures, because of our long sales cycle, we may recognize increased costs as a result of inflation before we are able to recognize the benefits of any such price increases. We have experienced increases in the prices of labor, supplies and other costs of doing business and continued inflationary pressures could continue to adversely impact our profitability** . If we need additional capital in the future, it may not be available to us on favorable terms, or at all. Our business requires significant capital. We have historically relied on outside debt or equity financing as well as cash flow from operations to fund our operations, capital expenditures and expansion. For example, in September 2018, we issued **our 2. 125 %** ~~convertible~~ **Convertible** ~~senior~~ **Senior** ~~notes~~ **Notes** due ~~September 1,~~ 2024 (the ~~“~~ **"** 2024 Notes ~~”~~ **"**) to pay the cost of the Capped Calls ~~, as discussed below~~ , to fund the cash portion of the purchase price of the Acquisition, and for general corporate purposes. In August 2019 and as amended thereafter, we entered into the

Prior Credit Agreement to provide additional working capital flexibility to manage our business. In addition, in March 2020, we issued **our 2. 5 %** ~~convertible~~ **Convertible** ~~senior~~ **Senior** ~~notes~~ **Notes** due ~~March 1,~~ 2027 (the “ 2027 Notes ~~”~~ **"**) to raise additional funds for general corporate purposes, including working capital to fund growth and potential strategic projects. On August 12, 2020, we entered into an Open Market Sales Agreement with Jefferies LLC (" Jefferies") under which we issued and sold through Jefferies, acting as agent or principal, shares of our common stock having an aggregate offering price of $ 96. 3 million, to raise funds for general corporate purposes, including working capital and capital expenditures. In June 2022, we terminated the Prior Credit Agreement and entered into the Loan Agreement to repay existing debt (including amounts outstanding under the Prior Credit Agreement) and for working capital and general corporate purposes, including to fund growth. In August 2022, we issued **our 3. 75 %** ~~convertible~~ **Convertible** ~~senior~~ **Senior** ~~notes~~ **Notes** due ~~August 1,~~ 2028 (the ~~“~~ **" Existing** 2028 Notes ~~”~~ **") to repurchase a portion of the 2024 Notes, for general corporate purposes, including working capital** and **to fund growth and potential strategic projects. In June 2023, we issued additional 3. 75 % Convertible Senior Notes due 2028 (the" Additional 2028 Notes," together with the Existing 2028 Notes, the" 2028 Notes," and the 2028 Notes** , together with the 2024 Notes and the 2027 Notes, the “ convertible senior notes ”) to repurchase a portion of the 2024 Notes, for general corporate purposes, including working capital and to fund growth and potential strategic projects. We may require additional capital from equity or equity- linked financing, debt financing or other financings in the future to fund our operations, respond to competitive pressures or strategic opportunities or to refinance our existing debt obligations. In the event that we require additional capital, we may not be able to secure timely additional financing, or restructure existing debt, on favorable terms, or at all, and may be affected by the impacts on capital markets of global economic uncertainty **, uncertainty in the financial and banking industry** and inflationary pressures. The terms of any additional financings or restructurings may place limits on our financial and operating flexibility **and we may not be able to obtain terms as favorable as the terms of our existing debt, including any debt being refinanced** . If we raise additional funds through further issuances of equity, convertible debt securities or other securities convertible into equity, our existing stockholders could suffer dilution in their percentage ownership of our company, and any new securities we issue could have rights, preferences and privileges senior to those of holders of our common stock. If we are unable to obtain adequate financing or financing on terms satisfactory to us, if and when we require it, our ability to grow or support our business and to respond to business challenges could be limited and our business will be harmed. Our Loan Agreement **and any other credit or similar agreements into which we may enter in the future may restrict our operations, particularly our ability to respond to changes or to take certain actions regarding our business. Our Loan Agreement** contains a number of restrictive covenants that ~~may~~ impose operating and financial restrictions on us and limit our ability to engage in acts that may be in our long- term interest, including restrictions on our ability to incur debt, create liens and encumbrances, engage in certain fundamental changes, dispose of assets, prepay certain indebtedness, make restricted payments, make investments, and engage in transactions with affiliates, in each case subject to limitations and exceptions set forth in the Loan Agreement. The Loan Agreement also contains a financial covenant that requires the Company to maintain a minimum fixed charge coverage ratio. The Loan Agreement also contains customary events of default, such as the failure to pay obligations when due, a material breach of representations and warranties or covenants, the entry of material judgments against certain of our subsidiaries, the initiation of bankruptcy or insolvency proceedings of certain of our subsidiaries, defaults on certain other indebtedness, a change of control, the failure of the guaranty of certain of our subsidiaries to be in effect or the failure of the security documents to create valid and perfected liens or the loan documents to be valid and enforceable, which could have a material adverse effect on our business, operations, and financial results. Upon an event of default, the lenders may, subject to customary cure rights, require the immediate payment of all amounts outstanding and foreclose on collateral, which could force us into bankruptcy or liquidation. In the event that our lenders accelerated the repayment of the borrowings, we may not have sufficient assets to repay that indebtedness. Any acceleration of amounts due under the Loan Agreement would likely have a material adverse effect on us **and may constitute a default under our convertible debt securities** . As a result of these restrictions, we may be limited in how we conduct business, unable to raise additional debt or equity financing to operate during general economic or business downturns, or unable to compete effectively or to take advantage of new business opportunities. In addition, we may enter into other credit agreements or other debt arrangements from time to time which contain similar or more extensive restrictive covenants and events of default, in which case we may face similar or additional limitations as a result of the terms of those credit agreements or other debt arrangements. Our debt obligations may adversely affect our ability to raise additional capital and will be a burden on our future cash resources, particularly if we elect to settle these obligations in cash upon conversion or upon maturity or required repurchase. As of December ~~31~~ **30** , ~~2022~~ **2023** , the outstanding aggregate principal amount of the 2024 Notes, the 2027 Notes and the 2028 Notes was $ ~~102~~ **18** . 7 million, $ 200. 0 million and $ ~~373~~ **473** . 8 million, respectively. The degree to which we are leveraged could have important consequences, including, but not limited to, the following: • our ability to obtain additional financing in the future for working capital, capital expenditures, acquisitions, litigation, general corporate or other purposes may be limited; and • a substantial portion of our future cash balance may be dedicated to the payment of the principal of our indebtedness as we have stated the intention to pay the principal amount of each series of convertible senior notes in cash upon conversion or when otherwise due, such that we would not have those funds available for use in our business. Our ability to meet our payment obligations under our debt instruments, including the convertible senior notes, depends on our future cash flow performance. This, to some extent, is subject to general economic, financial, competitive, legislative and regulatory factors, as well as other factors that may be beyond our control. There can be no assurance that our business will generate positive cash flow from operations, or that additional capital will be available to us, in an amount sufficient to enable us to meet our debt payment obligations and to fund other liquidity needs. If we are unable to generate sufficient cash flow to service our debt obligations, we may need to refinance or restructure our debt, sell assets, reduce or delay capital investments, or seek to raise additional capital. If we are unable to implement one or more of these alternatives, we may be unable to meet our debt payment obligations. As a result, we may be more vulnerable to economic downturns, less able to withstand competitive pressures and less flexible in responding to changing business and economic conditions. Our international sales and operations subject us to additional risks that may harm our operating results. Sales of our products into international markets continue to be an important part of our business. During **2023,** 2022 ~~,~~ **and** 2021 ~~and 2020~~, we derived approximately **38 %,** 45 % ~~,~~ **and** 53 ~~% and 54~~ %, respectively, of our revenue from customers outside of the ~~United States~~ **U. S** . We expect that significant management attention and financial resources will be required for our international activities over the foreseeable future as we continue to operate in international markets. In some countries, our success in selling our products and growing revenue will depend in part on our ability to form relationships with local partners. Our inability to identify appropriate partners or reach mutually satisfactory arrangements for international sales of our products could impact our ability to maintain or increase international market demand for our products. In addition, many of the companies we compete against internationally have greater name recognition and a more substantial sales and marketing presence. We have sales and support personnel in the Americas, EMEA (with offices in the Middle East) and APAC (including China). In addition, we have established development centers in Canada, China, Finland, Germany, India, Portugal and Sweden. There is no assurance that our reliance upon development resources in international locations will enable us to achieve meaningful cost reductions or greater resource efficiency. We are also aggressively pursuing opportunities with customers in additional geographies, including EMEA, APAC and Latin America. Our efforts to increase our sales and capture market share in international markets may ultimately be unsuccessful and may limit our growth and adversely impact our business, financial condition and results of operations. New or continuing disruptions of the global supply chain or the manufacture of our customer' s components caused by events outside of our control could impact our results of operations by impairing our ability to timely and efficiently deliver our products or provide installation and maintenance services to our customers. In addition, our operations in Russia have been impacted by sanctions and other trade controls imposed by the ~~United States~~ **U. S.** and other governments in response to Russia' s military operations in Ukraine which started in February 2022. The imposition of these sanctions and controls have prevented us from performing existing contracts. For the year ended December ~~31~~ **30** , ~~2022~~ **2023** , less than 1 % of our revenue was derived from customers ~~in Russia, and for the year ended December 25, 2021, approximately 1 % of our revenue was derived from customers based~~ in Russia. A de minimis percentage of our revenue is derived from Russian customers including channel partners and customers in other countries whose contracts with us may involve Russian entities. **The ongoing armed conflict between Israel and Hamas in the Gaza Strip may also broaden into a regional conflict that could impact our ability to maintain and expand our customer base in the Middle East.** Our international operations are subject to inherent risks, and our future results could be adversely affected by a variety of factors, many of which are outside of our control, including: • greater difficulty in collecting accounts receivable and longer collection periods; • difficulties of managing and staffing international offices, and the increased travel, infrastructure and legal compliance costs associated with ~~multiple~~ **such** international locations; • political, social and economic instability, including wars, terrorism, political unrest, boycotts, curtailment of trade and other business restrictions; • tariff and trade barriers and other regulatory requirements, contractual limitations, or customer specifications impacting our ability to sell or develop our products in certain foreign markets; • less effective protection of intellectual property than is afforded to us in the ~~United States~~ **U. S.** or other developed countries; • potentially adverse tax consequences; • natural disasters, acts of war or terrorism, and **public** health crises ~~, including the COVID- 19 pandemic~~ ; • changes to free trade agreements, trade protection measures, tariffs, export compliance, domestic preference procurement requirements, qualification to transact business and additional regulatory requirements, including changes related to policy and other changes made by the federal government in the ~~United States~~ **U. S.** , other national governments or multinational bodies; and • effects of changes in currency exchange rates, particularly relative increases in the exchange rate of the U. S. dollar compared to other currencies that could negatively affect our financial results and cash flows. The concentration of the storage and distribution of our inventory primarily in one location in southeastern Asia **also** increases the risks of our global operations. As a result, our operations are susceptible to local and regional **risks there** ~~factors in that area~~ , **including** ~~such as~~ accidents, system failures and weather conditions, natural disasters (including floods and earthquakes and related fires), **acts of war** and other unforeseen events and circumstances. Any significant interruption in the operations or availability of the storage and distribution facilities in which our inventory is held could lead to logistical and fulfillment issues or increased costs, which could have a material adverse effect on our results of operations, financial condition and cash flows. International customers may also require that we comply with certain testing or customization of our products to conform to local standards. The product development costs to test or customize our products could be extensive and a material expense for us. Our international operations are also subject to increasingly complex foreign and U. S. laws and regulations, including, but not limited to, anti- corruption laws, such as the U. S. Foreign Corrupt Practices Act of 1977, as amended (the" FCPA"), and the United Kingdom Bribery Act 2010, as amended (the " UK Bribery Act "), antitrust or competition laws, anti- money laundering laws, various trade controls, national security related regulations, and data privacy laws, among others. Violations of these laws and regulations could result in fines and penalties, criminal sanctions against us, our officers, or our employees, prohibitions on the conduct of our business and on our ability to offer our products and services in one or more countries, and could also materially affect our reputation, our international expansion efforts, our ability to attract and retain employees, our business, and our operating results. Although we have implemented policies, procedures and training designed to ensure compliance with these laws and regulations, there can be no complete assurance that any individual employee, contractor or agent will not violate our policies. Additionally, the costs of complying with these laws (including the costs of investigations, auditing and monitoring) could also adversely affect our current or future business. As we continue to expand our business globally, our success will depend, in large part, on our ability to effectively anticipate and manage these and other risks and expenses associated with our international operations. Our failure to manage any of these risks successfully could harm our international operations and reduce our international sales, adversely affecting our business, financial condition and results of operations. A portion of our sales and expenses stem from countries outside of the ~~United States~~ **U. S.** , and are in currencies other than U. S. dollars, and therefore subject to foreign currency fluctuation. Accordingly, fluctuations in foreign currency rates could have a material impact on our financial results in future periods. We have from time to time entered into foreign currency exchange forward contracts to reduce the impact of foreign currency fluctuations on certain non- functional currency account balances. Even if we have forward contracts in place, while they may reduce some of the impact of currency exchange rate movements on certain transactions, they would not cover all foreign- denominated transactions and therefore may not entirely eliminate the impact of fluctuations in exchange rates on our results of operations and financial condition. Our effective tax rate can be adversely affected by several factors, many of which are outside of our control, including: • changes in the valuation of our deferred tax assets and liabilities, and in deferred tax valuation allowances; • changes in the relative proportions of revenue and income before taxes in the various jurisdictions in which we operate that have differing statutory tax rates; • changing tax laws, regulations, rates and interpretations in multiple jurisdictions in which we operate; • changes to the financial accounting rules for income taxes; • the tax effects of acquisitions; and • the resolution of issues arising from tax audits. ~~The United States recently~~ **In August 2022, the U. S.** enacted the Inflation Reduction Act ~~of 2022~~ , which, among other changes, implements a 1 % excise tax on certain stock buybacks, **that applies** ~~which would generally apply~~ to repurchases of stock by U. S. corporations, **and which could** ~~including~~ **include** certain transactions **that we may undertake** with ~~the~~ **respect to our** Capped Calls. Many countries and organizations **,** such as the Organization for Economic Cooperation and Development **,** are actively considering changes to existing tax laws or have proposed or enacted new laws, including an agreement to implement a 15 % global minimum **corporate** tax, that could increase our tax obligations in countries where we do business or cause us to change the way we operate our business. ~~The Council of~~ **While it is uncertain if** the ~~European Union has~~ **U. S. will adopt the minimum tax directive, several countries in which we operate have** adopted ~~this initiative~~ **the minimum tax directive, and other countries are in the process of introducing legislation to implement the minimum tax directive. Although we currently do not anticipate any materially adverse impacts on our business** ~~for~~ **or results** ~~enactment by European Union member states by December 31, 2022, with implementation into the domestic laws~~ of **operations, we cannot provide any assurances that** ~~those~~ **these** ~~states by~~ **provisions will not have a materially adverse impact on our effective tax rate in the future years. We continue monitoring developments and evaluating the impacts** ~~the~~ **these** ~~end of 2023~~ **new rules may have on our tax rate** . Any **additional** changes in U. S. federal ~~,~~ **or** state or international tax laws or tax rulings could adversely affect our effective tax rate and our results of operations. Beginning January 1, 2022, the ~~Tax Cuts and~~ Jobs Act ~~of 2017~~ eliminated the right to deduct research and development expenditures for tax purposes in the period the expenses were incurred and instead requires all U. S. and foreign research and development expenditures to be amortized over five and ~~fifteen~~ **15** tax years, respectively. This provision may materially increase our effective tax rate and reduce our operating cash flows over time as we continue to utilize available net operating losses and tax credits **. Infinera continues to monitor and record the impact while waiting for final guidance from the IRS** . We may issue additional shares of our common stock in connection with conversions of the 2024 Notes, the 2027 Notes or the 2028 Notes, and thereby dilute our existing stockholders and potentially adversely affect the market price of our common stock. In the event that some or all of each series of convertible senior notes are converted and we elect to deliver shares of common stock to the extent permitted, the ownership interests of existing stockholders will be diluted, and any sales in the public market of any shares of our common stock issuable upon such conversion could adversely affect the prevailing market price of our common stock. In addition, the anticipated conversion of any series of convertible senior notes we have issued could depress the market price of our common stock. If a fundamental change **(as defined in the applicable indenture governing our convertible senior notes)** , such as an acquisition of our company, occurs prior to the maturity of the 2024 Notes, the 2027 Notes or the 2028 Notes **, as applicable** , holders of the applicable series of convertible senior notes will have the right, at their option, to require us to repurchase all or a portion of their convertible senior notes of such series. In addition, if such fundamental change also constitutes a make- whole fundamental change, the conversion rate for the applicable series of convertible senior notes may be increased upon conversion of the such series of convertible senior notes in connection with such make- whole fundamental change. Any increase in the conversion rate will be determined based on the date on which the make- whole fundamental change occurs or becomes effective and the price paid (or deemed paid) per share of our common stock in such transaction. Any such increase will be dilutive to our existing stockholders. Our obligation to repurchase any series of convertible senior notes or increase the conversion rate upon the occurrence of a make- whole fundamental change may, in certain circumstances, delay or prevent a takeover of us that might otherwise be beneficial to our stockholders. The Capped Calls may affect the value of the 2024 Notes and our common stock. In connection with the issuance of the 2024 Notes, we entered into capped call transactions (the" Capped Calls") with certain financial institutions who are the option counterparties. The Capped Calls are expected generally to reduce or offset the potential dilution upon conversion of the 2024 Notes or offset any cash payments we are required to make in excess of the principal amount of converted 2024 Notes, as the case may be, with such reduction or offset subject to a cap. From time to time, the option counterparties or their respective affiliates may modify their hedge positions by entering into or unwinding various derivatives with respect to our common stock or purchasing or selling our common stock or other securities of ours in secondary market transactions prior to the maturity of the 2024 Notes. This activity could also cause an increase or a decrease in the market price of our common stock. The option counterparties to the Capped Calls are financial institutions, and we will be subject to the risk that any or all of them might default under the Capped Calls. Our exposure to the credit risk of the counterparties will not be secured by any collateral. Past global economic conditions have resulted in the actual or perceived failure or financial difficulties of many financial institutions. If an option counterparty becomes subject to insolvency proceedings, we will become an unsecured creditor in those proceedings with a claim equal to our exposure at the time under the Capped Calls with such option counterparty. Our exposure will depend on many factors but, generally, an increase in our exposure will be correlated to an increase in the market price and in the volatility of our common stock. In addition, upon a default by an option counterparty, we may suffer adverse tax consequences and more dilution than we currently anticipate with respect to our common stock. We can provide no assurance as to the financial stability or viability of the option counterparties. We depend on our ability to protect our proprietary technology. We rely on a combination of methods to protect our intellectual property, including limiting access to certain information, and utilizing trade secret, patent, copyright and trademark laws and confidentiality agreements with employees and third parties, all of which offer only limited protection. The steps we have taken to protect our proprietary rights may be inadequate to preclude misappropriation or unauthorized disclosure of our proprietary information or infringement of our intellectual property rights, and our ability to police such misappropriation, unauthorized disclosure or infringement is uncertain, particularly in countries outside of the ~~United States~~ **U. S** . This is likely to become an increasingly important issue ~~if~~ **as** we expand our operations **, product offerings** and product development into countries that provide a lower level of intellectual property protection. We do not know whether any of our pending patent applications will result in the issuance of patents or whether the examination process will require us to narrow our claims, and even if patents are issued, they may be contested, circumvented or invalidated. Moreover, the rights granted under any issued patents may not provide us with a competitive advantage, and, as with any technology, competitors may be able to develop similar or superior technologies to our own now or in the future. Protecting against the unauthorized use of our products, trademarks and other proprietary rights is expensive, difficult, time consuming and, in some cases, impossible. Litigation may be necessary in the future to enforce or defend our intellectual property rights, to protect our trade secrets or to determine the validity or scope of the proprietary rights of others. Such litigation could result in substantial cost and diversion of management resources, either of which could harm our business, financial condition and results of operations. Furthermore, many of our current and potential competitors have the ability to dedicate substantially greater resources to enforce their intellectual property rights than we do. Accordingly, despite our efforts, we may not be able to prevent third parties from infringing upon or misappropriating our intellectual property. Claims by others that we infringe on their intellectual property rights could harm our business. Our industry is characterized by the existence of a large number of patents and frequent claims and related litigation regarding patent and other intellectual property rights. In particular, many leading companies in the optical transport networking industry, including our competitors, have extensive patent portfolios with respect to optical transport networking technology. In addition, non- practicing patent holding companies seek to monetize patents they have purchased or otherwise obtained. We expect that infringement claims may increase as the number of products and competitors in our market increases and overlaps in technology implementation occur. From time to time, third parties may assert exclusive patent, copyright, trademark and other intellectual property rights to technologies and related standards that are important to our business or seek to invalidate the proprietary rights that we hold. Competitors or other third parties have asserted, and may continue to assert, claims or initiate litigation or other proceedings against us or our manufacturers, suppliers or customers alleging infringement of their proprietary rights, or seeking to invalidate our proprietary rights, with respect to our products and technology. In addition, in the past we have had certain patent licenses with third parties that have not been renewed, and if we cannot successfully renew these licenses, we could face claims of infringement. In the event that we are unsuccessful in defending against any such claims, or any resulting lawsuits or proceedings, we could incur liability for damages or have valuable proprietary rights invalidated. For additional information regarding certain of the legal proceedings in which we are involved, see **the information set forth** ~~Part II, Item 8, Note 13~~ under the heading " Legal Matters ~~.~~" **in Note 12, Commitments and Contingencies, in Part II, Item 8.** Any claim of infringement from a third party, even one without merit, could cause us to incur substantial costs defending against the claim, and could distract our management from running our business. Furthermore, a party making such a claim, if successful, could secure a judgment that requires us to pay substantial damages or could include an injunction or other court order that could prevent us from offering our products. In addition, we might be required to seek a license for the use of such intellectual property, which may not be available on commercially reasonable terms or at all. Alternatively, we may be required to develop non- infringing technology, which would require significant effort and expense and may ultimately not be successful. Any of these events could harm our business, financial condition and results of operations. Competitors and other third parties have and may continue to assert infringement claims against our customers and sales partners. Any of these claims may require us to initiate or defend potentially protracted and costly litigation on their behalf, regardless of the merits of these claims, because we generally indemnify our customers and sales partners from claims of infringement of proprietary rights of third parties. If any of these claims succeed, we may be forced to pay damages on behalf of our customers or sales partners, which could have an adverse effect on our business, financial condition and results of operations. We also incorporate free and open source licensed software into our products. Although we monitor our use of such open source software closely, the terms of many open source licenses have not been interpreted by U. S. courts, and there is a risk that such licenses could be construed in a manner that could impose unanticipated conditions or restrictions on our ability to commercialize our products. In addition, non- compliance with open source software license terms and conditions could subject us to potential liability, including intellectual property infringement or contract claims. In such events, we may be required to seek licenses from third parties in order to continue offering our products, to re- engineer our products or to discontinue the sale of our products in the event re- engineering cannot be accomplished in a timely manner, any of which could adversely affect our business, financial condition and results of operations. **Security incidents, such as data breaches and cyber- attacks, could compromise our intellectual property and proprietary or confidential information and cause significant damage to our business and reputation.** In the ordinary course of our business, we maintain sensitive data on our networks and systems, including data related to our intellectual property and data related to our business, customers and business partners, which may be considered proprietary or confidential information. This sensitive data includes certain personal information and other data relating to our employees and others. We also utilize third- party service providers to host, transmit, or otherwise process data in connection with our business activities, including our supply chain processes, operations, and communications. Companies, especially in the technology industry, have been increasingly subject to a wide variety of security incidents, cyber- attacks, malicious activity, including ransomware, malware and viruses, and other attempts to gain unauthorized access and disrupt systems and the confidentiality, security, and integrity of information, and we and our third- party service providers and suppliers have faced and may continue to face security threats and attacks from a variety of sources. **Geopolitical tensions or conflicts have in the past led to, and may in the future lead to, increased risk of cybersecurity attacks. Moreover, advancements in technology, such as artificial intelligence and machine learning, are changing and may continue to change the way companies are subjected to attempts to gain unauthorized access and disrupt systems, thereby increasing the risks of security threats and attacks.** In accordance with our flexible approach to work arrangements, many of our employees are **also** working from home and accessing our corporate network via remote devices, which may be less secure than those used in our offices and thus could increase the potential for such events to occur. While the secure maintenance of this information and the security of the systems used in our business are critical to our business and reputation, our network and storage applications, and those systems and other business applications maintained by our third-party providers, may be subject to unauthorized access by hackers or breached or otherwise compromised due to operator error, malfeasance or other system disruptions. It may be difficult to anticipate or immediately detect such security incidents or breaches and to prevent or mitigate damage caused as a result. Accordingly, a data breach, security incident, cyber- attack, attack using ransomware or other malware, or any other unauthorized access to systems used in our business or unauthorized acquisition, disclosure, or other processing of our information or other information that we or our third- party vendors maintain or otherwise process could compromise our intellectual property, disrupt our operations, or result in loss of or unauthorized access to or acquisition, disclosure, modification, misuse, corruption, unavailability, or destruction of proprietary or confidential information. While we work to safeguard our internal networks and systems and validate the security of our third- party suppliers and providers to mitigate these potential risks, including through information security policies and employee awareness and training, there is no assurance that such actions will be sufficient to prevent cyber- attacks or security breaches or incidents, and we cannot guarantee that our systems and networks or our third- party service providers' systems and networks have not been breached or that they or any components of our supply chain do not contain exploitable defects or bugs, including defects or bugs that could result in a breach of or disruption to our systems and networks or the systems and networks of third parties that support our operations. We and third- party service providers also may face difficulties or delays in identifying or responding to security breaches and other security- related incidents. We have been subjected in the past to a range of **immaterial** incidents ~~including~~ **resulting from, for example,** phishing, emails purporting to come from an executive or vendor seeking payment requests, malware and communications from look- alike corporate domains ~~. For example, in 2021, we experienced a phishing attack that resulted in an immaterial loss~~ . While they have not had a material effect on our business or our network security to date, security breaches or incidents involving access to or improper use of our systems, networks or products, or those of third- party service providers, could compromise confidential or otherwise protected information, result in unauthorized acquisition, disclosure, modification, misuse, corruption, unavailability, or destruction of data, cause payments to be diverted to fraudulent accounts, or otherwise disrupt our operations. Security breaches or incidents, or any reports or perceptions that they have occurred, could cause us to incur significant costs and expenses to remediate and otherwise respond to any actual or suspected breach or incident, subject us to regulatory actions and investigations, disrupt key business operations, result in claims, demands, and liability, and divert attention of management and key information technology resources, any of which could cause significant harm to our business and reputation. Even the perception of inadequate security may damage our reputation and negatively impact our business. Further, we could be required to expend significant capital and other resources to address any security incident or breach and to attempt to prevent future security incidents and breaches. Although we maintain insurance coverage that may cover certain liabilities in connection with some security breaches and other security incidents, we cannot be certain our insurance coverage will be adequate for liabilities actually incurred, including any consequential damages that may arise from such security incidents, that insurance will continue to be available to us on commercially reasonable terms (if at all) or that any insurer will not deny coverage as to any future claim. The successful assertion of one or more large claims against us that exceed available insurance coverage, the occurrence of changes in our insurance policies, including premium increases or the imposition of large deductible or co- insurance requirements, or denials of coverage could have a material adverse effect on our business, including our financial condition, results of operations and reputation. We **have identified material weaknesses in our internal control over financial reporting. If we** are ~~required~~ **unable** to **remediate the identified material weaknesses, or if we experience additional material weaknesses or deficiencies in the future or if we otherwise fail to maintain an effective system of internal controls, our ability to produce timely and accurate financial statements or** comply with ~~Section 404~~ **applicable regulations could be impaired. We are subject to the reporting requirements** of **the Exchange Act,** the Sarbanes- Oxley Act of 2002 (" ~~SOX~~ **Sarbanes- Oxley Act** ") ~~.~~ **and the rules and regulations of** The ~~provisions~~ **Nasdaq Stock Market LLC. We expect that the requirements** of ~~SOX~~ **these rules and regulations will continue to increase our legal, accounting and financial compliance costs, make some activities more difficult, time- consuming and costly, and place significant strain on our personnel, systems and resources. The Sarbanes- Oxley Act** ~~require~~ **requires** , among other things, that we **maintain effective disclosure controls and procedures and internal control over financial reporting. We continue to develop and refine our disclosure controls, internal control over financial reporting and other procedures that are designed to ensure that information required to be disclosed by us in the reports that we will file with the SEC, is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms, and that information required to be disclosed in reports under the Exchange Act is accumulated and communicated to our principal executive and financial officers. As described under the heading" Controls and Procedures" in Part II, Item 9A of this Annual Report on Form 10- K, we identified control deficiencies within the revenue portion of our quote to cash cycle (revenue cycle) and inventory cycle, and with respect to these, our internal resources, expertise and policies required to maintain an effective control environment, that, individually or in the aggregate, constitute material weaknesses in our internal control over financial reporting, resulting in the determination that our disclosure controls and procedures were not effective as of December 30, 2023. 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 a company' s annual or interim financial statements will not be prevented or detected on a timely basis. In particular, we determined that (i) within the revenue cycle, controls over the annual establishment of the stand- alone selling prices (" SSPs ") for our performance obligations were not designed to include an adequate review and evaluation of whether the methodology used to develop and establish SSPs, including related financial statement disclosures, was in conformity with ASC 606, Revenue from Contracts with Customers, (ii) within the inventory cycle, controls over judgements used in the estimation of reserves for excess and obsolete inventory were not designed and operating effectively to support such judgements, (iii) controls over the application of our policy for capitalizing variances from standard costs as part of the cost of inventory, did not operate effectively and (iv) as related to our revenue and inventory cycles, certain key controls were not sufficiently designed to assess the completeness and accuracy of Information Produced by the Entity (" IPE"). These material weaknesses indicate that we had insufficient personnel with an appropriate level of technical accounting knowledge, experience, and training in the application of GAAP commensurate with the complexity of our business and our financial accounting and reporting requirements, which impacted our ability to adequately design, implement and monitor financial reporting controls related to our revenue cycle and inventory cycle that identify and mitigate risks of material misstatements in our financial statements. In response to the identified material weaknesses, management has implemented or plans to implement the remediation measures described under the heading" Controls and Procedures" in Part II, Item 9A of this Annual Report on Form 10- K. While management believes these remediation measures will remediate the identified material weaknesses and strengthen our overall internal control over financial reporting, the identified material weaknesses will not be considered remediated until the applicable remediated controls operate for a sufficient period of time and management has concluded, through testing, that these controls are operating effectively. As management continues to evaluate and work to enhance our internal control over financial reporting, management may take additional measures to address control deficiencies or we may modify some of the remediation measures. Despite these efforts, we may nevertheless be unsuccessful in remediating the identified material weaknesses. Further, additional weaknesses in our internal control over financial reporting or disclosure controls and procedures may be discovered in the future. Any failure to develop or maintain effective controls, or any difficulties encountered in their implementation or improvement, could harm our operating results or cause us to fail to meet our reporting obligations and may result in a restatement of our financial statements for prior periods. For example, we were unable to file this Annual Report on Form 10- K by the initial deadline of February 28, 2024, due to the reasons described in the Notification of Late Filing on Form 12b- 25, filed with the SEC on February 29, 2024. Our failure to file periodic and certain current reports with the SEC in a timely manner could impact our operations. Any failure to implement and maintain effective internal controls also could adversely affect the results of periodic management evaluations and annual independent registered public accounting firm attestation reports regarding the effectiveness of our internal control over financial reporting ~~and~~ that we are required to include in our periodic reports we will file with the SEC under Section 404 of the Sarbanes- Oxley Act. Ineffective disclosure controls and procedures ~~.~~ and internal control over financial ~~Preparing~~ - reporting could also cause investors to lose confidence in our reported financial and other information, which would likely have a negative effect on the market price of our securities and could adversely impact our business. In order to restore, maintain and improve the effectiveness of our disclosure controls and procedures and internal control over financial reporting to comply with the SEC rules that implement Sections 302 and 404 of the Sarbanes- Oxley Act, we have expended and anticipate that we will continue to expend significant resources and undertake various actions, implementing a remediation plan, incurring accounting- related costs and implementing new internal controls and procedures, and providing significant management oversight. As part of our remediation plan, we plan to review and enhance our personnel with the appropriate level of technical accounting knowledge, experience, and training in the application of GAAP commensurate with the complexity of our business and our financial accounting and reporting requirements, particularly in areas related to our revenue and inventory cycles. Any failure to maintain the adequacy of our internal controls, ~~our~~ - or consequent inability to produce accurate financial statements ~~involves~~ on a timely basis ~~number of complex processes~~ , could increase ~~many of which are done manually and are dependent upon individual data input or~~ our operating ~~review. These processes include, but are not limited to, calculating revenue, deferred revenue and inventory~~ costs ~~. While we continue to automate our processes~~ and could materially impair ~~put in place controls to reduce the likelihood for errors, we expect that for the foreseeable future many of~~ our ability ~~processes will remain manually intensive and thus subject~~ to ~~human error~~ operate our business and could have a material and adverse effect on our operating results and could cause a decline in the price of our securities . ~~If~~ In addition, if we are unable to continue ~~implement effective key operational controls around financial processes and successfully manage and monitor manual processes, we may fail~~ to ~~prevent~~ meet these requirements, we may not be able to maintain ~~or~~ our listing on ~~detect material misstatements in our financial statements, in which case investors may lose confidence in~~ the Nasdaq Global Select ~~accuracy and completeness of our financial reports and the market~~ Market ~~price of our securities may decline~~ . We are subject to various governmental export control, trade sanctions, and import laws and regulations that could impair our ability to compete in international markets or subject us to liability if we violate these controls. In some cases, our products are subject to U. S. and foreign export control laws and regulations that may limit where and to whom we are permitted to sell our products, including the Export Administration Regulations administered by the U. S. Department of Commerce, and our activities may be subject to trade and economic sanctions, including those administered by the ~~United States~~ U. S. Department of the Treasury' s Office of Foreign Assets Control (collectively, " Trade Controls "). As such, a license may be required to export or re- export our products, or provide related services, to certain countries and end- users, and for certain end- uses. Further, our products incorporating encryption functionality may be subject to special controls applying to encryption items or certain reporting requirements. We have procedures in place designed to ensure our compliance with Trade Controls, with **respect to** which failure to comply could subject us to both civil and criminal penalties, including substantial fines, possible incarceration of responsible individuals for willful violations, possible loss of our export or import privileges, or reputational harm. Further, the process for obtaining necessary licenses may be time- consuming or unsuccessful, potentially causing delays in sales or losses of sales opportunities. Trade Controls are complex and dynamic regimes, and monitoring and ensuring compliance can be challenging, particularly given that our products are widely distributed throughout the world. Although we have no knowledge that our activities have resulted in material violations of Trade Controls, any failure by us or our partners to comply with applicable laws and regulations would have negative consequences for us, including reputational harm, government investigations ~~,~~ and penalties. In addition, various countries regulate the import of certain technologies and have enacted laws that could limit our ability to distribute our products and certain product features or could limit our customers' ability to implement our products in those countries. Changes in our products or changes in U. S. and foreign import and export regulations may create delays in the introduction of our products in international markets, prevent our customers with international operations from deploying our products throughout their global systems or, in some cases, prevent the import and export of our products to certain countries altogether. For example, the ~~United States~~ **U. S.** has imposed tariffs on a large variety of products originating from China, including some on components that are supplied to us from China. Depending upon the duration and implementation of these and future tariffs, as well as our ability to mitigate their impact, these tariffs could materially affect our business, including in the form of increased cost of goods sold, increased pricing for customers ~~,~~ and reduced sales. Additionally, the U. S. government has ~~levied~~ **continued to expand** controls affecting the ability to send certain products and technology related to semiconductors, semiconductor manufacturing and supercomputing to China without an export license and adding additional entities to restricted party lists. It remains unclear what additional actions, if any, will be taken by the governments of the ~~United States~~ **U. S.** or China with respect to such trade and tariff matters. Any change in import and export regulations or related legislation, shift in approach to the enforcement or scope of existing regulations, or change in the countries, persons or technologies impacted by such regulations, could result in decreased use of our products by, or in our decreased ability to export or sell our products to, existing or potential customers with international operations. Failure to comply with these and similar laws on a timely basis, or at all, or any limitation on our ability to develop, export or sell our products would adversely affect our business, financial condition and results of operations. We are subject to complex U. S. and foreign environmental rules and regulations or other social initiatives that impact how and where we manufacture our products. In particular, our manufacturing operations use substances that are regulated by various federal, state, local, foreign and international laws and regulations governing health, safety and the environment, including U. S. Environmental Protection Agency regulations and WEEE, RoHS and REACH regulations adopted by the E. U. From time to time, the E. U. restricts or considers restricting certain substances under these directives. For example, InP has been considered for restriction under RoHS. Any restriction of InP or any other substance integral to our systems could materially adversely affect our business, financial condition and operating results. In addition, if we experience a problem complying with these laws and regulations, it could cause an interruption or delay in our manufacturing operations or it could cause us to incur liabilities or costs related to health, safety or environmental remediation or compliance. We could also be subject to liability if we do not handle these substances in compliance with safety standards for handling, storage and transportation and applicable laws and regulations. If we experience a problem or fail to comply with such safety standards or laws and regulations, our business, financial condition and operating results may be harmed. There has been an increased focus on environmental, social and governance (~~"~~ **“** ESG ~~"~~ **”**) matters that affect companies globally, including by the SEC **, the E. U. and certain state governments** . A number of ~~our~~ customers have adopted, or may adopt, procurement policies that include **ESG** ~~environmental or social responsibility~~ provisions or requirements that ~~their~~ **may impose additional burdens and costs on us as** suppliers ~~should comply with, or they may seek to include such provisions or requirements in their procurement terms and conditions~~ . An increasing number of investors are also requiring companies to disclose corporate ESG policies, practices **, goals** and metrics. In addition, various ~~jurisdictions~~ **governmental authorities** are developing ~~climate change~~ **ESG and disclosure** - ~~based~~ **related** laws or regulations that could cause us to incur ~~additional~~ **significant compliance costs and other** direct **and** ~~costs for compliance, as well as~~ indirect costs ~~resulting from our customers, suppliers, or both, incurring additional compliance costs that are passed on to us~~ . ~~These legal~~ **Any disclosed goals** and **aspirations related to** ~~regulatory requirements, as well as investor expectations, on corporate~~ ESG ~~responsibility practices and disclosure,~~ are subject to **assumptions that could** change **over time** , ~~can~~ **may evolve as the Company and global ESG practices change, and may not** be ~~unpredictable~~ **achieved. In addition** , **ESG- related standards** and **regulations are continuing to evolve and** may **not** be ~~difficult and expensive for us~~ **adequately harmonized. Our efforts** to ~~comply~~ **abide by these regulations, to report against these standards and to accomplish our ESG- related goals and aspirations present operational, reputational, financial, audit, legal and other risks. Our processes and controls may not always align** with **evolving standards** , **laws and regulations** ~~given the complexity of our supply chain. If we are unable to comply with~~ , ~~or~~ **our interpretation thereof** ~~are unable to cause our suppliers or contract manufacturers to comply with such policies or provisions, or meet the requirements of our customers and investors, a customer~~ may **differ** ~~stop purchasing products~~ from ~~us or~~ **governmental authorities** ~~an~~ **and** ~~investor may sell their~~ - **other parties** ~~shares,~~ and **the regulations and standards** may **continue to evolve** ~~take legal action against us~~ , **any of** which could ~~harm~~ **result in significant revisions to our goals, reported progress toward those goals,** ~~our~~ - **or other ESG information we disclose. In addition, any failure or perceived failure to pursue or fulfill previously stated goals and aspirations may result in** ~~reputation~~ **reputational damage and loss of business** , ~~revenue~~ **and could expose us to government enforcement actions, private litigation or other adverse consequences, and may adversely affect our business** and results of operations. We are subject to global laws and regulations governing privacy, data protection, and cybersecurity that could adversely affect our business or subject us to liability. Data privacy, data protection, and cybersecurity are areas of increasing focus for our customers, governmental regulators and privacy advocates, and many jurisdictions, including the E. U., the ~~United States~~ **U. S.** , China and other regions, are evaluating or have implemented laws and regulations relating to cybersecurity, privacy and data protection, which can affect the market and requirements for networking and communications equipment. For example, the General Data Protection Regulation (" GDPR ") in effect in the E. U., and similar regulatory standards in effect in the United Kingdom **(" UK")** , the Personal Information Protection Law (" PIPL") in China, the California Consumer Privacy Act (" CCPA ") and the California Privacy Rights Act (" CPRA "), other enacted or proposed legislation in the ~~United~~ **U. S., including comprehensive privacy legislation similar to the CCPA proposed, and in certain cases enacted, in numerous** ~~States~~ **states** , and enacted or proposed legislation in other jurisdictions **,** have created new compliance obligations with respect to data processing, privacy, data protection, and cybersecurity. The laws, rules, regulations, standards and other actual and asserted obligations relating to privacy, data protection and cybersecurity to which we may be subject, or that otherwise apply to our business, are constantly evolving, and we expect that there will continue to be new proposed laws, regulations and industry standards concerning these matters in the ~~United States~~ **U. S.** , the E. U. and other jurisdictions. We cannot fully predict the impact of the GDPR, the PIPL, the CCPA, the CPRA or other laws or regulations, including those that may be modified or enacted in the future, or new or evolving industry standards or actual or asserted obligations, relating to cybersecurity, privacy, or data protection or processing on our business or operations. These laws, regulations, and standards have required us to modify our practices and policies relating to privacy, data protection, cybersecurity, and data processing, and to incur substantial costs and expenses in an effort to comply, and we expect to continue to incur such costs and expenses in the future and may find it necessary or appropriate to further modify our relevant practices and policies. Any actual or perceived failure by us or our customers, partners or vendors to comply with laws, regulations, or other actual or asserted obligations to which we are or are alleged to be subject relating to cybersecurity, privacy or data protection could result in claims, litigation, and regulatory investigations and other proceedings, as well as damage to our reputation. These could result in substantial costs, diversion of resources, fines, penalties, and other damages, and harm to our customer relationships, our market position, and our ability to attract new customers. Any of these could harm our business, financial condition and results of operations. A portion of our revenue is generated by sales to government entities, which are subject to a number of uncertainties, challenges, and risks. We currently sell many of our solutions to various government entities, and we may in the future increase sales to government entities. Sales to government entities are subject to a number of risks, including risks related to a highly competitive, expensive, and time **-** consuming sales process, which often requires significant upfront time and expense without any assurance that we will complete a sale **. Additionally, the sales process may be delayed by a shutdown of the U. S. federal government** . If we are successfully awarded a government contract, such award may be subject to appeals, disputes, or litigation, including, but not limited to, bid protests by unsuccessful bidders. Government demand and payment for our solutions may be impacted by public sector budgetary cycles and funding authorizations, with funding reductions or delays adversely affecting public sector demand for our solutions. Government entities may also have statutory, contractual, or other legal rights to terminate contracts for convenience or due to a default. For purchases by the U. S. federal government, the government may require certain products to be made in, or be products of, the ~~United States~~ **U. S.** or other high- cost manufacturing locations, and all of our products may not be made in or products of jurisdictions that meet government requirements, and as a result, our business and results of operations may suffer. Contracts with government entities may also include preferential pricing terms, including, but not limited to, " most favored customer " pricing. Additionally, we may be required to obtain special certifications to sell some or all of our solutions to government or quasi- government entities. Such certification requirements for our solutions may change, thereby restricting our ability to sell into the federal government sector until we have attained the revised certification. If our products and subscriptions are late in achieving or fail to achieve compliance with these certifications and standards, or our competitors achieve compliance with these certifications and standards before us, we may be disqualified from selling our products to such governmental entities, or be at a competitive disadvantage, which would harm our business, financial condition and results of operations. There are no assurances that we will find the terms for obtaining such certifications to be acceptable or that we will be successful in obtaining or maintaining the certifications. As a government contractor or subcontractor, we must comply with laws, regulations, and contractual provisions relating to the formation, administration, and performance of government contracts and inclusion on government contract vehicles, which affect how we and our partners do business with government agencies. As a result of actual or perceived noncompliance with government contracting laws, regulations, or contractual provisions, we may be subject to non- ordinary course audits and internal investigations which may prove costly to our business financially, divert management time, or limit our ability to continue selling our products and services to our government customers. These laws and regulations may impose other added costs on our business, and failure to comply with these or other applicable regulations and requirements, including non- compliance in the past, could lead to claims for damages from our channel partners, downward contract price adjustments or refund obligations, civil or criminal penalties, termination of contracts or suspension or debarment from government contracting for a period of time with government agencies. Any such damages, penalties, disruption, or limitation in our ability to do business with a government would adversely impact, and could have a material adverse effect on, our business, financial condition, results of operations, reputation and growth prospects. Our business could be adversely affected if our employees cannot obtain and maintain required security clearances or we cannot maintain a required facility security clearance, or we do not comply with legal and regulatory obligations regarding the safeguarding of classified information. Our U. S. government contract revenue includes income derived from contracts that require our employees to maintain various levels of security clearances and may require us to maintain a facility security clearance, to comply with Department of Defense (" DoD ") requirements. The DoD has strict security clearance requirements for personnel who perform work in support of classified programs. In general, access to classified information, technology, facilities, or programs are subject to additional contract oversight and potential liability. In the event of a security incident involving classified information, technology, facilities, programs, or personnel holding clearances, we may be subject to legal, financial, operational

~~,~~ and reputational harm. We are limited in our ability to provide specific information about these classified programs, their risks, or any disputes or claims relating to such programs. As a result, investors have less insight into our classified programs than our other businesses and therefore less ability to fully evaluate the risks related to our classified business or our business overall. Obtaining and maintaining security clearances for employees involves a lengthy process, and it is difficult to identify, recruit, and retain employees who already hold security clearances. If our employees are unable to obtain security clearances in a timely manner, or at all, or if our employees who hold security clearances are unable to maintain their clearances or terminate employment with us, then a customer requiring classified work could terminate an existing contract or decide not to renew the contract upon its expiration. To the extent we are not able to obtain or maintain a facility security clearance, we may not be able to bid on or win new classified contracts, and existing contracts requiring a facility security clearance could be terminated. Failure to comply with anti- bribery, anti- corruption, anti- money laundering laws, and similar laws, could subject us to penalties and other adverse consequences. We are subject to the FCPA, the U. S. domestic bribery statute contained in 18 U. S. C. § 201, the U. S. Travel Act, the UK Bribery Act, and possibly other anti- bribery and anti- money laundering laws in the ~~United States~~ **U. S.** and in countries outside of the ~~United States~~ **U. S.** in which we conduct our activities. Anti- corruption and anti- bribery laws have been enforced aggressively and are interpreted broadly to generally prohibit companies, their employees, agents, representatives, business partners, and third- party intermediaries from authorizing, offering, or providing, directly or indirectly, improper payments or benefits to recipients in the public or private sector. We sometimes leverage third parties to sell our products and conduct our business abroad. We or our employees, agents, representatives, business partners or third- party intermediaries may have direct or indirect interactions with officials and employees of government agencies or state- owned or affiliated entities and may be held liable for the corrupt or other illegal activities of these employees, agents, representatives, business partners or third- party intermediaries even if we do not explicitly authorize such activities. We cannot assure you that all of our employees and agents will refrain from taking actions in violation of applicable law for which we may be ultimately held responsible. As we increase our international sales and business, our risks under these laws may increase. These laws also require that we keep accurate books and records and maintain internal controls and compliance procedures designed to prevent any such actions. While we have policies and procedures to address compliance with such laws, we cannot assure you that none of our employees, agents, representatives, business partners or third- party intermediaries will take actions in violation of our policies and applicable law, for which we may be ultimately held responsible. Any allegations or violation of the FCPA or other applicable anti- bribery, anti- corruption **or** ~~laws, and~~ anti- money laundering laws **,** could result in whistleblower complaints, sanctions, settlements, prosecution, enforcement actions, fines, damages, adverse media coverage, investigations, loss of export privileges, severe criminal or civil sanctions, or suspension or debarment from U. S. government contracts, all of which may have an adverse effect on our reputation, business, results of operations, and prospects. Responding to any investigation or action will likely result in a materially significant diversion of management' s attention and resources and significant defense costs and other professional fees. The trading price of our common stock has been volatile and may be volatile in the future. The trading prices of our common stock and the securities of other technology companies have been and may continue to be highly volatile. Factors affecting the trading price of our common stock include: • **market conditions in our industry, the industries of our customers and the economy as a whole, including inventory adjustments, supply chain disruptions, global trade tariffs, and fluctuations in currency exchange rates, interest rates or inflation rates; •** variations in our operating results; • announcements of technological innovations, new services ~~or~~ **,** service **or manufacturing** enhancements **or government funding opportunities** , strategic alliances or agreements by us or by our competitors; • the gain or loss of customers; • recruitment or departure of key personnel; • changes in the estimates of our future operating results or external ~~guidance~~ **outlook** on those results or changes in recommendations or business expectations by any securities analysts that elect to follow our common stock; • mergers and acquisitions by us, by our competitors or by our customers or suppliers; • ~~market conditions in our industry, the industries of our customers and the economy as a whole, including global trade tariffs, supply chain disruptions, and fluctuations in currency exchange rates, interest rates or inflation rates; •~~ social, geopolitical, environmental or health factors, including pandemics or ~~widespread~~ **other public** health **emergencies where we operate** ~~epidemics such as the COVID-19 pandemic~~ ; and • adoption or modification of regulations, policies, procedures or programs applicable to our business. An economic downturn, negative financial news, continued inflation, high interest rates, declines in income or asset values, market conditions, changes to fuel and other energy costs, and other economic factors, may lead to market volatility and associated uncertainty. In addition, if the market for technology stocks or the broader stock market experiences a loss of investor confidence, the trading price of our common stock could decline for reasons unrelated to our business, financial condition or results of operations. Each of these factors, among others, could harm the value of ~~your~~ **an** investment in our common stock. Some companies that have had volatile market prices for their securities have had securities class action lawsuits filed against them. If a suit were filed against us, regardless of its merits or outcome, it could result in substantial costs and divert management' s attention and resources. We have sold, and ~~plan~~ **may** in the future ~~to~~ sell, shares of our common stock in underwritten offerings and have established, and may in the future establish, " at- the- market " offering programs pursuant to which we may offer and sell shares of our common stock. Sales of securities have resulted and will continue to result in dilution of our existing stockholders, and such sales could cause our stock price to fall. In addition, if our existing stockholders sell, or indicate an intent to sell, a large number of shares of our common stock in the public market, it could cause our stock price to fall. We may also issue shares of common stock or securities convertible into our common stock from time to time in connection with financings, acquisitions, investments or otherwise. Any such issuance would result in dilution to our existing stockholders and could cause our stock price to fall. We are a Delaware corporation and the anti- takeover provisions of the ~~Delaware~~ General Corporation Law **of the State of Delaware (" DGCL")** , which apply to us, may discourage, delay or prevent a change in control by prohibiting us from engaging in a business combination with an interested stockholder for a period of three years after the person becomes an interested stockholder, even if a change of control would be beneficial to our existing stockholders.

In addition, our amended and restated certificate of incorporation and amended and restated bylaws may discourage, delay or prevent a change in our management or control over us that stockholders may consider favorable. Our amended and restated certificate of incorporation and amended and restated bylaws: • authorize the issuance of " blank check " convertible preferred stock that could be issued by our board of directors to thwart a takeover attempt; • establish a classified board of directors, as a result of which the successors to the directors whose terms have expired will be elected to serve from the time of election and qualification until the third annual meeting following their election; • require that directors only be removed from office for cause; • provide that vacancies on the board of directors, including newly created directorships, may be filled only by a majority vote of directors then in office rather than by stockholders; • prevent stockholders from calling special meetings; and • prohibit stockholder action by written consent, requiring all actions to be taken at a meeting of the stockholders. Our amended and restated bylaws designate the Court of Chancery of the State of Delaware and the federal district courts of the ~~United States of America~~ **U. S.** as the exclusive forums for substantially all disputes between us and our stockholders, which will restrict our stockholders' ability to choose the judicial forum for disputes with us or our directors, officers or employees. Our amended and restated bylaws provide that the Court of Chancery of the State of Delaware or, if such court lacks jurisdiction, any other state or federal court located in the State of Delaware, is the exclusive forum for any derivative action or proceeding brought on our behalf; any action asserting a breach of fiduciary duty; any action arising pursuant to the **DGCL** ~~Delaware General Corporation Law~~ , our amended and restated certificate of incorporation or our amended and restated bylaws; or any action asserting a claim governed by the internal affairs doctrine. However, such exclusive forum provisions would not apply to any such claim as to which such court determines that there is an indispensable party not subject to the jurisdiction of such court (and the indispensable party does not consent to the personal jurisdiction of such court within 10 days following such determination), which is vested in the exclusive jurisdiction of a court or forum other than such court or for which such court does not have subject matter jurisdiction. These provisions would not apply to suits brought to enforce a duty or liability created by the Exchange Act or any other claim for which the U. S. federal courts have exclusive jurisdiction. Furthermore, Section 22 of the Securities Act **of 1933, as amended (the " Securities Act ")** creates concurrent jurisdiction for federal and state courts over all such Securities Act actions. Accordingly, both state and federal courts have jurisdiction to entertain such claims. Our stockholders cannot waive compliance with the federal securities laws and the rules and regulations thereunder. To prevent having to litigate claims in multiple jurisdictions and the threat of inconsistent or contrary rulings by different courts, among other considerations, our amended and restated bylaws provide that, unless we consent in writing to the selection of an alternative forum, the federal district courts of the ~~United States of America~~ **U. S.** will be the sole and exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act. While the Delaware courts have determined that such choice of forum provisions are facially valid, a stockholder may nevertheless seek to bring a claim in a venue other than those designated in the exclusive forum provisions. In such instance, we would expect to vigorously assert the validity and enforceability of the exclusive forum provisions of our amended and restated bylaws. This may require significant additional costs associated with resolving such action in other jurisdictions and there can be no assurance that the provisions will be enforced by a court in those other jurisdictions. These exclusive choice of forum provisions may limit a stockholder' s ability to bring a claim in a judicial forum that it finds favorable for disputes with us or our directors, officers, or other employees, which may discourage lawsuits against us and our directors, officers, and other employees. If a court were to find such exclusive-forum provisions to be inapplicable or unenforceable in an action, we may incur further significant additional costs associated with resolving the dispute in other jurisdictions, all of which could harm our business. Events that are outside our control, such as natural disasters, violence or other catastrophic events, could harm our operations. Our headquarters and the majority of our infrastructure, including our PIC fabrication manufacturing facility, are located in Northern California, an area that is susceptible to earthquakes, fires, floods and other natural disasters. Further, attacks and violence aimed at Northern California or at the ~~United States~~ **U. S.** energy or telecommunications infrastructure could hinder or delay the development and sale of our products. In the event that an earthquake, targeted attack or other man- made or natural catastrophe were to destroy any part of our or our contract manufacturers' or suppliers' facilities, destroy or disrupt vital infrastructure systems, or interrupt our operations or supply chain for any extended period of time, our business, financial condition and results of operations would be harmed. For related risks concerning the operations and availability of the storage facilities in which our inventory is held, see also the Risk Factor titled" Our international sales and operations subject us to additional risks that may harm our operating results." ~~44~~